

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?

<p>Comments</p> <p>The claim form (3A) is much lengthier than the summons it has replaced. Despite this there is insufficient room in many cases to clearly state the basis of the claim, and some courts have been reluctant to accept a paper apart (D1).</p> <p>The claim form should have the claimant and respondent's names clearly stated on the front, rather than several pages in.</p> <p>Having to insert "N/A" into any blank box is time consuming and frustrating when a claim is returned due to a blank box erroneously not having been completed with "N/A".</p>

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?

Comments

We feel that overall the time to pay application process works reasonably well (coming from a primarily claimant point of view). There seems to be a lack of uniformity between the courts as to whether a copy of the respondent's completed time to pay application is sent to the claimant prior to the last date for a response, or whether the claimant should be contacting the court after the last date for a response to make the relevant enquiries.

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

This is an area that we feel that needs clarified, in particular for party litigants. We find that there is confusion between "sent" and "formally served". We also find that party litigants are not aware that a copy response or other correspondence should also be intimated to us on the other side.

There seems to be a lack of continuity between courts regarding accepting documents by email. There are some courts that insist on hard copies while some are happy to receive them by email. We feel that sending the applications by email would streamline the process. Although we appreciate that Civil Online may alleviate some of this once fully implemented and up and running.

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

There is ambiguity as to whether the claimant has to contact the court following the last date for a response to enquire as to whether a response has been lodged. Some courts will forward a copy of the response when asked but others have refused.

We have had experiences where we have called the court to ask if a response has been lodged and there has been and it had been passed to the sheriff for a decision to be made, without us having had sight of it or having lodged any application for a decision. While the sheriff has the ultimate power in dealing with matters, there surely has to be some scope for the claimant to consider any response lodged and act accordingly?

The application for a decision is fairly straight forward to use however there is no facility on the form to include sheriff officer fees being sought (following unsuccessful recorded delivery intimation of the claim).

The 14 day period allowed to apply for a decision is not long enough as it can be quickly taken up by the administration involved in applying for a decision and obtaining a copy of the response (if the respondent has not intimated this to the claimant). This is even more time consuming where the court will not issue documents via email.

The claim form should allow for the claimant to outline the expenses being sought.

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

We feel that not as many application forms are needed. Could there be a "catch all", for example the incidental orders application also being used to seek that a case is paused or restarted?

Again, party litigants are not always intimating their applications to the other side. They are only sending these to the court.

Consultation question 6

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

Comments

We feel that there should be the option to extend the List of Evidence or to include a paper apart rather than having to submit more than one form if more documents are required. This would also assist with the numbering of productions. Also, there should be an equivalent for a List of Authorities in instances where the matter proceeds to a full Case Management Hearing.

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 relation to decisions and the assigning of hearings, there is no guidance as to how long it will take the court to deal with these. The claimant and respondent both have set timescales to adhere to but it doesn't appear that the court is held to a particular timetable.

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?

Comments

There is a lacuna in the rules in relation to appeals. If permission for leave to appeal to the Court of Session is not granted, a party can then apply directly to the Court of Session. This was/is specifically excluded in relation to small claims and summary causes. Surely it cannot have been the intention of the simple procedure rules to allow an additional route of appeal?

The position on expenses is not clear at all in particular how much can be awarded. Legal professionals know to refer to the relevant act of sederunt for guidance. It seems to be clearer what expenses will be awarded on a claim where a response is lodged but it is not so clear what will be awarded in a claim with no response.

The sheriffs are pushing mediation as an alternative dispute resolution method however it is coming as a shock to parties that they may be involved in further costs in going to mediation. We are aware that some courts do have in-court mediators who have not levied any fee for their services (so far) however we know that the Scottish Mediation Service may levy a fee. This, together with the costs of raising a simple procedure (and the limited expenses), is taking away from the cost effectiveness of simple procedure.

We are finding that Case Management Discussions are being assigned where it is clear that there is a dispute in fact. In these circumstances, the sheriff should be assigning a Case Management Hearing while issuing an order for parties to narrow the points in dispute prior to the Hearing. There are some cases which will only be decided by the sheriff making a determination in fact, and these should not be clogging up the procedural court.

In terms of the appeal process, this is unattractive to parties given that they are now heard by three judges at the Sheriff Appeal Court.

The procedure is not as cost effective as it was first mooted to be. The continued Case Management Discussions and the reluctance of some sheriffs to make a decision is resulting in increased costs for our clients.

Due to the on-going ambiguity and confusion, we have concerns about further reform in particular to the current summary cause actions for recovery of heritable property being transferred to within the remit of Simple Procedure. These concerns also extend to the reform of the Ordinary Cause Rules to be brought in line with Simple Procedure.