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15 November 2021

Dear Sir/Madam,

Consultation: Rules Covering the Mode of Attendance at Court Hearing

I refer to the above consultation to which I respond on behalf of the Scottish Courts and Tribunals Service (SCTS). The response is submitted by the SCTS acting in its role to provide efficient and effective administration to the courts and tribunals and does not include the views of the Judiciary.

The SCTS is supportive of the proposals set out in the consultation which expand on the provisions within the Coronavirus (Scotland) Acts in providing different modes by which a hearing can take place. The [SCTS Digital Strategy](#), published in 2018, set out a 5-year ambition to move towards an increasingly digital service. Significant progress has been made on that front – out of necessity. This progress presents real opportunities to build a more resilient, responsive and efficient justice system, whilst upholding those cornerstones of access to justice, fairness and transparency. The SCTS remains committed to ensuring that we use the technology available to achieve this.

Pre-COVID, the use of remote attendance was allowed in certain circumstances including where parties applied for authority for a witness or party's evidence to be given this way, and vulnerable witnesses were also able to give evidence remotely. The expanded use of virtual hearings over the last 20 months has proved the concept that these can be made to work efficiently and effectively in more situations, whilst preserving the three fundamental elements of the justice system as noted above.

However, the SCTS fully accepts that virtual hearings may not be appropriate for all hearing types.

Draft rules

At this time, the SCTS would only make some initial comments on the draft rules provided as part of the consultation.

A number of sheriff courts have a varied caseload within each calling. For example, "ordinary courts" will often contain a number of different hearing and case types, e.g. family, personal injury and debt. Some smaller sheriff courts will have a general civil court

which will contain all types of civil hearing. Given the rules, as currently drafted, will mean that some of these would have to be in person hearings and some “virtual” there is likely to be an impact on the running of the courts.

As is noted in the consultation document, in addition to Court of Session and Ordinary Cause Rules, amendment would also be required for the Sheriff Appeal Court Rules; Sheriff Court Adoption Rules; Fatal Accident Inquiry Rules; Bankruptcy Rules; Child Care and Maintenance Rules; and the Summary Cause Rules; to name but a few. The SCTS has concerns that if rules provide for different modes of calling for the numerous types of hearing within the numerous different case categories there is a big risk that the rules will be overly complex and risk confusion and the wrong mode being applied to case types.

Further, the SCTS notes that the SCJC Access to Justice Committee, has in the past, made comment to the effect that there can be issues with being overly prescriptive with categories being omitted from the default position in the rules.


The SCTS is therefore of the view that consideration could be given to an overarching Act of Sederunt setting out the mode of attendance rather than amending each set of court rules. This could for example, set out a non-exhaustive list where in person hearings would be the default mode. A mechanism enabling parties to apply, or the court directing at its own instance, that a hearing take place in a different way could also be included.

Hybrid hearings

The SCTS is currently developing a new Virtual Hearing Service which will support hybrid hearings across all our courts and tribunals. This work includes an upgrade of the technology that is available within our court and tribunal hearing rooms across the estate. This work is currently underway in Parliament House and over time will be rolled out across our remaining estate.

The SCTS would be grateful if we could be kept informed of the progress of the consultation. We would welcome the opportunity to consider further draft rules in light of responses received as part of the consultation.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Mark Kubeczka', written in a cursive style with a large loop at the end.

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