POLICY NOTE

ACT OF SEDERUNT (SIMPLE PROCEDURE AMENDMENT) (CIVIL ONLINE) 2021

SSI 2021/295

MANDATORY USE OF CIVIL ONLINE FOR SIMPLE PROCEDURE CASES

1. This Policy Note is prepared and published by the Scottish Civil Justice Council ("the Council") to accompany the Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2021, made by the Court of Session on 30th August 2021. This will come in to force on the 29th of September 2021.

2. This Policy Note explains the exercise of the Council's policy making function in developing these rules. The note sets out the policy underpinning the rules. It does not form part of the rules.

3. The Council have considered and approved the draft rules on 24th August 2021 and agreed that they be submitted to the Court of Session for consideration.

Background

4. The Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2020 ("the 2020 Rules") came in to force on 1st December 2020 and temporarily modifies certain provisions contained in the Act of Sederunt (Simple Procedure) 2016 (S.S.I. 2016/200).

5. The 2020 Rules make it mandatory to submit a simple procedure claim via the Scottish Courts and Tribunals Service ("SCTS") Civil Online platform or the internet interface to the SCTS case management system. Under the rules, claimants may make an application to submit a claim on paper if they are unable to use either of these options. A sheriff will consider and decide whether a claimant could have submitted their claim by either of these methods, based on an explanation the claimant provides in a note.

6. The 2020 Rules were developed following a request from SCTS and were intended to assist in the Court's capability to progress simple procedure business under the public health restrictions imposed due to the Covid 19 pandemic. The 2020 Rules were intended to support the operational capacity of SCTS to deal with the backlogs created by Covid 19, as well as supporting the SCTS's long-term goal to digitise the court system. The views of the Council's Access to Justice Committee were canvassed following this request, and the Council agreed to the policy in principle, subject to the caveats discussed in paragraphs 15-23 of this policy note.

7. The 2020 Rules came in to force on 1st December 2020 and were set to expire on 30th September 2020.

8. The Council met in July 2021 to consider the potential extension of the 2020 rules, ahead of their expiry date. When revisiting the provisions, the Council agreed by majority vote that the temporary provisions contained in the 2020 Rules should be extended by a further 6 months until 31 March 2022. This was to enable a full Equality Impact Assessment to be submitted by the Scottish Courts and Tribunals Service.

Policy Objectives

9. The objective of the Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2021 ("the 2021 Rules"), is to is to extend the expiration date contained in the Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2020 by a further 6 months. This means that the provisions contained in the 2020 Rules are now due to expire on 31st March 2022.

10. The rules modify certain provisions contained in the Act of Sederunt (Simple Procedure) 2016.

11. The reason for extending the provisions of the 2020 Rules is to enable the Council to fully monitor the impact of the Rules in practice, before making a final policy decision on whether the provisions should be retained, abandoned or changed in any way ahead of the new expiry date of 31 March 2022.

12. In developing these Rules, efforts have been made to promote accessibility for all court users, in particular retaining the possibility for claimants to submit a claim on paper if they wish to do so. The Council intends to consider the findings from an Equality Impact Assessment, being prepared by SCTS, to inform its decision-making.

13. In developing these court rules, the Council has complied with its duty under section 2 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to have regard to the following guiding principles[1] when carrying out its functions:

Compatibility with SCJC guiding principles

14.

Principle	Compatibility
The civil justice system should be fair, accessible and efficient	The instrument extends the existing temporary provisions for the mandatory use of Civil Online in Simple Procedure cases by a period of 6 months from 30 September 2021. The extension will enable the Council to consider a full Equality Impact Assessment that is being prepared by SCTS. The inclusion of an exception test in the rules is designed to ensure that any users unable to use Civil Online may apply to the court to use paper processes. The temporary nature of these rule provisions enable the impact of the policy to be kept under review.
Rules relating to practice and procedure should be as clear and easy to understand as possible	The draft rules have been prepared using the rules rewrite style guide and are intended to be as clear and easy to understand as possible
Practice and procedure	These rules apply to simple procedure cases

[1] Section 2(3) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.

should, where appropriate, be similar in all civil courts	which may be raised only in the sheriff court.
Methods of resolving disputes which do not involve the courts should, where appropriate, be promoted	Alternative dispute resolution is not relevant to the proposal

Issues raised during policy development

15. The Council considered a number of policy issues when developing both sets of rules instruments:

Test for Exception

16. The Council agreed that there should be an exception test contained in the 2020 Rules, meaning that a claimant can still submit a claim on paper if they need to. The test is intended to be flexible and provides discretion to the Sheriff, ensuring that anyone who is unable to submit a claim online may be excused from compliance with this aspect of the Rules.

17. The Council considered that the inclusion of an exception test would help to mitigate access to justice issues, which had been identified, in particular relating to digital poverty or exclusion.

18. The Council noted that there may be a number of reasons why a potential claimant may be unable to submit an application electronically. This could include lack of access to hardware or reliable broadband and potential disabilities or lack of support which may make it more challenging for a person to submit forms online.

19. Although recent statistics indicate that the general population are confident in using the internet[2], it has also been found that some users will not have the appropriate skills to use online services, such as downloading and saving a document[3]. The Council agreed that the policy should not place court users in a disadvantaged position and should not lead to procedures that were unduly onerous.

Inclusion of Expiry Clause

20. The Council agreed that the rules instrument should include an expiry date to enable the impact of the underlying policy to be monitored and for the SCTS to finalise an Equality

[2] 88% of Scottish Users were confident in using the internet – Lloyds Consumer Digital Index 2021. Available here - Available from - https://www.lloydsbank.com/assets/media/pdfs/banking_with_us/whats-happening/210513-lloyds-consumer-digital-index-2021-report.pdf

[3] Citizens Advice Scotland found in their 2018 survey that 51% of respondents could download and save a document with a little difficulty but 49% could not do this without help or at all. Full research available from ps://www.cas.org.uk/system/files/publications/cas_disconnected_report.pdf

Impact Assessment to support the request that the current mandatory provisions be made permanent in rules of court. The Equality Impact Assessment will assist the Council in understanding the impact of the rule change for a proportion of court users who may fall under the protected characteristics category.

21. The user experience of both professional users and support services will be an important factor to be considered under the future review.

Consultation

22. The Council's Access to Justice Committee issued a questionnaire seeking views on the proposal that the 2020 Rule changes be made permanent.

23. The Committee set out relevant policy issues, which were considered by the Council in reaching its conclusions set out previously in this note.

SCJC Secretariat
30th August 2021