

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
<p>This seems logical to simplify the language and procedure for the Simple Procedures Rules and approach the Simple Procedure (special Claims) Rules in the same format while retaining the necessary summary cause mechanisms for the more complex actions.</p> <p>Making both procedure rules more user friendly and easier for individuals to understand and navigate their way through the system with or without assistance from Advisers.</p>

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?

<p>Comments</p> <p>Again this makes sense to allow individuals to understand the procedure and to remove uncertainty over language wherever possible.</p> <p>There are multiple words which could be used and would be easy enough for individuals to understand. i.e. Freeze is preferable to Sist but equally hold and un-hold could be used and understood by most people.</p>

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

Possible ambiguity over Claimant and wondered if pursuer was not easy enough for most people to understand.

Also with Responding Party which is quite clear for people to understand but Defender is pretty clear for individuals to understand against any claim also.

Also part 17 allows for legally updating terminology for simple procedure, so this is flexible.

Consultation question 5

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

Comments

Could the rules be numbered sequentially as whole numbers and any amendments would then be incorporated as .1 .2 etc.

Consultation question 6

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

Comments:

Via - Scottish Court website.

Law Society

Potentially Citizens Advice Scotland Website.

Consultation question 7

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

Comments

The headings are clear and practical and should be easy to follow and allow individuals to address a particular area of interest or question without having to read multiple documents.

Pop up boxes on the online application would perhaps assist even further with prompts and examples.

Consultation question 8

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

Comments

Very much in favour of minimising the number of hearings where parties need to attend as long as the sheriffs embrace the promotion of negotiating settlement and alternative dispute resolution. So case management be established to determine the dispute.

Only concern would be that parties were not disadvantaged by lack of opportunity to negotiate either themselves or with assistance of 3rd parties.

Consultation question 9

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

Comments

It would be helpful to all parties to have access to alternative dispute resolution and opportunities for mediation etc. This will give independent and pragmatic approach to disputes and realistic outcomes and would hopefully assist the Court with case management.

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

The principles as set out in Part 1 rules 2.1-2.5 are clear and emphasise the purpose of the rules and the expectation on all parties to resolve disputes with the assistance of the Court and participation in negotiations.

Rule 2.3 is the one of most concern while in principle 2.1 – 2.5 is a common sense approach to existing issues with Courts being swamped with a system that is no longer fit for purpose. The matter of parties being treated even handed by the Courts is not always the case in my experience as a lay representative. I often witness party litigants being given less time and consideration in comparison to agents for pursuers.

Consultation question 11

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

Comments

It is fundamental for Sheriff; Parties and Representatives to understand the need to respect the principles.

Again draw attention to 4.3 and the need to treat fairly parties who are not represented legally or otherwise.

Representatives must fully understand the rules 6.1 -6.11 and comply with them.

Consultation question 12

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

Comments

I believe the rules as set out in part 1 are clear and precise and easy to understand and perhaps with the electronic forms the relevant rule could pop up when completing each part to re-emphasize these principles.

Consultation question 13

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

Comments

Part 2 contains very clear guidance for understanding the role of representatives in Court process.

Consultation question 14

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

Comments

In terms of the proposed timetable for raising claim: The 3 important dates appear to be reasonable although concern that the 14 days for a sheriff to issue written orders after the date of first consideration might result in standard response being sent out by Courts.

Consultation question 15

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

Comments

Could this be set out in a flow chart similar to part 4.

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

I think the flow chart is particularly user friendly and like the reference back to the rules which allows responding party to be quite clear.

Consultation question 17

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

<p>Comments</p> <p>Again the procedure is well laid out and systematic and should be helpful to responding parties.</p>

Consultation question 18

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

<p>Comments</p> <p>In terms of the form of notice if a party is being assisted by Lay Representative is the Sheriff clerk the route for service for form of notice and if so could this be clarified.</p> <p>Would a flow chart be useful for this part of procedure.</p>

Consultation question 19

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

Comments

This part of procedure could be difficult for individuals to fully understand in particular the implications of cases being dismissed. Would it be possible to emphasise the importance of each step again by pop up box with an alert indicating the consequences of responding within time frame. There seems to be too many words and individuals might get lost in understanding what is expected.

Consultation question 20

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

Comments

The case management conferences may be an opportunity for the matters to be settled fairly by all parties and is a welcome stage in the procedure.

Consultation question 21

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

Comments

Only comment is that for individuals making application to Court or responding it is crucial for them to fully understand this part of the procedure and anything that can be done to assist with this understanding would be good. i.e. Flow charts, pop up boxes etc. possibly with less words and more graphics.

Consultation question 22

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

Comments

This seems clear with example to follow.

Consultation question 23

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

Comments

This is clearly laid out however again prompts on the important stages.

Consultation question 24

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

Comment

8.1 -8.6 may benefit from an example in this part, the rule and the word applicant may add to any confusion. Additional Responding Party application is quite a mouthful could this not be simplified.

Consultation question 25

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

Comments

No this is clear and gives timeline for action. Again, maybe use a flow chart.

Consultation question 26

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

Comments

This appears to be similar to current practise - no further 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 In terms of fairness and justice I believe these are necessary in the Simple Procedure Rules.

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.

<p>Comments</p> <p>No Just the layout and delivery for better understanding for any lay person who is unfamiliar with Court processes.</p>
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Consultation question 29

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

<p>Comments</p> <p>This is clear and well laid out.</p>

Consultation question 30

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

Comments

Only that it has too many words and therefore individuals might struggle to keep on track of stages and expectations on them. However I have no idea how it can be further simplified while retaining important information. Perhaps additional examples and guidance via pop ups.

Consultation question 31

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

Comments

This allows additional processes to be explained where the procedure is no longer simple and therefore is necessary part which is relevant.

Consultation question 32

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

Comments

Hopefully if the new approach by Courts is more user friendly and leads to greater access to justice and understanding then the appeal section may not be referred to very often. However recognise this is necessary and people need to understand their right to appeal and how to go about this.

Consultation question 33

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

Comments

I particularly like the forms; I believe they are clearer and more user friendly than the existing forms. I like the reference back to the rules to allow people to cross check and clarify their understanding of the procedures.

Consultation question 34

Do you have any comments on any individual forms?

Comments

Lay representative form does not include declaration for representative having no previous convictions.

Consultation question 35

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

Comments Again this is well laid out and provides clarity to parties on what to expect.
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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

Not sure what this question relates to ?

Consultation question 38

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

Comments

It is not dissimilar to the current procedures just different language.

I believe more examples and pop-ups and use of flow chart would make it even more user friendly.

I like the revised forms and believe these are well laid out.

Welcome the idea that due to this review there will be a period of training and implementations in the Courts as I believe this allows Courts to refresh their thinking and approach. I believe the options for dispute resolution and case management are long over due and will contribute to greater access to justice in a more pragmatic and effective way with better resolutions.