



**Scottish
Civil Justice
Council**

Consultation on the Simple Procedure Rules

February 2018

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RESPONDING TO THIS CONSULTATION PAPER

Written responses to this consultation paper are invited by **31 May 2018**.

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

scjc@scotcourts.gov.uk

or

Lauren Gibb
Scottish Civil Justice Council
Parliament House
Edinburgh
EH1 1RQ

If you have any queries please contact Lauren Gibb on 0131 240 6781 or scjc@scotcourts.gov.uk.

Please use the consultation questionnaire at **Annex B** 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(Annex A) and submit this with your response to make sure that we treat your response as you wish.** Your response will not be published on the SCJC website if you have asked us not to make it public.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 in carrying out its review of the Simple Procedure Rules.

It is intended that a consultation report will be published on the SCJC website, following consideration of this report by the Access to Justice Committee of the SCJC and the SCJC.

Feedback

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

Lauren Gibb
Scottish Civil Justice Council
Parliament House
Edinburgh
EH1 1RQ

Or by email to:

scjc@scotcourts.gov.uk

SECTION 1 INTRODUCTION AND BACKGROUND

Introduction

1. This consultation seeks views on simple procedure, the rules and forms for which are contained within the Act of Sederunt (Simple Procedure) 2016 (“the Simple Procedure Rules”). The rules and forms, as amended, can be accessed through the [Scottish Courts and Tribunals Service website](#).
2. Simple procedure is a court process designed to provide a speedy, inexpensive and informal way to resolve disputes. The Simple Procedure Rules have been designed with the party litigant in mind, using accessible language and incorporating user-friendly guidance wherever practicable.
3. The Simple Procedure Rules came into force on 28 November 2016.

Background

Scottish Civil Courts Review and the Courts Reform (Scotland) Act 2014

4. In 2007 the Rt Hon Lord Gill, at that time Lord Justice Clerk, undertook a wide-ranging review of the civil court system in Scotland.
5. 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*”.
6. 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... judge... should take an interventionist approach to identify the issues and assist the parties to settle if possible, and to determine how the case progresses.*”

7. The SCCR recommendation to replace small claims and summary cause with a new procedure was accepted by the Scottish Government and legislative provision for simple procedure was made under section 72 of the Courts Reform (Scotland) Act 2014 (“the Act”).

The Scottish Civil Justice Council

8. The SCJC was established on 28 May 2013 under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. The SCJC develops rules for the civil courts in Scotland and has responsibility for keeping the civil justice system under review and making recommendations for its improvement. This consultation is to assist the SCJC in carrying out those functions in relation to simple procedure.
9. The Simple Procedure Rules were developed by the Access to Justice Committee (“the Committee”) of the SCJC. The Committee has a wide range of experience with the judiciary, the legal profession, the third sector and experts in consumer affairs included in its membership.
10. During development of the Simple Procedure Rules the SCJC held a public consultation to seek views on the draft rules. The consultation ran from 25 November 2015 to 2 March 2016, during which the SCJC received 42 responses to the consultation. Respondents included advice agencies, the judiciary, the legal profession, the insurance industry, organisations involved in the civil justice system as well as a number of individuals.

Civil Online

11. The Scottish Courts and Tribunals Service is currently developing Civil Online, which will enable simple procedure claims and responses to be made online with electronic document submission and the creation of a digital case file.
12. Phase 1 of Civil Online is being launched in March 2018 and will initially provide a simple procedure case tracker which will allow claimants, respondents and their representatives to see their case details, see the details of any hearings set down for a case and see a description of any documents lodged in the case or created by the Court. While the intention is to make Civil Online a modern means of submitting simple procedure claims, there will always be an alternative available for those who cannot use or access a digital process.

13. The Simple Procedure Rules were designed with an online process in mind and it is intended that any changes to the Simple Procedure Rules as a result of the SCJC's review of the Rules will be reflected in the online process.

SECTION 2

OVERVIEW OF THE SIMPLE PROCEDURE RULES

Proceedings covered by simple procedure

14. On 28 November 2016, simple procedure replaced small claims in its entirety and largely replaced summary cause procedure. The effect of this is that simple procedure must be used to make a claim which has a monetary value of £5000 or less and seeks payment, delivery, the recovery of moveable property or an order for someone to do something specific. Such claims are subject to the Simple Procedure Rules, which is the focus of this consultation.
15. There are other types of action which will be made subject to simple procedure at a later date and therefore are outside of the scope of this consultation paper. These actions are referred to collectively as “special claims” and include personal injury claims, and actions of multiplepoinding, aliment, furthcoming or for the recovery of possession of heritable property. The proceedings subject to, or which will be subject to, simple procedure is provided for by section 72(3) of the Act.

Phased commencement of simple procedure

16. Following consultation on the draft Simple Procedure Rules, a decision was made to commence simple procedure in two stages. The first stage was the introduction of a core set of rules for the claims described in paragraph 14. The second stage will be the extension of those rules for special claims, at which time the Summary Cause Rules will be revoked¹ and the implementation of simple procedure will be complete. At the time of writing there is no commencement date agreed for the special claim rules. Until that date, the Summary Cause Rules will apply to special claims cases.
17. The decision to split commencement of simple procedure into two phases was taken because, whilst the procedure is intended to be accessible to party litigants, some of the types of action that will fall within it do not easily lend themselves to this accessible approach. Further, it was considered prudent to evaluate the core Simple Procedure Rules, and make any necessary amendments, before extending the rules to special claims.

The principles of simple procedure

¹ The Summary Cause Rules will be saved in relation to ongoing actions as of the date of revocation.

18. Part 1 of the Simple Procedure Rules provides an overview of simple procedure and sets out the following principles of simple procedure:
- cases are to be resolved as quickly as possible, at the least expense to parties and the courts;
 - the approach of the court to a case is to be as informal as is appropriate, taking into account the nature and complexity of the dispute;
 - parties are to be treated even-handedly by the court;
 - parties are to be encouraged to settle their disputes by negotiation or alternative dispute resolution, and should be able to do so throughout the progress of a case; and
 - parties should only have to come to court when it is necessary to do so to progress or resolve their dispute.
19. Part 1 also sets out the responsibilities of the sheriff and the parties in a simple procedure case. These include the sheriff ensuring that parties who are not represented, or parties who do not have legal representation, are not unfairly disadvantaged, and that parties must be honest, respectful, courteous and approach negotiation or alternative dispute resolution with an open mind.

The review of the Simple Procedure Rules

20. At its meeting on 16 August 2017 the Making Justice Work Board (“MJW”), which has oversight of all Scottish civil court reform, invited the Council to consider whether to bring forward the post-implementation review of the Simple Procedure Rules, which was originally scheduled to commence around May 2018. This was to allow any rules or form issues to be considered in advance of the second stage introduction of the rules for special claims.
21. On 20 November 2017, the SCJC approved a proposal to bring forward its post-implementation review of the Simple Procedure Rules. The focus of this review is primarily on the operation of the rules, forms and standard orders. A further review will be carried out by the SCJC at a later date in order to ascertain whether the policy intentions of simple procedure have been met.
22. This consultation forms part of the review. In addition to this consultation, the SCJC has commissioned research to obtain an insight into the accessibility and usability of the procedure to party litigants and the Secretariat to the

SCJC intends to carry out focus groups with key interested parties, likely to encompass both private practice and third sector organisations, to obtain further feedback on the Simple Procedure Rules.

SECTION 3 CONSULTATION

23. This section sets out some overarching questions for consideration in connection with the Simple Procedure Rules. It is intended to facilitate discussion, but is not exhaustive. The questions focus on the most commonly used parts of the Rules, however, participants are afforded an opportunity at question 8 to offer comment on any part of the Simple Procedure Rules not specifically covered by questions 1 to 7, or to make any general comments.

How to make a claim

24. Part 3 is about how the claimant may make a claim and what the court will do when it receives the claim. It covers the completion of the Claim Form and what a claimant is expected to do with that form once completed. Terms such as the “last date for service” and “last date for a response” are defined.
25. To assist a party litigant, or a representative who is perhaps not familiar with the procedure, rule 3.2(1) sets out the process of making a claim and signposts the reader to the applicable rules for each step to be carried out.
26. The forms associated with this Part are: Claim Form (**Form 3A**); Further Claimant Form (**Form 3B**); Further Respondent Form (**Form 3C**); the Timetable (**Form 3D**); and Change of Timetable Application (**Form 3E**).

Question 1 – do you have any comments on the way in which a claim is made using simple procedure or the forms associated with this stage?

How to respond to a claim

27. Parts 4 and 5 make provision above how a respondent may dispute a claim, admit a claim or, if an individual and admitting the claim, ask for time to pay. Guidance is given on how a respondent would complete a Response Form. A flow-chart is included, designed to assist a respondent in deciding how best to respond to the claim made against them.
28. The rules on time to pay explain what the court will do when it receives a Time to Pay Application and how the claimant can respond to that application.
29. The corresponding forms are: Response Form (**Form 4A**); Time to Pay Application (**Form 5A**); and Time to Pay Notice (**Form 5B**).

Question 2 - do you have any comments on responding to a claim, the way in which time to pay may be requested or the corresponding forms?

Sending and formal service

30. At various stages in a simple procedure case the parties are required to send and formally serve forms and documents to one another and the court. Part 6 covers the way in which parties can send or formally serve such items. Methods of sending include by electronic means. Formal service of an item, including the Claim Form, must be carried out by a solicitor, sheriff officer or sheriff clerk. Additional rules on formal service are found in Parts 18 and 19.
31. There are three forms connected with Part 6: Notice of Claim (**Form 6A**); Service by Advertisement Application (**Form 6B**); and Confirmation of Formal Service (**Form 6C**).

Question 3 – do you have any comments in relation to the ways in which forms and documents may be sent or formally served in a simple procedure case?

What happens to a claim

32. Part 7 is about what happens to a simple procedure case after the last date for a response. Where there is no response, or the claim is admitted, a claimant is entitled to send an Application for a Decision to the court. A failure to do so within 14 days from the last date for a response will result in the claim being dismissed by the court. If a claim is disputed, however, the court must consider the case and send the parties a written order which:
- refers the parties to alternative dispute resolution,
 - arranges a case management discussion,
 - arranges a hearing,
 - indicates the sheriff is considering deciding a case without a hearing, or
 - summarily dismisses or decides a case on the basis that the claim or response is incompetent, or has no real prospect of success.
33. The only relevant form for this Part is the Application for a Decision (**Form 7A**), by which a claimant can ask the court to decide or dismiss a case.

Question 4 – do you have any comments on what can happen to a case after the last date for a response, or the Application for a Decision Form?

Applications

34. Part 9 makes provision about the way in which parties can ask the court for things to be done in their case (for example, to pause or restart the case, or to

amend the Claim Form or Response Form). A number of different types of application are prescribed, covering the most commonly encountered situations in a case. The aim of these forms is to guide unseasoned litigants about what the court needs to know to decide whether to grant an application.

35. A party making an application must send it to the court and the other party (who will then have a period of 10 days in which to object or consent to the application). At the end of that period, the court must consider the application and any objection that may have been sent. The court will then grant or refuse the application on the papers without hearing anything further from the parties, or order a discussion in court at which the application will be decided.
36. Forms connected with Part 9 are: Application to Pause (**Form 9A**); Application to Restart (**Form 9B**); Additional Respondent Application (**Form 9C**); Application to Amend (**Form 9D**); Abandonment Notice (**Form 9E**); Application to Represent (**Form 9F**); and Incidental Orders Application (**Form 9G**).

Question 5 – do you have any comments on the way in which applications can be made in simple procedure, including any of the prescribed forms?

Documents, evidence and witnesses

37. Part 10 explains how parties should lodge documents and other evidence with the court prior to a hearing. It also makes provision for a Recovery of Documents or Special Recovery of Documents Application.
38. Part 11 covers the citation of witnesses and their attendance at a hearing, including special measures the court can take to assist vulnerable witnesses.
39. Nine forms are linked to Parts 10 and 11: List of Evidence (**Form 10A**); Recovery of Documents Application (**Form 10B**); Application to Open Confidential Document (**Form 10C**); Special Recovery of Documents Application (**Form 10D**); List of Witnesses (**Form 11A**); Witness Citation Notice (**Form 11B**); Child Witness Notice (**Form 11C**); Vulnerable Witness Application (**Form 11D**); and Special Measures Review Application (**Form 11E**).

Question 6 – do you have any comments on documents, evidence or witnesses, or the forms associated with Parts 10 and 11?

The hearing and decision

40. If the sheriff orders a hearing to resolve the dispute, Part 12 explains what the parties can expect at that hearing. The sheriff will ask the parties about their attitudes to negotiation and alternative dispute resolution, and may impose conditions on how evidence is to be presented or dealt with.
41. Part 13 concerns the decisions the sheriff can make to resolve the dispute. Such a decision may be taken at a hearing, in writing following a hearing, or at an earlier stage in a case (for example, upon receipt of an Application for a Decision). This Part also sets out the circumstances in which a party can apply to have a decision recalled, and what happens if it is recalled.
42. The associated forms are: Decision Form (**Form 13A**) and Application to Recall (**Form 13B**). There are no forms connected with Part 12.

Question 7 – do you have comments on the rules and forms relating to hearings and decisions, including the recall of a decision?

Miscellaneous matters

43. As noted earlier in this paper, the questions posed in this section are not exhaustive and the SCJC are very interested to hear from those with experience of simple procedure in order to evaluate the rules and forms.
44. Respondents to this consultation are invited to provide any comments on the rules and forms generally, as well as on any Parts not covered above.

Question 8 – do you have any comment on any other aspect of the Simple Procedure Rules, or any general comments about the rules or forms?

SECTION 4 NEXT STEPS

45. Following the consultation period, the responses will be analysed and considered along with any other available evidence to assist the Committee and the SCJC in determining the extent to which any amendments to the Simple Procedure Rules, and accompanying forms, are required.
46. Unless the respondent has asked that their response be treated as confidential, all responses will be published on the SCJC website.
47. The SCJC will publish a report on this consultation in due course.

SECTION 5 LIST OF CONSULTATION QUESTIONS

Question 1 – do you have any comments on the way in which a claim is made using simple procedure or the forms associated with this stage?

Question 2 - do you have any comments on responding to a claim, the way in which time to pay may be requested or the corresponding forms?

Question 3 – do you have any comments in relation to the ways in which forms and documents may be sent or formally served in a simple procedure case?

Question 4 – do you have any comments on what can happen to a case after the last date for a response, or the Application for a Decision Form?

Question 5 – do you have any comments on the way in which applications can be made in simple procedure, including any of the prescribed forms?

Question 6 – do you have any comments on documents, evidence or witnesses, or the forms associated with Parts 10 and 11?

Question 7 – do you have comments on the rules and forms relating to hearings and decisions, including the recall of a decision?

Question 8 – do you have any comment on any other aspect of the Simple Procedure Rules, or any general comments about the rules or forms?

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