

## SCOTTISH CIVIL JUSTICE COUNCIL

### Consultation on using online intimation to replace the walls of court

#### Response from the Sheriffs' and Summary Sheriffs' Association

The Sheriffs' and Summary Sheriffs' Association is the representative body for sheriffs and summary sheriffs across Scotland. The Association does not normally take positions on matters of public policy. We do welcome the opportunity to offer observations about practical issues arising from the implementation of legislation within our spheres of expertise.

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

It is the Association's view that it supports the suggestion of moving to 'online intimation' as a generality. We consider that there are particular issues which arise in relation to executry petitions.

The existing rules on advertising via the walls of court insofar as they relate to petitions for the appointment of an Executor Dative are a wholly ineffective mechanism for intimation on interested parties and should be amended. We note that when the matter was last reviewed in 1971, limiting advertising to the walls of court was considered to be a sufficient policy response on the basis that (a) these appointments are dealt with administratively and (b) there was no evident abuse of process that justified putting added costs onto pursuers for them to provide 'direct intimation'. Whilst the sheriff may order the petition to be intimated to specified persons, in practice direct intimation is required only in very limited, case-specific circumstances. The current rules essentially place the onus on those with an interest in an estate to lodge a caveat. Awareness of caveat procedure amongst the general population is limited, whereas online searches are free, produce instant results and the proportion of the population who are not equipped to do so is limited (and diminishing). Although it is recognised that issues of data protection arise, it is the view of the Association that on balance the benefits of online intimation outweigh the data protection issues identified.

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

The Association shares the regret expressed by others that in doing so an ancient, historical Scots legal phrase will pass into desuetude.

In relation to petitions for the appointment of an Executor Dative, the Association is not aware of any reason why the existing references to “advertising via the walls of court” should not be removed from the Act of Sederunt (Edictal Citations, Commissary Petitions and Petitions of Service) 1971, Section 2(2).

**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?**

Prior to the Covid 19 pandemic, circulation of local newspapers varied across the country, but in some parts, continued to be relatively healthy, so that there was continuing value in newspaper advertisement. Our impression is that there has been a continued decline in the physical circulation of local newspapers. We are aware of steps which have been taken by local press publishing companies to create an online equivalent. Details may be found in this link:

<https://www.pressreader.com/uk/edinburgh-evening-news/20250127/282518664178446>

We raise as a point for consideration whether this, or some equivalent, might provide a useful addition or alternative to local newspaper advertisement in print, as the local character of advertisement will continue to be important.

**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?**

The proposals for direct intimation raise a number of challenging issues. It may be that they are unworkable. The consultation paper proposes that the rules should be amended to require each petitioner to ‘directly intimate’ that petitioner’s potential appointment to “the relatives and other parties to the estate”. The SCJC are aware of the order of priority for appointment of an Executor Dative, which we do not intend to rehearse in this response, beyond observing that there is a cascading list of potential beneficiaries and with every tier the number of potential beneficiaries multiplies. It is of the view of the Association that detailed clarification of the persons on whom direct intimation should be made is essential. For example, in the event the deceased is survived by a spouse or civil partner and children, we would suggest that it may be appropriate for intimation to be restricted to that group of individuals (and any issue of predeceasing children). It is to be envisaged that due to more complex family structures, migration and estrangements, there will be very many cases in which the whereabouts and/or contact details of interested parties are unknown. Attempting to trace a broad group of potential beneficiaries could have significant financial implications. The consultation paper is silent in relation to both the criteria to satisfy the court in relation to the steps taken to locate interested parties and the default position in the event direct intimation cannot be achieved. There may be cases in which illegitimate offspring are aware of their parentage but are unknown to the deceased’s immediate family members and would therefore not be included in the schedule of intimation. It is therefore the view of the Association that online intimation should continue in parallel with direct intimation. We would also observe that the *induciae* in Petitions for the appointment of an Executor Dative is

significantly shorter than current practice in other forms of civil procedure and that this may be an appropriate opportunity to consider standardising the period of notice.

The position of a non-legally qualified party needs to be considered. Members of the public, who may be in a vulnerable situation due to bereavement, may struggle significantly to understand and execute intimation. If they are relying on the Sheriff Clerk's office for guidance then this could create an unnecessary burden on sheriff court staff.

It may be that the SCJC wish to consider an alternative course by simplifying the process by dispensing with the requirement for direct intimation and making all intimation by online means.

#### **Question 5 – Impact Assessments**

The Association has no observations to make about these.

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