

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

In principle, splitting the rules makes sense. We would, however, comment that this consultation does not include the Special Claims Rules which is where the majority of our work falls (we provide representation to people facing eviction for rent arrears).

Will there be further consultation on this?

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

It is unclear whether some Sheriffs and court staff will use this easier to understand terminology. For example, terms such as 'peremptory diet' and 'pre-proof' are often used in Summary Cause actions at the moment, despite these terms not being found in the current rules.

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
<i>We welcome the new numbering format which is clear and easy to follow. It also allows for future amendments to be made to the Rules without complicating the numbering system.</i>

Consultation question 6

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

Comments
<i>As outlined in the consultation document, it may be useful to use large readable text with links to definitions, related provisions and forms.</i>
<i>It would also be useful for the rules to be downloadable in consolidated form as a single PDF document.</i>

Consultation question 7

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

Comments
<i>We would reiterate that the layout of the Rules is user friendly and clear to follow.</i>

Consultation question 8

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

Comments

In respect to the type of cases (actions for recovery of possession of heritable property) we deal with, issues (such as benefit entitlement/appeals) may take some time to resolve and the case may need to be continued on a number of occasions.

Consultation question 9

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

Comments

Using alternative dispute resolution or mediation to resolve disputes at an early stage can be useful and we already have positive experience of working with such panels, e.g. Private Rented Housing Panel.

However, with respect to the client group we work with, this approach may prove problematic as attendance at these panels by us, as Lay Representatives, would drain on already tight resources.

Significant work is already undertaken with our cases to resolve issues and avoid going to court as part of the Pre-action Requirements. This may duplicate some of the work undertaken through alternative dispute resolution.

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

No.

Consultation question 11

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

Comments

This clearly outlines the responsibilities of each. However, would request more clarity on the definition of 'suitable' with regards to Lay Representative, especially with respect to Sheriffs who may interpret this differently, which in turn, could affect someone's entitlement to fair representation.

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

Possible issues with the Lay Representative Form need to be clarified.

Rule 4.1 of Part 2 states – "If a party is being represented by a lay representative throughout a case, then the lay representative must complete the Lay Representation Form and sent it to the court at the same time as the Claim Form or the Response Form is sent to court."

Frontline Fife provide lay representation for social housing tenants in actions for recovery of possession based on rent arrears. It is unclear whether a form of response will be required for cases involving the recovery of possession of heritable property. Tenants often contact the project at a very late stage (often this would be at or after the last date for response).

Consultation question 14

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

Comments

No

Consultation question 15

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

Comments

No

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

The flowchart is clear and straightforward.

However, it needs to be made clear what will happen in actions involving the recovery of possession of heritable property as no consultation is being carried out on the Simple Procedure (Special Claims) Rules (see also the response to questions 17).

In actions for recovery of possession of heritable property based on rent arrears, option B2 (i.e. completing a time to pay application) may cause confusion for tenants responding to a claim. In such cases, it may need to be made clear that completing this section will not prevent an eviction order being granted. Also, there is a concern that tenants responding to a claim in eviction cases may make unrealistic offers of payment.

Consultation question 17

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

Comments

It appears the responding party must always send a 'response form' to the court and the claimant. If no response form is returned in time, the claimant should 'send an Application for a Decision to the court before the date of first consideration' and 'the sheriff may make a decision awarding the claimant some or all of what they asked for in the Claim Form'. This seems similar to the current situation for small claims and most summary cause actions at the moment – if no form of response is returned the pursuer can minute for decree and the case will not call in court.

It is unclear if this will remain the position for cases involving the recovery of possession of heritable property. This will need to be made clear as otherwise this has the potential to cause problems in such actions.

On page 6 of the consultation document it is indicated that this was not the intention of the Scottish Civil Courts Review – “Other than in rented housing and mortgage re-possession cases, where no reply is received to a claim by the due date, it should not be called in court and the person making the claim should be able to ask for a court order in his favour by writing to the court.”

If a “response form” is required in heritable cases this also does not appear to sit particularly well with the requirement for the court to be satisfied “it is reasonable to make the order” before making an order for recovery of possession of a Scottish Secure tenancy.

Consultation question 18

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

Comments

This is much clearer. We would, however, welcome consideration of serving electronically. We cover a large and diverse geographical area which can pose problems when forms or notices need to be sent/served.

Consultation question 19

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

Comments

As noted previously, clarification is required as to whether a form of response will be required in actions involving the recovery of possession of heritable property. Part 6 (and indeed the way the draft rules work generally) seems to envisage that this will be required in all cases.

Consultation question 20

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

Comments

This model appears to be less complicated. However, as this is at the discretion of the Sheriff, may vary markedly from court to court. We would suggest producing guidance for Sheriffs to ensure a fair and consistent approach is adopted by all.

Consultation question 21

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

Comments

No

Consultation question 22

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

Comments

No

Consultation question 23

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

Comments

Rules 5.1 and 5.2 of Part 8 may require some clarification

Rule 5.1 states – “The sheriff clerk may present to the sheriff a case which has been frozen for at least 6 months”.

Rule 5.2 then goes on to state – “The sheriff may send the parties written orders that unless a party (or both parties) takes a particular step (such as appearing at a hearing arranged by the sheriff clerk, or sending a letter to the court) then the claim will be dismissed.”

There is a concern that in some cases of the cases that we deal with this will increase the likelihood of the claimant (i.e. the landlord) seeking an eviction order after a case has been frozen for 6 months.

Consultation question 24

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

The approach taken to applications appears to be in the main sensible and makes clear the action that a party would require to take.

The additional responding party procedure outlined in Rule 8 of Part 8 may need to be looked at again. It only appears to envisage an additional party themselves applying to become a responding party in a case.

It may also be useful if the original responding party can make an application to have another person become a responding party.

Rule 11 of the Summary Cause Rules 2002 allows this kind of application to be made by the original defender/responding party.

Consultation question 25

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

Comments

Realistically, listing evidence when raising the action would be extremely onerous for the client, and often not possible. Many of the cases we represent are still at early stages and some of the evidence used is unavailable/doesn't exist at the start of the proceedings (e.g. receipt for payment of rent).

The acceptance of evidence after the action is raised is at the discretion of the Sheriff. This may result in unfairness across the cases heard in the 3 courts (Dunfermline, Kirkcaldy and Dundee)

Consultation question 26

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

Comments

Not relevant to our work.

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

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

Consultation question 29

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

Comments

Rules 3.3 and 3.4 of Part 11 seem to be contradictory, at least to some extent.

Rule 3.3 states – “If no settlement is possible, the sheriff must resolve the dispute by deciding it at that hearing.”

Rule 3.4, however, states – “The sheriff may continue the hearing to another day without resolving the dispute if doing so is necessary in the interests of justice or if both parties agree to the hearing being continued.”

It may be necessary for some guidance as to when it would “be necessary in the interests of justice” to continue a hearing.

Consultation question 30

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

Comments

There does not appear to be any reference to the Sheriff being able to freeze a case.

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

No

Consultation question 33

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

Comments
No

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
<i>The standard orders included in the draft rules give much clearer definitions of what a party is being required to do. There should be much less chance of a party misunderstanding what they have to do.</i>

Consultation question 37

Do you have any comments on the approach taken in Part 17?

Comments
<i>The wording used in this table is more suited to solicitors/lay representatives and terms would still be difficult to understand.</i>

Consultation question 38

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

Comments

We feel that the use of the word 'Simple' may have negative connotations with respect to the people we work with. The people we assist are in crisis and could lose their home. As such, the term 'simple' could be seen as disparaging their situation.