

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 There is a clear rationale behind splitting the Simple Procedures into two sets of rules as stated in the consultation document though to the lay user this may not be clear. The Simple Procedure document does not clearly set out what types of actions it can be used for so it may be confusing for the lay user to know which forms they should use to raise their claim.

Consultation question 2

Are you content 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?

Comments

I feel that the terms Claimant and Responding Party will become confusing should the Responding Party lodge a counter claim, to which the Claimant may wish to respond. I feel the terms Pursuer and Defender were clear enough terms.

I agree that the term sist is confusing but feel that Pause & Restart may be a better option than Freeze & Unfreeze.

In Section 17: Interpreting these rules and the administration of the Simple Procedure, the special meaning stated for Freeze and Unfreeze is still confusing as it states to Sist the case and to Recall the Sist. This would benefit from a simple explanation.

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

The Simple Procedure Rules use the term “may” in a lot of the rules which appears very ambiguous and open to interpretation.

For instance in Part 9, section 2.1 it states: “A claimant may bring to a hearing any documents or other evidence listed in their claim from which has been lodged with the court.” The use of the word “may” implies that this is optional and that the claimant does not have to bring the evidence necessary to prove their claim, whereas if the word “may” was replaced by “should” or “must” then it is instructing the claimant to bring the evidence needed to prove their claim.

Consultation question 5

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

Comments

The numbering system is difficult to understand and reference as the numbering system is the same in each part so unless the relevant part is stated then confusing could occur.

A numbering system which also references the various parts of the rules would be easier to understand for instance instead of having Part 3, Rule 2.1 you could reference it as Rule 3.2.1 or Rule 3.2(1)

Consultation question 6

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

Comments

The Scottish Courts website is very good and to present this within the Taking Action section would be acceptable. It may be beneficial to add an additional section Defending an action, or Responding to an action.

When displaying these rules on the internet it would be beneficial to have the option to hover the mouse over terms within the rules to open an explanation box.

Consultation question 7

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

Comments

They are clear and easy to understand.

Consultation question 8

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

Comments

Quite often defenders do not complete court return documents and instead appear at court on the calling date. Projects like the In Court Advice Service (ICAS) run by various Citizen Advice Bureaus often meet clients for the first time immediately prior to the calling date or have client referred to them by the Sheriff during the first calling. The new First Consideration Date, which appears to be done in chambers by the Sheriff, dispenses with the first calling and therefore reduces the opportunity for support services such as ICAS to pick up these clients and ensure that they receive support in the court process.

The approach taken to minimising the number of hearings also makes it harder for a Responding Party to avoid decree if they admit liability. At present a party which admits liability, whether in part or in full, has the ability to negotiate repayment plan and over time settle the matter without decree being awarded against them. The Simple Procedure rules appear to dispense with the Responding Party's opportunity to admit liability and attend or be represented in court.

There are long term impacts associated with granting court decrees against an individual and by reducing the individual's opportunities to avoid decree in order to reduce court hearings appears unduly harsh. Is it possible to build in the opportunity to negotiate and enter into a payment plan as part of the Sheriff first written orders or case management? And the case then be frozen to allow payment to take place. Should the repayment plan which has been agreed fail then decree can be requested by unfreezing the case.

The Simple Procedure rules also appear to dispense with the simplicity of the Incidental Application as they appear to be very specific in what a claimant or responding party can ask the court to do.

Consultation question 9

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

Comments

Instead of having dispute resolution as part of the case management at the hearing it would be beneficial to state that both parties try and negotiate a settlement as part of the first written orders so that by the time the case calls in court both parties know if it is possible to reach a resolution to the dispute.

Most parties have tried to reach a settlement before the case calls in court so to continue a hearing to allow ADR to take place could potentially increase the number of court hearings.

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

Although I agree with trying to reduce the cost of court action it is misleading to imply to the claimant that the court action is cheap.

There is nothing in the rules which list the expenses which can be awarded in a Simple Procedure case.

Consultation question 11

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

Comments

No

Consultation question 12

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

Comments

No

Consultation question 13

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

Comments

In Part 2 section 2.3: A lay representative is a person who is entitled to act as a lay representative

This is confusing and should be replaced with the explanation of a lay representative in section 3.1.

Consultation question 14

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

Comments

The process set out at Part 3, section 2.1 – this would be better as a flow chart which includes times scales and the rules that apply rather than having to leave the flow chart to check up the rules.

When changing to an Ordinary Cause procedure the timescale stated does not leave very long for an individual to seek legal advice, engage a solicitor or make an application for Legal Assistance representation.

The timetable also does not highlight that the Claimant should check if there has been a response from the Responding Party and that the Claimant may need to requested decree as sought.

Consultation question 15

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

Comments

There does not appear to be any part which advises on ensuring correct jurisdiction.

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

This flow chart is excellent although it would be good to allow the responding party the opportunity to negotiate payments without automatically having decree granted because they admitted liability.

Consultation question 17

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

Comments

It would be good to allow the responding party the opportunity to negotiate payments without automatically having decree granted because they admitted liability.

Consultation question 18

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

Comments

It would be beneficial to have a table stating which items/documents can be sent and which need to be served.

It would also help speed up the process and reduce costs if the Simple Procedures allowed Lay Representatives and the Claimant or Responding Party to serve documents by recorded delivery.

For example at present a Minute for recall of decree must be served by a Solicitor or a Sheriff Officer at a cost in excess of £75.00 and involves instructing the party to serve the document whereas a recorded delivery letter costs approximately £2.00 and can be done quickly by the an individual or lay representative.

Consultation question 19

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

Comments

There isn't any clear guidance instructing the Claimant to check if there has been a response from the Responding Party and the steps a Claimant should take to request that decree is granted in this instance.

The rules also appear to state that if a case is abandoned then expenses will be awarded. This may encourage a party to continue the case as they will be charged otherwise so it may reduce court time if a party could abandon a case without expenses being awarded.

Consultation question 20

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

Comments No

Consultation question 21

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

Comments Alternative Dispute Resolution or negotiation should be part of the first written orders of the sheriff which come from the first consideration of the case

Consultation question 22

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

Comments Alternative Dispute Resolution or negotiation should be part of the first written orders of the sheriff which come from the first consideration of the case

Consultation question 23

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

Comments No

Consultation question 24

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

Comments

It would be helpful to include a table showing what the Claimant or Responding Party can ask the Sheriff to do.

It would also be helpful to retain the Incidental Application as the rules appear to be very prescriptive with regards to what a party can do.

Consultation question 25

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

Comments

Clearer guidance is needed with regards to lodging Inventory of Productions and lodging productions, in particular Second Inventory of Productions as the rules do not appear to make provision for subsequent evidence which is gathered after the initial claim.

The rules also do not allow for a Lay representative to make copies of documents or other evidence which has been lodged by the opposing party.

Consultation question 26

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

Comments

Clear guidance is needed with regards to expenses relating to witnesses as at present the rules indicate that the party is not responsible for the costs associated with cited witnesses.

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 other than they are necessary

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

Consultation question 29

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

Comments

The present draft of the Simple Procedures state that Negotiation and Alternative Dispute Resolution is options the Sheriff can consider and that he the Sheriff may continue a hearing to allow this to take place.

These options should be explored earlier in the process so that cases are not continued once they finally call in court.

Consultation question 30

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

Comments

No

Consultation question 31

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

Comments

No

Consultation question 32

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

Comments

The draft Simple Procedure rules state that appeals must be based on legal points of appeal, for which a party will need to seek legal advice.

The timescale of 14 days is not sufficient for a party to engage a solicitor, seek legal advice or apply for legal assistance representation.

Consultation question 33

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

Comments

It would help to have retained the Incidental Application

Consultation question 34

Do you have any comments on any individual forms?

Comments

No

Consultation question 35

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

Comments

No

Consultation question 36

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

Comments

Consultation question 37

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

Comments Which part 18?

Consultation question 38

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

Comments The Simple Procedures and its presentation could do more to highlight the support available to both Claimants and Responding Parties. I feel it could signpost individuals to the difference advice and support agencies such as the In Court Advice Service.
