

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?

We broadly welcome the style and approach of the Simple Procedure Rules as they stand.

While we understand the need to produce two sets of Simple Procedure Rules, we would recommend a consultation period for the Simple Procedure (Special Claims) Rules.

We note from the consultation documents that the choice to produce two sets of rules was motivated by usability for party litigants, as well as the complexity required in certain actions such as, for example, the recovery of heritable property not fitting into the case-flow approach of the standard Simple Procedure Rules.

However, we believe to achieve the user-friendly approach sought by the SCJC that the complex procedures required for Special Claims requires to be consulted on. We regularly work with service users that deal with matters such as rent/mortgage arrears and attempts to remove them from property. Such matters appear to fall into both the Simple Procedure and Special Claims rules. From the papers available, it is not clear how such actions may be dealt.

Considering it is a complex procedure, we presume they will fall into the Special Claims rules. However, the procedure of recovery of heritable property has previously been plagued by difficulty and controversy for party litigants. For example, the previous procedure has not always been clear that agreeing to repay rent arrears will, or will not, prevent eviction. Considering the importance of these matters for party litigants it is paramount they are clear and understood in both the proposed rules and forms that issued to party litigants. If usability is to be at the heart of these new rules, we suggest a consultation on such matters.

Consultation question 2

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

- Claim – for a standard simple procedure case

Content

- Claimant – for pursuer

Content

- Responding party – for defender

Content

- Freeze – for sist

Content

Consultation question 3

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

Comments

We welcome the plain English approach taken.

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

Consultation question 5

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

Comments

We welcome the methodical and clear layout of the rules.

Consultation question 6

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

Comments

They should be easily accessible from the Scottish Courts home page. An easy to access reference to them should be provided to party litigants when their claim is being made or when they require to defend actions.

Consultation question 7

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

Comments

The headings appear straightforward and clear.

Consultation question 8

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

Comments

These appear acceptable. However, party litigants opinions should be taken after 6-12 months of the rules to ensure the approach taken is in fact user-friendly.

Consultation question 9

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

Comments No comments.

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 While the principles are welcomed, some wording could be better explained such as “informal as appropriate”.
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Consultation question 11

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

Comments No comments.

Consultation question 12

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

Comments No comments.

Consultation question 13

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

Comments No comments.

Consultation question 14

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

Comments

No comments.

Consultation question 15

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

Comments

No comments.

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 No comments.

Consultation question 17

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

Comments

Comments on the dispute in question could be useful here so that they be identified before the first hearing. As early dispute resolution and only attending court as a last resort are aims of the rules, we recommend this in addition to the dialogue between parties prior to any court hearing.

Consultation question 18

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

Comments

Consultation question 19

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

Comments No comments.

Consultation question 20

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

Comments No comments.

Consultation question 21

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

Comments No comments.

Consultation question 22

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

Comments No comments.

Consultation question 23

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

Comments No comments.

Consultation question 24

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

Comments No comments.

Consultation question 25

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

Comments No comments.

Consultation question 26

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

Comments

No comments.

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

No comments.

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

No comments.

Consultation question 29

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

Comments

No comments.

Consultation question 30

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

Comments

No comments.

Consultation question 31

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

Comments No comments.

Consultation question 32

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

Comments No comments.

Consultation question 33

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

Comments

We welcome the straight forward nature of the forms along with helpful diagrams to highlight service users options. It would be welcomed how a response form which involved both arrears and recovery of heritable property may look. It would be important to highlight to the party litigant the importance of that even when accepting to repay rent arrears that you may still be removed from your property.

Consultation question 34

Do you have any comments on any individual forms?

<p>Comments</p> <p>See question 33.</p>

Consultation question 35

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

<p>Comments</p> <p>No comments.</p>

Consultation question 36

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

Comments No comments.

Consultation question 37

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

Comments No comments.

Consultation question 38

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

Comments

No comments.