

## **POLICY NOTE**

### **THE COURTS REFORM (SCOTLAND) ACT 2014 (CONSEQUENTIAL AND SUPPLEMENTAL PROVISIONS) ORDER 2015**

**SSI 2015 No. xxx**

The above instrument is made in exercise of the powers conferred by section 137 of the Courts Reform (Scotland) Act 2014 (“the Act”).

#### **Policy objectives of the Act**

The Act delivers an enabling framework to reform the civil courts both structurally and functionally in line with many of the recommendations of the Scottish Civil Courts Review. The policy objectives relating to the Act are fully described in the Policy Memorandum which accompanied the Bill for the Act (“the Bill”). The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/72771.aspx>

#### **Policy objectives of this instrument**

This Order contains provision in consequence of and supplementary to provisions of the Act. The policy objectives of this Order are principally to support the civil jurisdiction and competence of the Sheriff Appeal Court. The Scottish Government will be bringing forward commencement proposals in early course.

#### *Consequential provisions*

Section 109 of the Act abolishes appeals from the sheriff to the sheriff principal, and provides that any provision of an existing enactment which provides for an appeal to the sheriff principal from any decision of a sheriff in civil proceedings has effect as if for the reference to the sheriff principal there were substituted a reference to the Sheriff Appeal Court (Civil).

Article 3 makes provision about rights of audience before the Sheriff Appeal Court (Civil). Article 3 ensures that any person who had a right of audience before the sheriff principal in an appeal under such a provision will continue to have a right of audience in an equivalent appeal to the Sheriff Appeal Court (Civil). An exception is drawn for legislation in the form of acts of sederunt, which are proposed to be expressly amended in connection with rights of audience by new acts of sederunt.

Paragraphs 5, 7(2) and 9 of the Schedule make complementary textual amendments to antisocial behaviour and children’s legislation in the particular context of reporters’ rights of audience.

Paragraphs 2 and 4 concern two specific appeal provisions where the appeal is made to the sheriff principal rather than to the sheriff. Special appeal routes of this nature are not substantively affected by the Act (the Sheriff Appeal Court is not involved) therefore

paragraphs 2 and 4 simply update the cross-references to the applicable legislation for onwards appeals from decisions of sheriffs principal at first instance.

Paragraph 6 ensures that the Scottish Commission for Human Rights can continue to intervene in appeals against decisions of sheriffs when such appeals are heard by the Sheriff Appeal Court (Civil).

Paragraphs 3 and 7(3) consequentially update powers of the Scottish Ministers to make specific provision for appeals relating to children in secure accommodation by regulations. This is to ensure that appeals against decisions of sheriffs can be heard by the Sheriff Appeal Court (Civil) as is now the standard model for civil appeals.

Paragraph 8 of the Schedule amends the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 to remove a reference to the High Court which is potentially misleading following the transfer of summary criminal appeal jurisdiction to the Sheriff Appeal Court by section 118 of the Act on 22 September 2015. This provision is unconnected to the other provisions of the Order and concerns the Sheriff Appeal Court (Criminal) as further described in the Policy Note to the Courts Reform (Scotland) Act 2014 (Commencement No.3, Transitional and Saving Provisions) Order 2015 (S.S.I. 2015/247).

Article 5 of the Order provides that the provisions of the Schedule relating to civil appeals only apply to appeals arising on or after 1 January 2016.

#### *Supplemental provisions*

Article 2 ensures that sheriff officers may enforce orders or determinations of the Sheriff Appeal Court (Civil) under their existing commissions from sheriffs principal for particular sheriffdoms.

Paragraph 1 of the Schedule to the Order extends the Sheriff Courts Consignations (Scotland) Act 1893 Act from the sheriff court to the Sheriff Appeal Court (Civil) providing a framework for money consigned in the Sheriff Appeal Court (Civil) that will be familiar to clerks and practitioners. Amendments are in particular made to ensure that a separate consignment book is kept for the Sheriff Appeal Court (Civil).

The modifications in the Schedule to this Order are additional to those provided for in the Act itself, the Courts Reform (Scotland) Act 2014 (Consequential Provisions and Modifications) Order 2015 (S.I. 2015/700), the Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2015 (S.S.I. 2015/150) and the Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015 (S.S.I. 2015/338).

#### **Commencement**

The Order is scheduled to come into force on 1 January 2016.

## **Consultation**

Technical engagement on the drafting of the Order has been had with the Scottish Human Rights Commission and the Lord President's Private Office (particularly given interaction with the package of acts of sederunt that the Scottish Civil Justice Council is preparing). No formal consultation has taken place on the Order as it is being made as a consequence of the Act which has already been the subject of separate consultation exercises. The Scottish Government consulted on the Bill in early 2013. The consultations can be viewed on the Scottish Government website at [www.scotland.gov.uk/Publications/2013/02/5302](http://www.scotland.gov.uk/Publications/2013/02/5302) and [www.scotland.gov.uk/Publications/2013/05/6753](http://www.scotland.gov.uk/Publications/2013/05/6753)

The analyses of consultation responses, published on the Scottish Government website can be viewed at [www.scotland.gov.uk/Publications/2013/09/8038](http://www.scotland.gov.uk/Publications/2013/09/8038) and [www.scotland.gov.uk/Publications/2013/05/6753](http://www.scotland.gov.uk/Publications/2013/05/6753)

## **Impact Assessments**

An Equality Impact Assessment (EQIA) for the Bill was published on the Scottish Government website at <http://www.scotland.gov.uk/Publications/2014/03/9314> and the Bill was found to have no significant effects in relation to the protected characteristics.

## **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) for the Bill was signed by the Cabinet Secretary for Justice on 5 March 2014 and published on the Scottish Government website at [www.scotland.gov.uk/Resource/0044/00446226.pdf](http://www.scotland.gov.uk/Resource/0044/00446226.pdf). The Bill has no significant financial effects on the Scottish Government, local government or on business.

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