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Date: 03 December 2004

Glynis McKeand
Secretary to the Sheriff Court Rules Council
Scottish Executive Justice Department
St Andrew's House
Regent Road
EDINBURGH
EH1 3DG

Dear Ms McKeand,

Sheriff Court Rules Council : Consultation Paper

I refer to your letter dated 15 September enclosing copy of the consultation paper and would respond to the questions raised therein as follows:-

<u>Question</u>	<u>Answer</u>
1.1	Yes.
1.2	Electronic transmission would, hopefully, save both time and money to parties, minimise delays and increase the certainty of documents being received. There would also probably be associated savings in postal charges and costs associated with the production of hard copy documents.
1.3	The main disadvantages would be, as for any computer system, that if the system crashed or developed a fault there is a potential for considerable difficulties and inconvenience to be caused. Another potential disadvantage might be cost, if the system and associated software required was expensive.
1.4	The main impact would be to speed up the process, ensure greater efficiency and, hopefully, reduce costs and the time spent physically delivering documents to the court.

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- 1.5 The Council is of the general view that the proposals are to be welcomed and reflect the increasing reliance on electronic communication, which is gradually encompassing all areas of commercial and business activity.
- 2.1 Yes.
- 2.2 The advantages would be faster transmission of interlocutors and decisions of the court. The Council has personal experience of letters, etc from the courts going astray or being delayed in the postal system and this development would minimise such difficulties.
- 2.3 There are no immediately obvious disadvantages but, in a large organisation such as the Council, where individual PCs are pass-worded to the individual solicitor, there could be difficulties during periods of unexpected absence, eg illness, where access to systems could be delayed, with resulting difficulties. Also, in smaller firms, where a solicitor was absent from the office for lengthy periods of time, similar problems could arise, although this could also be said of the current system of paper documentation. No doubt, in relation to systems within the Council as described above, there would require to be thought given to developing a means of avoiding such problems.
- 2.4 The impact is likely to be a faster, more efficient system of litigation.
- 2.5 Again, the Council would welcome this proposal.
- 3.1 Yes.
- 3.2 In order to have confidence in the system, it is suggested that positive confirmation of receipt of papers would be essential.
- 3.3 No.
- 3.4 No.
- 4.1 Yes.
- 4.2 In relation to a pilot scheme, any testing of the system would require to be both rigorous and in a suitable location. It is suggested that a medium sized court would be the best forum in which to run the pilot. The obvious advantage, once the system is introduced across all courts in Scotland, is to ensure that there is a unitary and well understood system in operation.
- 4.3 There are likely to be teething problems encountered, both in the pilot and running out the system across Scotland but hopefully, over time, these will be ironed out.

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- 4.4 No.
- 5.1 Yes.
- 5.2 A two year lead-in period would enable solicitors to become accustomed to the new system and would be an appropriate transition period.
- 5.3 There would be the potential for confusion during this parallel period but, hopefully, this would not pose major problems nor outweigh the advantages of the new system.
- 5.4 A two year period does seem appropriate but if this is not adopted then the period should be at least one year.
- 5.5 Possible exceptional circumstances would be where litigants do not have access to the appropriate technology or in the possible, but unlikely, event of a catastrophic failure across the electronic system.
- 6.1 Yes.
- 6.2 The advantage would be that all documents would be able to be lodged electronically.
- 6.3 Appropriate security measures would require to be in place.
- 6.4 No.
- 6.5 Presumably, the relevant Sheriff Court Rules and Acts of Sederunt would require to be examined and amended, as would any other procedural or evidential rules requiring documents in writing, etc.
- 7.1 All relevant parts of the process should be available.
- 7.2 Only those involved in the particular case should be entitled to view, which may require some form of individual password for each case.
- 7.3 In order to ensure the necessary confidence in the system, all parties to an action should be aware of all parts of the process and their contents lodged in court. Parties must be able to ensure that their own file records, either paper or electronic, within their own office are consistent with those lodged in court.
- 8.1 It is suggested that further consideration should be given to clearly identify the advantages of a centralised court and this proposal is subject to a qualified Yes.
- 8.2 Again, it should speed up the process of cases.

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- 8.3 The disadvantages, potentially, could be that a centralised court could not effectively monitor and process the large volume of cases but, again, this will be dependent on the systems adopted.
- 8.4 There should be little immediate impact on the litigant, with the advantage, as stated, of a speedier progress of cases.
- 8.5 No.
- 9.1 The Council would give this proposal a qualified Yes.
- 9.2 Service by the Sheriff Clerk would certainly speed up the process and would prevent postal delays and, hopefully, establish more easily whether actions have been properly served. The disadvantages: individual Sheriff Courts, especially those with a high volume of cases, may become bogged down in the mechanics of serving papers. There would also need to be, as currently provided, a system for personal service by Sheriff Officers, etc.
- 9.4 It would, hopefully, make things easier for the litigant, especially party litigants.
- 9.5 No.
- 10.1 It is agreed that the Secretariat should undertake the search of the relevant primary and secondary legislation. This is clearly a lengthy and complicated procedure and the Council has no suggestions at this time as to where the relevant changes should be made.

I trust that the foregoing comments are of some assistance to you. In the event that further clarification or information is required, please do not hesitate to contact the writer.

Yours faithfully,

Jim Watters, Legal Services Manager

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