

# COURTS REFORM (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### THE ACT

#### Part 3 – Civil Procedure

#### *Chapter 6 – Vexatious proceedings*

#### *Section 100 – Vexatious litigation orders*

#### *Section 101 – Vexatious litigation orders: further provision*

170. Sections 100 and 101 replace and update the Vexatious Actions (Scotland) Act 1898. They retain the role of the Lord Advocate as guardian of the public interest, permitting the Lord Advocate to seek a “vexatious litigation order” from the Inner House of the Court of Session which requires the vexatious litigant to obtain the consent of a Lord Ordinary prior to raising a civil action (section 100(2)(a)). The test for obtaining an order from the Inner House and the test which requires to be met by a litigant in seeking permission from a judge of the Outer House remain mostly the same but have been updated with a more modern form of drafting (section 101(1) and (4) respectively). For the first time however, the Court in determining whether to grant a vexatious litigation order will be able to take into account the proposed vexatious litigant’s behaviour in proceedings outwith Scotland (section 101(2)).
171. The sections also allow the Lord Advocate to seek to prevent a vexatious litigant from taking a specified step in specified on-going proceedings (section 100(2)(b)). This power is based on the similar powers of the Attorney General of England and Wales in section 42 of the Senior Courts Act 1981 and the existing power of the Lord Advocate in 33(2)(b) the Employment Tribunals Act 1996. Further, the court may also determine that a vexatious litigation order has effect only for such a period as specified in the order (section 100(4)).
172. Subsections (6) to (8) of section 101 make provision permitting a court dealing with on-going civil proceedings that are halted by an order under section 100(2)(b) to make orders in those proceedings in consequence, including with regard to the disposal of those proceedings.

#### *Section 102 – Power to make orders in relation to vexatious behaviour*

173. Section 102(1) allows the Scottish Ministers to make regulations (subject to the negative procedure) to empower the courts to deal with vexatious behaviour. Scottish Ministers will require to consult the Lord President prior to making regulations.
174. This section is designed to empower the courts to deal with vexatious behaviour and abuse of process in a similar way to the use of Civil Restraint Orders (CROs) by the courts of England and Wales. CROs are part of the inherent powers of the courts of that jurisdiction and are a form of order which may be granted by them in response to unmeritorious applications or claims by a litigant. The effect of such orders is to require a litigant to obtain the permission of a specified judge or court (as the case may be)

*These notes relate to the Courts Reform (Scotland) Act 2014  
(asp 18) which received Royal Assent on 10 November 2014*

prior to making applications in a particular case or cases, or from raising actions, either generally or in specific courts. They are a flexible, court-led response to abuse of the court process, which can be tailored to ensure that the rights of the litigant in question are balanced against both the rights of the other parties to any action and the efficient operation of the court.

175. Despite section 102 there will continue to be a role for the Lord Advocate as guardian of the public interest (under section 100 and 101): it may be possible for a vexatious litigant, through a wide geographical spread of different actions, not to trouble one court sufficiently to trigger the court-led sanction, but in his or her behaviour overall, to trouble the system or one litigant in a variety of courts. That said, now that the courts will be given this power, it is expected that the number of actions required to be taken by the Lord Advocate will decrease.