

RESPONDENT INFORMATION FORM

For the PUBLIC CONSULTATION on using online intimation to replace the walls of court.

Please note **this form must be completed** and returned with your response.

Are you responding as an individual or an organisation?

☐ Yes ☐ INDIVIDUAL

☐ ORGANISATION

Your details:

Your full name or your organisation's name:

Brian McKenzie

Phone number:

Address:

Postcode:

Email Address:

executorscotland@gmail.com

Your views on the publication of your response

Please indicate your preferences with regard to the publication of your response:

☐ Yes ☐ Publish response with name

☐ Publish response only (without name)

☐ Do not publish response

Providing your response

If you chose to provide a separate written response, then please complete the first page of this Respondent Information Form and attach it to your response.

If you chose to include your responses within this Respondent Information Form, please insert your responses to each consultation question into the relevant boxes below:

Proposal 1 - Online Intimation:

Question 1 – Do you agree the existing rules on “advertising via the walls of court” should be replaced by amended rules requiring “online intimation”?

Agree

The posting on walls, doors or other parts of court should be seen as archaic and should cease - to be replaced with a digital solution. Legislation should be amended accordingly.

Question 2 – Are you aware of any reason why those existing references to “advertising via the walls of court” should not be removed?

No

Proposal 2 - Newspaper Advertising:

Question 3 – Other than notices for publication in the Edinburgh Gazette; are you aware of any reason why the existing references to the mandatory use of “advertising via newspapers” should not be made discretionary?

No

Proposal 3 - Direct Intimation:

Question 4 – Subject to securing a prerequisite law change; when potential appointments as an Executor Dative are being advertised do you agree that ‘direct intimation’ would be more appropriate?

Do not agree

Proposal 3 envisages a two stage move to ‘direct intimation’ for applicants for appointment as executor dative. The first stage being a firming up of the existing temporary ‘online intimation’. The second stage is a move to ‘direct intimation’.

The proposal is that the advertising aspect of an application for appointment as executor dative would sit with the applicant who should intimate the existence of the petition to relatives and other parties. We are not told who would need to be informed. Presumably the only persons that would need to be notified would be the other persons, if any, with an equal entitlement to be appointed executor.

There are a number of stated influencing factors:

Blended families

The greater prevalence of blended families does likely introduce a greater potential for interested persons and for more requests to be conjoined as executor and ultimately more conflict and more work for lawyers. But it also acts as an obstacle to notification because

blended families are often estranged and without contact details for each and without interaction and people are often unaware of the composition of the family. Estranged family members may intentionally keep their contact details private.

Romance fraud

It is difficult to see a direct correlation between petition details and romance fraud. But the current interim measure whereby the petitioner and the deceased's details are displayed together on the SCTS website does lend itself to other types of financial fraud. And this is further influenced by an inconsistency of reporting by the SCTS during the temporary period. There are a number of courts which additionally add the capacity in which the pursuer is applying and this divulges more personal information about relationship that could assist fraudsters.

Unsuitable executor

There is limited opportunity for the court to deny the appointment of an executor dative. Unsuitability is generally not a subjective factor in choice. The appointment of an executor dative is an administrative function rather than a suitability exercise and while there is an acknowledgement of limited options for removal once appointed, there is no link to the fact that the limited options also apply to the appointment.

The proposal to 'directly intimate'.

The note is short on detail on how 'directly intimate' would work. There would be a need to account for the situation whereby an applicant does not know the address of the other persons, or may be at a stage where they do not know who or how many other persons may be relevant. A system would have to allow for non intimation or intimation to the extent known to the applicant. And with a non-intimation provision this could easily become the default and the notification system would lose credibility. How would the court possibly police such a scheme? It could become the easy option for an applicant to misrepresent and to not intimate on that same basis.

How would the court know whether an applicant has acted properly, what would the consequence be of non-intimation?. At present a pursuer need only declare entitlement as a member of a class, there is no requirement to identify the other class members.

While the consultation describes a concept, there is a lack of detail in the consultation about how the process would work in practice. It has not been fully thought out and accordingly it is a risky approach to make decisions without detail.

It is relatively common for siblings to jointly apply to be executor. There is no detail how that would work.

The notion that there would be no cost to applicants if email can be used is faulty. While some applications are made by applicants, most are made by solicitors due to the application process being obscure to the public. Solicitors will charge for tracking down potential recipients and the extra work involved in communicating. This is an example which shows that the proposal has not been fully considered

There is also some reputational risk associated with the proposal in so much as persons could be alerted to an unknown bereavement by a legal notification.

A large number of dative appointments require a bond of caution at the confirmation stage. There is no information in the consultation advising what influence this might have and whether any associated change is envisaged.

Timescale

The increase to 21 days makes a lot of sense.

Conclusion

The direct intimation proposal will not achieve the intended benefits. The notion is idealistic and ignores the practicalities of unknown and uncontactable persons.

A better proposal would be to retain the SCTS online notification system for executor-dative petitions but with petitioner details omitted and only to publish the details of the deceased.

Additional

- a) As an interim measure it is recommended that the SCTS instruct those courts that publish the additional 'qua' information, to cease this practice to preserve personal information.
- b) One of the items for amendment is a change to the form specified in the Act of Sederunt (Confirmation of Executors) 1964. While unrelated to the consultation, a revision of the Act of Sederunt should use the opportunity to remove the term 'next of kin' which has caused debate and adds to uncertainty. (see the references in Currie on Confirmation of Executors and Meston: The Succession (Scotland) Act 1964).