



Family Law
Association

BY FAX & POST – 0131 244 4848

Glynis McKeand,
Secretary to the Sheriff Court Rules Council,
Sheriff Court Rules Council,
St Andrew's House,
Regent Road,
Edinburgh,
EH1 3DG.

15th November 2004

Dear Glynis,

**Family Law Association
Sheriff Court Rules Council Consultation Paper**

Many thanks for your letter dated 15th September 2004. I enclose herewith the Family Law Association's response to the consultation papers.

Kind regards.

Yours sincerely,

p.p. Lesley Gordon

**LESLEY GORDON
SECRETARY**

Lesley Gordon
Messrs Skene Edwards
LP67, EDINBURGH 2
Tel no. 0131 718 4747

Recommendations for Ordinary Cause and Summary Applications	Questions
<p>1. Electronic transmission, lodging and storage of the following documents should be competent:</p> <p>(a) Initial Writs/Petitions/Applications</p> <p>(b) NID</p> <p>(c) Defences/Answers</p> <p>(d) Closed Record</p> <p>(e) Motions</p> <p>(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? <i>Yes</i></p> <p>1.2 What would the advantages be? <i>Quicker, save on postage costs</i></p> <p>1.3 What would the disadvantages be? <i>More at mercy of often temperamental computer systems</i></p> <p>1.4 What impact do you think this proposal would have on the litigant? <i>More of a benefit for solicitor really. Litigant might have to bear costs of updating solicitor computer system.</i></p> <p>1.5 Do you have any general comments to make? <i>Positive step forward, provide sheriff court staff given appropriate training so that delay not caused by their lack of familiarity with system</i></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? <i>Yes</i></p> <p>2.2 What would the advantages be? <i>Might actually get over interlocutors! Saves time in urgent cases</i></p> <p>2.3 What would the disadvantages be? <i>Might not be same flexibility as now we can phone clerk + say we need a warrant urgently</i></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? <i>Time scales would need to be set so that we would know we would get warrant within a certain no of days.</i></p>

Recommendations	Questions
<p>3. The system should be operated by use of a website that provides positive confirmation of receipt.</p> <p><i>if a centralised site for Scotland is intended there will be a risk of lack of communication btw central site + each sheriff clerk's office</i></p>	<p>3.1 Do you agree with the option of using a website? <i>yes, but not sure whether a central web for Scotland is intended or sites for each court</i></p> <p>3.2 Do you have any comments on any advantages? <i>Good to have confirmation of receipt, so we can prove it to sheriff + confirm not us who lost original writ!</i></p> <p>3.3 Do you any comments on any disadvantages? <i>Whole court system will collapse if website has technical problems</i></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? <i>Yes, no point otherwise</i></p> <p>4.2 Do you have any comments on any advantages? <i>more streamlined</i></p> <p>4.3 Do you have any comments on any disadvantages? <i>firms will effectively be forced to upgrade computer system, which obviously cost a lot.</i></p> <p>4.4 Do you have any general comments to make? <i>firms will always need to upgrade their computer</i></p>

Systems to keep up with improvements made by court system technology,

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? <i>Yes, not fair to force firms to use electronic system as of a certain date</i></p> <p>5.2 Do you have any comments on any advantages? <i>firms can ensure staff trained properly + systems upgraded as + when funds permit</i></p> <p>5.3 Do you have any comments on any disadvantages? <i>Definite scope for confusion, e.g. if one party to an action use electronic + other side still paper</i></p> <p>5.4 What period of time would you suggest? <i>2 years fine. 1 yr not enough</i></p> <p>5.5 What should the exceptional circumstances be? <i>Sole practitioner who can demonstrate not use computer system</i></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? <i>Yes, as system not work efficiently otherwise.</i></p> <p>6.2 What do you see as advantages? <i>Quicker</i></p> <p>6.3 What do you see as disadvantages? <i>Trainees not qualified to send off docs which not seen properly checked.</i></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? <i>time as we can access to paper processing</i></p> <p>7.2 What degree of security do you think is required to protect individual parties' interests? <i>password for each firm + also password for each case</i></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? <i>Yes</i></p> <p>8.2 What would any advantages be? <i>one centralised way of dealing with actions as opposed to each court having its own peculiarities</i></p> <p>8.3 What would any disadvantages be? <i>if system works efficiently, will be fine, if not then could be chaos</i></p> <p>8.4 What impact do you think this proposal would have on the litigant? <i>easier for party intent as can get all into for one website</i></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><i>if there is a centralised virtual court then better if sheriff clerk continues this unifying procedure. But would it be the sheriff clerk of court in area of jurisdiction or clerks at centralised site? if latter, could be scope for confusion.</i></p>	<p>9.1 Do you consider this proposal to be a step in the right direction? <i>Yes</i></p> <p>9.2 What would the advantages be? <i>←</i></p> <p>9.3 What would the disadvantages be? <i>←</i></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.