

ANNEX A – CONSULTATION RESPONSE FORM

RCS

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

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

I see no reason why actions under the Adoption and Children (Scotland) Act 2007 could not be carried out by electronic means as a first presumption. On the whole, parents are represented by counsel in the Court of Session rather than self-represent. If represented by counsel then there should be no issue with having the hearing by electronic means. In any event, for those parents who are party litigants, it would likely be costlier for them to travel to Edinburgh (if they are not already in Edinburgh) to appear in a calling of a case. Most people, if not all people, have telephones so would be able to access a hearing in this way if they do not have access to wifi for the purposes of a video conference. This argument translates to others listed too.

The concern about presumptions - and the long list where in person hearings are presumed - is that there is likely to be a slide back to the traditional in person hearings due to the default to in person hearings. I am not clear why it cannot be the case that the hearings start off as being electronic (including telephone) as they are now. If it is the case that a person cannot access electronically then in the interests of fairness and justice that hearing can then take place in person by that person contacting the court. This does not necessarily need to be by motion *per se* but can be a request to court. I am really concerned that if we don't keep up the momentum here and, if there is a presumption of in person hearings for certain categories over time, we will very likely go back to how we did it before. If we step back in time to in person hearings being the norm again at least even in certain cases and types of hearings, I believe that we will have lost an unexpected opportune moment for seismic change. In my view, to go back to in person hearings would be a step back in time towards inefficiency. Of course, it is necessary to ensure fairness and that justice be done, but there can be safeguards to ensure that this is the case. In person hearings cannot be the norm going forward and all users of the court must embrace the change due to the sheer numbers of cases going through the courts at this time to ensure that cogs of justice keep moving at an efficient pace.

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

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

Whilst I think it is useful to see that some hearings would presumptively be heard by electronic means, I see no reason for there to be a list at all. I go back to my earlier points above. I see no reason that all cases can't be presumptively electronic and then can be in person if need be. I think it is unnecessarily confusing to have two sets of lists.

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

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

No, I think given that solicitors are busy and with the list of presumptive in person hearings that this will just be yet another hurdle that people will either not have time for or forget to do. I think there needs to be a real seismic change here, as we all have had to do as we have had no choice but to embrace the change, towards hearings being online first and foremost unless an in person hearing is required in the interests of justice and fairness.

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

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

I don't agree with the presumptions as set out; however, if there is to be presumptions, I agree that Court should have the final say as they are responsible for ensuring that justice is not only done but is seen to be done.

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

No, thank you.

OCR

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

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

The concern about presumptions - and the long list where in person hearings are presumed - is that there is likely to be a slide back to the traditional in person hearings due to the default to in person hearings. I am not clear why it cannot be the case that the hearings start off as being electronic (including telephone) as they are now. If it is the case that a person cannot access electronically then in the interests of fairness and justice that hearing can then take place in person by that person contacting the court. This does not necessarily need to be by motion *per se* but can be a request to court. I am really concerned that if we don't keep up the momentum here and, if there is a presumption of in person hearings for certain categories over time, we will very likely go back to how we did it before. If we step back in time to in person hearings being the norm again at least even in certain cases and types of hearings, I believe that we will have lost an unexpected opportune moment for seismic change. In my view, to go back to in person hearings would be a step back in time towards inefficiency. Of course, it is necessary to ensure fairness and that justice be done, but there can be safeguards to ensure that this is the case. In person hearings cannot be the norm going forward and all users of the court must embrace the change due to the sheer

numbers of cases going through the courts at this time to ensure that cogs of justice keep moving at an efficient pace.

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

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

Whilst I think it is useful to see that some hearings would presumptively be heard by electronic means, I see no reason for there to be a list at all. I go back to my earlier points above. I see no reason that all cases can't be presumptively electronic and then can be in person if need be. I think it is unnecessarily confusing to have two sets of lists.

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

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

I don't think this necessarily needs to be a formal motion *per se* as the parties may be unrepresented and may not have access to a computer or skills to complete such a form. I think the preference should be in writing by email to the court but if that person does not have the means to do so then a telephone call to the court should suffice. Then the court can ask the other party for their views on the request.

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

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

I don't agree with the presumptions as set out but if there is to be presumptions, I agree that Court should have the final say as they are responsible for ensuring that justice is not only done but is seen to be done.

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

On a connected note, I cannot express to you how much the efficiencies with hearings being dealt with administratively, by telephone and by video have improved the way I work now. I prepare written submissions in all of my cases and lodge them 48 hours before the hearing, regardless of whether or not this has been requested in the interlocutor. The reason I do this is because it allows the Sheriff time to reflect prior to the hearing and drastically reduces the time of hearings. This does not take much time to do in most cases as it is important to be concise in such matters. I had a series of complex craves in an ordinary case this year. Instead of this taking what would have been a good chunk of time explaining what I was seeking to the Sheriff, I lodged submissions. When the case called, the Sheriff merely said, I have read your submissions and decree is granted. Albeit, the case was undefended; however, it does show how efficiency savings can be made as it would have meant that all the other

I think there is a need; however, for uniformity across all courts in respect to procedure relating to the mode of court hearings. I am aware that some courts are doing in person hearings at this time when this is really not necessary and is very inefficient in terms of time taken waiting on such hearings calling. I also think there is a need for training across the courts to ensure that clerks are fully aware of the full functionality of Webex e.g. ability to record. I must say though that generally the sheriff clerks have been brilliant and incredibly helpful across many of the sheriff courts, and they are a credit to the SCTS.