ANNEX B CONSULTATION QUESTIONNAIRE

Consultation question 1

Do you have have any comments on the way in which a claim is made using simple procedure or the forms associated with this stage?

Comments

1. Rule 3.9 (1) provides that:

"The sheriff clerk will check the Claim Form for problems which mean that it cannot be registered. Such problems might include...the Claim Form not being accompanied by the correct fee."

Neither the Rules nor the Claim Form state what fee is payable to the court by the Claimant. The fee is £102, and this is noted on the Scots Courts website in the Fees section. A party litigant who is unfamiliar with the website may have some difficulty finding this information. We would recommend that the fee is noted in the Rules and on the Claim Form.

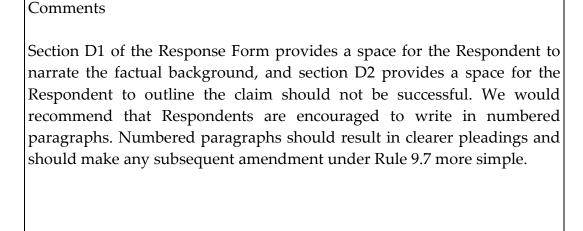
- 2. A major consideration for any Claimant is the cost involved in pursuing a claim via the Simple Procedure. Party litigants will not necessarily be aware of either the general rule that "expenses follow success" or the capped levels of recoverable expenses. We would recommend that the Rules refer to the general rule on expenses and contain a note of the caps, as provided in Section 3 of the Sheriff Court Simple Procedure (Limits on Award of Expenses) Order 2016
- 3. Section D1 of the Claim Form provides a space for the Claimant to narrate the factual background to their claim, and section D7 provides a space for the Claimant to outline why his/her case should be successful. We would recommend that Claimants are encouraged to write in numbered paragraphs. Numbered paragraphs should result in clearer pleadings and should make any subsequent amendment under Rule 9.7 more simple.
- 4. Section E2 of the Claim Form invites Claimants to:

"Set out in a numbered list any documents you might bring to court to support your claim."

Although this section asks only for a list and not the actual documents, Claimants will often enclose the relevant documents with the Claim Form. Any further documents which are lodged at a later stage are lodged with a corresponding List of Evidence Form (Form 10A). This can lead to confusion at the hearing, as some documents are attached to the Claim Form, and some are with the List of Evidence Form (which might actually contain a duplication of documents lodged with the Claim Form). We would recommend that the Claim Form advises claimants to complete a List of Evidence Form and attaching it to the Claim Form.

Consultation question 2

Do you have any comments on responding to a claim, the way in which time to pay may be requested or the corresponding forms?



Consultation question 3

Do you have any comments in relation to the ways in which forms and documents may be sent or formally served in a simple procedure case?

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Consultation question 5

Do you have any comments on the way in which applications can be made in simple procedure, including any of the prescribed forms?

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No comments.	
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Consultation question 7

Do you have comments on the rules and forms relating to hearings and decisions, including the recall of a decision?

Comments

The Rules do not provide party litigants with an understanding of the way in which hearings are conducted. Party Litigants, of course, cannot put questions to themselves, which sometimes leads to confusion as to how the party litigant's evidence should be given. Sheriffs tend to approach this issue differently. We would recommend that the Rules outline a system for governing the way in which hearings are conducted and, in particular, the way in which a party litigant's testimony is given to the court.

The following is a suggested system:

- The party litigant is given an opportunity to give his evidence in a manner similar to submissions.
- The opposing litigant is given an opportunity to cross examine the party litigant on his evidence.
- The party litigant is then given a further opportunity to clarify his submissions.
- The Sheriff can then put questions to the party litigant.
- Once the party litigant has given his evidence, he may call other witnesses, and the usual form of evidence (examination in chief, cross-examination, re-examination) is followed.
- Once both parties have led their evidence, the party litigant can then make his closing submissions

Consultation question 8

Do you have any comment on any other aspect of the Simple Procedure Rules, or any general comments about the rules or forms?

Comments

In most cases, the lodging of a Response Form leads to a Case Management Discussion being fixed. Case Management Discussions call in court alongside numerous other cases. This may cause party litigants a degree of anxiety. It is also a potentially time consuming process and one which may require a party litigant to miss a morning from their work. In our experience, substantive issues of the case are rarely discussed at Case Management Discussion, and the CMD usually simply leads to a hearing being fixed. We would therefore recommend that parties have the option to have a Case Management Discussion with the Sheriff by telephone.