

COURT OF SESSION RULES AMENDMENT: CIVIL JURY PRECEPTS

Purpose

1. To invite the Scottish Civil Justice Council ('the Council') to consider and, if content, approve draft rules (**Paper 2018/13A**) making amendments to the Rules of the Court of Session in relation to the time periods for the issuing of a civil jury precept ahead of trial.

Background

2. At meetings on 27 March and 3 July 2018, the Council's Rules Rewrite Committee ("the Committee") considered a request from the Scottish Courts and Tribunal Service ("SCTS") seeking changes to Rule 37.2 (1) and (2) of the Rules of the Court of Session. The SCTS rules request, considered by the Committee is provided at **Paper 2018/13B**.
3. The purpose of the rules amendments is to require pursuers to request the issue of a jury precept further in advance of the diet for jury trial than is currently required.

Timing

4. SCTS request this rule change to be implemented as soon as possible to improve operational efficiency.

Rationale

5. The Court of Session has found that the upper limit of 50 jurors that can be cited for any specified trial is on occasions barely sufficient due to the number of people who do not respond to their citation and the number of requests for excusal as of right.
6. SCTS has submitted a request to the Scottish Government to amend primary legislation to remove the upper limit on the number of jurors that can be cited in civil cases and to remove the right of each party to challenge, without reason, the selection of up to four jurors. It is noted however, that any such legislative change cannot be achieved within an appropriate timeframe.
7. In the meantime, SCTS is seeking to implement administrative changes intended to minimise the risk of civil jury trials not being able to proceed due to insufficient numbers of jurors being available. One of these administrative changes is to cite

jurors for civil cases further in advance of the date of trial. Under current rules, pursuers cannot be compelled to submit the jury precept (which authorises the sheriff clerk to cite jurors for trial) any sooner than 28 days in advance of the diet.

8. The draft rules amend:

- the time period within which the pursuer must request the issue of a jury precept, from 28 days to 70 days, and if the pursuer fails to do so,
- the time period by which any other party may do so, from 21 days to 63 days.

9. These amendments will enable SCTS to give jurors who are to be cited, more notice of the requirement to serve, affording them more time in which to make alternative arrangements for issues such as childcare and work commitments. This should reduce the need for requests for discretionary excusal.

10. It will also allow SCTS to take more effective remedial action on occasions where it becomes apparent that a large proportion of those cited for a particular case are entitled to excusal as of right or have strong grounds for discretionary excusal.

11. It is anticipated that the rules amendments will reduce the administrative burden on SCTS staff and costs to SCTS in chasing-up pursuers for precepts.

Issues raised during policy development stages

12. The SCTS recognised that the rule change could impact on the cost of litigation as a fee of £298 is incurred by the pursuer for requesting the issue of a jury precept. The proposals were discussed by the Committee along with civil jury trial statistics provided by SCTS for the year 2016 in relation to 51 jury trials in which only 2 proceeded (see paragraphs 16 and 17 of **Paper 2018/13B**).

13. Having considered the rules request in the context of the data provided, the Committee agreed with SCTS that the rule change had potential to encourage earlier settlement of cases.

Compatibility with SCJC guiding principles

14.

Principle	Compatibility
<i>The civil justice system should be</i>	The rules are intended to create administrative efficiencies in the Court of Session in relation to the

<i>fair, accessible and efficient</i>	process for issuing jury precepts.
<i>Rules relating to practice and procedure should be as clear and easy to understand as possible</i>	The rules have been drafted using the rules rewrite style guide and are short, streamlined and easy to understand.
<i>Practice and procedure should, where appropriate, be similar in all civil courts</i>	The rules apply to proceedings which are raised in the Court of Session only.
<i>Methods of resolving disputes which do not involve the courts should, where appropriate, be promoted</i>	There is no scope to consider alternative methods of resolving disputes in the context of these rules.

Links to other initiatives

15. There are no links to any other initiatives.

Implementation

16. The Secretariat has liaised with SCTS on the drafting of these rules and it is anticipated that the impact upon staff training, guidance and IT changes will be minimal. The draft rules were also shared with the Judicial Institute and it is anticipated that any impact upon judicial training will be minimal.

Consultation

17. No external consultation has taken place in the preparation of these rules.

Legal advice

18. The amendment, to Rules 37.2(1) and (2) of the Rules of the Court of Session, may be made in terms of the powers conferred by Section 103(1)(b) of the Courts Reform (Scotland) Act 2014. There are no *vires* issues in respect of the amendment.

Recommendation

19. The Council is invited to consider and, if content, approve draft rules in Paper 2018/13A, making amendments to the Rules of the Court of Session in relation to the time periods for issuing of a civil jury precept ahead of trial, and to submit the rules to the Court of Session for consideration and approval, subject to any stylistic or typographical amendment.

**SCJC Secretariat
July 2018**