

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, the general presumption given is appropriate.*
 - *We would not make any additions or deletions.*

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, the general presumption given is appropriate.*
 - *We would not make any additions or deletions.*

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.
- *We agree that the motion procedure is suited to an application to change the mode of attendance to depart from the general presumption. The motion procedure is designed to enable opposition and it provides a mechanism for judicial consideration and decision on the application.*
 - *We think it would be useful for there to be a cut-off point by which such an application can be made to avoid any last-minute applications immediately prior to a hearing. Perhaps this is more suited to the rules*

rather than a practice note/direction to provide a strict obligation on parties although we appreciate that there are a number of different types of action to cater for.

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.
- *We are not wholly clear how rule 35B.5. will work in practice and in what circumstances a Court would decide either to unilaterally change the general presumption or to change the mode of hearing following the consideration of an application to change the mode of hearing and an earlier decision by the Court either to do so or not.*

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

- *Rule 35B.2 (2)(c) and (f) - How does one know whether a legal debate on procedure roll/reclaiming motion/appeals raises a point of law of general public importance/particular difficulty or importance? How is that to be determined, by whom and what procedure is to be applied?*
- *Our experience is that cisco WebEx hearings are more effective than telephone hearings because there is less scope for those making submissions to speak over each other or to determine when people have lost connection. We would therefore recommend that all or as many hearings as possible are conducted by WebEx.*
- *We do not find the wording of rule 35B.4(5) particularly clear. We suggest it may be more helpful if simply, the test was set out which the Court is to apply in considering the application and whether to grant or refuse it.*

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, the general presumption is appropriate.*
- *We would not make any additions or deletions.*

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, the general presumption is appropriate.*
- *We would not make any additions or deletions.*

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
- *We agree that the motion procedure is suited to an application to change the mode of attendance to depart from the general presumption. The motion procedure is designed to enable opposition and it provides a mechanism for judicial consideration and decision on the application.*
- *We think it would be useful for there to be a cut-off point by which such an application can be made to avoid any last-minute applications immediately prior to a hearing. We think the rules should provide a strict obligation on parties, although we appreciate that there are a number of different types of action to*

cater for.

- *We think that a motion could add an extra unnecessary step and additional cost. Perhaps the form of hearing could be determined at a pre-proof or procedural hearing.*
- *No – grounds/basis can be stated within the motion.*

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.

- *We are not wholly clear how rule 28ZA.5. will work in practice and in what circumstances a Sheriff would decide either to unilaterally change the general presumption or to change the mode of hearing following the consideration of an application to change the mode of hearing and an earlier decision by the Court either to do so or not.*

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

- *Rule 28ZA.2(2)(e) - How does one know whether a legal debate raises a point of law of general public importance/particular difficulty or importance? How is that to be determined, by whom and what procedure is to be applied?*
- *Our experience is that cisco WebEx hearings are more effective than telephone hearings because there is less scope for those making submissions to speak over each other or to determine when people have lost connection. We would therefore recommend that all or as many hearings as possible are conducted by WebEx.*
- *We do not find the wording of rule 28ZA.4(5) particularly clear. We suggest it may be more helpful if simply, the test was set out which the Court is to apply in considering the application and whether to grant or refuse it.*

- *We think that there is an argument that sequestrations and mortgage repossession cases should be in person by default. In petitions for sequestration at courts throughout Scotland, many respondents choose to appear in person at the hearing. Negotiations can take place before the petition calls, resulting in possible resolution. In some courts, there is an In-Court Citizens Advice Service which some parties make use of.*

These negotiations and access for parties to support may not be possible where the hearing is virtual.

- *Ordinary Procedure Roll – we think that an effort should be made for consistency across Sheriff Courts, if possible. In some courts, cases call on a Roll, others at an appointed time.*
- *While Webex access will not necessarily be a difficulty for OAG, we have concerns about party litigants. There are some who may not have the necessary technology or skills to negotiate Webex, or even simply dialling in to a hearing. We suggest more work is necessary before this provision is made permanent.*

