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Responses

by

The Society of Messengers-at-Arms & Sheriff Officers

to the Consultation Paper issued by the

SHERIFF COURT RULES COUNCIL

on proposals for further extension of

the use of information technology in

civil cases in the sheriff court.

<p>1 -Electronic transmission, lodging and storage of the following documents should be competent:</p> <p>(a) Initial Writs/Petitions/Applications (b) NID (c) Defences/Answers (d) Closed Record (e) Motions (f) Minutes</p>	<p>We have no specific comment on this proposal other than we support any measure that leads to greater efficiency in the court service. The first recommendation makes no mention of Warrants for Service or Intimation. Our members would require some form of authentication of the warrant that is currently provided by a signature. We would seek direct involvement in any discussions to change the method of authentication.</p> <p>Our response is on the basis that the word “transmission” is not intended to have the meaning of intimation or service, in which case we are opposed to the suggestion.</p>
<p>2. - All interlocutors pronounced by the court (including warrants granted by sheriffs and clerks) should be transmitted electronically to agents (party litigants too where they wish to avail themselves of this service).</p>	<p>Our comments on recommendation 1 again apply. Some form of authentication would be required for any interlocutor that required to be served. No mention is made of security to ensure documents are sent or viewed by interested parties only.</p>
<p>3. The system should be operated by use of a website that provides positive confirmation of receipt.</p>	<p>We have no objection to this proposal subject to the proviso that positive receipt does not include intimation or service.</p>
<p>4. After a short pilot scheme the system should be introduced in all the courts in Scotland.</p>	<p>No objection subject to our comments on intimation and service above..</p>
<p>5. The electronic system should be operated by the Scottish Court Service in parallel with a paper system for a period of 2 years after its introduction. Thereafter it is proposed that only in limited or exceptional circumstances or on cause shown should the paper system be used by solicitors.</p>	<p>See our response to question 4.</p>
<p>6. There should be a statutory provision that removes the need for a manual signature.</p>	<p>We have no specific comment to make on the removal of the need for a manual signature on say an Initial Writ. We would refer to our responses to Recommendations 1 & 2. We would require some form of authentication on warrants for service. At this stage it would appear that manual signature is required for that purpose at a minimum.</p>
<p>7. Consideration should be given to the provision of other facilities such as parties being able to view the case on line.</p>	<p>See our responses to questions 1,2, and 3.</p>
<p>8. There should be a centralised virtual court. In the first place all such actions would go electronically to this single site and unless defended or otherwise required a hearing would be dealt with entirely electronically at this site.</p>	<p>There is a mixed view on this proposal from our members. In general, there is no objection to this proposal. An alternative view is that such a system might demean the Scottish judicial system.</p> <p>Notwithstanding that, concerns have been raised on the impact of the system on litigants without access to computer systems. This could impact on party litigants in particular. Consideration would have to</p>

	<p>be given to defenders if court documents were to be viewed on-line. Many defenders in small claim and summary cause actions will again have no access to computer systems.</p> <p>Concerns have also been raised regarding potential access by lending or credit reference agencies prior to decree being granted with potential impact on defenders' credit ratings.</p>
9. The Sheriff Clerk should serve all summary cause and small claims actions.	No. See our detailed responses below.
9.1 Do you consider this proposal to be a step in the right direction?	No.
9.2 What would the advantages be?	There may at first sight be perceived advantages to the parties on a cost basis. This would be outweighed by the disadvantages detailed in 9.3 below. In any event the savings will in many cases be negligible to litigants affected, the only saving being a fee for postal service. The citation costs are in any event recoverable by the Pursuer once decree is granted. The Pursuer would be put in no different position but there would be an impact on the public purse.
9.3 What would the disadvantages be?	<ol style="list-style-type: none"> 1) There would be considerable additional cost to the public purse, not only in staff resources but in more menial items such as postage, paper etc. Postage costs can now be considerable in view of the documentation that has to be served with Small Claim and Summary Cause summonses. We accept that the public purse has borne the cost for individual party litigants in the past. We do not consider the public purse should be liable for any further costs. 2) This proposal will add considerably to the pressure of work in the Sheriff Court. Our members regularly report delays in having applications dealt with, particularly since the introduction of the Debt Arrangement and Attachment (Scotland) Act 2002. This will not be improved by the imposition of further work on the Sheriff Clerk service. 3) The availability of an independent officer to effect service, independent of the parties, agents and courts has always been a part of the court process in Scotland. We would consider it a retrograde step to remove the availability of an independent party to effect service. As mentioned recently in other consultation documents the Society is very concerned about

	<p>the long term viability of an independent officer of court system in Scotland which depends mainly on citation and diligence. Whilst we have no wish to stand in the way of progress we nevertheless must emphasise that any deficiency in the range of work available to officers of court might threaten that position.</p> <p>The dilution of work available to officers of court in recent years has lead to a significant decrease in the number of practising officers of court. The annually published Civil Judicial Statistics show a drop in the number of court actions raised with a consequent drop in citation and enforcement work available to officers of court. Any further reduction may adversely affect the ability of officers to provide a service to the courts and the public particularly in rural areas.</p> <p>4) Consideration should also be given to defenders. Personal service enables the officer to provide advice and assistance. On a general note, we have concerns about the effectiveness of postal citation. Our position on this is fully set out in the Society's responses to the Scottish Executive consultation document, Modernising Bankruptcy and Diligence in Scotland.</p>
<p>9.4 What impact do you think this proposal would have on the litigant?</p>	<p>The impact on the litigant would be negligible. The cost savings will not be significant.</p>
<p>9.5 Do you have any general comments</p>	<p>Our position is detailed in the response to 9.3 above.</p>
<p>10. The Secretariat should search the primary and secondary legislation to identify where changes will be required.</p>	<p>No comment.</p>

We are very supportive of any measures that lead to greater efficiency in the operation of the courts and the civil judicial process. As indicated, there could be a significant impact in our methods of working if any change is proposed to the method of authenticating warrants and interlocutors. We would seek direct involvement with the Rules Council in any discussion of these matters both for the impact this may have on our members, litigants and other parties but also for the practical input we can provide.

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