ANNEX B CONSULTATION QUESTIONNAIRE

Consultation question 1

Do you have any comments on the approach taken to splitting the Simple Procedure Rules into two sets of rules?

	Comments		
Con sult atio	We support the apinto two sets of rule		g the Simple Procedure Rules
n ques			
tion			
2 140			
Are you			
cont ent			
	he use of the follow	ing terms in the rules?	
-	<u>Claim</u> – for a stand	lard simple procedure case	?
Co	ntent 🛚	Not content	No Preference
-	<u>Claimant</u> – for purs	suer	
Co	ntent 🗌	Not content \boxtimes	No Preference
-	Responding party -	- for defender	
Co	ntent 🗌	Not content \boxtimes	No Preference
_	<u>Freeze – for sist</u>		
Co	ntent 🛚	Not content	No Preference

Consultation question 3

Do you have any comments on the approach taken to updating hard to understand terminology in the simple procedure rules?

	Comments	
Con sult atio n ques tion 4 Is ther	Whilst it is well intended and welcome it is important not to lose sight of the importance of the specific meaning which some technical words convey. Changing terms such as hearings instead of proofs and freeze instead of sist is helpful. There is also the danger of oversimplifying e.g most people would understand the meaning of pursuer and defender.	
any		
term		
inolog	y remaining in the draft simple procedure rules which you think is unfriendly	
_	ficult for the lay user to understand and, if so, what alternatives would you t?	_
or diff sugges		_
or diff sugges	t?	_
or diff sugges	Yes No No	_
or diff sugges	Yes No No	_
or diff sugges	Yes No No	_
or diff sugges Con sult	Yes No No	_
Con sult atio n ques	Yes No No	_
Con sult atio n ques tion	Yes No No	_
Con sult atio n ques tion 5	Yes No No	_
Con sult atio n ques tion 5	Yes No No	_
Con sult atio n ques tion 5 Do you	Yes No No	_
Con sult atio n ques tion 5	Yes No No	_

ments about the approach taken to the numbering and layout of the rules?

Con We have no comments about the approach taken to the numbering and layout of the rules. atio n ques tion 6 Do you have any

ments about how, and where, the rules should be presented on the internet?

Comments

The Society believes that the most appropriate location that the rules are presented is the Scottish Courts website and there should be a prominent link on the main page. We also believe it would be helpful to have hyperlinks in the rules to the appropriate form that the rule may refer to.

Con sult atio n ques tion

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t101 7

Do you

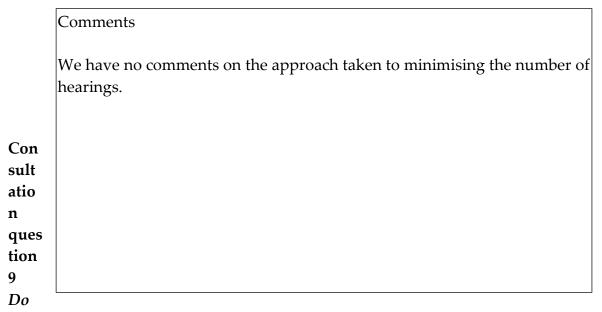
have any comments on the approach to headings in the Rules?

Comments

Con sult atio n

n ques tion We have no comments on the approach to the headings.

Do you have any comments on the approach taken to minimising the number of hearings?



you have any comments on the approach taken to alternative dispute resolution in the rules?

	Comments
sult atio	We have no comments on the approach taken to alternative dispute resolution.
n ques	
tion 10	
Do	
you have	
any com	

ments on the proposed principles of simple procedure as set out in Part 1 Rules 2.1 – 2.5?

	Comments
	We have no comments on these principles.
Con sult	
atio	
n ques	
tion 11	
Do	
you have a	my comments on the proposed duties on sheriffs, parties and representatives:
nuve u	
	Comments
Con sult	We have no comment to make.
atio	
n ques	
tion	
12 Do	
you	
have any	
othe	
r comn	nents on the approach taken in Part 1: The simple procedure?
	Comments
	We have no further comments on the approach taken in part 1.
Con sult atio	
n	
	5

question 13

Do you have any comments on the approach taken in Part 2: Representation and support?

	Comments
Con sult atio	We have no further comments on the approach taken in part 2.
n	
ques	
tion	
14	
Do	
you	
have	
any	
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ments on the proposed timetable for raising a simple procedure claim?

	Comments
	The Society believes it would be helpful to clarify the number of days referred to as 'clear days'. This would remove any ambiguity regarding the defender having been provided with the appropriate period of notice.
Con	and defended maying been provided with the appropriate period of notice.
sult	
atio	
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ques	
tion	
15	
Do	
you	

have any other comments on approach taken in Part 3: Making a claim?

Comments Con In relation to rule 4.4 there does not appear to be any way of authenticating sult a Claim Form such as a stamp, seal or signature. This is particularly atio important for our members when receiving instructions to serve. We also n believe that in rule 4.5 (a) it may be more appropriate to use the term 'not ques an individual' to ensure that unincorporated bodies and associations are tion addressed. 16 Do you have any

ments on the flowchart (at Part 4 Rule 2.4) setting out the options available to the responding party when responding to a claim?

com

Comments
We have no comments.

you have any other comments on the approach taken in Part 4: Responding to a claim?

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	Comments
Con	We have no comments.
sult atio	
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tion 18
Do you have any comments on the approach taken in Part 5: Sending and service?

	Please see paper apart.
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ques tion	
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Do	

you have any comments on the proposed procedures for settlement and for undefended actions?

	Comments
Con sult atio	We have no comments.
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tion	
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Do	
you	
have	
any	
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ments on the proposed model for case management conferences?

	Comments	
	Comments	
	We have no comments.	
	vve have no confinents.	
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21		
Do		
you		
	any other comments on the approach taken in Part 6: The first consideration o	ţ
a case	<i>:</i>	
	Comments	
Con	Mo have no comments	
sult	We have no comments.	
atio		
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ques		
tion		
22		
Do		
you		
have		
any		
com		
ments	on the approach taken in Part 7: Orders of the sheriff?	
	Comments	
	We have no comments.	
Ce ::		
Con		
sult		
	9	

ation question 23

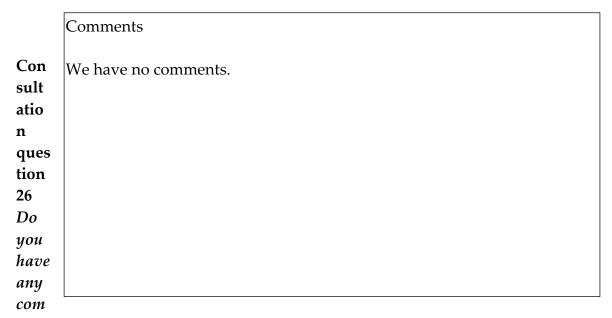
Do you have any comments on the proposed model for freezing and unfreezing cases?

	Comments
Con sult atio n ques tion 24 Do you have any othe	The Society believes that given the importance that freezing and unfreezing applications can have, it would be more appropriate that any applications sent to the court should be formally served on the other party and not sent. With respect to references to numbers of days it should also state from whatever the appropriate date would be.

r comments on the approach taken in Part 8: Applications by the parties?

	Comments
	We have no further comments.
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sult	
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tion	
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Do	
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have any comments on the approach taken in Part 9: Documents and other evidence?



ments on the approach taken in Part 10: Witnesses?

Comments

We are concerned that there are no provisions for Caution regarding party litgants instructing the citation of witnesses by Sheriff Officers.

Con sult atio It is unclear if only witnesses named in the section E1 of the Simple Procedure Claim Form can be cited or if additional witnesses can be added.

n ques tion 27

Do

There are no witness citation forms included in the draft rules at present and the Society would welcome further opportunity to comment once these are produced.

you have any comments on whether the detailed provisions on documents, evidence and witnesses are necessary in the Simple Procedure Rules?

	Comments
Con sult atio	We would consider these provisions necessary.
n ques	
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	11

tion 28

If you think that any of this provision could be dispensed with (or any additional provision is necessary), please identify that provision.

	Comments
	With reference to our response to question 26 it would be helpful if the issue of Caution by party litigants was addressed.
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Do	
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have any comments on the approach taken in Part 11: The hearing?

	Comments
Con sult atio	We have no comments.
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Do	
you	
have	
any	
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ments on the approach taken in Part 12: The decision?

Comments

We consider that it is important that the decree form should clearly state the information currently contained in the types of decree presently in use. In particular information detailing the parties, who the decree is against, the date of decree, when it was extracted, the amount due, any interest awarded and expenses.

Con sult atio n

Given that the enforcement of decrees can only be carried out by Officers of Court we do not consider this an area that requires simplification.

ques tion

31

Do you have any comments on the approach taken in Part 13: Other matters?

	Comments
Con	We have no comments.
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Do	
you	
have	
any	
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ments on the approach taken in Part 14: Appeals?

Comm	ents				
We ha	ve no comm	ents.			
			13		

ation question 33

Do you have any comments on the approach taken in Part 15: Forms?

	Comments
Con sult atio	The forms should be individually numbered.
n ques	
tion	
34	
Do	
you	
have	
any	
com	

ments on any individual forms?

Comments

Claim Form

We also note that there does not appear to be any space on the proposed forms for details of the Sheriffdom, Sheriff Court, address, telephone and email to be inserted. Part C1 should contain an additional option of not known as some claimants will not know if a responding party using a trading or descriptive name is an individual, company or organisation. In part D3 of the form consideration should be given to adding a prompt to allow claimants to ask for interest, expenses and or late payment penalty. The form appears to have been drafted purely with party litigants in mind without consideration that the vast majority of claims will likely be conducted by solicitors.

Cons ultati on quest ion 35

Do

Response Form

In 'B You Options' and 'Next Steps' details should be provided as to how the response can be sent e.g. post, email etc.

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Confirmation of Service Notice

We do not consider it necessary to have a separate confirmation of service notice as these are in every case served by qualified Officers of Court. The existing certificate of service Form 12, found in the Summary Cause Rules, would be far more appropriate.

Claim Service Notice

There should be provision for the date of service and should be signed by the person effecting service with their designation and address.

14

Decree Form – Please see our response to question 30

sal to include standard orders in the rules?

	Comments
Con	We have no comments.
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36	
Do	
you	
have	
any	
com	
ments	on the terms of the standard orders included in the draft rules?
	Commonto
	Comments
	TAT 1
	We have no comments.
Con	
sult	
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37	
Do	
you ha	we any comments on the approach taken in Part 18?
	Comments
Con	We have no comments.
sult	
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ques	
_	15

tion 38 Do you have any other comments on the draft Simple Procedure Rules?

Comments
We would welcome the opportunity for further consultation on the final draft rules.