

**ANNEX B                      CONSULTATION QUESTIONNAIRE**

**Consultation question 1**

*Do you have have any comments on the way in which a claim is made using simple procedure or the forms associated with this stage?*

Comments

1. Rule 3.9 (1) provides that:

*“The sheriff clerk will check the Claim Form for problems which mean that it cannot be registered. Such problems might include...the Claim Form not being accompanied by the correct fee.”*

Neither the Rules nor the Claim Form state what fee is payable to the court by the Claimant. The fee is £102, and this is noted on the Scots Courts website in the Fees section. A party litigant who is unfamiliar with the website may have some difficulty finding this information. We would recommend that the fee is noted in the Rules and on the Claim Form.

2. A major consideration for any Claimant is the cost involved in pursuing a claim via the Simple Procedure. Party litigants will not necessarily be aware of either the general rule that “expenses follow success” or the capped levels of recoverable expenses. We would recommend that the Rules refer to the general rule on expenses and contain a note of the caps, as provided in Section 3 of the Sheriff Court Simple Procedure (Limits on Award of Expenses) Order 2016

3. Section D1 of the Claim Form provides a space for the Claimant to narrate the factual background to their claim, and section D7 provides a space for the Claimant to outline why his/her case should be successful. We would recommend that Claimants are encouraged to write in numbered paragraphs. Numbered paragraphs should result in clearer pleadings and should make any subsequent amendment under Rule 9.7 more simple.

4. Section E2 of the Claim Form invites Claimants to:

*“Set out in a numbered list any documents you might bring to court to support your claim.”*

Although this section asks only for a list and not the actual documents, Claimants will often enclose the relevant documents with the Claim Form. Any further documents which are lodged at a later stage are lodged with a corresponding List of Evidence Form (Form 10A). This can lead to confusion at the hearing, as some documents are attached to the Claim Form, and some are with the List of Evidence Form (which might actually contain a duplication of documents lodged with the Claim Form). We would recommend that the Claim Form advises claimants to complete a List of Evidence Form and attaching<sup>2</sup> it to the Claim Form.

**Consultation 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?*

<p>Comments</p> <p>Section D1 of the Response Form provides a space for the Respondent to narrate the factual background, and section D2 provides a space for the Respondent to outline the claim should not be successful. We would recommend that Respondents are encouraged to write in numbered paragraphs. Numbered paragraphs should result in clearer pleadings and should make any subsequent amendment under Rule 9.7 more simple.</p>
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**Consultation 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?*

Comments  No comments.
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**Consultation 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?*

Comments  No comments.
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**Consultation 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?*

Comments  No comments.
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**Consultation question 6**

*Do you have any comments on documents, evidence or witnesses, or the forms associated with Parts 10 and 11?*

Comments  See Consultation Question 1 for comments on the List of Evidence Form.
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**Consultation question 7**

*Do you have comments on the rules and forms relating to hearings and decisions, including the recall of a decision?*



Comments

In most cases, the lodging of a Response Form leads to a Case Management Discussion being fixed. Case Management Discussions call in court alongside numerous other cases. This may cause party litigants a degree of anxiety. It is also a potentially time consuming process and one which may require a party litigant to miss a morning from their work. In our experience, substantive issues of the case are rarely discussed at Case Management Discussion, and the CMD usually simply leads to a hearing being fixed. We would therefore recommend that parties have the option to have a Case Management Discussion with the Sheriff by telephone.