

ANNEX A QUESTIONNAIRE

Please clearly indicate in your response which questions you are commenting on.

- 1. Do you have any general comments about using Civil Online to submit claims?**

In our Press Release of 17th September 2020 we observed that when Civil Online was introduced in part, during 2018, SCTS announced that “there will *always* be an alternative available to those who cannot use or access a digital process”. The facility became fully functional only in 2019 last year, and in June 2020 the tone changed, SCTS declaring that from 30th July new Simple Procedure cases “must be via Civil Online unless in exceptional circumstances and on cause shown.” We feel that Civil Online can be useful but it should never be mandatory; we would call upon SCTS to adhere to the assurance that they gave that there will “always” be an alternative.

- 2. Were there benefits to using Civil Online to submit your claim and if so what were these?**

None. As solicitors undertaking a form filling exercise for clients it seems to be no easier or more difficult than completing a paper form. If anything it takes longer, due to having to look through many pages which do not apply and to have to scan and upload documents rather than simply photocopying and lodging them.

- 3. Did you have any difficulties using Civil Online when submitting a claim? If so what were these?**

No.

- 4. If you tried to raise a claim but did not do so because of Civil Online, could you explain why and what happened?**

n/a

- 5. Do you have any comments about using the API for Civil Online to submit bulk claims?**

No. It will no doubt be of great benefit to those who issue large quantities of writs using a standard formula.

- 6. Were there benefits to using Civil Online API for submitting bulk claims and if so what were these?**

n/a

- 7. Did you have any difficulties in using the API for Civil Online to submit bulk claims? If you did, what were these? Please include any issues you may have had integrating the API with your own computer system, case management system or general way of submitting claims.**

n/a

8. If you needed support to use the either of the digital portals, who did you ask for support?

SCTS.

9. Was it easy to find information about what support was available to you?

Yes, it was reasonably easy.

10. Was the support provided helpful to you?

Yes.

11. If you play a role in providing support to court users, do you have any comments on any practical issues arising from the rule change?

If the question pertains to our being solicitors advising clients on their using Civil Online themselves as party litigants we would observe that many clients, particularly the elderly and those lacking fluency in written English, struggle with online facilities. Also, some of them may feel that forcing their low value claim online rather than calling it in a real court in the presence of a sheriff is not treating it with the seriousness they feel it deserves.

12. What effect, if any, has the rule change had for your service and service users?

It has made little or no difference to us as solicitors; it has impacted on members of the public who may wish to litigate in person but lack access or ability in relation to a digital process.

13. Are you aware of any cases whereby individuals have decided not to engage with the court under the new rules? If so, how often has this happened and do you know the reasons why?

No, but we know that members of the public are more likely to take a claim more seriously if a writ is delivered by recorded delivery or handed over by sheriff officers than if they simply receive an email. In the same way they will probably find that it focusses the mind more effectively if they have to attend a building and stand up in public rather than answering an email or phone call.

14. If you have provided a note to the Sheriff asking to submit your claim on paper please comment on the process. For example - is it straightforward or complicated? Did you encounter any problems and if so please explain?

n/a

15. If you requested to submit a claim on paper and NOT through either digital interface (Civil Online or the API) please explain the main reasons why?

(Please do not include any personal information which could identify you or your case)

n/a

- 16. Did you need any support or further information to submit the note, if so, why did you feel you needed support? Where did you go to for support to complete the note and was this helpful?**

n/a

- 17. Do you think the rules to make the use of Civil Online mandatory for Simple Procedure Cases should remain in place? If yes, why? If no, why?**

Absolutely not. Where there is a public health emergency it is possible to justify exceptional procedures. The rules are meant to be in response to Covid lockdown; once that lifts and we return to normality there can be no reason for SCTS not to adhere to its assurance that there will always be an alternative. If pursuers want to raise actions using Civil Online they should be able to do so. However, compelling everyone to do so is unreasonable. Our understanding is that in England the use of online litigation is optional; it should be the same in Scotland too.

- 18. If the rules continue to be in force past the 30th of September 2021, are there any changes to them that you think could usefully be made and if so, why?**

We do not agree that compulsory use of Civil Online should be retained. There ought to be freedom of choice. Some of the rule changes are sensible and should be kept even after Covid lockdown has been lifted; service on persons whose address is unknown used to be by walls of court display and it is now on the SCTS Website. That is a good idea and should be kept permanently.

- 19. Please provide any further comments on the rules under review regarding the submission of claims through Civil Online or the API.**

The courts exist to provide a process by which people of all ages and abilities can resolve their grievances. If that process is restricted so as to make Civil Online compulsory it will disadvantage those people who are uncomfortable with using digital means to state a case. This is not in the interests of justice. Neither is it necessary once social distancing and other lockdown measures become redundant. Indeed, it is not even necessary now. There is also the impact on justice being seen to be done; it is meant to be a public exercise. This is of constitutional importance. If parties wish to litigate secretly they can use arbitration instead of litigation.

The Scottish Law Agent's Association

20th March 2021