



Response from the Faculty of Advocates

to the

Consultation on the Proposed Revision of the Supreme Court Rules

Question 1: Do you foresee any practical difficulties with reducing the methods for filing of documents with the Registry as proposed?

The Faculty of Advocates does not foresee any practical difficulty with the reduction of the methods for filing documents with the Court. Faculty regards it as a welcome simplification that, for most appeals, documents will be lodged electronically and served automatically on the parties to the appeal.

Provided that the options are sufficiently clear to parties (particularly non-portal parties), the acceptable methods of service appear to satisfy the aim of modernising the procedures of the Court.

Question 2: Do you foresee any practical difficulties with removing a deemed date of filing with the Registry for the remaining methods of filing?

Faculty does not foresee any difficulties with this proposal.

Question 3: Do you foresee any practical difficulties with reducing the methods for service of documents on other parties as proposed?

Faculty regards it as a welcome simplification that, for most appeals, documents will be served automatically on the parties to the appeal by way of the portal. The reversal of filing and service is also welcome and is expected to remove some of the practical uncertainties with the provision of documents to the Court such as requiring engagement from opposing parties ahead of filing deadlines.

Question 4: Do you foresee any practical difficulties with removing a deemed date of serving documents on other parties for the remaining methods of service?

Faculty does not foresee any difficulties with this proposal. Given the acceptable methods of non-portal service, the actual date of service should be readily determinable without the need for a deemed date.

Question 5: Do you have any view on the proposal that the 28 day time limit for filing an application for permission to appeal should run from the date of refusal of permission by the court below instead of from the date of the decision or order appealed against?

As noted in the consultation papers, this is the method currently used in Scotland and therefore does not constitute a change for Scottish litigants. The rule is clear and workable.



Question 6: Do you foresee any practical difficulties with introducing a time limit for the application to the court below for permission to appeal to the Supreme Court where there is currently no time limit?

Faculty regards it to be sensible in terms of finality for there to be a time limit by which such an application should be made.

The time limits that currently operate in Scotland do not pose any difficulty in general terms for parties seeking to make an application, and also have the advantage of providing certainty for parties that an ability to seek a further appeal is not open-ended.

Question 7: Do you foresee any practical difficulties with the proposed time limits for filing and serving bundles?

Faculty queries whether it is necessary for the key documents and the hearing bundle to be lodged on different dates.

In practice, under the current rules, the written cases are often updated to include references or hyperlinks to the hearing bundle. The new rules will either cause that practice to cease or, alternatively, both bundles will be prepared at the same time in any event in order to permit the cross-referencing to be included. Faculty accepts that guidance on this matter may be forthcoming in the practice directions. Subject to what may be said in the practice directions and to what is said below in terms of the requirement for separate bundles, it may be simpler for both bundles to be lodged with the court at the same time in order to ensure they are as useful as possible to the Court.

That being said, unless there is a specific benefit of the key documents bundle from the Court's perspective, it may be advantageous for the whole hearing bundle to be lodged as a single, tabbed and hyperlinked pdf document with no need for a separate key document bundle at all. That will prevent duplication (in part) between the two bundles and should mean that both counsel and the Court require to have only one single pdf document available to them for the hearing, also reducing the prospect of confusion as regards pagination during oral submissions. Faculty recognises that if the Court considers that there is a benefit to having a key documents bundle, for example to assist with the Court's preparation, then that more than justifies its existence.

Faculty is mindful that the issue is likely largely to be one for solicitors in terms of compiling the bundles and for the Court in terms of their function. From the perspective of advocates, the matter is unlikely to cause any material concern.

8. Do you foresee any practical issues in complying with the transitional provisions in Rule 62?

Faculty foresees no difficulty arising from the transitional provisions.

9. Do you wish to add any other comments?

Faculty notes the intention of the Court to allow direct public access to certain documents via the Court's website.

Faculty supports this as a matter of open justice in broad terms. However, it will represent a marked change in approach for the majority of litigants in Scotland and the change is likely to



take a little time to settle. It may be, therefore, that there are initial practical issues in terms of confidentiality and redaction which are not readily apparent until the procedure has had an opportunity to settle in. Faculty would welcome this issue being kept under review in terms of directions and would also welcome a degree of flexibility initially until the practice becomes more familiar to solicitors and counsel.