

Business and Regulatory Impact Assessment

Title of Proposal

Shaping Scotland's Court Services:
The Sheriff Court Amendment Order 2013
The Justice of the Peace Courts (Scotland) Amendment Order 2013

Purpose and intended effect

• **Background**

The Scottish legal system is about to embark on the most significant changes in well over a century. This includes reforms arising from the reviews conducted by Lord Gill, Lord Carloway, Sheriff Principal Bowen and the current Victims and Witnesses Bill. These reviews not only deal with the redistribution of existing business, but have implications for how and where court services will be delivered in the future.

In addition, public sector funding is under severe pressure and the Scottish Court Service (“**the SCS**”) will see its budgets reduced: by 2014-15 their running cost budget will reduce by 20% in real terms and their capital budget will reduce from £20 million to £4 million. Substantial savings have already been made by the SCS including reducing staff numbers, court sitting days and streamlining services. However, continuing with cuts of this nature will reduce the SCS's ability to deliver a quality service.

• **Objective**

The SCS set out that to provide access to justice for the people of Scotland they need a court structure that does the following:

- reflects the planned reforms to the justice system
- improves the facilities and services for court users
- is affordable in the long term

These Orders take forward the recommendations of the SCS to close 7 Justice of the Peace Courts and 9 Sheriff Courts and co-located Justice of the peace (JP) courts and 1 Sheriff Court, as set out in the SCS consultation “Shaping Scotland's Court Services”¹. These recommendations have been accepted by the Scottish Ministers: they will allow the SCS to focus future investment across a smaller group of buildings while maximising the benefit of that investment in the services delivered to court users.

• **Rationale for Government intervention**

While the running of Scotland's Courts is undertaken by the SCS, independent of Scottish Ministers, it is the responsibility of Scottish Ministers to consider and make the necessary Orders to close courts.

The Scottish Ministers have accepted the recommendations and believe that they are consistent with their wider justice reform plans, and that there is no obvious way that SCS could make comparable savings with less impact on efficiency and access.

¹ http://www.scotcourts.gov.uk/docs/default-source/scs-consultation-court-structures/response_to_the_consultation_and_recommendationspdf.pdf

Consultation

- **Within Government**

These proposals form part of the wider justice reforms that are being undertaken as part of the Making Justice Work Programme which will improve the effectiveness and efficiency of the justice system generally. The programme brings together a range of reforms to the structure and processes of the courts, access to justice, tribunals and administrative justice. The programme has been developed, and is being delivered, with partners across the justice system, including the Crown Office and Procurator Fiscal Service, Scottish Court Service, Scottish Legal Aid Board and the Police.

- **Public consultation**

In preparing their proposals for consultation, the SCS engaged with the judiciary, their own staff, and other justice bodies. They also ran a series of events around the country to discuss ideas with the legal profession and representatives of other bodies that are associated professionally with the court system or represent the interests of court users.

The SCS then ran a formal public consultation from September to December 2012. This consultation received over 700 responses which were independently analysed. After consideration of the responses, the SCS produced their final recommendations for Shaping Scotland's Court Services which they published in April 2013. These were considered by Scottish Ministers who accepted the recommendations.

The consultation document, analysis and SCS response can be found on the SCS website (www.scotcourts.gov.uk) along with the consultation responses.

- **Business**

Though there has been no specific consultation with businesses, some legal firms, business organisations and third sector organisations responded to the SCS consultation.

Options

Option 1 – Do nothing

The Scottish Ministers agree with the SCS, particularly in light of reducing public budgets, that the status quo is not an option if we are to have a court structure that:

- reflects the planned reforms to the justice system;
- improves the facilities and services for court users; and
- is affordable in the long term.

Option 2 – Close the following courts

Option 2 involves closing the following courts and transferring each one's business to another court – the receiving court. Table A below lists the closing courts, the receiving courts, and the date of each closure and transfer.

TABLE A

Closing Sheriff Court	Receiving Sheriff Court	When
Arbroath	Forfar	31 st May 2014
Cupar	Dundee	31 st May 2014
Dingwall	Inverness	31 st January 2015
Dornoch	Tain	30 th November 2013
Duns	Jedburgh	31 st January 2015
Haddington	Edinburgh	31 st January 2015
Kirkcudbright	Dumfries	30 th November 2013
Peebles	Selkirk	31 st January 2015
Rothsay	Greenock	30 th November 2013
Stonehaven	Aberdeen	31 st May 2014

Closing JP court	Receiving court	When
Annan	Dumfries JP court	30 th November 2013
Arbroath	Forfar JP court	31 st May 2014
Cumbernauld	Coatbridge JP court	30 th November 2013
Cupar	Dundee JP court	31 st May 2014
Dingwall	Inverness JP court	31 st January 2015
Dornoch	Tain JP court	30 th November 2015
Duns	Jedburgh JP court	31 st January 2015
Haddington	Edinburgh JP court	31 st January 2015
Irvine	Kilmarnock JP court	30 th November 2013
Kirkcudbright	Dumfries JP court	30 th November 2013
Motherwell	Hamilton JP court	30 th November 2013
Peebles	Selkirk JP court	31 st January 2015
Portree	Sheriff court held at Portree	30 th November 2013
Stonehaven	Aberdeen JP court	31 st May 2014
Stornoway	Sheriff court held at Stornoway	30 th November 2013
Wick	Sheriff court held at Wick	30 th November 2013

- **Sectors and groups affected**

Option 1 – do nothing

Option 1 will not be feasible. The SCS is subject to a number of statutory controls on the way buildings are managed and developed, and many of the courts recommended to close are not fit for purpose. This places considerable pressure on the SCS's available resources and affects all court users who use those courts.

In some locations improvement is just not physically possible owing to the original design and structure of the building. The inequality in the standard of court facilities that already exists within the present structure, and the absence of any prospect of funding to address this comprehensively, means that SCS cannot guarantee the same standard of service to all communities. This creates a challenge in meeting the standards expected, and increasingly demanded, of a modern European court system.

Option 1 would have a neutral impact on local economies as it maintains the status quo. However, it is considered keeping these courts open would ultimately have a negative impact on users of the court system as a whole (i.e. across Scotland) - as the diversion of funding required to keep the courts proposed for closure constrains the ability of the remaining estate and system to modernise.

Option 2 – close the courts referred to in Table A

The responses to the consultation focused in great detail on negative impacts on court users, especially in relation to increased travel times, costs and inconvenience. Business organisations which responded to the consultation also argued that local firms may also be affected.

However, consolidation of the court estate both in terms of function as well as location will mean that some court users will make fewer trips to court (e.g., COPFS officers and solicitors may have to travel to fewer courts), lessening the overall impact. Moreover, fewer courts may also reduce the need for duty solicitors decreasing costs incurred by the Scottish Legal Aid Board. In addition, in some sheriff court areas travelling times for some court users to the new location will be less. It should also be noted that, as only approximately 5% of Scottish court business will be affected by these changes, only a relatively small number of individuals will be affected.

The closure of the JP courts where there is no sheriff courthouse may lead to economic impacts around the courts from where activity will be transferred in relation to reduced expenditure by court staff, the judiciary and those attending court (offset by increased activity in the location to which activity is transferred). However, this will be limited by the fact that none of the JP courts in question have permanent staffing, and none sits full time. Each is scheduled to sit for three days or fewer each week, with Annan sitting only once per month. The unemployment rate is slightly lower in Cumbernauld and Annan than the Scottish average of 4.9%. The unemployment rate in Irvine (6.8%) is significantly higher than the Scottish average which would suggest that Irvine might be least resilient to the change in activity.

The disestablishment of the JP courts at Portree, Stornoway and Wick will result in those courts' business being heard in the sheriff courts in the same locations and the economic impacts are therefore likely to be negligible.

The closure of sheriff and JP courts with low volumes of business may have economic impacts in the areas around the courts to be closed, resulting from reduced expenditure by court staff, the judiciary and those attending court (offset by increased expenditure in the locations to which activity is transferred). The impact on the areas in question will be limited by the fact that the courts sit on a relatively low number of days – less than 50 per year in all cases, except Kirkcudbright. Over time, other economic activity may replace the activity in these empty court buildings.

With the exception of Rothesay, the unemployment rates of the travel to work areas in question are below the Scottish average of 4.9%. Rothesay's higher than average unemployment rate – together with the lower than average employment rate – suggest that Rothesay could be less resilient to changes in activity than other areas. However, the impact is likely to be limited by the very low (44) number of sitting days. In all cases employment in question is a very low percentage of employment in travel to work area.

The closure of the sheriff courts in close proximity to another is likely to have the greatest impact on the local economy. All the courts in question have permanent staff and the number of sitting days are also relatively high. However, this reduction in activity should be offset by increased activity in the location to which activity is re-located – and alternative uses for the court buildings are likely to be found over time.

The majority of the locations proposed for closure present employment rates above the Scotland average of 70.8%. With the exception of Arbroath, the travel to work areas within which the courts in question sit all have employment rates higher than the Scottish average - and unemployment rates lower than the Scottish average. These areas therefore should be resilient to changes in economic activity.

- **Benefits**

Option 1 – do nothing

Maintaining the status quo does not offer benefits to SCS. Keeping courts open which have been identified for closure will permit existing use to continue, but many of these courts do not have the facilities and services expected in a modern court service. They are not fit for purpose and are under-used.

Option 2 – close the courts referred to in Table A

The present fragmented and outdated court system, where many smaller courts are not fit for purpose and are under-used, is no longer sustainable in the current economic climate. Restructuring the court structure in the manner envisaged in Option 2 will allow the SCS to target resources better to maintain the remaining court estate in a fit condition, and to invest in improved facilities and technology for the best interests of court users, including provision for vulnerable and disabled court users.

Option 2 will deliver a range of financial benefits for the SCS, including immediate cash savings, namely:

- savings on building maintenance, rates, utilities and other running costs for court buildings that are closed with business, staff and judiciary redeployed elsewhere;
- operational savings, for example reduced expenditure on copies of legal publications and IT costs across a smaller number of locations; and
- savings on judicial and staff travel and subsistence.

There will also be one-off savings and benefits, including:

- substantial backlog maintenance costs, to address significant maintenance and investment issues, will be avoided across a number of sites identified for closure; and
- the release of one-off capital receipts from building sales.

On-going maintenance is a key consideration. With reduced capital funding available across the current court estate (down from £20.4 million in 2010/11 to £4 million by 2014/15), there is increased risk of maintenance and building compliance issues across the estate - and even of a significant failure resulting in a building or buildings being unavailable for operational use with the resultant impact on the progress of court business.

Taken together we estimate that the proposals in this paper, once implemented in full, will deliver recurring annual cash running cost savings of £1 million a year. The proposals would also deliver one-off savings on estimated backlog maintenance costs for the courts identified for closure of £3 million. The total value of possible capital receipts*, subject to final sale values, is estimated conservatively at around £2.2 million overall.

***Note:** Capital receipts are dependent on the ultimate sale value of any buildings that are sold. Based on independent advice, and experience from previous court building disposals, SCS have made a cautious overall estimate of the potential sale value of those buildings owned and identified for possible closure. Capital receipts from building sales can be used only for limited purposes within the year in which they are received. They have not, therefore, been included as a significant element of the financial justification for these proposals, but will offer resources for reinvestment into the remaining estate.

- **Costs**

Scottish Court Service

Option 1 – do nothing

Maintain the status quo which would require annual running costs of £1m and £3m in backlog maintenance. This would also mean that estimated capital receipts of over £2m could not be realised.

Option 2 – close the courts referred to in Table A

The proposals will not reduce the overall levels of activity within Scotland's courts, but will realign where that business is undertaken. In some cases, staff and judiciary will transfer to new locations. The overall economic impact of these proposals at an all-Scotland level should, therefore, be broadly neutral.

There would be the following costs to the SCS:

- estimated one off restructuring costs: £700,000
- estimated costs of constructing additional capacity: £900,000
- short-term annual retention costs pre-disposal: £108,000

The costs associated with estate disposals (e.g. legal, valuation, advertising and estate agent costs) have not been calculated as many of these are dependent on the value of building disposed. A valuation exercise of these costs will be undertaken for the Impact Assessment at the implementation stage. These costs will be offset by any sales of premises.

Scottish Government

The costs on the Scottish Government are minimal, namely the cost of preparing legislation.

Local authorities

There are no costs on local authorities except in some cases for a small increase expenses related to travel to slightly more distant courts for staff involved in court cases.

Scottish Firms Impact Test

Local firms may be affected as highlighted by the business organisations that responded to the consultation. The closure of the JP courts where there is no sheriff courthouse may lead to economic impacts around the courts from where activity will be transferred in relation to reduced expenditure by court staff, the judiciary and those attending court (offset by increased activity in the location to which activity is transferred). However, this will be limited by the fact that none of the JP courts in question have permanent staffing, and none sit full time. Each is scheduled to sit for three days or fewer each week, with Annan sitting only once per month.

The disestablishment of the JP courts at Portree, Stornoway and Wick will result in those courts' business being heard in the sheriff courts in the same locations and the economic impacts are therefore expected to be negligible.

The closure of sheriff and JP courts with low volumes of business may have economic impacts in the areas around the courts to be closed, resulting from reduced expenditure by court staff, the judiciary and those attending court (offset by increased expenditure in the locations to which activity is transferred). The impact on the areas in question will be limited by the fact that the courts sit on a relatively low number of days – fewer than 50 per year in all cases, except Kirkcudbright. In reality, very few people out of the general population actually attend court sittings and most people only attend court on one or two occasions in their lives – the economic impact of closure will therefore be very limited. Over time, other economic activity may replace the activity in these empty court buildings. In Peebles for example, the former sheriff court is now occupied by three businesses, a hair salon, restaurant and book shop.

The closure of the sheriff courts in close proximity to another is likely to have the greatest impact on the local economy. All the courts in question have permanent staff and the number of sitting days are also relatively high. This reduction in activity should be offset by increased activity in the location to which activity is re-located – and alternative uses for the court buildings are likely to be found over time. However, a relatively small proportion of the population attend court and so the economic impact will again be limited. Many similar and larger communities function without a local court and the existence of a court in some locations is more a reflection of the difficulties of travel in Victorian times or before rather than the size of modern population.

As regards impact on local solicitor firms, it is considered while there may be some economic impact, firms are unlikely to concentrate solely on court work and will have diversified into various other areas of law.

- **Competition Assessment**

Not applicable

- **Test run of business forms**

Not applicable

Legal Aid Impact Test

- ***Closure of JP courts where there is no sheriff courthouse***

The number of cases being heard in these courts is very small, and the number of these cases which will have the benefit of legal assistance will be even smaller. However, there may be a very small increase in the travelling costs associated with these cases.

- ***Closure of JP courts at Portree, Stornaway, and Wick and transfer of business to the sheriff courts in those locations***

This would have some cost implications for the legal aid as higher fee rates are paid for sheriff court cases. In summary criminal legal aid, the average cost of a sheriff court case is £274 more than a JP court case. In Assistance by Way of Representation (ABWOR) cases the difference is £406.

- ***Closure of sheriff courts with low volumes of business***

The courts in question accounted for 0.9% of all civil legal aid cases, 0.3% of all solemn criminal legal aid cases, and 0.6% of all summary criminal legal aid cases in 2010/11. Overall, it is anticipated that a marginal increase in legal aid travelling costs will result from these closures.

- ***Closure of sheriff courts in proximity to each other***

The courts in question accounted for 6.2% of all civil legal aid cases, 3.1% of all solemn criminal legal aid cases, and 3.7% of all summary criminal legal aid cases in 2010/11. Overall, we have anticipated a marginal increase in legal aid travelling costs associated with these closures.

- ***Summary – sheriff court closures***

The Scottish Legal Aid Board has estimated that there would be a marginal increase in legal aid travelling costs associated with the court closures of around £10,000 to £15,000 per annum.

Enforcement, sanctions and monitoring

Not applicable

Implementation and delivery plan

The proposal involves closing the courts referred to in Table A and transferring their business to the relevant receiving court.

Post-implementation review

The Scottish Government and SCS will continually review the changes as further plans are implemented modernising Scotland's court services.

Declaration and publication

Signed:

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