

## 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  <b>It is difficult to respond to this without seeing the other set of rules.</b>
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### Consultation question 2

*Are you content with the use of the following terms in the rules?*

- Claim – for a standard simple procedure case

Content X                      Not content                       No Preference

- Claimant – for pursuer

Content X                      Not content                       No Preference

- Responding party – for defender

Content X                      Not content                       No Preference

- Freeze – for sist

Content X                      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
<b>None</b>

**Consultation question 4**

*Is there any terminology 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

Comments
<b>Whilst the rules should be simple to comprehend for the lay user it should be appreciated that a significant number of claims will relate to businesses instituting proceedings against other businesses.</b>

**Consultation question 5**

*Do you have any comments about the approach taken to the numbering and layout of the rules?*

Comments  <b>I think the approach is helpful and transparent.</b>
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**Consultation question 6**

*Do you have any comments about how, and where, the rules should be presented on the internet?*

Comments  <b>None</b>
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**Consultation question 7**

*Do you have any comments on the approach to headings in the Rules?*

Comments  <b>The headings are helpful</b>
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**Consultation question 8**

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

Comments  <b>It is hoped that there will be sufficient investment and resources to allow Summary Sheriffs the required time to deal with litigation in terms of the rules.</b>
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**Consultation question 9**

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

Comments
<b>None</b>

**Consultation question 10**

*Do you have any comments on the proposed principles of simple procedure as set out in Part 1 Rules 2.1 – 2.5?*

Comments
<b>None</b>

**Consultation question 11**

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

Comments  Part 1: The Simple Procedure 7.10 Reference is made to 7.10 which permits the Sheriff to dismiss the claim or any part of it, if there is no real prospect of success. It is noted that there is no provision to allow decree to be granted in the event of an irrelevant defence. Whilst 7.7 may permit the sheriff to make such a decision without hearing this will only be competent if all parties agree.  Accordingly there is no effective mechanism for a defence to be deemed “irrelevant” and decree granted in a situation where, for example, the defence is simply “debt denied”. In addition this is counter to the obligation on the responding party to substantiate their position to produce documentation as required by rule 3.5, Part 4.
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**Consultation question 12**

*Do you have any other comments on the approach taken in Part 1: The simple procedure?*

Comments  <b>None</b>
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**Consultation question 13**

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

Comments
<b>None</b>

**Consultation question 14**

*Do you have any comments on the proposed timetable for raising a simple procedure claim?*

Comments
<b>None</b>

**Consultation question 15**

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

Comments
<b>None</b>

**Consultation question 16**

*Do you have any comments on the flowchart (at Part 4 Rule 2.4) setting out the options available to the responding party when responding to a claim?*

Comments
There is no provision detailing which competent parties are entitled to make a “Time to Pay Application”



**Consultation question 17**

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

Comments
Part 3: Making a claim
4.5 Reference is made to 4.5. Should “must not” not be substituted for “may not”. Presumably the Sheriff Clerk will not effect service in the circumstances described in 4.5(a) + (b)?
Part 4: Responding to a claim
2.1 It is not clearly stated how the responding party will have access to the Response Form (Rule 2.1 : Part 4) Rule 2.1 of Part 3 obliges the claimant to prepare two copies of the claim form. Is it assumed that the response form has also to be sent to the responding party by the claimant. Presumably there will be different response forms depending upon whether the responding party is entitled to apply for a “Time to Pay”.
2.4 There is no statement to the effect that partnerships and limited companies and other excluded parties are not entitled to make an application for a “Time to Pay Application”.
7.1 Reference is made to 2.4 above.

**Consultation question 18**

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

Comments
Part 5: Sending and Service
6.2 Is service by “newspaper advertisement” no longer to be competent?
7.2 As only those persons referred to in the rule can serve the Notice should “sent” not be substituted with “served”?

**Consultation question 19**

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

Comments
<b>None</b>

**Consultation question 20**

*Do you have any comments on the proposed model for case management conferences?*

Comments
None

**Consultation question 21**

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

Comments
Part 6: The First Consideration of a Case
Will it be possible for there to be a “virtual” Case Management Conference? This surely will be acceptable where both parties are legally represented?

**Consultation question 22**

*Do you have any comments on the approach taken in Part 7: Orders of the sheriff?*

Comments
<b>None</b>

**Consultation question 23**

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

Comments
<b>None</b>

**Consultation question 24**

*Do you have any other comments on the approach taken in Part 8: Applications by the parties?*

Comments
Part 8:           Application by the Parties
Rule 7 Is there a reciprocal entitlement to allow the Responding Party to abandon their defence and the consequences of so doing?
Part 11:          The Hearing
There does not appear to be any specific provision which will permit the Sheriff to either grant decree or dismiss the case at the Hearing. Whilst the “Sheriff’s powers” referred to in rules 7.1 - 7.13 of Part 1 may permit this should there be no reference to these in Part 11?

**Consultation question 25**

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

Comments
<b>None</b>

**Consultation question 26**

*Do you have any comments on the approach taken in Part 10: Witnesses?*

Comments
<b>None</b>

**Consultation question 27**

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

Comments
<b>No comment</b>

**Consultation question 28**

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

Comments
<b>No comment</b>

**Consultation question 29**

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

Comments
<b>No comment</b>

**Consultation question 30**

*Do you have any comments on the approach taken in Part 12: The decision?*

Comments
<b>No comment</b>

**Consultation question 31**

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

Comments
<b>No comment</b>



**Consultation question 32**

*Do you have any comments on the approach taken in Part 14: Appeals?*

Comments
<b>No comment</b>

**Consultation question 33**

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

Comments
<b>Yes – see 34 below</b>

### Consultation question 34

*Do you have any comments on any individual forms?*

Comments

#### THE SIMPLE PROCEDURE CLAIM FORM

It appears that the claim form is predicated on the assumption that most will be completed by individuals, or their representatives, instituting court proceedings against defaulting retailers.

It is submitted that the vast majority of claims up to £5,000.00 are debt recovery actions out of which, perhaps, 98% are undefended.

It is further submitted that a significant number of court actions relate to one business instituting proceedings against another business. The entire basis of the claim form appears to assume that a consumer will be instituting proceedings against a business. This simply does not reflect the reality of the current position.

Accordingly comments are made on this assumption.

Part A: As most claim forms will be prepared by creditors' solicitors, whose details are required to be added into "B...Representation" the inclusion of the claimant's contact details in A5 and A6 could be confusing. This could be resolved by there being an option which allows the claimant to suggest that the court contacts their legal representative as an alternative.

Part C: In a situation where the claimant is aware of the business name and address of the Responding Party, but not the name and address of the individual who owns the business, currently Rule 5.7 of the Ordinary Cause Rules (and their Summary Cause equivalent) allows action to be raised against the business name alone. This is not replicated in the claim form.

The domicile of an individual is determined where, in effect, they live. The domicile of an individual is not determined from the address where that person carries on business. (Schedule 8 to the Civil Jurisdiction and Judgments Act refers)

It is suggested that appropriate amendments be made to the claim form which will allow court actions to be taken solely against a business name which will conform to the current Ordinary Cause Rules and the legislation referred to.

Part D:3 It is assumed that the claimant will be able to state within the box provided the principle due, interest, collection costs and compensation all in terms of the Late Payment of Debts (Interest) Act 1998 as well as judicial expenses.

D.1 It is assumed that a supporting invoice can be referred to in this section and reproduced on “D1”

E As previously stated most claims will be “debt recovery” and only a small proportion of these will be disputed.

Accordingly perhaps the “side explanation” headed “Witnesses, Documents and Evidence” could be amended to state that it may be sufficient for the claimant’s solicitor to attend the hearing.

#### THE SIMPLE PROCEDURE RESPONSE FORM

As already stated it will be incompetent for all types of responding parties to be entitled to a “Time to Pay Application”. The Debtors (Scotland) Act 1987 refers.

B2 This will require amendment

It is suggested that consideration be given to there being separate response forms depending upon whether a “Time to Pay Application” will be competent.

#### THE SIMPLE PROCEDURE CLAIM SERVICE NOTICE

Reference is made to the contents of the envelope containing a “Completed Claim Form” and a “blank Response Form”

Reference is made to Part 3 Rule 2.1 Step 3. There does not appear to be an obligation on the claimant to send the response form to the responding party.

Perhaps this is to be clarified? Is the claimant required to serve a copy of the claim form and two blank response forms?

#### THE SIMPLE PROCEDURE DECREE FORM and Part 16: “Standard Orders”

There does not appear to be anything permitting the grant of an Instalment Decree? Does the “Simple Procedure Order of the Sheriff” ordering to pay sums of money permit this?

**Consultation question 35**

*Do you have any comments on the proposal to include standard orders in the rules?*

Comments
<b>None</b>

**Consultation question 36**

*Do you have any comments on the terms of the standard orders included in the draft rules?*

Comments
<b>None</b>

**Consultation question 37**

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

Comments
None

**Consultation question 38**

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

Comments
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