

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?

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| Comments |
| I think it would be preferable to have a single set of rules with specific parts for specialist cases, if required. |
| If it is decided to split the rules, it should be made clear in Part 1 rule 1.1 what actions these rules apply and do not apply to. This would avoid party litigants using the wrong set of rules. |

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?

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| <p>Comments</p> <p>“Responding party” is clumsy and not clear. It would be preferable to use defender or defendant. Some parts are particularly clumsy, for example: Part1 (3.4) “Together, the claimant and responding party are known as the parties”</p> <p>Defendant is used in the EU Small Claim, and generally well recognised.</p> <p>The terminology used previously had the virtue of being clear. Only hard to understand because there was no glossary or definition of the terms.</p> <p>The draft rules attempt to remedy this, but the glossary at Part 17 does not appear to be particularly clear. Much of Part 17 seems redundant – the definition of “freeze a case” appears to be “sist the case”. Why when “sist” is not mentioned anywhere else in the rules?</p> |
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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

“Revoke” is ugly, and no easier to understand than “recall”

Alternative dispute resolution is mentioned but not explained or defined.

Counterclaiming is not sufficiently described or defined. An example would be useful to illustrate what is meant by counterclaim, and how this differs from defence.

Consultation question 5

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

Comments

It is confusing starting from 1.1 in each part. I don't think this is an improvement, and I think this will make the rules less clear for the party litigant.

The numbering system needs to be used verbally and in writing to clearly identify the rule being referred to.

Each paragraph should be referred to by identifying the part followed by the paragraph number, giving each paragraph a unique reference.

It appears to be intended that the forms will be numbered in such a way that their numbering relates to the part of the rules that refers to them.

Consultation question 6

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

Comments

Information is accessed online differently by different people.

The current rules have to be downloaded in sections. We think it would be helpful if the new rules could be downloaded in Parts. But as an alternative, A PDF of the whole document should also be provided, allowing a party litigant to get an overview of the procedure.

Some users may want to print off a pdf of the rules, others may want to be able to read the rules by mobile phone. To be accessed effectively online, the rules need to be presented in a low band-width format, with hyperlinks. So for example, the rule referring to preparing the summons could contain a link to the relevant form, and to any relevant definitions.

Forms need to be presented in a format such that they can be printed off and completed, rather than as styles

Consultation question 7

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

Comments

The headings add clarity and assist with navigation of the rules.

However, the definition of terms is easy to miss at the end. Therefore we suggest that the Part for definition of terms is placed before the forms which should come at the end.

Or to make the rules even more clear – the procedural rules that describe the steps in the procedure should be able to be read as a whole. Definition type-rules such as types of service, or glossary, should be linked but separate.

Consultation question 8

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

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| Comments |
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Consultation question 9

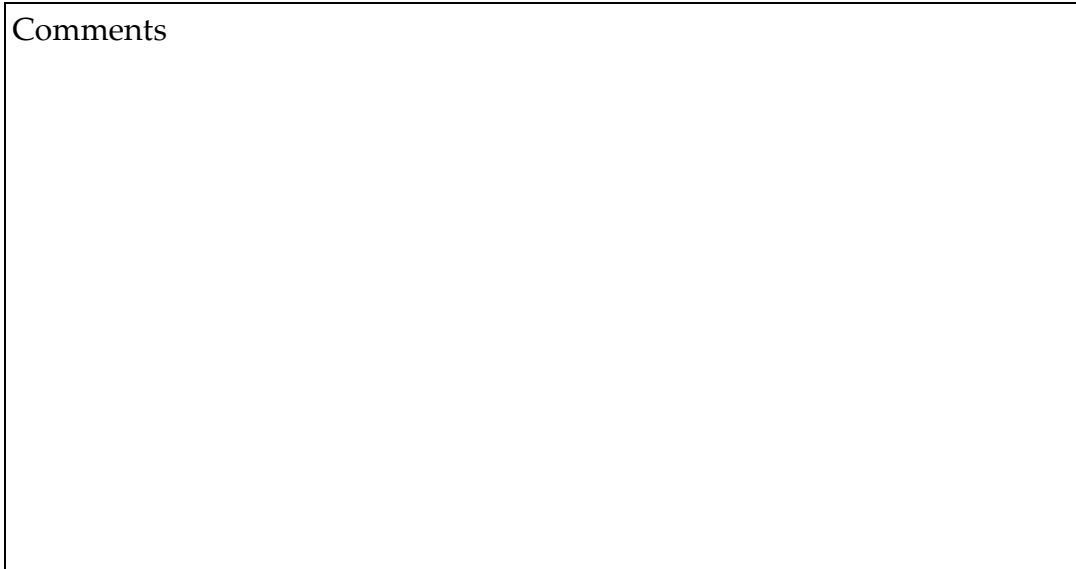
Do you have any comments on the approach taken to alternative dispute resolution in the rules?

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| Comments |
| <p>ADR is a valuable tool in resolving disputes. Very often, party litigants come to court and are shocked when the Sheriff puts them on the spot about their lack of knowledge of the law, lack of specification of their claim and how to conduct a proof. Sheriffs can spend a lot of valuable court time explaining basic matters to party litigants or attempting to clarify the issues in dispute. Sheriffs often continue cases to try to allow the parties to attempt to reach a settlement, which inconveniences all parties and the Court and costs all parties time and money.</p> <p>ADR is less stressful and confrontational, and is thus more likely to produce a negotiated settlement. ADR is a major omission from the current rules.</p> <p>However, it is difficult to see how the rules can encourage party litigants to use ADR where there is no mediation service available. Mediation needs to run alongside access to effective advice.</p> |

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?

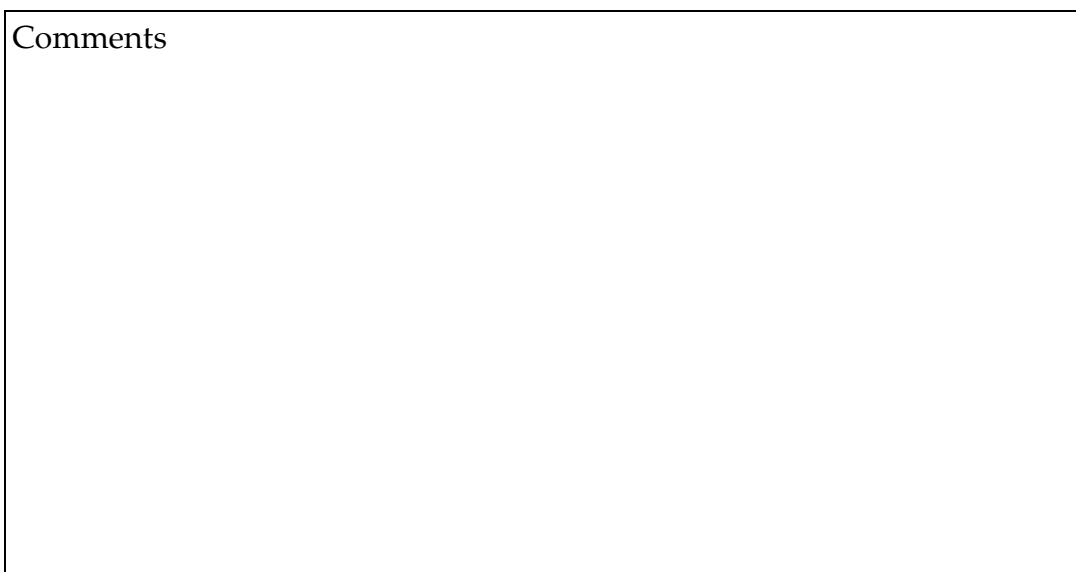
Comments



Consultation question 11

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

Comments



Consultation question 12

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

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| Comments |
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Consultation question 13

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

Comments

The proposed rules make this appear much more complex and confusing than necessary. We had (have) a very straightforward rule for lay representation in small claims which required that the person was suitable and authorised. Since then, efforts to increase rights of audience in the superior courts, have resulted in what was a very straightforward rule in small claims being made more complicated and formalised. This trend is not helpful.

The rules should be as simple and straightforward as possible. . As things stand, Part 2 is repetitive and unnecessarily complex. There should be a single description of what makes a person suitable to assist a party litigant, either by acting as a lay support or lay representative

To make sense, the lay support provisions should come before the lay representation provisions, and should make clear that someone acting as a lay support may seek permission to make oral submissions on behalf of the party litigant at a particular hearing.

Despite being more formal and detailed, the rules do not make it crystal clear that a lay representation can appear in court and speak on behalf of the party litigant.

The draft rules do not appear to recognise that there are different categories of lay people who may appear on behalf of a party litigant, and it is not always appropriate to expect them to sign a certificate as a formal lay representative.

For example – a parent or other family member may appear at a procedural hearing to represent the party litigant's position.

An adviser from CAB or other advice agency, or in-court adviser may appear as a representatives in multiple cases. But their role might vary depending on the case. For example, depending on their remit, they may assist with preparing pleadings, but may not intend to appear at the evidentiary hearing.

Also these draft rules seem to envisage that the majority of cases will involve party litigants, whereas it is clear that the majority of pursuers are businesses/ limited companies. The rules should make it clear whether these businesses may be represented by employees or directors.

Consultation question 14

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

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| Comments |
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Consultation question 15

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

Comments

The examples are useful. However, there appear to be examples given for pursuers but not for defenders. We think that party litigants are more likely to be defenders than pursuers.

There could usefully be more guidance on the difference between a claim against an individual and a limited company, and the importance of accurate designation of a limited company.

One common party litigant mistake is to raise the claim against the director or manager of a company

The rules do not appear to give any guidance on jurisdiction.

The rules require the claimant to list documents and witnesses but there is no guidance on what may be required

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

Examples should be given for guidance of responding parties as they are for claimants.

There isn't any clear guidance on how to frame a counterclaim.

There is nothing to indicate that a defender may be able to apply for a time order under the Consumer Credit Act Section 129. This is important for regulated agreements, and allows the courts to suspend the rights of creditors to repossess vehicles etc. There should be a single time to pay application form, which allows the court to consider whether to grant a time order or time to pay direction.

Consultation question 17

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

Comments

One of the issues about settling the claim prior to the hearing is that there is no clear guidance about how expenses will be dealt with.

The claim form should give clear breakdown of the sum required to settle the claim if expenses are to be included.

Consultation question 18

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

Comments

This section appears to be out of order. It is hard to read, and by positioning it in the middle of the rules, it makes them harder to be read as a whole. Also, it is quite confusing in that some of the types of service or intimation can be done by the party litigant, and some have to be carried out formally by e.g. the Sheriff Clerk.

I think this section would sit better with the glossary of terms?

Alternatively, the information about how to serve or send could be included within the parts that require that information.

Consultation question 19

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

Comments

There is no mention of regulated agreements and time order applications under the Consumer Credit Act.

Possible disposals for time to pay applications could be outlined.

The rules should encourage negotiated settlement and in particular “full and final settlement”

Consultation question 20

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

Comments

This is an important inclusion, as it gives the parties an opportunity to examine the issues and to achieve a negotiated settlement or at least to agree on matters that are not disputed.

It is good that the procedure encourages ADR at each stage, but this will only be effective if mediations and advice services are available

Consultation question 21

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

Comments

A procedure that allows parties to agree for a case to be decided on written submissions alone would be of value.

Consultation question 22

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

Comments

Part 7 refers to part 17, but it appears that it should refer to part 16

Consultation question 23

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

Comments

Consultation question 24

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

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| <p>Comments</p> <p>(7) there should be an option to provide for a joint motion to abandon with no expenses due to or by either party</p> <p>“the applicant” in part 8(8.1) isn’t defined in the glossary, neither is the “Additional Responding Party Application”</p> |
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Consultation question 25

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

Comments

It should be made clear if there will be a charge for copying documents.

Consultation question 26

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

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?

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| Comments |
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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.

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| Comments |
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Consultation question 29

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

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| <p>Comments</p> <p>There is nothing in the rules to warn the party litigant that the hearing will be a civil trial where evidence must be led, and that special rules apply with regard to presenting evidence. For example, a party litigant may bring along photos, but not realise that a witness must speak to them. Also, it must be made clear that the Sheriff's role is to hear the evidence and not to conduct the proof.</p> |
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Consultation question 30

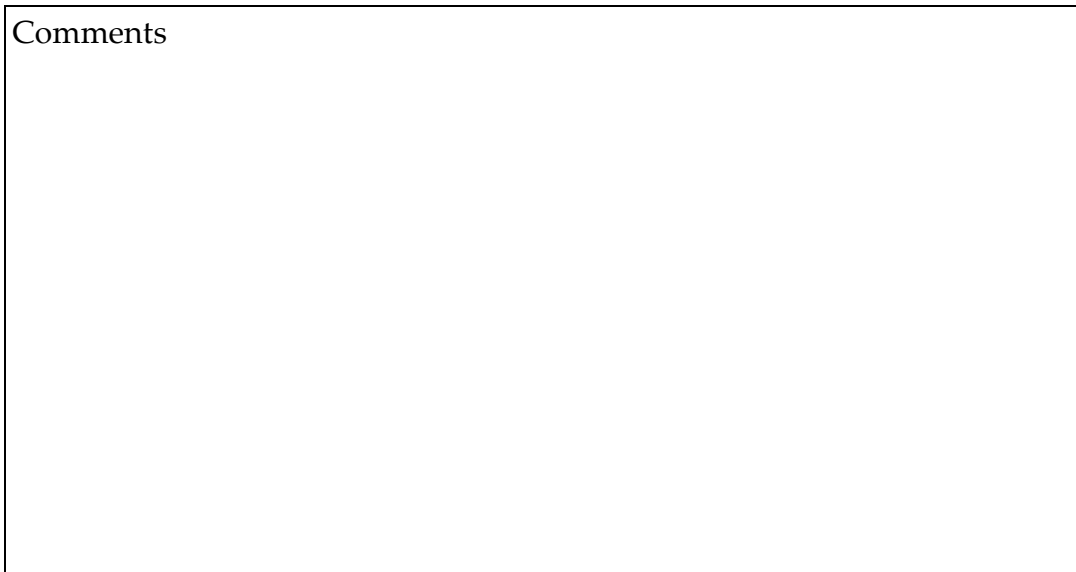
Do you have any comments on the approach taken in Part 12: The decision?

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| <p>Comments</p> |
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Consultation question 31

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

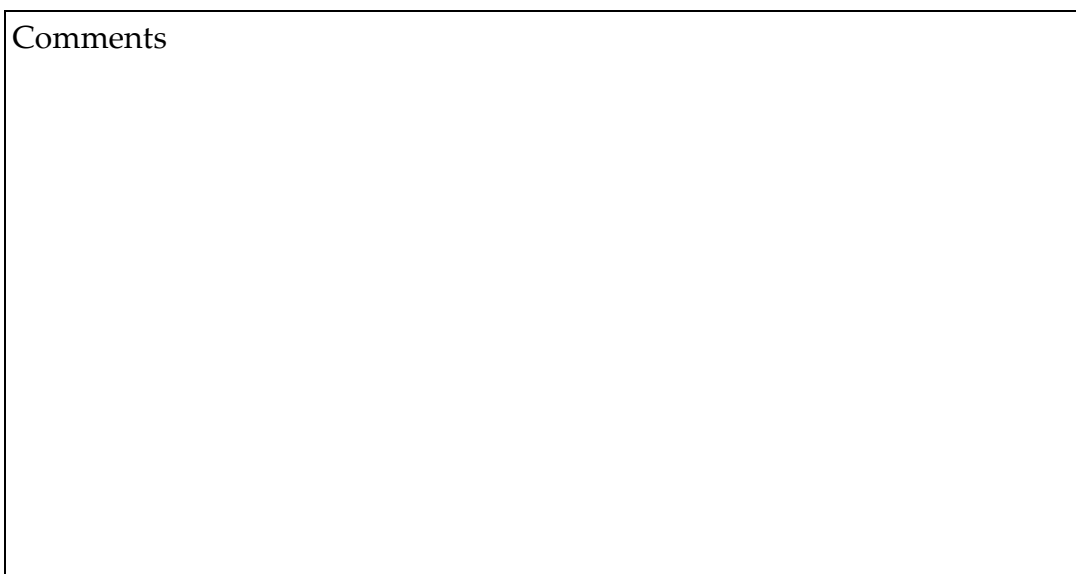
Comments



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?

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| Comments |
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Consultation question 34

Do you have any comments on any individual forms?

Comments

The claim form and response forms are very directive. Maybe at the risk of losing some flexibility. I would be surprised if party litigants would know who would be relevant witnesses when responding to a claim.

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?

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| <p>Comments</p> <p>It seems to be quite a big departure from the current practice that the standing orders appear to extend the Sheriff's role to include ordering that particular evidence be submitted.</p> |
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Consultation question 37

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

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| <p>Comments</p> |
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Consultation question 38

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

Comments

There is no option for the case to be decided upon written submissions alone where the parties agree to this. In many instances, party litigants are deterred from going to court as they will find it stressful and time consuming. This applies to both pursuers and defenders. Low value cases would be prime candidates for such a procedure.

The procedure seems to envisage that it will principally be used by party litigants but we know that most pursuers will be companies and businesses.