



SHERIFF COURT RULES COUNCIL

Consultation Paper

**on proposals for further extension of
the use of information technology in
civil cases in the sheriff court**

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CONSULTATION PAPER ISSUED BY THE SHERIFF COURT RULES COUNCIL

Purpose

To seek views on the Rules Council's proposals for the further extension of the use of information technology in civil cases in the Sheriff Court.

The Sheriff Court Rules Council

The Sheriff Court Rules Council was set up by section 33 of the Sheriff Courts (Scotland) Act 1971 to keep under review the procedure and practice in civil proceedings in the Sheriff Court. It regularly prepares draft rules of procedure and submits them to the Court of Session for approval and enactment as an Act of Sederunt.

To assist it in the discharge of its functions, the Council may invite representations on any aspect of the procedure or practice in civil proceedings in the Sheriff Court. Representations may also be made by individual members of the Council or by any member of the public on any matter within the Council's remit. The Council considers any representations received. In this paper the Council invites comments on the recommendations below.

Background

The recent developments in information technology (IT) have brought great changes to the way governments, professions, businesses and other agencies deliver their services to the public. IT also provides unprecedented opportunities for substantial improvements in the services the sheriff's civil court renders to litigants. Within the courts themselves IT is already used in a variety of ways. A civil case management system has been in operation since 2000. In addition, sheriffs and clerks use computers for word-processing, communication with other sheriffs and clerks through an Intranet, and access to on-line databases. The Council is at present considering the introduction of rules providing for the taking of evidence by video link and other forms of communications technology. A pilot scheme for the digital audio recording of civil proceedings is about to begin in the Sheriff Principal's appeal court in Edinburgh.

The Council is convinced that the carefully devised use of IT is essential to the efficient and economic delivery of the services of the sheriff's civil court to the public in the 21st century. By means of IT there is scope for the reduction of delay and expense, the improvement of access to justice, and the formation of a modern and forward-looking system of civil procedure. The Council's views are consistent with the policy of the present Government that all services which can be electronically delivered should be.

Accordingly, in April 2003 the Council established a sub-committee to identify the areas in the sheriff's civil court in which information technology could be more widely used. The remit given to the sub-committee, known as the IT Committee, is in the following terms:

“To consider the current procedures and practices that facilitate the use of information technology in the Sheriff Court civil procedure and recommend:

- (a) whether such measures should be adopted more widely; and
- (b) whether, and what, other measures should be introduced.”

THE IT COMMITTEE'S RECOMMENDATIONS

As a first step, the Committee considered the use of IT for the electronic transmission and storage of documents, and the transmission of interlocutors. The Committee reported its recommendations to the Council and these are listed in the left-hand column of the table at the end of this paper. The Council has considered these recommendations and, before deciding how to proceed, would welcome your comments on them.

In relation to each of the IT Committee's recommendations the Council has posed a series of numbered questions which are listed in the right-hand column of the table. It would be helpful to have your response to these questions. Please also take the opportunity to make any other comment you consider appropriate. We have given you the opportunity to do so either in reply to the final question relative to each recommendation or at the end of your response.

The Committee makes 10 recommendations. Recommendations 1 to 7 are concerned with ordinary causes and summary applications. Recommendations 8 and 9 are concerned with summary causes and small claims. Recommendation 10 is concerned with changes in the rules of procedure. Each recommendation is now set out and explained.

ORDINARY CAUSES AND SUMMARY APPLICATIONS

First Recommendation

“Electronic transmission, lodging and storage of the following documents should be competent:

- (a) *Initial Writs/Petitions/Applications*
- (b) *NID*
- (c) *Defences/Answers*
- (d) *Closed Record*
- (e) *Motions*
- (f) *Minutes”*

In reaching the first recommendation the IT Committee considered which parts of the court process it should be permissible to transmit to and lodge in court in electronic form. The Committee reached the view that allowing the whole process to be transmitted and lodged electronically would be a significant step towards an electronic office. This is the direction most businesses and professions are moving in. It is also the Government's policy to move towards electronic delivery of services.

The Committee was of the view that this recommendation would produce significant efficiency gains and monetary savings to the benefit of courts and solicitors and, as a consequence, to the benefit of the individual users of the

court system. It was also considered that the use of electronic means of transmission of the whole process rather than, for example, motions alone, would encourage more to take advantage of the system when introduced.

The Committee did not address the electronic transmission and storage of productions. This matter will be considered separately.

Second Recommendation

“All interlocutors pronounced by the court (including warrants granted by sheriffs and clerks) should be transmitted electronically to agents (and party litigants where they wish to avail themselves of this service).”

In reaching this conclusion the IT Committee considered the advantages that would be gained by the litigant. It again concluded that there was the potential to make significant efficiency gains in that the solicitors and party litigants who were participating in the use of electronic means of transmission could have the court's interlocutor (or order) in their possession much more quickly than would otherwise be the case. Electronic transmission of court interlocutors should also bring about savings in time and effort expended by solicitors and, as a consequence, savings in the overall cost to the litigant.

Third Recommendation

“The system should be operated by use of a website that provides positive confirmation of receipt.”

In reaching this recommendation the Committee very much relied upon professional technical advice. The advantages and disadvantages of e-mail and website submission of documentation were presented to the Committee. The presentation included advice on the capability of the Case Management System currently used by Scottish Court Service. The advice strongly favoured a website based system.

The Committee considered advice to the effect that a website-based system:-

- cuts down the number of options as to the forms in which electronic information is presented to the Court Service;
- would better facilitate a more structured submission of information;
- would be easier for the Court Service to retrieve data from;
- should not result in formatting problems which would be likely to occur if an e-mail based system were used;
- is technically more efficient;
- should have fewer technical problems; and
- would resolve issues of time limits on the lodging of documents through the programming of the system to issue positive confirmation of receipt of the documents transmitted.

Fourth Recommendation

“After a short pilot scheme, the system should be introduced in all the courts in Scotland.”

In reaching this conclusion the IT Committee considered the experience of other jurisdictions in introducing an electronic system. Experience in England showed that there was little interest in using a system which was a pilot and limited in its extent to one court. The costs in time, training and equipment in doing so were prohibitive. In Singapore, on the other hand, they had been much more radical and had applied the system instantly across the board.

The Committee believes the pilot of the website system should be very short and that thereafter it should be introduced to all the sheriff courts in Scotland. It is hoped that this course will encourage solicitors to take advantage of the benefits the system will have to offer and that they will perceive that it will enhance the quality of their service to their clients. The cost implications for solicitors are principally in relation to the purchase of the necessary software to access the system. In the Committee's view the best way of persuading solicitors to incur these costs is to have a system working across the whole country: thus the software will be capable of being used in all parts of Scotland and not only in one sheriff court.

Fifth Recommendation

“The electronic system should be operated by the Scottish Court Service in parallel with the existing 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.”

The Committee considered that court users should be encouraged to use the electronic services provided through any new system in the hope that in time we can move to a completely electronic office. It was thought that a period of two years should be sufficient to enable solicitors to become accustomed to lodging material electronically. During this period they should be entitled to lodge papers either in hardcopy or in electronic form. However, the Committee proposes that once the period of two years has elapsed, only in exceptional circumstances would hardcopy papers be accepted. In reaching this conclusion the Committee was aware that while both a manual and electronic system were running, no savings would be achieved for the Scottish Court Service. The Committee is nevertheless of the view that it will be necessary to run both systems for an initial two year period.

It is not proposed that party litigants should be required to use the electronic system.

Sixth Recommendation

“There should be a statutory provision that removes the need for a manual signature. “

The Committee formed the view that in order to achieve a fully electronic office and facilitate full use of the electronic system the need for manual signatures would require to be removed where at all possible; and where signature was essential, a form of secure electronic signature should be introduced.

Seventh Recommendation

“Consideration should be given to the provision of other facilities such as parties being able to view the case on line.”

The IT Committee was undecided as to whether parties should be entitled to any extent to remote access to the court-stored data relative to the case in which they are involved. If each party is transmitting all documentation electronically to the court and to the other parties and each party is in turn storing that data then there should be little or no need for such remote access. It was, however, suggested by one member of the Committee that agents would want access from their own offices into the court stored data.

Security issues were raised as concerns. The use of passwords to protect or restrict access to files was considered. Some Committee members saw difficulties that might be experienced in the use of passwords where employees change companies.

The Committee had concerns about confidentiality while, at the same time, recognising the need for parties to be assured their motions etc were being dealt with and to obtain the information they needed. The Committee made no firm recommendation to the Rules Council in this regard and it was agreed to seek the views of the readers of this consultation paper.

SMALL CLAIMS AND SUMMARY CAUSES

Eighth Recommendation

“There should be a centralised virtual court. In the first place every such action would go electronically to this single site and unless it was defended or a hearing was otherwise required, it would be dealt with entirely electronically at this site.”

The intention here is that all small claims and summary cause actions should be lodged in electronic form and transmitted to a single site or “virtual court”. Unless they were defended or would otherwise require a hearing. these cases

would be dealt with entirely electronically at this location. Defended cases and those otherwise requiring a hearing would be transmitted to the appropriate local court for this purpose.

The Committee is of the view that such a system would bring about advantages in efficiency and that there would also be potential costs benefits that would be in the interests of the parties.

Ninth Recommendation

“The sheriff clerk should serve all summary cause and small claims actions.”

The Committee considered that if the system for handling small claims and summary causes is to change as outlined above then this is the time to decide whether the sheriff clerk should serve all summary cause and small claims actions. The Committee saw this as a sensible step if all summonses are going to be lodged at the one central site and handled electronically. It also considered that this proposal too had the potential to generate cost savings which again could be to the benefit of the parties involved in the individual cases.

Tenth Recommendation

“The Secretariat should search the primary and secondary legislation to identify where changes will be required.”

The Committee was of the view that rules changes may be necessary to effect any desired reforms. The Secretariat of the Sheriff Court Rules Council is currently searching rules and legislation with a view to identifying where change will be necessary.

<p align="center">Recommendations for Ordinary Cause and Summary Applications</p>	<p align="center">Questions</p>
<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>Note: For the avoidance of doubt it is not anticipated that productions for proof will be electronically stored at this stage. This issue will be looked at separately.</p>	<p>1.1 Do you consider this proposal to be a step in the right direction?</p> <p>1.2 What would the advantages be?</p> <p>1.3 What would the disadvantages be?</p> <p>1.4 What impact do you think this proposal would have on the litigant?</p> <p>1.5 Do you have any general comments to make?</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>2.1 Do you consider this proposal to be a step in the right direction?</p> <p>2.2 What would the advantages be?</p> <p>2.3 What would the disadvantages be?</p> <p>2.4 What impact do you think this proposal would have on the litigant?</p> <p>2.5 Do you have any general comments to make?</p>

Recommendations	Questions
<p>3. The system should be operated by use of a website that provides positive confirmation of receipt.</p>	<p>3.1 Do you agree with the option of using a website?</p> <p>3.2 Do you have any comments on any advantages ?</p> <p>3.3 Do you any comments on any disadvantages?</p> <p>3.4 Do you have any general comments to make?</p>
<p>4. After a short pilot scheme the system should be introduced in all the courts in Scotland.</p>	<p>4.1 Do you agree that the system should be introduced across the whole of Scotland?</p> <p>4.2 Do you have any comments on any advantages?</p> <p>4.3 Do you have any comments on any disadvantages?</p> <p>4.4 Do you have any general comments to make?</p>

Recommendations	Questions
<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>5.1 Do you agree with using parallel systems initially?</p> <p>5.2 Do you have any comments on any advantages?</p> <p>5.3 Do you have any comments on any disadvantages?</p> <p>5.4 What period of time would you suggest?</p> <p>5.5 What should the exceptional circumstances be?</p> <p>5.6 Do you have any general comments to make?</p>
<p>6. There should be a statutory provision that removes the need for a manual signature.</p>	<p>6.1 Do you agree with this proposal?</p> <p>6.2 What do you see as advantages?</p> <p>6.3 What do you see as disadvantages?</p> <p>6.4 Do you have any general comments to make?</p> <p>6.5 Can you highlight any areas of primary or subordinate legislation that will require to be altered in order to achieve this intention?</p>

Recommendations	Questions
<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>7.1 What information should be displayed?</p> <p>7.2 What degree of security do you think is required to protect individual parties' interests?</p> <p>7.3 Any other general comments?</p>
<p>Recommendations in relation to summary cause and small claims actions</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>8.1 Do you consider this proposal to be a step in the right direction?</p> <p>8.2 What would any advantages be?</p> <p>8.3 What would any disadvantages be?</p> <p>8.4 What impact do you think this proposal would have on the litigant?</p> <p>8.5 Do you have any general comments to make?</p>
<p>9. The Sheriff Clerk should serve all summary cause and small claims actions.</p>	<p>9.1 Do you consider this proposal to be a step in the right direction?</p> <p>9.2 What would the advantages be?</p> <p>9.3 What would the disadvantages be?</p> <p>9.4 What impact do you think this proposal would have on the litigant?</p> <p>9.5 Do you have any general comments to make?</p>

Recommendations	Questions
10. The Secretariat should search the primary and secondary legislation to identify where changes will be required.	10.1 Do you have any suggestions on where changes should be made?

Please now respond to the questions posed and indicate any other general comments or suggestions you would wish to make.

Responses

Consultees are asked to respond by – **15 November 2004**.

Responses can be:

- (a) **Posted to:** Glynis McKeand
Secretary to the Sheriff Court Rules Council
Scottish Executive Justice Department
St Andrew's House
Regent Road
Edinburgh
EH1 3DG
- (b) **Faxed to:** Glynis McKeand, 0131-244-4848
- (c) **E-mailed to:** Glynis.McKeand@scotland.gsi.gov.uk

Please ensure your response clearly identifies who you are, your interest in these proposals and whether or not you would wish your views to remain confidential.

The Sheriff Court Rules Council thanks you for taking part in this consultation exercise. Your views are important to us.