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Our Ref: CEN
Your Ref:
Date: 15 November 2004

CONFIRMATION OF EMAIL

Dear Madam,

Sheriff Court Rules Council Consultation Paper

We refer to the above and would respond to the questions as follows:-

- 1.1 We consider this proposal to be a step in the right direction.
 - 1.2 The main advantage of this proposal would be speed.
 - 1.3 The obvious disadvantage of this proposal would be that productions cannot be lodged with the Initial Writ and Defences. However, this is a surmountable disadvantage.
 - 1.4 The main impact this proposal would have would be a saving in time. Where there is a problem with any motion or Writ, the litigant could be informed by e-mail and deal with it immediately. This would result in a saving of time of up to a week. Currently, the Writ etc will be examined and if there is a difficulty a letter dictated and it may reach the litigant perhaps 2 days later. Thereafter, the litigant has to consider their position and respond. If matters could be dealt with by e-mail, immediate changes could be made.
 - 1.5 We have no general comments.
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- 2.1 We consider the proposal to transmit all Interlocutors electronically to agents to be a step in the right direction.
 - 2.2 The main advantage would not be having to wait for the Interlocutor to arrive by post/collection by Clerk.

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2.3 We cannot think of any disadvantages.

We have no further comments in this section.

3.1 We agree with the option of using a website as we agree that there would otherwise be a potential formatting problem.

3.2 We have no comments on this section.

3.3 The main disadvantage we can foresee is that it will require every solicitors office in Scotland to be technologically advanced. Every office will require broadband access. Broadband is not universally available in Scotland which might be a problem. Another difficulty we foresee is that if the website crashes whilst midway through making an application – how will the rules deal with late lodging etc if the reason for this is that the systems had crashed. Further, it will need to be possible to save the forms into each solicitors own system – this will be necessary for adjustment purposes and for completion of the Record.

We have no general comments to make.

4.1 We agree that the system should be introduced across the whole of Scotland.

4.2 This will have the advantage of making it easier for those who are not particularly close to the Sheriff Court to raise an action. The system would have to be introduced across the whole of Scotland as otherwise mistakes will be made with regard to time limits etc. It will not be appreciated that items would have to be sent by post and would therefore require to be attended to a day earlier.

4.3 The main disadvantages are as above – every solicitors office will need have up to date technology and provisions will need to be in place to deal with lateness of documentation where that is not due to the fault of the solicitor but is due to a fault in the website or the broadband link.

4.4 We have no general comments.

5.1 We agree that parallel systems should be used initially.

5.2 The advantage of parallel systems is that it would enable all solicitors offices to introduce the appropriate technology and it enables solicitors and the court service alike to iron out any quirks in the system.

5.3 The main disadvantage of running a parallel system is that people become very set in their ways and will need encouragement to use the electronic system as soon as possible so that a paper system is not used for a further 2 years and then an immediate cross over.



- 5.4 We would suggest a potential 3 year period with parallel systems. Perhaps 2 years where everybody has the option of paper or online and then 1 year where this is only be special arrangement for example because the technology is still not available in the particular office.
- 5.5 The exceptional circumstances would require to be situations such as the website having crashed and the case time barring, internal IT problems, phone line problems.

We have no general comments to make.

- 6. We agree that there will require to be a statutory provision removing the need for a manual signature.
- 6.2 The main advantage is that it would be impossible to use an electronic system if a manual signature was required unless matters were to be scanned and e-mailed rather than completed on a website.
- 6.3 The main disadvantage we can foresee is in relation to certainty as to who has submitted the writ. There will need to be a way of inserting a secure signature – firms will need to sort this out internally for example a password to release a signature which has already been identified by the Scottish Court Service as the signature for that particular firm.

We have no further comments on this section.

- 7.1 The information which should be available to parties on line are all Interlocutors, the Writ, the NID, Defences, the Record, Minutes and Motions.
- 7.2 The documents will be a matter of public record in any event but it maybe wise to require a password or even simply the appropriate case reference number to prevent members of the public logging on simply to read documentation. Apart from anything, that could result in an overload of the system. Therefore there will require to be some security not least to protect the system so much as the documents and the party's interests. Further consideration may need to be given to family law actions where it might not be appropriate to have all documentation available on line.

We have no general comments to make.

- 8.1 We consider a centralised virtual court to be a step in the right direction.
- 8.2 The main disadvantage would be in relation to heritage actions. These would need to be kept separate. A Sheriff requires to decide if it is reasonable to evict and therefore they would need to call in any event. However, it would be acceptable for debt actions.



- 8.3 It would be hoped that the impact of this proposal would be to speed up court actions.
- 8.4 No comment to make.
- 8.5 One concern would be how jurisdiction is to be established. Would it work in a similar fashion to the Court of Session ie. there is jurisdiction if the incident is in Scotland or would it be a case of actions theoretically calling in the appropriate Sheriff Court albeit they are dealt with centrally?
- 9.1 We are not convinced that service of all summary cause and small claims actions should be done by the Sheriff Clerk.
- 9.2 The advantage would be the knowledge that the Sheriff Clerk will attend to matters and that if anything untoward occurs, it will be the Sheriff Clerk's problem!
- 9.3 The disadvantages would be in cost and time. One issue we have frequently is that certain defenders will not accept any recorded delivery letters. Accordingly, we use Sheriff Officers only. This saves time. However, this would not be appropriate for every case. If service had to be by recorded delivery followed by Sheriff Officers if the recorded delivery service failed, this could result in a delay. We would not expect the current difficulty of missing a return date to apply but would foresee that instead cases would be given dates so far in advance that every case would be delayed, regardless of the method of service.
- 9.4 We have no comment on this section.
- 9.5 Would service of incidental applications etc. also be carried out by the Sheriff Clerk or would it be intended to restrict matters to summonses only?

We therefore consider that service should rest with the solicitor.

10. We have no suggests with regard to changes in legislation.

We hope these comments are useful.

Yours faithfully

A handwritten signature in black ink, appearing to be 'MS', written in a cursive style.