

ANNEX A – CONSULTATION RESPONSE FORM

RCS

Question 1 – For the categories of case listed as suitable for an in-person hearing:

- Do you think the general presumption given is appropriate? and
- Would you make any additions or deletions and if so why?

Yes

Question 2 – For the categories of case listed as suitable for attendance at a hearing by electronic means (both video or telephone attendance):

- Do you think the general presumption given is appropriate? and
- Would you make any additions or deletions and if so why?

Yes

Question 3 – The parties can apply to change the mode of attendance if their circumstances warrant a departure from the general presumption:

- Do you think lodging a motion is the right way to do that?
Please explain your answer.

Yes – a standard joint motion should be published so all agents use the same styles as well as litigants in person having access to the same to ensure access to justice.

The joint motion will avoid a "spaghetti junction" of emails to the court from agents and allow a busy Sheriff to handle by way of box work.

Question 4 – The courts can change the mode of attendance if circumstances warrant a different choice to the general presumption:

- Do you agree that the court should have the final say? Please explain your answer

Yes – this will ensure a check-and-balance and permit access to justice. It may also help those litigants in person who feel more comfortable addressing the court from a home office than being in court. One word of warning is that should a litigant in person show discourtesy to the court in a remote hearing then the next hearing should be in person.

Question 5 – Do you have any other comments to make on the proposed changes within the Rules of the Court of Session?

No, this is a question better answered by Faculty and Solicitor-Advocates.

OCR

Question 6 – For the categories of case listed as suitable for an in-person hearing:

- Do you think the general presumption given is appropriate? and
- Would you make any additions or deletions and if so why?

Yes.

Question 7 – For the categories of case listed as suitable for attendance at a hearing by electronic means (both video or telephone attendance):

- Do you think the general presumption given is appropriate? and
- Would you make any additions or deletions and if so why?

Yes.

Question 8 – The parties can apply to change the mode of attendance if their circumstances warrant a departure from the general presumption:

- Do you think lodging a motion is the right way to do that?
- Is there any need for an application form to accompany the motion (in similar terms to RCS)? Please explain your answers

Yes – a motion will provide written reasons in support. If departing from the general presumption then a party should provide detailed reasons. Guidance may need to be provided as to what constitutes a "good reason" to change the mode of attendance.

Question 9 – The courts can change the mode of attendance if circumstances warrant a different choice to the general presumption:

- Do you agree that the court should have the final say? Please explain your answer

Yes – otherwise there would be no other check-and-balance mechanism; particularly if one of the parties is unrepresented.

Question 10 – Do you have any other comments to make on the proposed changes within the Ordinary Cause Rules?

The move towards increased use of technology is a positive step. For agents the concept of physically attending court in-person for a minute or two of discussion in procedural cases where the parties are in agreement is not a good use of time and money for all involved. It also causes delays. If agents can handle this from their office then they are able to work more efficiently. There remains a role for in-person hearings, but the more procedural knock-around work such as options hearings do not require in-person attendance. One word of caution needs to be expressed is that parties will need to be placed on a tight leash as there is a real risk that litigants in person may feel braver attending court from their home and if the court is making a decision they disagree with then there is a risk the party will become abusive; in such situations the next hearing should be in-person. There remains a role for in-person hearings, particularly where cross examination of witnesses is central to resolving disputes, and the courts should not see these new rules as an opportunity for further mission creep.