



**Scottish
Civil Justice
Council**

Report on the consultation on the draft Simple Procedure Rules

JUNE 2016

CONTENTS

INTRODUCTION	1
Background	
Responses	
Additional stakeholder engagement	
Approach to the consultation exercise	
Overview of consultation responses	
SUMMARY OF THE CONSULTATION RESPONSES AND CHANGES MADE TO THE RULES	7
NEXT STEPS	25
ANNEX A – LIST OF THOSE WHO RESPONDED	26

INTRODUCTION

Background

1. Lord Gill's Scottish Civil Courts Review identified that 'there is a particular need for changes to court practices and procedures in cases of low monetary value ... so that people who do not have legal representation can enter and move through the court process effectively.' The Review went on to recommend that 'Summary cause and small claims procedure should be replaced by a new simplified procedure for all actions with a value of £5,000 or less ... The procedure should be designed with unrepresented litigants in mind.'
2. The Scottish Government accepted the recommendation to have a new simple procedure, replacing small claims and summary cause actions, and made legislative provision for it in the Courts Reform (Scotland) Act 2014 ('the Act'). Section 72 of the Act created a new form of civil procedure in the sheriff court known as simple procedure and provided for further provision for the new procedure, in the form of court rules, to be made by Act of Sederunt under section 104(1).
3. The Scottish Civil Justice Council (SCJC) has responsibility for developing rules for the civil courts and tasked its Access to Justice Committee with taking forward the work on the rules for the simple procedure. Draft rules were developed by the Committee and approved by the Council to be issued for consultation in November 2015.

Responses

4. The consultation ran from 25 November 2015 to 2 March 2016. The Council received 42 responses to the consultation. The respondents are listed at Annex A and included advice agencies, the judiciary, the legal profession, the insurance industry, organisations involved in the civil justice system as well as a number of individuals. The responses have been grouped into the following categories:

Category	Number of responses			
	Representative organisation	Firm / Organisation	Individual	Total
Judiciary	2	-	-	2
Legal profession	6	4	3	13
Insurance industry	1	3	-	4
Advice agencies	4	5	4	13
Organisations involved in the administration of the civil justice system	1	3	-	4
Local authority	-	1	-	1
Other	-	4	1	5
Total	14	20	8	42

5. The [responses](#) to the consultation were published on the SCJC website on 1 April 2016. Of the 42 responses, five individual respondents asked to remain anonymous and two organisations asked for the content of their responses not to be published.

Additional stakeholder engagement

6. One of the Scottish Civil Courts Review recommendations relating to the simple procedure was that consultation on the rules should include an ‘intelligibility road-test’. The Access to Justice Committee decided to take this forward in the form of both a readability exercise, for participants unfamiliar with court rules and processes, and a focus group for participants working with the procedures being replaced by simple procedure on a daily basis. The readability exercise was carried out on 26 January 2016 and the focus group took place on 28 January 2016.
7. The readability exercise involved a group of Scottish Courts and Tribunal Service staff, without a legal background or experience of working in a court, undertaking exercises using the draft rules and participating in a facilitated discussion about their experience of using the rules. The exercises took the

form of questions such as ‘find the rule which answers the following question’ and ‘would you be entitled to do x under this rule’.

8. The focus group participants were in-court advisers and others who work with party litigants. The participants had been asked to familiarise themselves with the draft Simple Procedure rules and the consultation paper about them. They took part in a facilitated discussion around the questions in the consultation paper.

Approach to the consultation exercise

9. The purpose of the consultation on the draft Simple Procedure Rules was to seek views both on the approach taken to the new procedure and on the detail of the proposed rules, in order to inform the drafting of the final rules with a wide range of views. The consultation questions were mostly of the format ‘do you have any comments on?’ in order to allow for a broad spectrum of views. The feedback gathered in this way is essentially qualitative in nature providing helpful and detailed comments on all aspects of the draft rules but not lending itself to a quantitative approach to the analysis of the responses received. A summary of the responses to each question has therefore been prepared and then the principal changes made to the rules have been set out.

Overview of the consultation responses

10. The response to the consultation on the draft Simple Procedure Rules was generally supportive about the approach taken to the new procedure both in designing the rules to be more accessible to the lay user and in making the court process for lower value monetary claims swifter and more flexible. There were many helpful and detailed comments received about all aspects of the draft rules. The key points in the responses and the principal changes made to the rules are set out below.

Delaying the implementation of the Simple Procedure (Special Claims) Rules

11. The consultation sought views on the splitting of the rules into two sets, the Simple Procedure Rules and the Simple Procedure (Special Claims) Rules. This was supported by most respondents. However, there were strong views expressed, both among respondents to the consultation and participants in the focus group, that the second set of rules should be consulted upon. Many of those calling for consultation on the Simple Procedure (Special Claims) Rules have a professional interest in housing or personal injury proceedings which will be covered by these rules. It has therefore been decided that only the Simple Procedure Rules will be commenced in November 2016 and that the Simple Procedure (Special Claims) Rules will be commenced later in time for the

beginning of the legal year in 2017. This will provide time for informal consultation on the draft rules.

Presentation of the rules

12. There was general support for updating hard to understand terminology and useful feedback on some of the terms used. A number of changes have been made to the terminology used.
13. The layout and numbering of the rules was well-regarded, particularly the use of questions as headings and the incorporation of flowcharts. There was feedback received that incorporating the Part number into the rule number would be clearer and this change has been made.

Minimising hearings and encouraging alternative dispute resolution

14. There was support for the principle of minimising the number of hearings although some respondents were not convinced that there would be a significant reduction in practice. The approach to alternative dispute resolution was also generally positively regarded although it was noted that provision is variable across Scotland.

Making a claim

15. The procedure for making a simple procedure claim received positive comment. There was also feedback about whether the timetable, and particularly the way in which the key dates are calculated and referred to, would be easily understood by party litigants. The timetable has been adjusted to calculate dates from 'the last date of response' and the concept of 'the date of first consideration' has been removed.

Responding to a claim

16. While the overall response to this part of the procedure was supportive, there was comment that the timetable for responding to a claim might not allow enough time for the responding party to prepare their case. The timetable has therefore been adjusted to give the responding party an additional week in which to respond to the claim.

What will happen to a case

17. A number of responses suggested that having the hearing as the default option and case management conferences as the exception could limit the number of cases where successful early settlement was achieved through judicial intervention. The rules have been adjusted so that there is no longer a presumption of proceeding directly to a hearing and what the next step is for a case is at the discretion of the sheriff.

Orders and applications

18. The inclusion of standard orders was generally supported and it was thought they would be helpful to party litigants.
19. Some respondents thought the timetable for sending and receiving applications was rather tight and an adjustment has been made to increase the time between an application being sent to a decision being made to 10 days.

Documents, other evidence and witnesses

20. While these Parts were thought to be set out clearly, there were some concerns expressed about parties having to set out all of their evidence at the beginning of the process. The forms have been reframed to provide for parties to explain the evidence they consider might support their claim and to lodge evidence later in the process. This approach has also been followed for witnesses.

The hearing and the decision

21. Rules and guidance about how evidence should be given at the hearing have been added as a number of respondents thought this would be useful. Some respondents thought it would be efficient if parties were able to agree revocation of a decision by consent without a hearing and this change has been made.

SUMMARY OF THE CONSULTATION RESPONSES AND CHANGES MADE TO THE RULES

22. The main points made in the responses and key changes made to the rules are set out below.

Consultation question 1: Do you have any comments on the approach taken to splitting the Simple Procedure Rules into two sets of rules?

23. Producing two sets of rules was supported by most respondents. The Sheriffs Association thought this approach 'enables the core rules to remain succinct and easy to follow', the Association of Personal Injury Lawyers (APIL) welcomed that 'personal injury claims are recognised as more complex' and the Scottish Association of Law Centres thought it was 'helpful to have special claims rules for more complex types of action'.
24. However, six respondents did not support this approach including Citizens Advice Scotland (CAS) who took the view that having two sets of rules is trying to fit existing processes within simpler language rather than creating a new process. South Lanarkshire Council, Haddington Citizens Advice Bureau (CAB), the Scottish Mediation Network and two individual respondents all had a preference for one set of rules.
25. 12 respondents, including those with a professional interest in the proceedings covered by the Simple Procedure (Special Claims) Rules, asked for the second set of rules to be consulted upon. These included the advice agencies and APIL. Shelter Scotland advocated consultation on the second set as the consequences of heritable actions can involve the loss of a person's home. This view was also put forward by in-court advisers who attended the focus group on the draft rules.

Changes made

26. It has been decided that the implementation of the Simple Procedure (Special Claims) Rules will be delayed to allow for informal consultation on these rules.

Consultation question 2: Are you content with the use of the following terms in the rules?

27. *Claim – for a standard simple procedure case:* There was general support for the use of the term 'claim' for a standard simple procedure case although Shelter Scotland felt it was not an appropriate term for heritable actions seeking to remove an occupier from a property.

28. *Claimant – for pursuer*: Most respondents were content with using the term ‘claimant’ in place of ‘pursuer’. There were four respondents who were not content with this term, including the Society of Messengers-at-Arms and Sheriff Officers (SMASO) and Orkney CAB, who preferred that pursuer continued to be used.
29. *Responding party – for defender*: There was less support for using the term ‘responding party’ to replace ‘defender’. Some 18 respondents were not content while 14 were content with this term. Those not in favour of ‘responding party’ commented that a single word would be preferable, that it was ‘unnecessarily cumbersome’ and ‘not clear’. While some respondents suggested continuing to use ‘defender’ a number, including the Money Advice Service, the Faculty of Advocates and the Sheriffs Principal, suggested ‘respondent’ which is the term used in the Employment Tribunal.
30. *Freeze – for sist*: 15 respondents were not content with using the term ‘freeze’ for ‘sist’. Another 15 commented that they were content, although some of these suggested alternative terms as well. A number of respondents, including the insurance companies and the Faculty of Advocates, pointed out that it may cause confusion as there is a freezing injunction in England and Wales which has a different purpose. Haddington CAB thought ‘freeze’ sounded too permanent. Various alternatives were put forward including stay, suspend, halt and pause.

Changes made

31. Changes have been made to the terminology used in the rules such that ‘respondent’ is the term used in place of ‘defender’ and ‘pause’ is the term used in place of ‘sist’.

Consultation questions 3 and 4: Do you have any comments on the approach taken to updating hard to understand terminology in the simple procedure rules? And, is there any terminology remaining in the draft simple procedure rules which you think is unfriendly or difficult for the lay user to understand and, if so, what alternatives would you suggest?

32. There was general support for updating hard to understand terminology: the Sheriffs Association found the updated terminology ‘clear and intelligible’, the Scottish Association of Law Centres thought the language used was an ‘improvement’ and the Sheriffs Principal welcome the approach. Another respondent welcomed any such changes that improve access to justice for party litigants and the Forum of Insurance Lawyers (FOIL) supported easy to understand terminology to make the court process more accessible.

33. Some respondents were not in favour of changing the terminology. One thought that one set of technical terms was being replaced with another and South Lanarkshire Council commented that having different terms for one court procedure could cause confusion. The Glasgow Bar Association consider the current terminology to be relatively straightforward.
34. There were many detailed comments about specific wording used in individual rules. In particular, a number of respondents commented that 'recall' was perhaps easier to understand than 'revoke', for the recall of an undefended decree.

Changes made

35. Other changes have been made to the terminology used in the rules including retaining the term 'recall' to refer to the recall of an undefended decree.

Consultation question 5: Do you have any comments about the approach taken to the numbering and layout of the rules?

36. There was positive support for the layout and numbering of the rules. Yuill and Kyle found them 'helpful and transparent', another respondent thought they were 'clear and would be accessible to party litigants', the Scottish Association of Law Centres said they were 'laid out well', the Sheriffs' Association thought they were 'easy to follow' and CAS liked the 'logical and chronological order'. However, the Scottish Courts and Tribunals Service (SCTS) would prefer the conventional numbering.
37. Some respondents thought that adjusting the numbering convention to ensure that rules with the same number in different parts were not confused would be beneficial. A number of respondents suggesting including the part number in the rule number. These included advice agencies, the Scottish Legal Aid Board (SLAB), the Sheriffs Principal and the Faculty of Advocates.

Changes made

38. To aid with navigation of the rules, the numbering has been adjusted so that each rule is now numbered to identify the part it is in (ie Part 9 contains rules 9.1 to 9.x) with each paragraph of each rules given its own numbered sub-heading (ie the first paragraph of rule 9.1 is 9.1(1)).

Consultation question 6: Do you have any comments about how, and where, the rules should be presented on the internet?

39. There was general support for presenting the rules on the SCTS website, which Orkney CAB regards as 'very good', and many respondents commented on the

importance of clearly signposting the rules on the face of the website and providing hyperlinks to forms, definitions and examples. Charles Hennessy, Strathclyde Law School, suggested having explanatory videos with the online rules.

40. SLAB commented that accessing the rules online should be integrated into the mygov.scot platform in due course and the SCTS noted that there would need to be easy access for updating the rules to minimise the resource required. CAS commented that there would need to be other ways to access the rules for those with limited internet access.

Consultation question 7: Do you have any comments on the approach to headings in the Rules?

41. The incorporation of guidance, approach to headings and the question and answer style were all favourably commented upon. Included in the positive comment, Orkney CAB found the headings 'clear and easy to understand' and the insurance companies agreed with the question and answer approach. Another respondent thought the headings 'add clarity and assist navigation'. The advice agencies found the headings helpful and Shelter Scotland suggested that some more general headings may help with locating information.
42. South Lanarkshire Council would prefer rules set out with 'ordinary chapters and headings' and two respondents suggested separating procedural and definitional rules into separate sections.
43. It was apparent at the readability exercise that the more clearly divided the sections were the easier it was for users to find what they were looking for.

Changes made

44. A new level of division has been introduced into the rules to aid navigation – the italic cross-heading.

Consultation question 8: Do you have any comments on the approach taken to minimising the number of hearings?

45. There was support for the principle of minimising the number of hearings from many respondents, including the SCTS, the Sheriffs Principal, the Faculty of Advocates, the Law Society of Scotland and CAS.
46. Some respondents, including the advice agencies, were not convinced that there would be a significant reduction in the number of hearings in practice and the Sheriffs Association doubted that it would 'result in the resolution of many

cases prior to the hearing'. The insurance companies commented that this approach would be most effective when applied consistently and the Glasgow Bar Association took the view that there is not a surplus of hearings in the current system.

47. A number of respondents suggested that tele- or video-conferencing could be used for hearings.

Consultation question 9: Do you have any comments on the approach taken to alternative dispute resolution (ADR)?

48. Overall the approach to ADR was supported but it was noted that provision is variable across Scotland and that it would not be suitable for all cases. Some respondents, including Haddington CAB and the Sheriffs' Association, pointed out that ADR is most helpful early in the process. bto solicitors noted that the costs of ADR may exceed the value of some claims.
49. The Scottish Association of Law Centres supported the encouragement of ADR for straightforward claims and the Scottish Legal Complaints Commission welcomed the 'focus on embedding ADR into the process' which could be used in disputes between consumers and their lawyers.
50. Some respondents, including the Scottish Mediation Network and the Scottish Arbitration Centre, thought it would be helpful to define ADR in the rules.

Consultation question 10: Do you have any comments on the proposed principles of simple procedure as set out in Part 1 Rules 2.1 – 2.5?

51. Most respondents were positive about the principles of simple procedure although South Lanarkshire Council thought they were unnecessary. Haddington CAB noted that they accord with the recommendations of the Gill Review and the Scottish Legal Aid Board (SLAB) thought they were 'apt'.
52. The Sheriffs Principal queried the term 'importance' as they thought all parties would consider their case important. CAS commented that 'inexpensive' could be misleading to parties.
53. The Sheriffs Principal and the Sheriffs' Association wondered if the fifth principle unnecessarily limited the sheriff from requiring parties to come to court simply to achieve more effective progression of the case than would be possible without an appearance at court.
54. The Scottish Mediation Network and the Scottish Arbitration Centre suggested including the encouragement of using ADR to resolve disputes in the principles.

Changes made

55. The word 'importance' has been removed from the second principle and the encouragement of alternative dispute resolution as well as negotiation has been included in the fourth principle. The fifth principle has been reworded to allow for hearings to progress, as well as resolve, a case.

Consultation question 11: Do you have any comments on the proposed duties on sheriffs, parties and representatives?

56. There was support for the approach of setting out these duties including from Morton Fraser LLP who thought 'setting out what parties ought to do is helpful to party litigants'.
57. Some respondents suggested that the duties of lay representatives and lay supporters could be set out more clearly. A number of the advice agencies, including CAS and the Money Advice Service, thought that lay representatives should not be expected to know whether an argument has a legal basis and that this duty should be amended such that they are required not to do so 'knowingly' or 'intentionally'.
58. A number of respondents, including the Sheriffs Principal and Sheriffs' Association, suggested that it would be helpful if the sheriff could dismiss an incompetent claim at first consideration, without the consent of both parties.

Changes made

59. The rules have been adjusted to make clear that the sheriff's power to dismiss incompetent cases may be exercised at any time.

Consultation question 12: Do you have any other comments on the approach taken in Part 1: The simple procedure?

60. One respondent commented that this Part was 'lengthy and repetitive' and another that the 'rules are clear, precise and easy to understand'.
61. CAB Edinburgh thought it would be helpful to have more guidance on matters such as what would be an acceptable excuse for not attending a case management conference.
62. Some participants at the readability exercise did not feel that the title of this part reflected its contents.

Changes made

63. The title of this part has been changed to 'an overview of simple procedure' in order to reflect its purpose to set the scene, introduce those taking part and establish the principles of the procedure.

Consultation question 13: Do you have any comments on the approach taken in Part 2: Representation and support?

64. There was support for lay representatives 'being able to see a case through to conclusion' from Haddington CAB, Shelter Scotland welcomed the clear process for lay representation and another respondent thought Part 2 provided 'clear guidance on the role of representatives'.
65. There were also suggestions about how lay representatives should be defined including from CAS, who suggested a distinction between lay representation as a 'one-off' and as part of a person's work, and SLAB who suggested non-practising solicitors should not be excluded.
66. The Sheriffs Principal, and another respondent, thought that a party should formally authorise a lay representative to represent them by signing to that effect.
67. Participants in the readability exercise thought that the terms 'lay representative' and 'lay supporter' were similar enough to be confused.
68. Participants in the focus group questioned the reason for the rule, which reflects the current position, that a party who is represented may not also have a lay supporter.

Changes made

69. The term 'courtroom supporter' is now used in place of 'lay supporter' and the rules now allow for a party who is represented to have a courtroom supporter.

Consultation question 14: Do you have any comments on the proposed timetable for raising a simple procedure claim?

70. The Scottish Association of Law Centres thought the procedure was 'clearer than the present situation' and CAB Edinburgh said it was reasonable.
71. Some respondents suggested amending the timetable and particularly how the significant dates are arrived at. The Faculty of Advocates suggested calculating deadlines by counting forwards from the date the claim is registered. The Sheriffs Principal thought the timetable would effectively prohibit the sheriff from considering a case and issuing orders until the date of first consideration.

The Money Advice Service and CAS thought the three important dates in the proposed timetable could be confusing for party litigants.

72. The Forum of Scottish Claims Managers, and the insurance companies who responded, agreed with the time frames and suggested specifying whether the timetable is counted in calendar days. SMASO suggested that the number of days referred to as clear days should be clarified.

Changes made

73. The rules have been adjusted to remove the concept of the 'date of first consideration' and replace it with a requirement on the sheriff to consider a case and issue orders within two weeks from the date the Response Form is received by the court. This simplifies the timetable and allows the sheriff to consider the case more quickly once a Response Form has been received.

Consultation question 15: Do you have any other comments on the approach taken in Part 3: Making a claim?

74. There was support for the examples included in the rules, although not from South Lanarkshire Council. Some respondents, including bto solicitors, CAS and CAB Edinburgh, suggested that a flowchart would be helpful.
75. There were suggestions relating to the proposed claim process including from Orkney CAB, the Sheriffs Principal and CAS who thought that guidance on jurisdiction would be beneficial. The Faculty of Advocates suggested a requirement to fill in the form legibly and SMASO thought the form should be authenticated. The Scottish Mediation Network suggested there should be an indication of where parties might seek negotiation and ADR. FOIL suggested issuing parties with a document of all the court deadlines.
76. The SCTS noted that there were resource implications for the public purse in extending the requirement for sheriff clerks to serve claims for party litigants from just small claims to a procedure replacing small claims and summary cause.

Consultation question 16: Do you have any comments on the flowchart (at Part 4 Rule 2.4) setting out the options available to the responding party when responding to a claim?

77. There was much support for the flowchart. Orkney CAB thought it was 'excellent', another respondent thought it would be 'helpful to party litigants' and an in-court adviser found it 'particularly user-friendly'.

78. There was a comment that an option for the defender admitting the claim but wishing to make a counterclaim would be useful. The Sheriffs Principal suggested adding into the flowchart the procedure following the completion of the Response Form. It was also suggested that it should be made clear that time to pay applications are not available to companies and organisations.

Changes made

79. The provision in the rules for the respondent to counterclaim has been removed as cases so complex that a counterclaim procedure is required are likely to be remitted to ordinary cause procedure.

Consultation question 17: Do you have any other comments on the approach taken in Part 4: Responding to a claim?

80. This Part was considered 'helpful to the responding party' by an in-court adviser although South Lanarkshire Council found the 'language and format confusing'.
81. There were suggestions about including additional guidance on such matters as how the responding party will access the Response Form, from Yuill and Kyle, and what the responding party should do if they miss the deadline for returning the Response Form from bto and FOIL.
82. The Sheriffs Principal thought the Response Form should set out the matters in the Claim Form with which the respondent agrees, the essential factual background and the matters with which the respondent disagrees. The Faculty of Advocates and the Money Advice Service suggested a worked example of a response form would be helpful.
83. A number of respondents, including the Glasgow Bar Association, thought there might not be sufficient time for the responding party to lodge documents and list witnesses with the response.

Changes made

84. The timetable in the rules has been adjusted to give the respondent a further week in which to respond to the claim.
85. A new Part *How to ask for time to pay* has been added to the rules. This differs from the current procedure in that there is a single form to make an application for time to pay so that parties no longer have to work out whether they are applying for a time order, a time to pay order or a time direction.

Consultation question 18: Do you have any comments on the approach taken in Part 5: Sending and service?

86. The Sheriffs' Association supported replacing newspaper and walls of court advertising for parties whose address is unknown by publication on the SCTS website as did Morton Fraser LLP. However, Yuill and Kyle questioned the exclusion of service by newspaper advertisement.
87. Haddington CAB thought that party litigants should be able to serve documents. SMASO would prefer more detailed provisions about service. Some respondents, including CAS, Front Line Fife and bto, advocated electronic service.
88. SMASO commented that the provision for parties to 'send' documents by handing them over in person was unwise considering the often contentious nature of litigation.
89. A respondent noted that the 'sound and meaning' of send and serve was 'perhaps similar enough to cause confusion' and suggested that using the term 'formal service' would make the distinction easier to understand.
90. There was feedback from participants in the readability exercise that they found the considerable length of the rules on service, and their position quite early in the rules, distracting when looking for particular matters in the rules.

Changes made

91. The rules have been adjusted to use the term 'formal service' in place of 'service' and to remove provision for parties to 'send' by handing documents over in person.
92. The rules relating to sending and service are now set out in three Parts. Part 6 *Sending and formal service* contains all the rules for sending, generic rules for service and particular rules about service of the Claim Form. The detailed provision on methods of service are now found later in the rules at Parts 18 *Formal service in Scotland* and 19 *Formal service outside Scotland*.

Consultation question 19: Do you have any comments on the proposed procedures for settlement and for undefended actions?

93. The Glasgow Bar Association commented that these procedures appear 'straightforward'. The Money Advice Service and CAB Edinburgh, among others, thought it could be made clearer that claimants need to contact the court to find out if a response has been received and send an application for decision if there has not been a response.

94. bto suggested that the Claim and Response Forms should make clear that parties will not receive reminders from the court about deadlines and the Law Society of Scotland thought the court should send out a letter with the dates for response.
95. The SCTS suggested that admitted claims should be automatically dismissed, where no application for a decision has been received.

Consultation question 20: Do you have any comments on the proposed model for case management conferences?

96. While there was support for this part of the procedure, South Lanarkshire Council, CAB Edinburgh and CAS thought that guidance about how case management conferences would work in practice would be helpful.
97. The Sheriffs' Association, the Faculty of Advocates, Morton Fraser LLP and bto suggested that the Sheriff should be able to dismiss an incompetent claim without the agreement of both parties, at a case management conference.
98. bto solicitors, FOIL and another respondent suggested provision should be made for case management conferences by tele- or video-conferencing.

Consultation question 21: Do you have any other comments on the approach taken in Part 6: The first consideration of a case?

99. There was a comment that it should be more prominent in the rules that a case may be decided on the papers to ensure party litigants are aware of this.
100. CAS and CAB Edinburgh suggested that it should be made clear that parties are not expected to attend.
101. The Sheriffs' Association noted that first consideration could potentially take up more shrieval and administrative resource than small claims and summary cause courts.
102. The Money Advice Service and another respondent suggested there should be provision for the Sheriff to make a decision based on written submissions alone.
103. A number of respondents, including the Sheriffs' Association, suggested that having the hearing as the default option and case management conferences as the exception could limit the number of cases where successful early settlement was achieved through judicial intervention.

Changes made

104. As references to first consideration have been removed, this Part has been renamed *What happens to a case*.
105. The rules have been adjusted so that there is no longer a presumption of proceeding directly to a hearing and whether the next step is a case management conference, a hearing or something else is at the discretion of the sheriff, guided by the principles of simple procedure and the available options.

Consultation question 22: Do you have any comments on the approach taken in Part 7: Orders of the Sheriff?

106. There was general support for including standard orders in the rules, which the Sheriffs Association regarded as a 'welcome development' and the Sheriffs Principal as 'helpful'. The Law Society of Scotland welcomed 'the simplicity of the orders' however the Money Advice Service commented that their inclusion may be confusing to party litigants.
107. South Lanarkshire Council thought there should be more detail about the consequences of failing to comply with orders.
108. Morton Fraser LLP and bto suggested that it would be helpful to party litigants if verbal orders were confirmed in writing.

Changes made

109. The rules have been adjusted to clarify the consequences of not following an order and to set out the purpose and effect of an unless order.

Consultation question 23: Do you have any comments on the proposed model for freezing and unfreezing cases?

110. The model for freezing and unfreezing cases was thought to be 'clearly laid out' by an in-court adviser and 'appropriate' by the Sheriff's Association. However, South Lanarkshire Council commented that party litigants were unlikely to understand or use the applications without advice.
111. SMASO thought these applications should be served not sent.
112. There was support for applications being dealt with on paper rather than at a hearing.
113. CAS suggested that guidance would be helpful on the factors the Sheriff will consider when deciding whether to freeze a case.

Consultation question 24: Do you have any other comments on the approach taken in Part 8: Applications by the parties?

114. Front Line Fife commented that this was a sensible approach that makes clear the action that a party is required to take.
115. A respondent suggested that there should be clearer provision for a third party procedure as there is a form for an application to become an additional party. It was also put forward that an option to abandon with no expenses due to or by either party would be useful.
116. Orkney CAB thought it would be helpful to include a table of what the claimant or responding party can make an application to the Sheriff for.
117. CAS and CAB Edinburgh commented that the rules applicable to all the applications could be set out at the beginning of the Part with explanations of specific applications following.
118. A number of respondents, including CAS, thought a general application asking the court to use its powers would be useful.
119. CAB Edinburgh and another respondent suggested the use of email for applications.

Changes made

120. The rules have been adjusted to include a form of 'other orders' application: the Incidental Orders Application.

Consultation question 25: Do you have any comments on the approach taken in Part 9: Documents and other evidence?

121. There was comment that this Part was set out clearly and also that further guidance on the lodging of documents and other evidence would be helpful, particularly lodging of additional evidence. The Law Society of Scotland thought examples with the online rules may be of use to court users.
122. The Sheriffs Principal suggested specifying a maximum number of documents and the Faculty of Advocates suggested using photographs for bulky productions.
123. Some respondents, including bto solicitors, thought lodging documents 14 days before a hearing might not be sufficient time for parties to examine evidence and consider settlement.

124. CAS suggested requiring parties to send copies of documents to the other party and another respondent thought it should be made clear whether party litigants would have to pay for copies of the other party's documents.

Changes made

125. The rules have been adjusted such that the Claim Form now provides for parties to explain the evidence they consider might support their claim, and for evidence to be lodged later in the process.

Consultation question 26: Do you have any comments on the approach taken in Part 10: Witnesses?

126. Some respondents, including FOIL and bto solicitors commented that citing witnesses on a seven day period of notice was not long enough.

127. The Sheriffs Principal thought that the consequences of witnesses not appearing should be clarified in the rules. CAB Edinburgh thought that who pays witness expenses should be set out clearly at the beginning of the Part. The Money Advice Service thought that who has responsibility for citing witnesses needed to be clarified.

128. CAS were concerned that this Part uses technical language, such as citation, that may be difficult for party litigants to understand.

129. The Faculty of Advocates suggested that definitions of 'child' and 'vulnerable witness' should be provided.

Changes made

130. The rules have been adjusted to extend the period for citing witnesses, consistent with the longer period now allowed for listing witnesses and listing and lodging evidence.

Consultation questions 27 and 28: Do you have any comments on whether the detailed provisions on documents, evidence and witnesses are necessary in the Simple Procedure Rules? And, if you think that any of this provision could be dispensed with (or any additional provision is necessary), please identify that provision.

131. The overall view was that these detailed provisions should be retained with one respondent commenting that they kept 'the procedure informal while providing for the requirements of fair notice'.

132. South Lanarkshire Council suggested that some of the detail about witnesses was unnecessary.

133. CAB Edinburgh thought the provisions were required and that more detail about the importance of evidence for parties would be helpful.
134. The Money Advice Service suggested that the rules on child and vulnerable witnesses could be dispensed with as they thought such cases were likely to be transferred to the ordinary cause procedure.

Consultation question 29: Do you have any comments on the approach taken in Part 11: The hearing?

135. There was comment that this Part was 'clear and well laid out' and the Forum of Scottish Claims Managers, together with a number of insurance companies, supported the approach to the hearing.
136. The Sheriffs' Association thought there would be a proof hearing in most cases where a response form is lodged and that this could increase court time for hearings. They also considered that including provision about evidence-giving at hearings would be useful.
137. A number of respondents, including Money Advice Scotland and CAS, suggested that adding details of what a hearing involves would be helpful to party litigants. The Edinburgh Housing and Advice Partnership thought it should be made clear whether there may be a continuation of the case at the hearing.
138. Yuill and Kyle noted that there does not seem to be provision permitting the Sheriff to grant decree or dismiss the case at the hearing.
139. The Scottish Mediation Network thought that information about resolving disputes by negotiation should be provided to parties at an earlier stage than the hearing.

Changes made

140. The rules have been adjusted to set out how evidence should be given at the hearing.

Consultation question 30: Do you have any comments on the approach taken in Part 12: The decision?

141. There was support for the approach taken in this Part including from the Forum of Scottish Claims Managers and a number of insurance companies.

142. A respondent suggested making it clear that 'it is the responsibility of the 'winning' party to enforce the decree' as there is a common misconception that the court is responsible for enforcing a decree.
143. SLAB suggests including provision for expenses in this Part and CAS thought the key time limit could be made more prominent.
144. SMASO commented that the decree form should state the information currently contained in decrees.
145. A number of respondents, including bto solicitors, thought it would be efficient if parties were able to agree revocation of a decision by consent, without the need for a hearing.

Changes made

146. The rules have been adjusted to allow for revocation, termed 'recall' in the final rules, of a decision by consent of both parties without a hearing.
147. A new Part, *Expenses*, has been added providing rules for the making of awards of expenses to the successful party.
148. A new Part, *How to enforce a decision*, has also been added providing rules for the enforcement of a decision.

Consultation question 31: Do you have any comments on the approach taken in Part 13: Other matters?

149. One respondent thought that this Part could be omitted and that the Sheriff could explain at the hearing if the case should be dealt with elsewhere.
150. The Faculty of Advocates, the Money Advice Service and South Lanarkshire Council thought that headings could helpfully highlight what the Part covers.
151. CAB Edinburgh suggested that guidance about when the Sheriff might transfer a case to another procedure would be helpful and bto solicitors thought provision for a party to ask the Sheriff to transfer a case should be included.

Changes made

152. The matters in this Part now appear towards the end of the rules in Part 17 *Miscellaneous matters*.

Consultation question 32: Do you have any comments on the approach taken in Part 14: Appeals?

153. The Forum of Scottish Claims Managers, and some insurance companies, supported the approach taken to appeals, while South Lanarkshire Council preferred the language used in the current rules.
154. Both CAB Edinburgh and Charles Hennessy, Strathclyde Law School, suggested it could be made clearer in the rules that an appeal can only be made on a point of law.
155. The Money Advice Service, CAB Edinburgh and Orkney CAB thought that 14 days was not long enough for a party litigant to seek legal advice for an appeal.
156. The Sheriffs Principal suggested that there should be provision for more than one appeal sheriff for appeals raising novel or complex points of law.

Changes made

157. The rules have been adjusted to provide that the Sheriff Appeal Court may hold appeal hearings in front of more than one Appeal Sheriff.

Consultation questions 33 and 34: Do you have any comments on the approach taken in Part 15: Forms? And, do you have any comments on any individual forms?

158. The forms were generally well-regarded with the Sheriffs Principal commending 'the approach taken to setting out the forms'. An in-court adviser thought they were 'clearer and more user-friendly than the current forms', Morton Fraser LLP commented that the wording was 'quite clear' and the Scottish Association of Law Centres said they were an 'improvement on the present situation'.
159. One respondent thought 'the large number of forms gave an impression of complexity' and South Lanarkshire Council commented that they were 'not user-friendly'.
160. Some respondents thought an index of forms would be helpful and SMASO took the view that they should be numbered.
161. The Equality and Human Rights Commission (EHRC) welcomed the use of electronic forms and commented that it would be important to ensure that forms are available in a variety of formats and through a number of channels to ensure wide accessibility.
162. Suggestions about the individual forms included adding guidance on jurisdiction to the Claim Form and asking for more specific information about the background to the dispute on both the Claim and Response Forms.

Changes made

163. The forms are numbered and indexed, and are now contained in a separate schedule to the rules.

Consultation questions 35 and 36: Do you have any comments on the proposal to include standard orders in the rules? And, do you have any comments on the terms of the standard orders included in the draft rules?

164. The inclusion of standard orders in the rules was generally well-regarded. The Forum of Scottish Claims Managers, and some insurance companies, thought they were 'sensible', the Sheriffs Association welcomed their inclusion and the Edinburgh Housing and Advice Partnership commented that listing standard orders helps 'demystify the process'. However, South Lanarkshire Council commented that they may not be understood by party litigants.
165. Some respondents, including CAS and CAB Edinburgh thought the standard orders could be separate from the rules, possibly in an annex.
166. Suggestions about the terms of the standard orders included defining technical terms in footnotes and making clear how many copies of documents are required for a hearing.

Changes made

167. The standard orders are now contained in a separate schedule to the rules.

Consultation question 37: Do you have any comments on the approach taken in Part 17?

168. A number of respondents, including the Forum of Insurance Lawyers and the Money Advice Service, thought that it would be helpful to party litigants to expand the table of definitions into a more extensive glossary of terms.
169. The Money Advice Service thought the rules on the administration of the procedure might be better placed elsewhere.
170. The Scottish Arbitration Centre suggested that there should be a duty for Sheriff Clerks to inform parties of the availability of arbitration and mediation.

Changes made

171. The interpretation section has been expanded into a glossary which now appears at the end of the rules in Part 21 with technical interpretation provision contained in the body of the Act of Sederunt, rather than the rules.

Consultation question 38: Do you have any other comments on the draft Simple Procedure Rules?

172. One respondent thought the rules rather lengthy for party litigants and South Lanarkshire Council commented they were not an improvement on the current rules.
173. The advice agencies suggested adding in signposting to advice and support and the Sheriffs Principal suggested including fees payable so party litigants need only refer to one document. The SCTS suggested adding provision for the procedure relating to expenses.
174. There was also support for the approach taken to ADR and case management.
175. The EHRC welcomed the simplified language, information on court procedures and reducing the cost of litigation, and asked that the needs of people with protected characteristics are borne in mind.
176. The Scottish Legal Complaints Commission strongly welcomed 'the approach taken in the draft rules and particularly the plain English used which communicates clearly without losing legal meaning'.

Changes made

177. There is a new Part 20 *Provisional orders* which contains rules required to support the forms of interim diligence available in a simple procedure case.

NEXT STEPS

178. The Access to Justice Committee considered the responses and determined that the Simple Procedure Rules should be revised in the light of them. The Committee considered the revised rules and recommended them to the Scottish Civil Justice Council, which submitted them to the Court of Session to be made by Act of Sederunt. A Scottish Statutory Instrument will be laid enabling the rules to come into force in November 2016.
179. Both the Committee and the Council are grateful to everyone who responded to the consultation exercise and who took part in the readability exercise and focus group. The responses have been of great assistance to them in the further development of the rules for the new simple procedure.

**CONSULTATION ON THE DRAFT SIMPLE PROCEDURE RULES –
LIST OF THOSE WHO RESPONDED**

- Association of Commercial Attorneys
- Association of Personal Injury Lawyers
- Aviva
- BLM
- bto solicitors
- Campaign for Housing and Social Welfare Law
- Charles Hennessy – Strathclyde University Law School
- Citizens Advice Edinburgh
- Citizens Advice Scotland
- Derek Edmunds
- Edinburgh Housing and Advice Partnership
- Equality and Human Rights Commission
- Faculty of Advocates
- Forum of Insurance Lawyers
- Forum of Scottish Claims Managers
- frontlineife
- Glasgow Bar Association
- Haddington CAB
- Law Society of Scotland
- Money Advice Scotland
- Morton Fraser LLP
- NFU Mutual

- Orkney CAB
- Peter Beaton
- Scottish Arbitration Centre
- Scottish Association of Law Centres
- Scottish Courts and Tribunals Service
- Scottish Legal Aid Board
- Scottish Legal Complaints Commission
- Scottish Mediation Network
- Shelter Scotland
- Sheriffs Association
- Sheriffs Principal
- Society of Messengers-at-Arms and Sheriff Officers
- South Lanarkshire Council
- Yuill and Kyle Limited
- Zurich Insurance plc
- Five individuals who asked for their names to be withheld