

ANNEX B CONSULTATION QUESTIONNAIRE

Response to the SCJC consultation on the draft Simplified Procedure Rules on behalf of the Scottish Courts and Tribunals Service (“SCTS”) acting in its role to provide efficient and effective administration to the courts and tribunals. This response does not include the views of the Judiciary

Consultation question 1

Do you have any comments on the approach taken to splitting the Simple Procedure Rules into two sets of rules?

Comments No comment.

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 The SCTS welcomes the approach taken to updating hard to understand terminology.

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 No comment.

Consultation question 5

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

Comments

We have some concerns about the numbering style adopted in the draft Rules. We understand that the approach has been taken to accommodate future amendments but we think that the current style, which involves re starting the numbering within each part, but without replicating the part number for each rule, will lead to confusion for members of the public, professional court users and sheriff clerks. We suggest that the current tried and tested format, familiar to all current users, is replicated in the new Rules.

Consultation question 6

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

Comments

The SCTS has for a number of years provided a range of updated court rules on its website for the assistance of the public and provides the resource, with access only to basic functionality, to update as required.

In considering any future location for the new Rules, thought will need to be given to the general layout and format of the Rules online to allow simple access to update the text and any associated links, and to minimise any future resource which may be required to carry out that function.

Consultation question 7

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

Comments

No comment.

Consultation question 8

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

Comments

Minimising the number of court hearings as far as possible contributes to an efficient and effective court system and the SCTS supports any proposals which intend to achieve this.

However we would comment on the following Rules:

Part 6 Rule 4.3. To streamline the disposal of business we would ask that the rules provide for any Application for Decision to be sent to the court 'before the sheriff clerk's office closes for business on the second last day before' the date of first consideration. This would replicate the current practice in Rule 7(1) (b) of the Summary Cause Rules and Rule 8.1(2) of the Small Claims Rules and allows the sheriff clerk preparation time, before the first date of consideration by the sheriff, to identify and separate cases which are proceeding from those without response which will be automatically dismissed.

Consultation question 9

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

Comments No comment.

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 comment.

Consultation question 11

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

Comments No comment.

Consultation question 12

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

Comments No comment.

Consultation question 13

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

Comments No comment.

Consultation question 14

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

Comments Reference is made to response to Q 8 above.

Consultation question 15

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

Comments

Part 3 Rule 4.5 Currently the sheriff clerk is only required to serve a claim form on behalf of party litigants in small claims procedure. Rule 4.5 now broadens this to require the sheriff clerk to serve a claim form in all simplified procedure which includes actions previously raised under the Summary Cause rules. We would note that extending the requirement of service for sheriff clerks will have resource implications for the public purse.

We would also note that in respect of electronic submission of documents that where service by the sheriff clerk is appropriate there will be additional cost in the printing of documents for service.

SCTS will expect any such additional resource to be covered by relevant funding.

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

We note that there is no distinction in respect of the appropriate response route for companies or organisations who cannot competently make a Time to Pay application and would think that this may cause some confusion about the format of response available in these cases.

Consultation question 17

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

Comments

No comment.

Consultation question 18

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

Part 5 Rule 6.2. We have some concerns in respect of the current drafting of this rule. We consider that it is neither necessary nor appropriate to publish the whole claims form on the SCTS website. We would note that the claim form will include details of the claim which may contain personal details of either the claimant or the responding party in relation to the claim. Instead we would prefer that the current detail required in newspaper advertisements is replicated and it is simply the details of the pursuer and defender and the relevant court which are published on the website. This will address any concerns in respect of Data Protection issues and also concerns about capacity and space on the website to publish the full claims form.

Consultation question 19

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

Comments

Part 6, Rule 5.1 – 5.3. These rules as currently drafted appear to introduce unnecessary complexity into the procedures. To streamline the disposal of business we would propose that where a defender admits a claim and wishes to settle the current practice continues. That is that following the submission of such a response from the responding party the rules provide for the case to be automatically dismissed if no 'Application for Decision' is sent to the court prior to the date of first consideration. The assumption being that the matter has been settled informally and the claimant does not wish to progress to final decree so that there is no further need for court involvement.

Consultation question 20

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

Comments No comment.

Consultation question 21

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

Comments No comment.

Consultation question 22

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

Comments

We note that the style form proposed for decree, included at Part 17, does not set out the full designation, name and address of the parties. We would note that sheriff clerks' experience over the years has shown it is essential for as much detail as possible to be included in the court order and copied into the subsequent extract to assist in identification of the correct party for enforcement.

Consultation question 23

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

Comments

Part 8, Rules 3.3 & 4.3 We would ask for clarification of when the 7 days for stating an objection to an application to freeze or unfreeze commences. Is it the date of sending or the date of receipt of the application? If it is expected that the sheriff clerk checks the relevant dates for lodging the objection, provision must be made to ensure that evidence of the relevant date is available to check the time limits have been complied with.

Consultation question 24

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

Comments

Part 8 Rule 6.1- 6.6

Similar issues to those identified in Q 23 apply. – We would ask for clarification of when the 7 days for stating an objection to an application to amend commences. Is it the date of sending or the date of receipt of the application? If it is expected that the sheriff clerk checks the relevant date for lodging the objection, provision must be made to ensure that evidence of the relevant date is available to check the time limits have been complied with.

Part 8 Rule 7.2

We think it would be helpful to have it stated clearly in the Rules the basis on which the sheriff clerk assess the expenses. Current Rules state that the assessment of expenses will be in accordance with the statutory table of fees.

Consultation question 25

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

Comments

No comment.

Consultation question 26

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

Comments

Part 10 Rule 3.4 (and Part 17 Rule 3.4)

We think it would be helpful if it specified on the face of the rules that the sheriff may order a witness to be brought to court **by an ‘officer of court’**. We suggest that this would provide an indication of the level of expense a witness may incur as set out in Part 17 Rule 3.4.

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

SCTS support the detailed provisions being made available in the Rules as this is the most effective way to provide information to parties. It effectively manages the flow of enquiries coming to sheriff clerks, allowing them time to focus resources on providing more detailed input and explanation where 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

No comment.

Consultation question 29

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

Comments No comment.

Consultation question 30

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

Comments <p>Part 12. Rule 3.5. We would propose that the wording of this Rule, covering the issue of a copy decree form to parties, reflects the wording of the current Rules in respect of court extracts (eg Small Claims Rule 21.5) which provides that the extract is issued only <u>after</u> 14 days from the granting of decree have lapsed .ie on the 15th day. This allows for the appeal period to have expired at the end of the 14th day and that due execution of the decree issued can be immediately enforced.</p> <p>Part 12. Rule 5.1-5.7 We would consider it useful to have a rule, similar to those in relation to other applications eg in Part 8, which requires the applicant to send a copy of the application to revoke a case both to the court and to the other party. This will alert the other party to the issue, and allow them to consider getting advice, if appropriate, prior to receiving intimation of a hearing from the sheriff clerk in terms of Part 12. Rule 6.1.</p>

Consultation question 31

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

Comments No comment.

Consultation question 32

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

Comments No comment.

Consultation question 33

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

Comments For efficient administrative disposal of business for the sheriff clerk in dealing with large volumes of Simple Procedure applications we would ask that the name, and if possible address, of both parties be shown on the front page of the Claim form, and, to assist in disposing of cases accurately, the name of parties is also printed on each of the relevant court Order forms shown at Part 15.

Consultation question 34

Do you have any comments on any individual forms?

Comments

See response to Q22. In addition we would specifically note that all applications, response and ancillary forms should include the name of the parties and the claim number on the front page in each case, to assist in the administrative handling of volumes of simplified procedure cases in court.

Confirmation of Service Notice. We think it would be helpful to have a note on the form advising parties to attach postal receipts, in terms of Rule Part 5 Rule 4.3, if relevant. Provision should also be made in the form for execution by sheriff officer.

Consultation question 35

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

Comments

No comment.

Consultation question 36

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

Comments No comment.

Consultation question 37

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

Comments No comment

Consultation question 38

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

Comments

Part 17 Rule 2.2-2.3

We would note the duty of the sheriff clerk in Rule 2.3 to make the Register of Simple Procedure Cases available for inspection to the public and in light of that would suggest that Rule 2.2 (g) may not be appropriate. In similar terms to answer at Q 18 above, the response form will include details of the defence to the claim and may contain personal details of either the claimant or the responding party. We would consider that the recording of the fact that a response form has been lodged in the Register is sufficient and will address any concerns in respect of Data Protection issues and also address any concerns about capacity to record required details.

Expenses: We note that no provision is currently made in the draft Rules about the procedure in relation to expenses equivalent to Summary Cause Rule 23.3 (8) and would suggest that such a rule is necessary to manage the expenses assessment process.

Re-service: We note that there is no provision currently made in the draft Rules for re-service procedure. This is a commonly used procedure in current summary cause and small claims cases eg Rule 5.10 of the Summary Cause Rules which allows a further 'first date for calling' to be fixed following failure of the initial service attempt, without waiting for the time period initially set to expire. We would suggest that this 're-service' procedure is used so routinely that incorporating something within the new Rules to cover these circumstances would assist parties in achieving speedy resolution of the claim.