POLICY NOTE

THE SHERIFF COURT SIMPLE PROCEDURE (LIMITS ON AWARD OF EXPENSES) ORDER 2016

SSI 2016/

The above instrument is made in exercise of the powers conferred by section 81 of the Courts Reform (Scotland) Act 2014 ("the Act") and is subject to the affirmative procedure.

Background

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. Reform of the civil courts forms part of the Scottish Government and multi-agency programme, 'Making Justice Work'.

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.parliament.scot/parliamentarybusiness/Bills/72771.aspx

Policy Objectives

The order supports the introduction of the new simple procedure on 28 November 2016. Simple procedure is a new form of sheriff court procedure established by Chapter 1 of Part 3 of the Act and will replace the existing small claims and summary cause procedures. Simple procedure is designed to be a speedy, inexpensive and informal procedure, usable by people who do not have legal representation to sort out problems about matters of lower monetary value. New Simple Procedure Rules 2016 have been developed by the Scottish Civil Justice Council using plain language and a flow-chart to make the rules as straightforward as possible for users. Simple procedure is to be introduced in two phases with the first phase commencing on 28 November 2016.

Generally, the law of expenses in Scotland is that the unsuccessful party pays a portion of the successful party's expenses. However for small claims it has been recognised that the cost of obtaining legal representation will often be disproportionate to the sum sued for. Therefore the Small Claims (Scotland) Order 1988 restricts the recoverability of expenses in small claims by reference to the monetary value of the claim.

The key policy objective of the order is to preserve the effect of the Small Claims (Scotland) Order 1988 for equivalent simple procedure cases. Articles 2 and 3 of the order, which limit the award of expenses, restate article 4 of the 1988 Order. Article 4 of the order, which excepts personal injury and certain other actions from the limitation on the award of expenses, restates article 2(a) of the 1988 Order. The

1988 Order is proposed to be revoked, subject to savings provision for small claims raised before 28 November 2016.

Consultation

Technical engagement on the drafting of the order has been had with the Lord President's Private Office. 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.gov.scot/Publications/2013/02/5302 and www.gov.scot/Publications/2013/05/6753.

The analyses of consultation responses, published on the Scottish Government website can be viewed at www.gov.scot/Publications/2013/09/8038 and www.gov.scot/Publications/2013/05/6753.

Impact assessments

An Equality Impact Assessment (EQIA) for the Bill was published on the Scottish Government website at http://www.gov.scot/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.gov.scot/Resource/0044/00446226.pdf. The Bill has no significant financial effects on the Scottish Government, local government or on business.

Scottish Government
Courts Reform Team,
Civil Law and Legal System Division,
Justice Directorate
September 2016