

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
I may be missing something but clause 8 of section 1 (Introduction and Background) refers to summary cause and small claims being replaced by one procedure.
Essentially, I don't understand question 1.

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

YES

Some of the current terms may be hard for some people to understand but this is where the sheriff will come in to his/her own in the management of the case.

For example: I believe the word 'freeze' to be more difficult to understand than 'sist'. I say this because 'freeze' is intended to be understood by anybody when, in fact, it would not. Pursuers and defenders would still be wondering if or when it might be thawed out and particularly a defender, I believe, would still be bemused and need an explanation.

If sheriffs are to become case managers then they have a lot to learn and a lot to explain to each party. A small number of sheriffs realize that they need to explain judgements to some people whilst other sheriffs leave a lot to be desired when a party litigant demonstrates that s/he does not understand what is going on.

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

Leave the terminology just as it is and get sheriffs to understand that their case management role is in helping party litigants to receive justice.

Also, sheriffs would better understand their case management role if they dispensed with their wigs and gowns and pursued cases in an informal atmosphere, ie in a room without sitting high up on the bench and where party litigants can feel at ease in unfamiliar surroundings and having to stand. The gulf between My Lord/Lady/solicitors is never so apparent when they have places to put papers and can drink whilst the lay representative and/or defender has to find a place to be, has nowhere to put papers and is not permitted to drink.

Consultation question 5

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

Comments

Not really, apart from it is normal for a section to start with, for instance, '3' or '3.0' for the purpose of the section – not 3.1.

All that is needed is that the numbering is easy to understand and refer to as well as being easy to insert later amendments without causing confusion if the existing numbering changes.

Consultation question 6

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

Comments

Someone familiar with how search engines work should be able to come up with suitable phrases that a novice might use.

There will need to be explanations of the rules and terminology and these should easily accessible.

Consultation question 7

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

Comments

There needs to be a serious review of the headings. I like the question style (this is like the booklet on Landlords and Tenant rights and responsibilities) but there are questions on the process mixed in with questions for explanations. This marriage is not a good one and leads to confusion and a much lengthier document that is difficult to read and understand.

Consultation question 8

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

Comments

I don't believe that there should be any push to minimize the number of hearings.

In a small claim, and if all of the evidence has been submitted at the correct time, there should only be need for one hearing. I don't believe that a 'proof' hearing should be considered and has no meaning in a small claim if the sheriff is case managing effectively.

Summary cause for housing cases – I can't see where this is covered.

Consultation question 9

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

Comments

Without specifying what the alternative dispute resolution might be then 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

2.1 OK

2.2 What is the problem with being informal all of the time? Seems to suggest that being formal adds to justice being served, which it doesn't.

2.3 I would hope that they always will be – simple rules or not.

2.4 The sheriff should be doing this all of the time in his/her role as a case manager.

2.5 Is there a suggestion that a sheriff can make a determination without the party litigants speaking to the sheriff or each other?

Consultation question 11

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

Comments

No

Consultation question 12

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

Comments

Far too many words. Far too much repetition. I don't understand the purpose of Part 1 – it is not the start of a procedure and it is not a glossary of terms. The word 'excuse' in 7.9 should be replaced by the word 'reason'.

Consultation question 13

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

Comments

Again, I am struggling to understand what this is. It seems to be a mixture of procedure and a glossary of terms.

Consultation question 14

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

Comments

I presume that this is referring to Part 3 sections 1 & 2. I don't particularly have an issue with the timescales but there are much clearer ways of displaying them. As with the whole document this part of the procedure would benefit from far less words and more bullet points, a table or a process flow chart.

Consultation question 15

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

Comments

Again, I don't quite see why we need so many words. I also don't see why the procedure needs sub-sections like (a) to (d) in 4.1. There are many things that the form could be returned for and the procedure shouldn't be telling the sheriff's clerk how to do his/her job.

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

Yes, there should be a lot more of them throughout the procedure. However the flowchart is not complete and therefore incorrect, ie the defender could admit the claim but want to make a counterclaim. The flowchart does not permit this.

Consultation question 17

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

Comments

No

Consultation question 18

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

Comments

The procedure can be made much simpler with the use of a lot less words. As with the majority of the simple rules procedure the word 'may' should be replaced by a word or phrase that accurately describes what shall happen. As said at the focus group meeting in the Parliament House the procedure should not be describing how people do their jobs where it is inherent in the job that they do, eg a sheriff officer.

Consultation question 19

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

Comments

Where a defender has been properly served and does not respond I don't see why a pursuer has to then file an Application for a Decision. The pursuer has already done that by making the claim in the first place. A sheriff should be able to make a judgement without any further paperwork on the merits of the case and the evidence supplied.

Consultation question 20

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

Comments

My understanding of case management is probably not the case management envisaged by these simple rules, which I find over-complicated.

I accept that there needs to be a legal framework but in the interests of justice a sheriff needs to be more pro-active and lead party litigants through the process. I see no evidence that sheriffs will do this and keeping the same forum as at present will, in my view, be counter-productive.

Consultation question 21

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

Comments

Clause 2.1 is meaningless.

Clause 3.1 “as soon as possible after the date of first consideration” is again meaningless. Should say “within 14 days”.

Clause 6- I don't understand why case management doesn't start at the time the two parties come together. To get the two parties together for an informal chat before a hearing appears to be overly complicated and expensive, especially where there are long distances to travel. With the closure of some sheriff courts in the Highlands there are considerable distances to now travel.

Consultation question 22

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

Comments

I don't understand the difference between a 'case conference' and a 'hearing' and I don't see why they need to be different.

I don't see the point of having 'typical' situations when a sheriff can do as s/he pleases.

Consultation question 23

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

Comments

This section appears to be the only area where a summary cause for repossession of a house is dealt with.

Apart from not agreeing with the terminology I don't see why we have to explain what the sheriff needs to consider when the sheriff knows what to do from his/her training.

Consultation question 24

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

Comments

Far too many words.

All that needs to be said is that a form needs to be filled in and the form should lead the compiler of the form through the process.

Consultation question 25

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

Comments

This can be handled with far less words and also brings into sharp focus the preferential treatment that solicitors get over lay representatives. In a court now the lay representative cannot have a drink of water and has to find space in a court to stand all of the time, a solicitor can and does sit, and perch documents in awkward places – nothing changes then.

Consultation question 26

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

Comments

The section appears to make the simple rules very complicated and the majority is probably covered in other parts of the sheriff's rules or something similar.

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

Realistically, all that needs to be said is that any documents that are to be relied on at a hearing shall be available to the sheriff clerk at least two weeks before the hearing. Also to be advised are the names of witnesses and representatives.

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

I've probably covered this on the way through my comments.

Consultation question 29

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

Comments

I don't really understand why the sheriff might look at alternative dispute resolution. The small claim case has been brought to a sheriff (case manager) for a decision on the evidence put forward at the hearing and by witnesses. The sheriff should make a decision and I see no reason to continue the case at another hearing, which will cause valuable court time to be wasted, incur additional costs for travel and lost wages for party litigants and increase the cost of representation.

For a summary cause case where the pursuer, in addition to seeking rent arrears and expenses, is wishing to re-possess a property there will be a need to continue cases to a further hearing but I cannot see where this is specifically addressed in any part of the simple rules.

Consultation question 30

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

Comments

Again there are too many 'may's and too many words. I don't believe that appealing a decision or revoking a decision belongs in this section. It should be in its own section at the end of the document.

Consultation question 31

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

Comments

I don't believe this belongs in the simple rules procedure. If a sheriff believes that the case should be dealt with elsewhere then it is incumbent on the sheriff to explain this at the hearing or in the decision and apply the rules applicable to the other procedure.

Consultation question 32

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

Comments

I do not believe that the appeal process should be in the simple rules process.

Simplified language is being proposed for the simple rules so what is an 'appellant'?

Consultation question 33

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

Comments

An index of forms might be useful without a reference to which rule applies and the initial sections.

Consultation question 34

Do you have any comments on any individual forms?

Comments

Lay Representative Form – this is the wrong approach. This should be the pursuer or responder asking permission to use a lay representative and then the LR makes declarations. I don't see a similar form for permission to use a solicitor.

All the forms need a good review to remove all the unnecessary words and provide a good flow without regurgitating the procedure. Unless, of course, the forms could be used as the process flow.

Consultation question 35

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

Comments

I don't see the need. Surely sheriffs have had sufficient training to understand what they are doing and how to phrase orders.

Consultation question 36

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

Comments

No, apart from they don't need to be there.

Consultation question 37

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

Comments

Is there a part 18?

Consultation question 38

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

Comments

Too many words.

Sectioning over-complicated.

Too much telling people what to do when it is inherent in their training.

A flow diagram would be much more useful.

Not much on housing-related cases.

Forms are too complicated and contain far too many words.

I believe that there should be a complete review of the simple procedure rules with a clear focus on what is trying to be achieved.

Stick to the procedure for making the claim and have different documents for appeals and other supporting processes.