ANNEX A – CONSULTATION RESPONSE FORM RCS

Question 1 – No comment.

Question 2 – No comment.

Question 3 – No comment.

Question 4 – No comment.

Question 5 – No comment.

Question 6 –

(i)The general presumption is not, in our opinion, appropriate.

(ii)It requires to be expanded to include Motions. It should not be the default position that parties are not attending at Motions. Motions in cases can often be determinative of the whole court action and can therefore be of extreme significance. It should also be expanded to include any other hearing that the Sheriff thinks is appropriate. While there is a degree of discretion in paragraph I where the Sheriff directs a person to attend, a general discretion for any other hearing should be considered.

Question 7 –

(i)It should not be presumed that legal Debates are not held in person. While again it is noted that there is an exception for a point of law of general public importance or particular difficulty or importance but who is to be the judge of that? Is this subjective or objective? A point may be of extreme importance to a client but not have particular significant wider importance. It does our clients a disservice to assume that they neither not able to understand nor interested in understanding what proceeds at a Debate. It is after all their case. There are many clients that are happy to engage in this way with Debates.

(ii)See above

Question 8 –

(i)There is no difficulty in lodging a Motion to request a change in the presumption or mode of attendance, however the suggestion that it is dealt with by way of Motion with no oral hearing is not supported.

(ii)If a Motion is being made to allow the case to be in person it follows that the solicitor or client believes that there is good reason for that motion. To refuse to hear oral submissions on this motion and for the party not to be able to hear these arguments is not justice being seen to be done. The decision not to allow a hearing in person is an important decision which could then potentially exclude a party from being able to hear a debate or other issue.

Question 9 –

It is correct that there should be a degree of flexibility over this, however there should be a right of appeal from the Sheriff.

Question 10 –

The whole premise of proceeding to non-physical attendance in court assumes a level of digital inclusion which is not consistent throughout Scotland. While reference has been made to increasing digital inclusion, what happens to the people in the meantime who do not have access, for example the elderly who wish to appear in Adults with Incapacities applications, people who have no resources or people with disabilities. Mention of an equality impact has been made but with the greatest of respect these changes are too much too soon as they risk the possibility of large sectors of the public being excluded in the short term. It also fails to acknowledge that some people find it difficult and stressful to operate technology and there will need to be general education of sectors of society. Looking forward the younger society will have no difficulty with these proposals. It is not clear from the proposed rules how the courts are meant to deal with a situation where a person simply is unable or unwilling to engage due to disability.

There is a genuine concern in our faculty that hearings in heritable matters where the defenders are sometimes the most vulnerable in our society will be excluded from the judicial process and may result in evictions being granted with no input from the defender.

There have been suggestions that we should sit with our client to conduct a remote hearing and in that way the client can be engaged in the process. While that may be feasible in some situations it can not be assumed that all solicitors can offer that facility. Some solicitor offices are unable to offer this and enable the solicitor and client to remain socially distanced.

There needs to be substantial training given to the legal profession and the public and proceeding without that is risking access to justice.

There is a risk that young solicitors and trainee solicitors will miss out on valuable court experience and court craft due to these changes.

The courts also require to be trained in how to deal with situations, for example Children's Panel Referrals. Where these are mostly now conducted by video conferencing, the infrastructure cannot cope. The system is outdated and there are many hearings in which either Panel members, parents or agents' connections drop out. In these situations the hearings are either paused or continued to another day completely. In some occasions, however the Panel continues without the parties or agents being present and decisions are in effect made in absence which is a breach of the fundamental process. The infrastructure at present cannot cope with the proposals.

On the other hand, there are various aspects which are long overdue, for example digital submissions of documents at Sheriff Court level is long overdue and further expansion of that to ensure that substantial documents can be properly lodged would be welcome. In our jurisdiction there does not seem to be any procedure for lodging of large bundles of documents.

It is therefore the feeling of our Faculty that if you pushed forward at such speed with these changes that justice will not be done or seen to be done in some cases due to the inability of parties to engage properly in the process.

Further, written submissions are not particularly popular in this Faculty. They are found to be time consuming and inflexible. They do not allow for a fluid and changing situation and it is difficult to fully answer your opponent.