ANNEX B CONSULTATION QUESTIONNAIRE

Consultation question 1

Comments

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

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

Comments
See response to question 1
Re Time to pay applications - it should be made clear that these cannot be made by limited companies

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?

Comments
What is required as evidence of service or evidence of something being sent is not clear e.g. is a formal execution of service required if served by sheriff officer?

Do you have any comments on what can happen to a case after the last date for a response, or the Application for a Decision Form?

Comments

Re admitted claims, the application for a decision form and procedure are straightforward.

Re disputed claims the options open to the sheriff in terms of rule 7.6 are too limited given the overriding principles of simple procedure.

In particular, why is it that a sheriff can dismiss a claim as having no reasonable prospects of success or being incompetent (r1.8 (11) and (12)) but can only decide a case "at any time" where a response is incompetent (r1.8(13))?

Rule 1.8(13) does not allow sheriffs to decide a case "at any time" where a defence is obviously irrelevant (i.e. it has "no real prospects of success"). The rules (rule 1 and 7) should allow for that.

The other limitation is that rule 7.6 does not reflect the power sheriffs have in terms of rule 1.8(3) "to do anything or give any order considered necessary to decide the case".

Perhaps there needs to be a catch-all at rule 7.6 that sheriffs be allowed to "make any other order considered necessary to decide the case or secure the expeditious progress of the case".

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

Comments
There are too many application forms e.g. quite often there will be in one claim an application to recall, an application to amend and an application for a decision lodged by the same party at the same time. There should be one generic application form that can be adapted as necessary.

Do you have any comments on documents, evidence or witnesses, or the forms associated with Parts 10 and 11?

Comments
There is no need for information re documents, evidence or witnesses to be contained within the claim form or response form.

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

Comments
The orders that are issued by sheriffs relating to hearings etc are useful in allowing the sheriff to set out in clear terms what parties are expected to do ahead of the hearing.

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

Comments

Regrettably it is our view that the rules and forms very often stand in the way of the over-riding principles and objectives of simple procedure being achieved.

The cumbersome nature of the forms does not make it easy to quickly identify (a) the ground of jurisdiction being founded upon (b) what it is that the claimant seeks by way of remedy and (c) what the true issues between the parties are. This can often impact on the sheriff's effective management of a case either in deciding what first orders to make or in preparing for a case management discussion.

As stated in answer to question 4 above the inability to find against a respondent on the basis that the proposed defence is irrelevant without the case calling at either a hearing or case management hearing does not make for effective case management or the expeditious disposal of the case.