

**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 Given the intention to simplify the rules it would perhaps have been better to have a general set of rules with extra conditions for the particular instances covered by the second set.
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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                       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?*

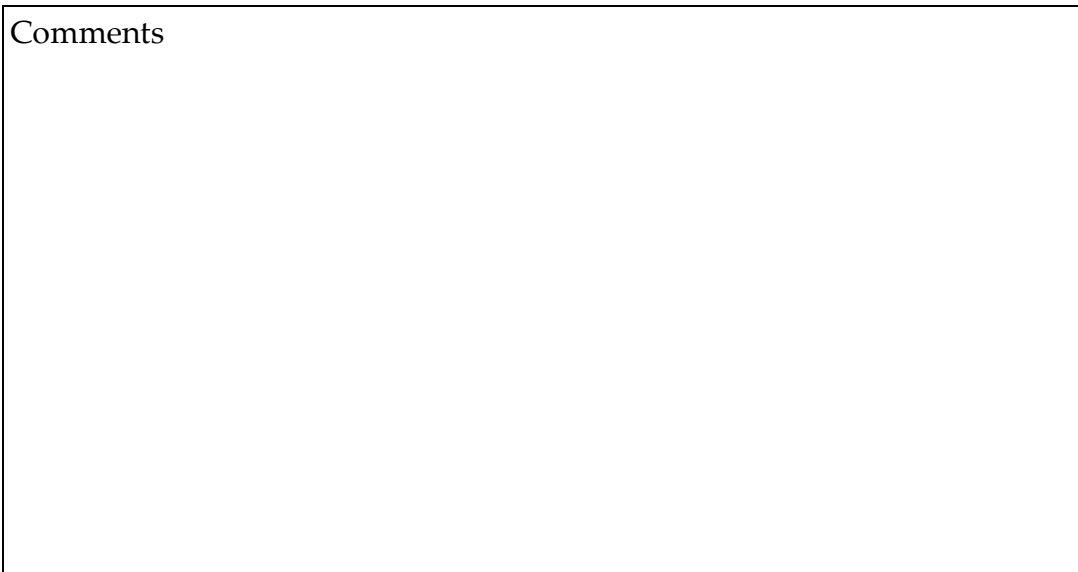
Comments
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**Consultation question 4**

*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?*

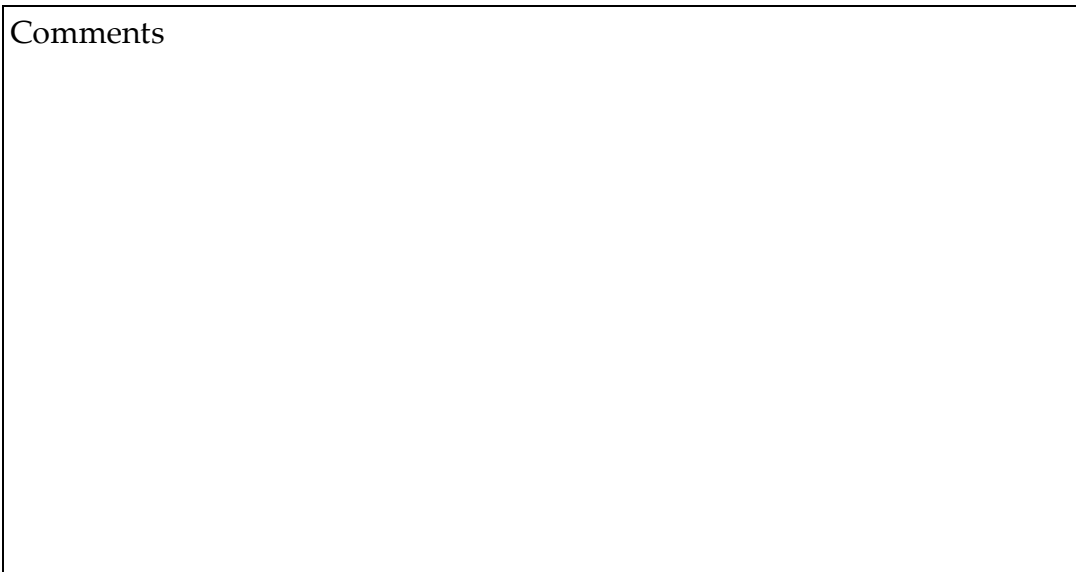
Comments



**Consultation question 6**

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

Comments



**Consultation question 7**

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

Comments



**Consultation question 8**

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

Comments

It would be helpful to give clearer guidance on how to access Alternative Dispute Resolution and negotiation.

In reading the procedure as it stands, unless the Sheriff either suggests ADR/negotiation at the case management conference or hearing, there is no suggestion of how it can be brought to the parties' attention.

If ADR is to be encouraged, it should be encouraged from the earliest stage possible, before a case is lodged in court. Advice services/ in-court advisers (where they exist) have an important role here.

It would also be helpful to clarify the role of the Sheriff Clerk in regards to minimising the number of hearings as there may be a role in provision of information to parties presenting either at the court or by other means.

**Consultation question 9**

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

Comments

It does not make sense to present negotiation and ADR as separate forms of dispute resolution as mediation is a form of negotiation facilitated by a third party, the mediator.

It would be useful to give guidance to parties on what negotiation and ADR entail and how they work and to define ADR in the rules.

Rather than just asking parties to state what steps they have taken to try to settle their dispute, it would make sense to highlight negotiation/ADR as an option on the claim form and response form and to ask the parties whether they have considered and/ or would be interested in resolving their dispute this way. If the parties indicate that they would be interested in this, the Sheriff Clerk could have a key role in referring parties to ADR. This might result in fewer cases coming before the court.

**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

It should be explicit in the principles that ADR and within that mediation are routes to be encouraged as well as negotiation.

It should be explicit that one of the ways parties can be encouraged to resolve disputes would be through the use of online technology.

**Consultation question 11**

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

Comments

The rules do not comment on the role of the Sheriff Clerk and whether they can have a role to play in either giving information on ADR and negotiation and /or identifying cases to the Sheriff that may be suitable for ADR and negotiation. Rule 4.4 states that a Sheriff must encourage negotiation or ADR where a case can be resolved in that way. It is unclear as to what this means. It would be better to suggest that a Sheriff can refer parties to an appropriate dispute resolution service.

**Consultation question 12**

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

Comments



**Consultation question 13**

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

Comments
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**Consultation question 14**

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

Comments



**Consultation question 15**

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

Comments

The step process does not give any indication of where parties might seek negotiation and ADR.

If the timetable is read taking the lack of any reference to ADR/negotiation then it gives the impression that it would be 63 days before this is suggested.

Whilst rules 2.4 and 2.5 make sense when you read the definitions the combination of words may be confusing to someone not familiar with court procedures.

**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

In rule 2.4 there does not appear to be an identified point at which the respondent might suggest negotiation or ADR as a method of dispute resolution. It is our view that negotiation and ADR should be encouraged at the start of the process and be available at any point thereafter.

**Consultation question 17**

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

Comments

**Consultation question 18**

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

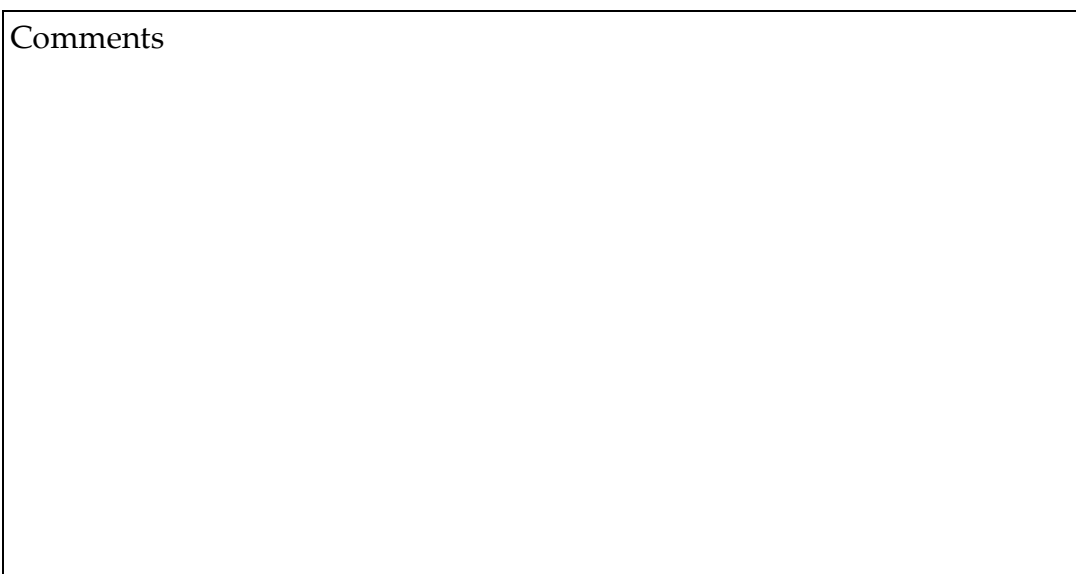
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**Consultation question 19**

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

Comments



**Consultation question 20**

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

Comments

It is unclear as to whether the parties and the Sheriff require to attend the court for a case management conference or whether this could be held online.

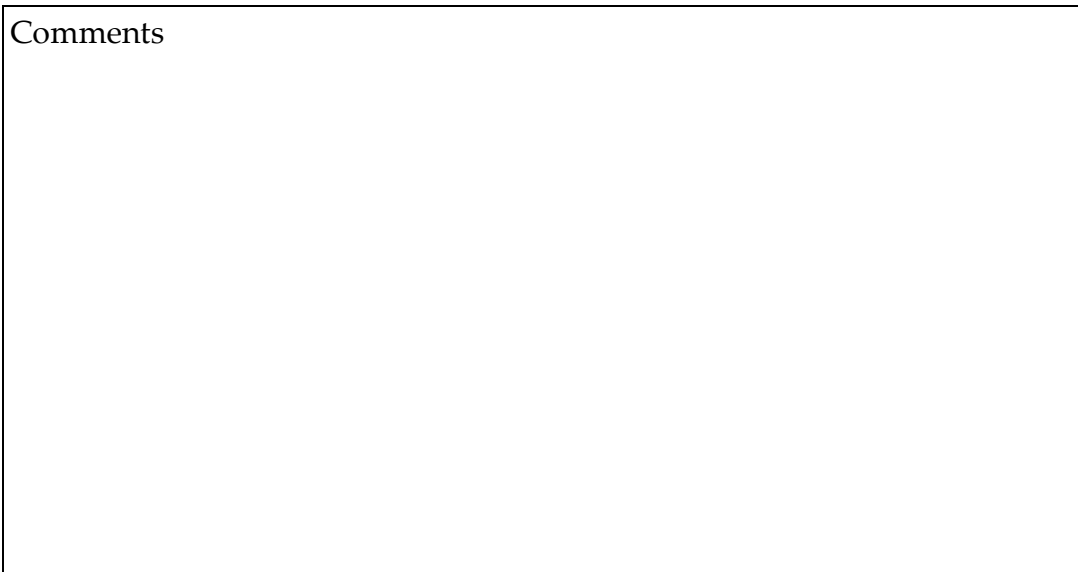
It is not clear whether the case management conference is a separate timed event or whether Sheriffs will have a diet of case management conferences which may end up like the current first calling. If so the concern would be that this would not give sufficient time for cases to be considered properly. It is not clear whether the case conference is restricted to the parties or whether there is public access to this.

In 6.3(b) it is not clear what is meant by asking the parties about their attitude to negotiation and ADR.

**Consultation question 21**

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

Comments



**Consultation question 22**

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

Comments



**Consultation question 23**

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

Comments

It is not clear whether freezing would be used by Sheriffs in cases where the parties are using ADR/negotiation. The current text suggests that it is something that would arise only if a party has asked for it. This poses the question of how the timetable for cases would be viewed/amended if parties do use ADR/negotiation.

**Consultation question 24**

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

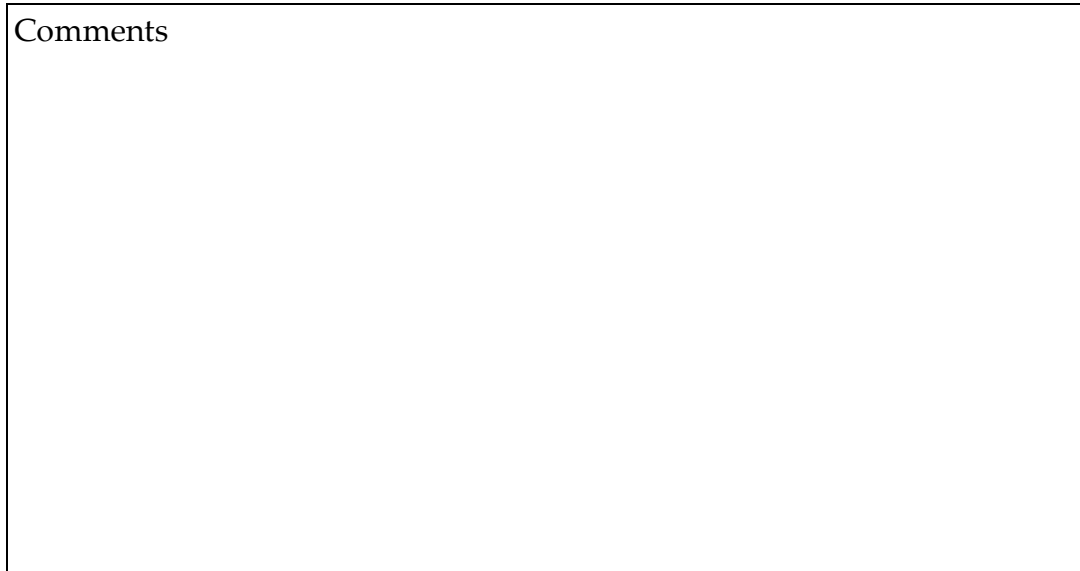
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**Consultation question 25**

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

Comments



**Consultation question 26**

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

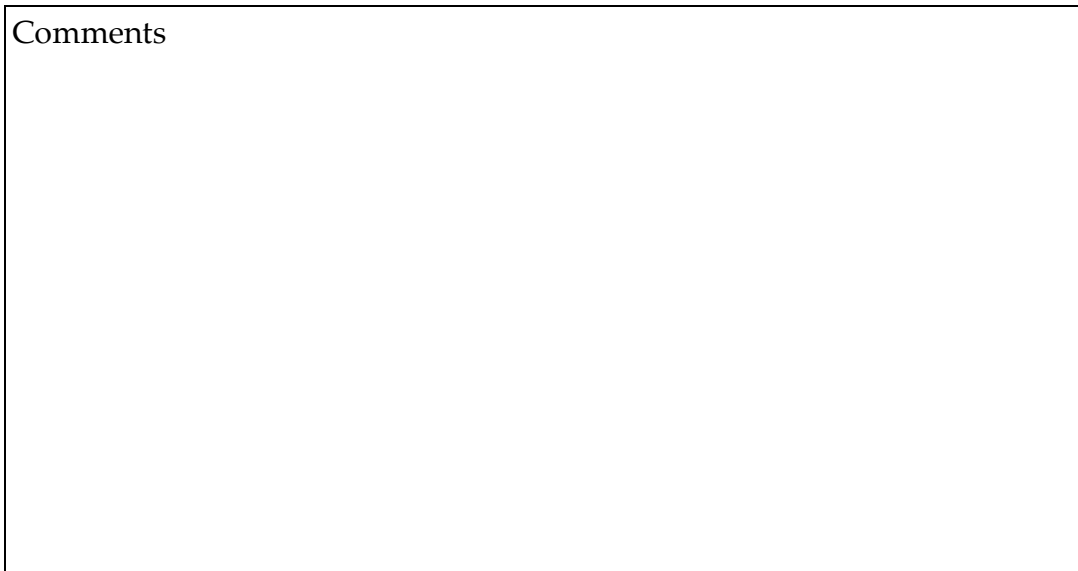
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**Consultation question 27**

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

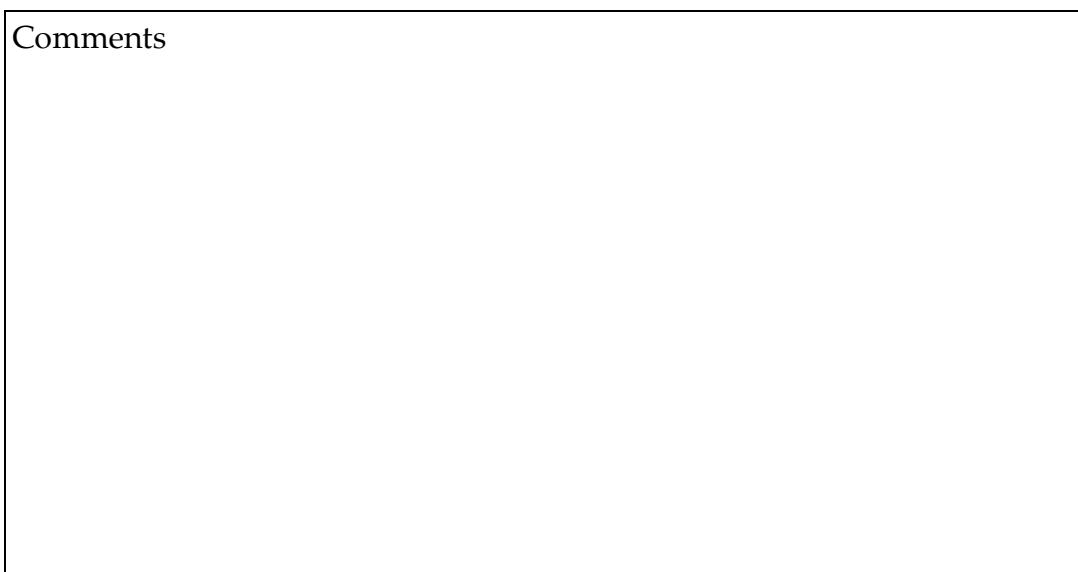
Comments



**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 rule seems to load information about resolution by negotiation at the hearing which seems very late on in the process.

By not mentioning ADR it is not clear if the parties would be able to or be encouraged to use mediation at this stage and if the Sheriff can refer them to ADR.

**Consultation question 30**

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

Comments



**Consultation question 31**

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

Comments



**Consultation question 32**

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

Comments

**Consultation question 33**

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

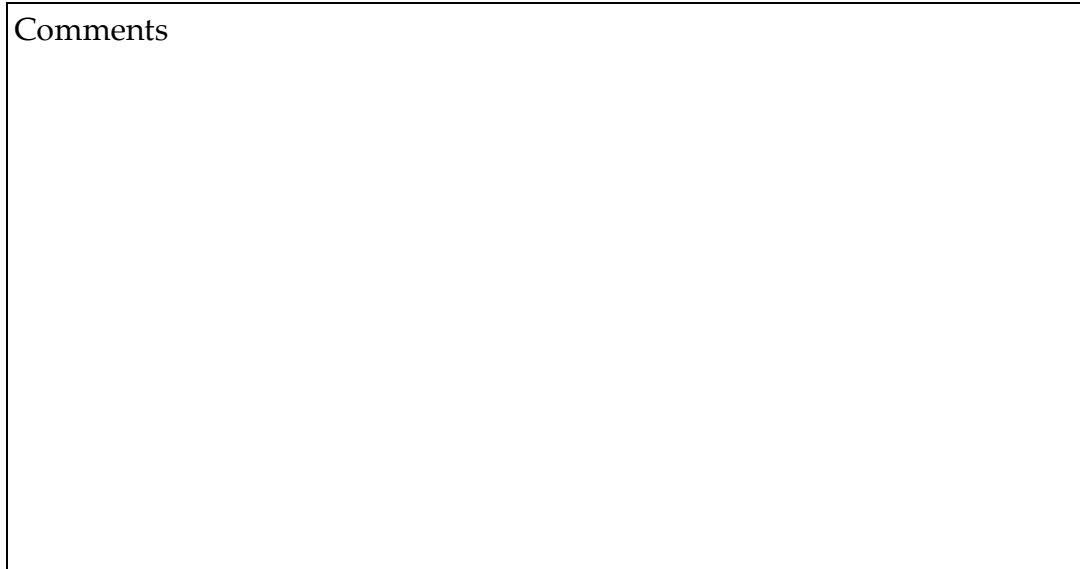
Comments

In both the claim and response form it would be helpful to have somewhere that the parties could indicate any willingness to use ADR/negotiation.

**Consultation question 34**

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

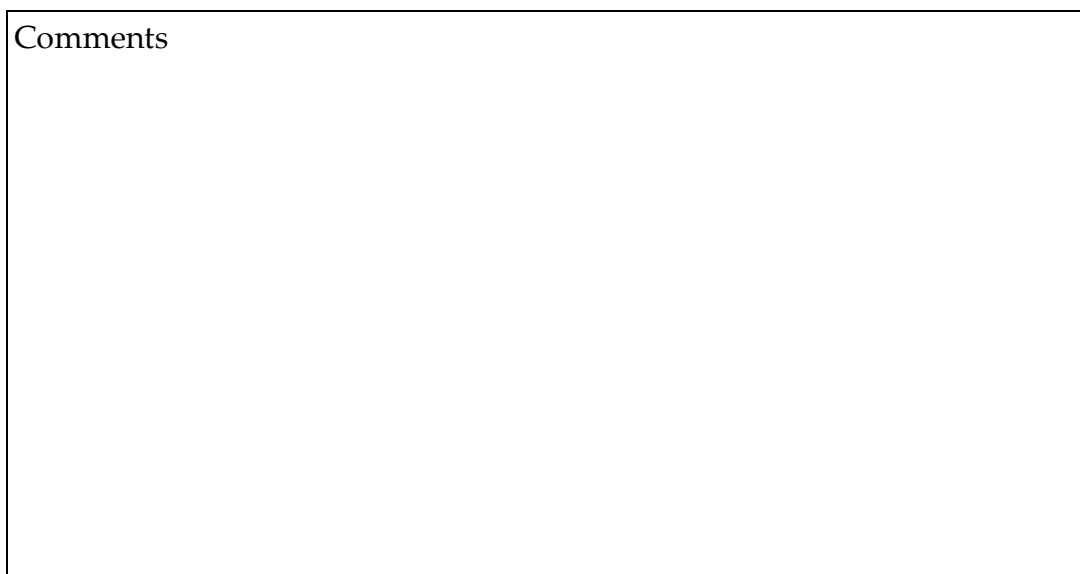
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**Consultation question 35**

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

Comments



**Consultation question 36**

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

Comments
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**Consultation question 37**

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

Comments



**Consultation question 38**

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



Comments

One of the key elements that needs to be clarified urgently is how and where parties will be able to access ADR/negotiation. Reference to it in the rules without duly considering how parties may use them would be confusing to say the least. Currently there are services that provide mediation through Edinburgh, Airdrie and Glasgow Sheriff Courts. In all other areas parties would have to rely on accessing mediation through private services. If the intention behind the rules is to be achieved, there is a need to ensure that appropriate services are available. If such services are not available, the courts are likely to be deterred from referring parties to mediation.

The Scottish Mediation Network has developed a model which would facilitate access to ADR/negotiation, in order to deliver such services across Scotland it is vital that appropriate mediation services are established as quickly as possible. A copy of this proposal is attached.

It is also suggested that consideration needs to be given to how both parties and the courts can be assured that the ADR/negotiation they are able to access is properly regulated and quality assured. Scottish Mediation holds a register for all mediators in Scotland. It provides for complaints against mediators to be dealt with, standards of practice specified, initial training and ongoing CDP and development specified and checked.

As regards how the rules might be implemented across Scotland, is it anticipated that common practice in implementation would be expected? Within the current rules there is considerable variation on how these are implemented with a high degree of interpretation from the Sheriffs and Sheriff Clerks. Where advice is given by national organisations to parties it will be important to know if variation in implementation is to be expected. It is anticipated that training for Sheriffs and Sheriff Clerks would be required on the suitability of mediation, as well as where to refer parties.

