

SCJC Update - Group Procedure

Purpose

1. To update members on work regarding group procedure in Scotland

Introduction

2. The remit of the Group Procedure Joint Working Group is:

“To consider the secondary legislation and other matters required to facilitate a full implementation of Part 4 (Group Proceedings) of the Civil Litigation (Expenses & Group Proceedings) (Scotland) Act 2018;

To consider the learning from the existing rules in use; including whether to extend RCS Chapter 26A to cover the “opt out” option.

To propose any necessary amendments to that existing Group Procedure”

The Call for Evidence

3. At its meeting on October 2025 the SCJC approved a call for evidence. The call for evidence has provided much useful information. A total of twenty-six responses were received, from a wide variety of stakeholders. The responses have been published on the SCJC website, unless the respondent withheld permission for publication.

[https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations/consultation-on-group-procedure-\(opt-out\)---call-for-evidence](https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations/consultation-on-group-procedure-(opt-out)---call-for-evidence)

Developments

4. The working group has continued its work on technical issues relating the matters within its remit and considered the responses to the Call for Evidence. It has identified that certain issues relating to opt-out group proceedings are outwith the scope of Court Rules and will require legislation. This was anticipated by Parliament when the 2018 Act was passed, and the Act contains specific provision for such issues to be dealt with by secondary legislation (sec 22).
5. The Department for Business and Trade is conducting a review of the current opt-in and opt-out regime in competition cases in the Competition Appeal Tribunal.
6. The UK government has asked the Law Commission for England and Wales to consider the introduction of a consumer class actions regime in relation to opt in and opt out. The terms of reference are to consider the benefits and risks of

introducing such a regime, and make recommendations for the design of such a scheme, should it be introduced

<https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2026/04/Consumer-Class-Actions-Project-Terms-of-Reference.pdf>

Next Steps

7. The next steps are as follows:

- Preparation of a discussion paper to be approved by the SCJC in due course;
- A three-month consultation period on the discussion paper;
- Preparation of a communication and engagement strategy for the consultation, for approval by the SCJC in due course; and
- A final report from the SCJC containing the SCJCs decisions on court rules and recommendations to the Scottish Government in respect of any issues requiring legislation.

Recommendation

8. **The Council is asked to note this paper.**

Group Procedure Joint Working Group