

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?

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Comments
We support the approach taken to splitting the Simple Procedure Rules into two sets of rules.

with the use of the following terms in the rules?

- Claim – for a standard simple procedure case

Content Not content No Preference

- Claimant – for pursuer

Content Not content No Preference

- Responding party – for defender

Content Not content No Preference

- Freeze – for sist

Content 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?

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Comments
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.

inology remaining in the draft simple procedure rules which you think is unfriendly or difficult for the lay user to understand and, if so, what alternatives would you suggest?

Yes No

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Comments

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

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Comments

We have no comments about the approach taken to the numbering and layout of the rules.

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

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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.

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

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Comments

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?

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Comments We have no comments on the approach taken to minimising the number of hearings.

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

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Comments We have no comments on the approach taken to alternative dispute resolution.
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ments on the proposed principles of simple procedure as set out in Part 1 Rules 2.1 – 2.5?

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Comments

We have no comments on these principles.

have any comments on the proposed duties on sheriffs, parties and representatives?

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Comments

We have no comment to make.

r comments on the approach taken in Part 1: The simple procedure?

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Comments

We have no further comments on the approach taken in part 1.

question 13

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

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Comments
We have no further comments on the approach taken in part 2.

ments on the proposed timetable for raising a simple procedure claim?

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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.

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

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Comments

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

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

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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

We have no comments.

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Do you have any comments on the approach taken in Part 5: Sending and service?

Please see paper apart.

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

Comments

We have no comments.

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ments on the proposed model for case management conferences?

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Comments

We have no comments.

have any other comments on the approach taken in Part 6: The first consideration of a case?

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Comments

We have no comments.

ments on the approach taken in Part 7: Orders of the sheriff?

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Comments

We have no comments.

consultation question 23

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

Consultation question 24
Do you have any other

Comments
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.

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

Consultation question 25
Do you have any comments on the approach taken in Part 9: Documents and other evidence?

Comments
We have no further comments.

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Comments

We have no comments.

ments on the approach taken in Part 10: Witnesses?

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Comments

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

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.

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?

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Comments

We would consider these provisions necessary.

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

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Comments With reference to our response to question 26 it would be helpful if the issue of Caution by party litigants was addressed.

have any comments on the approach taken in Part 11: The hearing?

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Comments We have no comments.

ments on the approach taken in Part 12: The decision?

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<p>Comments</p> <p>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.</p> <p>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.</p>
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Do you have any comments on the approach taken in Part 13: Other matters?

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<p>Comments</p> <p>We have no comments.</p>

ments on the approach taken in Part 14: Appeals?

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<p>Comments</p> <p>We have no comments.</p>

question 33

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

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Comments

The forms should be individually numbered.

ments on any individual forms?

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Comments

Claim Form

We also note that there does not appear to be any space on the proposed forms for details of the Sherifffdom, 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.

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.

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.

Decree Form – Please see our response to question 30

sal to include standard orders in the rules?

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Comments

We have no comments.

ments on the terms of the standard orders included in the draft rules?

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Comments

We have no comments.

you have any comments on the approach taken in Part 18?

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Comments

We have no comments.

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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.