



**Scottish  
Civil Justice  
Council**

# **Consultation on the draft Simple Procedure Rules**

**NOVEMBER 2015**

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## **RESPONDING TO THIS CONSULTATION PAPER**

Written responses to this consultation paper are invited by **Wednesday 2<sup>nd</sup> March 2016.**

Please send your response with the completed Respondent Information Form (see "How your response will be treated" below) to:

[scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk)

or

Bridget Lee  
Scottish Civil Justice Council  
Parliament House  
Edinburgh  
EH1 1RQ

If you have any queries please contact on Bridget Lee 0131 240 6781.

Please use the consultation questionnaire to make your comments or clearly indicate in your response which questions or parts of the consultation paper you are commenting on to ensure that we know which of the rules you are commenting on.

This consultation, and all other Scottish Civil Justice Council (SCJC) consultation exercises, can be found on the consultation web pages of the SCJC website at:

<http://www.scottishciviljusticecouncil.gov.uk/consultations>

### **How your response will be treated**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. **Please complete the Respondent Information Form (Annex A) to make sure that we treat your response as you wish.** Your response will not be published on the SCJC website if you have asked us not to make it public.

However, all respondents should be aware that the SCJC is subject to the provisions of the Freedom of Information (Scotland) Act 2002. This means that, if the SCJC receives a Freedom of Information request about the responses to this consultation exercise, any of the responses, including those not published, may have to be made available under the request.

Where respondents have given permission for their response to be made public (and as long as they contain no potentially defamatory material) responses will be made available to the public on the SCJC website.

### **What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help the SCJC reach a view on the Simple Procedure Rules. It is intended to publish a consultation report on the SCJC website, following the meeting of the SCJC on **16<sup>th</sup> May 2016**.

### **Feedback**

If you have any comments about how this consultation exercise has been conducted, please send them to:

Bridget Lee  
Scottish Civil Justice Council  
Parliament House  
Edinburgh  
EH1 1RQ

0131 240 6781

**Or by email to:**

[scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk)

**Introduction**

1. This consultation seeks views on draft rules of court for simple procedure.
2. Simple procedure is designed to be a speedy, inexpensive and informal civil court procedure for helping people sort out disagreements about matters of lower monetary value.
3. When designing this new procedure the purpose has been to produce readable rules, that can be easily understood, and which will create a swift, efficient, affordable and just system for settling disputes.

**Background***The Scottish Civil Courts Review*

4. In February 2007, Cathy Jamieson, then Minister for Justice, asked the Rt Hon Lord Gill, at that time Lord Justice Clerk, to undertake a wide-ranging review of the civil court system in Scotland. A report published by the Scottish Executive at the same time [Modern Laws for a Modern Scotland – A Report on Civil Justice in Scotland](#) set out the Scottish Government's vision for civil law and civil justice in 21<sup>st</sup> century Scotland, which included supporting Lord Gill in undertaking a comprehensive review of the structure, jurisdiction, procedures and working methods of the civil courts in Scotland.
5. Two key principles for reform of civil justice were put forward in the Scottish Executive's Report: proportionality – systems and processes that are proportionate to the importance, complexity and monetary value of the issues involved; and, value for money – making sure civil justice services are efficient, meet reasonable public expectations, and promote early resolution of disputes.
6. Issues identified in the Scottish Executive's report for Lord Gill's Review to examine included 'the disproportionate cost of litigation, particularly in cases of lower financial value' and 'the possibility of increasing the role of the courts in case management, which may reduce time taken and costs'.
7. Lord Gill's Scottish Civil Courts Review (SCCR) consulted widely and when it reported in September 2009 it set out that there had been a 'strong call from practitioners and court users for ... a more proactive system of case management', that 'for those litigants who do not have legal representation even those court procedures designed with them in mind may be inaccessible'

and that ‘it was thought that there was considerable scope for improving the procedures for dealing with lower value cases’.

8. To address these issues the SCCR recommended that ‘there is a particular need for changes to court practices and procedures in cases of low monetary value ... so that people who do not have legal representation can enter and move through the court process effectively. Summary cause and small claims procedure should be replaced by a new simplified procedure for all actions with a value of £5,000 or less ... The procedure should be designed with unrepresented litigants in mind. The district judge<sup>1</sup> should take an interventionist approach to identify the issues and assist the parties to settle if possible, and to determine how the case progresses.’
9. The SCCR set out its vision for a new procedure, to replace the small claims and summary cause procedures for cases valued at up to £5,000, in the following recommendations:

*‘Actions before the District Judge’<sup>2</sup>*

79. There should be a single new set of rules for cases for £5,000 or less.  
(Paragraph 125)
80. The new rules for low value cases should be based on a problem solving or interventionist approach in which the court should identify the issues and specify what it wishes to see or hear by way of evidence or argument.  
(Paragraph 126)
81. The new rules should be written in plain English and be as clear and straightforward as possible. (Paragraph 127)
82. At the first hearing the district judge<sup>3</sup> should decide what further information is required and what the next stage of procedure should be. He should be able to continue the case to a later date if he considers that to do so will enhance the prospects of achieving a settlement. There should be a permissive provision that will allow the district judge<sup>4</sup> to assist the parties to reach a settlement at any point in the case, rather than a requirement that he should do so at the first hearing in every case. (Paragraph 128)
83. The simplified procedure should enable a party litigant, with the help of written explanatory guidance and/or support from an in-court or other advice

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<sup>1</sup> ‘Summary sheriff’ is the term used for this office in the Court Reform (Scotland) Act 2014.

<sup>2</sup> See above.

<sup>3</sup> See above.

<sup>4</sup> See above.

agency, to initiate a claim or lodge a defence and conduct his case to a conclusion. Such a party should be entitled, with the permission of the court, to have his case presented for him by a suitable lay representative.  
(Paragraph 130)

84. The rules should be drafted for party litigants rather than practitioners. They should describe in outline how the case will proceed. They should also entitle the judge to permit lay representation and to hold any hearing in chambers. (Paragraph 131)

*Actions which include a claim in respect of personal injury*

85. The rules should provide that an action for damages for personal injury for up to £5,000 action can be transferred to the ordinary court or to the specialist personal injury court, if it raises complex or novel issues.

(Paragraph 132)'

10. The SCCR made further recommendations relating to the new procedure in Section C of the Annex to Chapter 5.

'The detail of the new procedure will be a matter for the Rules Council or Civil Justice Council for Scotland but we recommend that the rules should have the following features:

- The rules and any forms should be written in plain English and with the minimum of technical legal language. Consultation on the rules, on newly-designed forms and on written guidance should include an "intelligibility road-test" with members of the public.
- The rules should make clear that the court will control how the case progresses, and will take an active role in identifying the issues in dispute and deciding what information or legal argument it needs to have in order to determine the case.
- Forms for making and replying to a claim should explain clearly the difference between the time limit for responding in writing to the claim, and the day on which the case will be heard for the first time in court. The consequences of failing to respond to the claim should be made obvious.
- Forms for making and replying to a claim should provide information about sources of help and advice, including mediation and other forms of dispute resolution and any relevant in-court advice or mediation services. They should also explain what will normally happen at the first hearing.
- Forms for making a claim should require the person making the claim to set out briefly the essential facts and law on which the claim is based along with details of any documents which are relevant. Written guidance should include examples of the kinds of information and statements that

should be put on the form and the sort of documents and information that the court will want to have, for common types of claim.

- Similarly, the person replying to the claim should be required to set out briefly why he does not agree with what the claim form says and give details of any documents that he intends to use in support of his arguments. Again written guidance should include examples of possible defences and information about what the court will need to have in order to decide the case, for common types of claim.
- Other than in rented housing and mortgage re-possession cases, where no reply is received to a claim by the due date, it should not be called in court and the person making the claim should be able to ask for a court order in his favour by writing to the court.
- At the first hearing, the judge should decide what further information each party should provide and what the next stage of the procedure should be. In many defended cases, the first hearing would therefore in effect be a case management hearing.
- It should continue to be possible for the judge to dispose of the case finally at the first hearing if he considers it appropriate to do so.
- The judge should be able to try to assist the parties to reach a settlement at any point in the case, if it seems appropriate in the circumstances.
- The judge should be able to continue the case to a later date in order to allow parties to seek advice, to go to mediation or to negotiate a settlement.
- It should be open to the judge, at the request of one of the parties or if the judge considers it appropriate, to hold any hearing in private. This might help to settle some cases in which the parties may be willing to discuss a settlement but are reluctant to do so in front of other people in open court.
- Any party should be able to be represented by an authorised lay representative at any hearing, so long as the court is satisfied that the representative is a suitable person to fulfil that role.'

#### *The Scottish Civil Justice Council*

11. The Scottish Civil Justice Council (SCJC) was established on 28 May 2013 under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. As well as developing rules for the civil courts the Council has responsibility for keeping the civil justice system under review and making recommendations for its improvement. Many of the recommendations of the SCCR require new court rules to be made and the Council has responsibility for taking this forward.

#### *Rules Rewrite Working Group*

12. The SCJC set up the Rules Rewrite Working Group (RRWG) to develop and submit to the SCJC a 'rules rewrite methodology' for the Rules Rewrite Project to frame the rules required to implement the recommendations of the

SCCR, and its enabling legislation, and to consider the prioritisation of separate phases of the rules revisions. The Rules Rewrite Project is being carried out under the Scottish Government's *Making Justice Work* Programme.

13. In March 2014 the RRWG published an interim report setting out its vision for the rules rewrite methodology and priorities. In its report the Working Group made recommendations as to how the Rules Rewrite Project should be taken forward which included that drafting rules for the new simple procedure should begin during 2014 as one of the priorities for the Project. The other recommendations in the interim report that relate specifically to simple procedure are set out below:

**Simplicity, modernisation and accessibility of the rules**

**Recommendation 2:** ... we consider that out of date or complex language should not be restated in the simple procedure rules on this basis as party litigants should not be expected to rely on case law.

**Party litigants**

**Recommendation 3:** As party litigants will be regular users of the simple procedure (which will replace small claims and summary cause procedure) proposed in the Courts Reform (Scotland) Bill 2014, we consider that it is vital that simple procedure is designed with party litigants in mind. As such, it ideally should not require complementary guidance (and indeed we suggest that the procedure itself could be drafted in such a way that it 'guides' litigants step-by-step through the court process).

**Implementation**

**Managing Litigation**

**Recommendation 6:** We consider it essential that management of litigation transfers to the courts, and that judges and the judicial system take a proactive stance in managing the progression of cases through the courts.

**Courts Reform (Scotland) Act 2014**

14. The SCCR recommendation to have a new simple procedure, replacing small claims and summary cause actions, was accepted by the Scottish Government and legislative provision was made in the Courts Reform (Scotland) Act 2014 ('the Act').
15. The Scottish Government will also be required to make secondary legislation relating to simple procedure, including amendments to legal aid regulations and an order capping the recoverability of expenses in simple procedure cases.

*Court fees and expenses*

16. As set out in the Scottish Government's February 2015 consultation paper, [Fees Charged by the Court of Session, Accountant of Court, Sheriff & Justice of the Peace Courts, High Court, Office of the Public Guardian, personal injury court and the Sheriff Appeal Court](#), the court fees for simple procedure will be determined once the Simple Procedure rules have been consulted upon. The Scottish Government expects to consult on these court fees in Summer 2016.
17. It is expected that the expenses-capping order made by the Scottish Government will largely replicate the existing provision in the Small Claims (Scotland) Order 1988, as amended: actions of aliment, defamation and personal injury will continue to be exempted from the expenses-capping regime, the scale of expenses for claims of under £3,000 will be maintained, and expenses will be able to be awarded on a scale prescribed by Act of Sederunt for claims worth over £3,000.

*Proceedings covered by simple procedure*

18. Section 72 of the Act creates a new form of civil procedure in the sheriff court known as simple procedure and provides that further provision for the new procedure is to be made by Act of Sederunt under section 104(1). The proceedings that are to be brought under simple procedure are set out in section 72(3) and they are:
  - (a) proceedings for payment of a sum of money not exceeding £5,000,
  - (b) actions of multiplepoinding<sup>5</sup> where the value of the fund or property that is the subject of the action does not exceed £5,000,
  - (c) actions of furthcoming<sup>6</sup> where the value of the arrested fund or subject does not exceed £5,000,
  - (d) actions ad factum praestandum<sup>7</sup>, other than actions in which there is claimed, in addition or as an alternative to a decree ad factum praestandum, a decree for payment of a sum of money exceeding £5,000,
  - (e) proceedings for the recovery of possession of heritable property<sup>8</sup> or moveable property, other than proceedings in which there is claimed,

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<sup>5</sup> To determine the rights of parties to a fund or property in dispute and to release the holder of the fund from any claim.

<sup>6</sup> By a person who is owed money against a third party.

<sup>7</sup> For the performance of a certain act.

<sup>8</sup> Land and houses as distinct from moveable property.

in addition or as an alternative to a decree for such recovery, a decree for payment of a sum of money exceeding £5,000.

*The principles of simple procedure*

19. Section 75 of the Act details matters that are to be taken into consideration when the rules for simple procedure are being made. These are that, so far as possible, when hearing a simple procedure case the sheriff:

- (a) is able to identify the issues in dispute,
- (b) may facilitate negotiation between or among the parties with a view to securing a settlement,
- (c) may otherwise assist the parties in reaching a settlement,
- (d) can adopt a procedure that is appropriate to and takes account of the particular circumstances of the case.

*Sheriff Personal Injury Court and simple procedure*

20. Section 41 of the Act allows for the establishment of all-Scotland sheriff court jurisdiction for specified types of civil proceedings and the All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015 established the All-Scotland Personal Injury Court in Edinburgh Sheriff Court. Section 73 of the Act specifies that simple procedure proceedings may not be brought in an all-Scotland sheriff court.
21. Personal injury proceedings for sums up to £5,000 are to be brought under simple procedure unless they are raised in the Sheriff Personal Injury Court in which case simple procedure will not apply. Proceedings may be raised in the Sheriff Personal Injury Court if they: are workplace-related and are for payment of a sum of money exceeding £1,000; or, are workplace-related and for payment of a lesser sum of money and a sheriff has transferred the proceedings to the Sheriff Personal Injury Court on grounds of importance or difficulty.

*SCJC Access to Justice Committee*

22. The preparation of the simple procedure rules comes under the remit of the SCJC which asked its Access to Justice Committee to take it forward. The Access to Justice Committee has a wide range of experience with the judiciary, the legal professions and experts in consumer affairs included in its membership.

23. When the Committee was set up part of its remit was 'to consider the practice and procedure to be followed in actions which are currently subject to small claims and summary cause procedure, and in due course the simple procedure proposed in the draft Courts Reform (Scotland) Bill', subsequently passed as the Courts Reform (Scotland) Act 2014. Development of simple procedure has formed a large part of the Committee's work. Having prepared the draft simple procedure rules the Committee submitted them to the SCJC with a recommendation that there should be a public consultation on the core simple procedure rules.
24. There are certain matters which will be included in the final draft of the Simple Procedure Rules but which are not included in the consultation draft at Annex D. These are principally matters which are highly technical or which are tightly regulated by primary legislation, leaving little scope for procedural innovation. Examples include time to pay directions and orders, provisions concerning interim diligences and the rules for international service. In addition, the consultation draft does not contain examples of every form or standard order that the rules require. Only those forms or orders which relate to the 'core' of simple procedure have been included for consultation.

## **SECTION 2            KEY ASPECTS OF THE DRAFT SIMPLE PROCEDURE RULES**

### **Two sets of simple procedure rules**

25. The Committee has decided to produce two sets of rules for simple procedure: the Simple Procedure Rules and the Simple Procedure (Special Claims) Rules. This consultation relates to the former.
26. Simple procedure replaces summary cause and small claims procedures. All proceedings currently brought under those procedures will fall under the 'core' Simple Procedure Rules unless provision is made for them in the Simple Procedure (Special Claims) Rules. The types of proceedings, for sums that do not exceed £5,000, that it is proposed the Simple Procedure Rules should cover are:
  - Actions for payment other than personal injury actions
  - Actions for delivery
  - Actions ad factum praestandum (for the performance of a certain act)

27. It is proposed that the following proceedings, for sums that do not exceed £5,000, will be covered by the Simple Procedure (Special Claims) Rules:

- Personal injury actions
- Actions of multiple poindings (to determine the rights of parties to a fund or property in dispute and to release the holder of the fund from any claim)
- Actions of count, reckoning and payment (to compel the respondent to account to the claimant and the pay sums due)
- Proceedings for aliment (financial support of a spouse or child enforceable by law)
- Actions for the recovery of heritable property (land and houses as distinct from moveable property)
- Actions of forthcoming (by a person who is owed money against a third party)

*Why there are two sets of rules*

28. Simple procedure is intended to be accessible to party litigants. However, some of the types of action that fall within simple procedure do not easily lend themselves to this accessible approach. These include personal injury actions valued at less than £5,000 other than those to be heard in the new all-Scotland Sheriff Personal Injury Court and some of the more complex special forms of action that can currently be taken forward as summary causes such as actions of count, reckoning and payment (to compel the respondent to account to the claimant and the pay sums due).
29. At an early stage in the development of the rules a concern arose that the proposed user-friendly and straightforward approach to simple procedure did not fit well with these more complex special forms of action. It was thought that incorporating these actions into the core set of rules could be detrimental to the workability of the proceedings while at the same time affecting the usability and coherence of the simple procedure rules. These special procedures require a more complex, case-flow approach which is incompatible with the case-managed approach of the core simple procedure that is designed to minimise the number of hearings required.
30. It was therefore decided that some special forms of action, including personal injuries actions, should be incorporated into a separate set of rules. These rules would adopt the user-friendly style and approach of the core simple procedure rules but retain some of the more complex procedures and

mechanisms currently found in summary causes which are necessary to make these forms of action work successfully. These rules will be prepared by the SCJC with a view to coming into force at the same time as the Simple Procedure Rules.

*Consultation only on the Simple Procedure Rules*

31. The Simple Procedure Rules are drafted with party litigants in mind and have a different look and feel to other sets of court rules. As they differ significantly from the summary cause and small claims rules they are to replace it was decided that they should be consulted on to allow a range of potential users to contribute their views before they are made. It was decided that consulting on a draft set of the Simple Procedure (Special Claims) Rules was not necessary since the proposed rules will reflect the style and approach of the draft Simple Procedure Rules as far as possible and there is less scope for innovation in the drafting of the rules for the special claims procedures. Responses to this consultation will, where relevant, be taken into account when developing and preparing the Simple Procedure (Special Claims) Rules.

**Consultation question 1**

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

**Terminology**

32. The SCCR recommended that the simple procedure rules should be written in 'plain English' and the RRWG Interim Report recommended that 'out of date or complex language' should not be used. With these recommendations in mind different terminology has been adopted where it was considered this would make the rules more easily understood.
33. It was decided that a standard simple procedure case would be called a 'claim' as this is considered to be descriptive and well understood. To tie in with the term 'claim' the pursuer is called the 'claimant'. The defender is termed the 'responding party'. The form by which a simple procedure claim will be raised is called the Claim Form and the form by which it is defended will be called the Response Form.
34. Other terminology considered by the Committee to be unfriendly or uninformative has been, where possible, updated. The Committee discussed whether the term 'sist' should be used in the Simple Procedure Rules and concluded that the term 'freeze', would be more easily understood as the term to refer to proceedings being sisted. Consequently the term for re-starting proceedings in these Rules is 'unfreeze'.

35. Where necessary the rules (in Part 17) contain the interpretation provision necessary to legally update terminology for simple procedure.

### **Consultation question 2**

*Are you content with the use of the following terms in the rules?*

- *Claim – for a standard simple procedure case*
- *Claimant – for pursuer*
- *Responding party – for defender*
- *Freeze – for sist*

### **Consultation question 3**

*Do you have any comments on the approach taken to updating hard to understand terminology in the simple procedure rules?*

### **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?*

### **Layout and numbering**

36. It is a principle of the Rules Rewrite Project that, where possible, rules should be arranged in the chronological order of the process they apply to. The simple procedure rules follow this principle by setting out the claim process from start to finish. This structure is intended to guide the lay user through the process step by step. In addition, the Rules have a contents page at the beginning to help users looking for a particular aspect of the process find the Part they are looking for. The rules contain more guidance, sign-posting and purely informative provision than is typical in a set of court rules. For example, each Part begins with a section briefly describing what the Part is about and these have been included in the contents page to aid navigation.
37. A new approach has been adopted to numbering the Rules. The numbering of the Rules re-starts at 1.1 at the beginning of each Part. This is to allow for amendments being made in the future without the need for a complex system of numbering inserted provisions, for example, as rule 14A in between rules 14 and 15. It is envisaged that if additional rules are required they could be inserted at the end of a Part with sequential numbering.
38. In these Rules the system of division into Parts and Schedules has been dispensed with. All divisions of the rules are termed Parts including the divisions containing the Forms and Standard Orders.

39. Simple procedure is intended to be accessible to party litigants and, while this consultation is specifically about the wording of the Simple Procedure Rules, it is recognised that the manner in which they are made available via the internet will be a key aspect of that accessibility. For example, using large readable text with links to take users to definitions, related provisions, forms etc is likely to make accessing the rules online easier for the lay user. Views are therefore invited about presenting the rules online to inform any recommendations the Council may wish to make about the online presentation of the rules.

**Consultation question 5**

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

**Consultation question 6**

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

**Headings**

40. The headings take the form of questions which are then answered in the subsequent rules. A question-and-answer approach was thought best to reflect the way in which the rules are likely to be used in a practical day-to-day way. Users typically come to a set of rules with a concern or a question about how something should be done or what is likely to happen next. Setting out the questions as headings that are answered by each section of the rules should help the lay user find the information they are seeking more quickly.

**Consultation question 7**

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

**Minimising the number of hearings**

41. Minimising the number of hearings is a principal feature of the new simple procedure as set out in the principles that 'Parties should normally only have to come to court when it is necessary to do so to resolve their dispute, (Part 1 Rule 2.5). The main mechanic for achieving this is providing the sheriff with a broad and creative set of powers to use in simple procedure cases including that the sheriff may decide a dispute without hearing (Part 1 Rule 7.7). These powers are intended to enable the sheriff to manage cases to achieve as just and speedy a resolution as possible, with a minimum of hearings.

42. While the rules allow creativity in that ‘the sheriff may do anything and may order parties to do anything considered necessary to determine the dispute’ (Part 1 Rule 7.3) they also provide a structure specifying, for example, that first consideration of the papers in the case must take place as soon as possible after the date of first consideration (Part 6 Rule 2.1) and that first written orders will be sent within 14 days of the date of first consideration (Part 6 Rule 3.1). The rules also set out that the first written orders may arrange a case-management conference prior to the hearing (Part 6 Rule 6.2), reflecting the point in recommendation 82 of the SCCR that a case should be continued to a later date if it will ‘enhance the prospects of achieving a settlement’.

**Consultation question 8**

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

**Negotiation, settlement and alternative dispute resolution**

43. One of the principles of simple procedure is that ‘Parties are to be encouraged to settle their disputes by negotiation, and should be able to do so throughout the process’ (Part 1 Rule 2.4). This reflects the SCCR recommendation that the sheriff ‘should be able to try and assist the parties to reach a settlement at any point in the case’. This approach is promoted in the rules which include, in the duties of both the sheriff and the parties, that negotiation or alternative dispute resolution must be considered to resolve the dispute. Similar requirements to consider alternatives to determination of the case are included in the rules relating to case management conferences, the hearing and on the Claim Form.

**Consultation question 9**

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

**SECTION 3                   OVERVIEW OF THE RULES**

*Overview of procedure*

44. The new simple procedure is designed to make the process as quick and inexpensive as possible by incorporating clear time limits and providing the sheriff with broad and creative case management powers. The basic structure is:

- i. The claimant begins the action by sending a claim in to their local sheriff court.
- ii. The court checks this claim and it is served on the responding party (at least 35 days before the sheriff considers the case on the papers).
- iii. The responding party has to state, briefly, their defence (at least 14 days before the sheriff considers the case on the papers).
- iv. Within 14 days of the sheriff considering the case on the papers, the sheriff has to issue his first orders in the case and can begin to use the case management powers.
- v. The presumption is that the case will be determined (by negotiation or decision) at the first hearing: case management conferences should only be held when necessary.

### **Part 1: The simple procedure**

45. This Part provides a description of what simple procedure is and what its purpose is to make clear to the lay user at the beginning of the rules what it is they refer to. It sets out the principles by which simple procedure is to operate and who takes part in a simple procedure case and how they are referred to in the rules. The responsibilities of representatives and parties are clearly stated and the powers of the sheriff are set out. Including these points at the start of the rules should help the lay user to understand the process.

#### *Statement of principle and purpose*

46. The rules open with a statement setting out what simple procedure is and what its purpose is (Part 1 Rule 1.1). This reflects the SCCR recommendation 112 that there should be a guiding principle for rules and the RRWG recommendation that ‘there should be a statement of principle and purpose in both the sheriff court and Court of Session rules’.

#### *The principles of simple procedure*

47. The next section (Part 1 Rules 2.1 – 2.5) contains the principles of simple procedure which provide the framework for how the procedure is to operate in order to achieve its purpose. These set out that cases are to be resolved as quickly and cheaply as possible, as informally as is appropriate, that negotiation is to be encouraged and hearings minimised. Part 1 Rule 4.1 binds the sheriff to manage cases in a manner that is compatible with the principles of simple procedure. Parties and representatives are required to respect the principles by Part 1 Rule 5.1 and Part 1 Rule 6.1 respectively.

48. The principles reflect matters specified to be taken into consideration in making the simple procedure rules in section 75 of the Act including that the sheriff 'may facilitate negotiation' (s75(b)) and 'adopt a procedure that is appropriate' (s75(d)).

**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?*

**Consultation question 11**

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

**Consultation question 12**

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

**Part 2: Representation and support**

49. This Part sets out who can represent a party in a simple procedure case and what the different types of representative may or may not do. In particular, as simple procedure is intended to be accessible to party litigants, who may not be aware that they may have the help of a lay representative, it is set out clearly that parties may have a lay representative (Part 2 Rule 3.1), who is entitled to act as a lay representative (Part 2 Rules 4.1 - 4.8) and when the Lay Representation Form needs to be completed.

**Consultation question 13**

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

**Part 3: Making a claim**

50. This Part describes what the claimant has to do to make a claim. The steps in the process are set out in a table (Part 3 Rule 2.1) with the dates before which each step must be completed. This is designed to help lay users by providing an overview of the process.
51. The section entitled 'What has to go in the Claim Form?' provides an example of the information required illustrated by a claim about buying a fridge that has subsequently broken. The steps that the court must take on receipt of a Claim Form are described in the section 'What will the court do with a Claim Form?'. Setting out in the rules (at Part 3 Rule 4.1) the sorts of problems with a form which would result in it not being registered should help users not to

make these errors. As noted in paragraph 24 above, rules on interim diligences have not been included in the consultation draft but will be in the final rules made by the Court of Session.

#### **Consultation question 14**

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

#### **Consultation question 15**

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

#### **Part 4: Responding to a claim**

52. This Part describes what the responding party (defender) has to do to respond to a claim and how the court deals with the response. It includes a flowchart (at Part 4 Rule 2.4) to aid the responding party in their decision about how to respond to the claim which sets out the options available as clearly as possible. As noted in paragraph 24 above, rules on time to pay orders and directions have not been included in the consultation draft but will be in the final rules made by the Court of Session.

#### **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?*

#### **Consultation question 17**

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

#### **Part 5: Sending and service**

53. This Part describes what has to be done when the rules require something to be sent to someone or served on someone. As noted in paragraph 24 above, rules on international service have not been included in the consultation draft but will be in the final rules made by the Court of Session.

#### **Consultation question 18**

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

#### **Part 6: The first consideration of a case**

54. This Part sets out how the sheriff will first consider and manage a case. It is a key aspect of taking a case-management approach to simple procedure cases and minimising the number of hearings required. It is set out that the first consideration will be on the papers. The rules set out what the sheriff must

do in each situation that may arise at this point in the case and the timetable that must be adhered to.

55. Where a Response Form has been received by the court and the responding party intends to dispute the claim the sheriff is required to issue the first written orders within 14 days of the date of first consideration. The rules set out that these written orders will normally arrange a hearing but may arrange a case management conference.

**Consultation question 19**

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

**Consultation question 20**

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

**Consultation question 21**

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

**Part 7: Orders of the sheriff**

56. This Part describes what the orders are and when and how they may be given to the parties. There are a set of standard orders at Part 16.

**Consultation question 22**

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

**Part 8: Applications by the parties**

57. This Part sets out how parties may ask for things to be done during the progress of a simple procedure case. For example, Part 8 Rules 3.1 – 3.4 set out that a party should send an Application to Freeze to the court and the responding party if they wish the progress of a case to be frozen (sisted), and then describes the steps that follow. This approach is designed to make clear to lay users that the option of asking the court to do things during the progress of a case is available to them and to appreciate what making an application would involve.

**Consultation question 23**

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

**Consultation question 24**

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

**Part 9: Documents and other evidence**

58. This Part describes how parties are to send documents and other evidence to the court and to other parties before a hearing.

**Consultation question 25**

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

**Part 10: Witnesses**

59. This Part sets out detailed provisions about the citation of witnesses and their attendance at hearings.

**Consultation question 26**

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

**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?*

**Consultation question 28**

*If you think that any of this provision could be dispensed with (or any additional provision is necessary), please identify what should be dispensed with or added.*

**Part 11: The hearing**

60. This Part is about the hearing at which the sheriff will consider the case. It sets out the purpose of the hearing, how the dispute will be resolved and what the sheriff will do at the hearing. Setting out these matters in detail should help parties unfamiliar with court processes by making this aspect of simple procedure more predictable and therefore less daunting. By stating clearly that the sheriff's first approach to resolving the dispute should be negotiation and, that if this is not successful, other means to settle the dispute should be used including 'any available means of alternative dispute resolution' (Part 11 Rule 3.2) the approach that will be taken at the hearing is made apparent to the parties. This also supports the principle of simple procedure that negotiation is to be encouraged for the resolution of disputes.

**Consultation question 29**

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

### **Part 12: The decision**

61. This Part is about the decision that the sheriff makes after considering a case. It sets out the timing, how the decision is communicated to the parties, examples of the types of decisions that may be made and that the decision can be revoked. This Part also covers how a party can obtain a copy of the Decree Form on which the decision is set out. Setting out information about the decision should make it easier for party litigants to have a clear idea of what the process involves. In particular, giving examples of the sorts of decisions that may result from the sheriff's determination should help to provide an understanding of possible outcomes when someone is contemplating making a simple procedure claim.

### **Consultation question 30**

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

### **Part 13: Other matters**

62. This Part sets out the procedures for matters which could arise during a simple procedure case but are unlikely to do so very often: transferring a case out of simple procedure; making a reference to the Court of Justice of the European Union; and, intervention by the Commission for Equality and Human Rights and the Scottish Commission for Human Rights. It has been decided that they should form a part of these rules as they may be required in some simple procedure cases. At the same time most lay users of these rules will not need to make themselves aware of the matters dealt with in this Part.

### **Consultation question 31**

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

### **Part 14: Appeals**

63. This Part covers how a party in a simple procedure case can appeal against the decision and how the appeal is to be dealt with in the new Sheriff Appeal Court.

### **Consultation question 32**

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

### **Part 15: Forms**

64. This Part contains the Forms, Applications and Notices which these Rules require parties to use in a simple procedure case. It describes how to get hold of these documents and provides a list of them which specifies the Rules which apply to each document. The Forms, Applications and Notices are then set out in full in the remainder of Part 15.

65. New forms have been designed to accompany the rules. The key forms for a simple procedure case are the Claim Form and the Response Form and their layout is intended to lead a party litigant through the process of filling it in. Guidance on each question has been incorporated in a separate column on the left side of the form and the questions are designed to minimise the number of forms being returned for easily avoidable errors. The Claim Form and Response Form each have a table on the back page setting out, clearly numbered in sequential order, the Next Steps in the procedure as a helpful guide for lay users filling out the forms as to what they need to do next and what will be happening.
66. Interactive, electronically submitted forms are currently under development and paper forms will continue to be required for those unable or unwilling to access electronic forms.

**Consultation question 33**

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

**Consultation question 34**

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

**Part 16: Standard orders**

67. This Part contains some standard orders which may be used or adapted by the sheriff to give directions in a simple procedure case. Simple Procedure is designed to be accessible to party litigants. One of the ways of making the procedure more understandable to the lay person is to make it more predictable by including as much of the process in the rules as possible. This means that lay users can find out from the relevant rules what the likely process is. With this in mind a set of standard orders, providing suggested wording for use by the sheriff when giving written directions in a case, have been designed as part of the procedure. The standard orders are not intended to be prescriptive but to be available for sheriffs to use, not use or vary as they wish.
68. Having only a small number of standard orders when the Rules are made would allow the SCJC Access to Justice Committee to keep a watching brief as to whether the orders provided are fit for purpose and, over time, to make recommendations for more specialised orders, and amendments to the initial orders, with the benefit of feedback about the first set of orders. When the rules are first issued, a small number of standard orders will be included and the draft rules being consulted upon include a typical and indicative selection of the most commonly used standard orders. The Committee would then

adopt a monitoring role, observing how practice is developing in the sheriffdoms and which approaches are considered to be most useful. The intention being that the standard orders would then be regularly updated and new standard orders for more specific situations would be issued.

#### **Consultation question 35**

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

#### **Consultation question 36**

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

#### **Part 17: The interpretation of these Rules and administration of the simple procedure**

69. This Part contains a table of definitions of some of the terms with a particular meaning in these Rules. It also sets out some rules about the duties of the sheriff clerk, and about warrants, in simple procedure.

#### **Consultation question 37**

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

## **SECTION 4                  NEXT STEPS**

#### **Implementation timetable**

70. Following the consultation period the responses will be analysed and a revised set of rules will be considered at the 16<sup>th</sup> May 2016 meeting of the SCJC, taking account of the responses received. There will be a period of some months between the rules being made by Act of Sederunt and their coming into force during which time the necessary changes to IT systems and training of court staff and judiciary will take place. Subject to the responses to the consultation, an implementation date of 28<sup>th</sup> November 2016 is planned.