

ANNEX B CONSULTATION QUESTIONNAIRE

Consultation 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?

The following comments are in relation to claim form 3A:

Question A5 uses the term 'responding party'. This term was suggested in the simple procedure consultation document, but ultimately rejected in favour of the term 'respondent'. It is therefore unclear why it has been used in the rules and forms.

Many sections of the form are routinely left blank, and this leads only to the form being longer and using more paper. In the electronic versions of the forms, it would be helpful if these sections could be automatically hidden when they are not relevant. For example, question C6-9 (second respondent) would be hidden if 'one respondent' was selected in question C1, and D4 (details of consumer credit agreement) would be hidden if 'no' was selected in question D3. This is technically possible with interactive PDF forms, and would be competent under s2(3) of the Act of Sederunt.

It is not clear what information is sought for 'company type' in A3, C4 and C8. For example, 'registered in Scotland under the Companies Acts', or 'public limited company'. Party litigants may misunderstand the question and describe the type of business run by the company, e.g., 'window cleaner'.

My understanding of question D2 (Where did this take place?) is intended to enable the court to establish a ground of jurisdiction. However, it is too much of an oversimplification. Jurisdiction may be established by the place of performance of a contractual obligation or a wrongful act. However, it may equally be established by the domicile of the respondent. In my view, a more direct approach should be taken, and the question should read 'Why does the court have jurisdiction?'. There should then be a guidance note assisting party litigants in determining which courts have jurisdiction, and what to write in this box to establish jurisdiction (e.g., 'the respondent has a place of business in the sheriffdom').

Question D5 allows a claimant to ask the court to award a particular rate of interest, but there is no guidance as to what rate of interest the court is likely to allow, and party litigants are likely to have difficulty selecting the judicial rate.

Consultation 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?

I have a number of concerns with the simple procedure forms which comprise schedule 2 of the Simple Procedure Rules. The purpose of introducing simple procedure was to make it easier for litigants to pursue low value claims in person. However, the forms are not straightforward to use, and in many respects make the process of raising an action more time consuming.

The electronic versions of the forms are only available as PDFs, and the text boxes do not expand. For many of the questions, litigants must therefore write 'see paper apart' and include a separate sheet with the form. This considerably increases the size of the form and the amount of paper used, and also makes it more difficult for the form to be read in the correct order as it is necessary to repeatedly switch between the main body of the form and the papers apart.

The same issue arises in relation to short text boxes on the form (e.g. name of claimant/respondent) as these are limited to approximately 35 characters upper case or 50 characters lower case. It is therefore occasionally necessary for 'see paper apart' and a separate sheet to be used for the name of one of the parties.

Providing a more flexible version of the electronic form (e.g., an editable Word document) would be competent without amending the relevant rules: the Act of Sederunt (Simple Procedure) 2016, s2(3) provides that 'Where the Simple Procedure Rules require a form to be used, that form may be varied where the circumstances require it'.

It is unclear why the forms refer to 'The Simple Procedure' (including the definite article 'the') as the Courts Reform (Scotland) Act 2014, s72 states that the procedure is to be known only as 'simple procedure'.