

EQUALITY IMPACT ASSESSMENT - RESULTS

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| Title of Policy | Sheriff Personal Injury Court (Section 41 order under the Courts Reform (Scotland) Act 2014) |
| Summary of aims and desired outcomes of Policy | To establish a Sheriff Personal Injury Court in Edinburgh sheriff court to hear personal injury claims. |
| Directorate: Division: team | Justice; Civil Law & Legal System; Courts Team. |

Executive summary

The Courts Reform (Scotland) Act 2014 (“the 2014 Act”) takes forward many of the recommendations arising from the Scottish Civil Courts Review (“SCCR”).

The 2014 Act provides for a more efficient and effective civil justice system where users should experience fewer unnecessary delays in resolving disputes, more proportionate costs and clearer routes to access to justice. An effective civil justice system should benefit, either directly or indirectly, all sections of society.

The 2014 Act sets out a framework enabling the reforms within which the court rules will add the necessary detail to implement many of the measures – the Scottish Civil Justice Council (including input from its committees) is engaged in a project to rewrite the rules of court. The Scottish Courts and Tribunals Service (“SCTS”)¹ will also play a key role in the implementation of several aspects of the reforms.

Section 41 of the 2014 Act permits the Scottish Ministers to provide by order that the jurisdiction of a sheriff in a specified sheriff court extends throughout Scotland for the purpose of dealing with specified types of civil proceedings. It is this provision which permits the establishment of a

¹ On 1 April 2015, the Scottish Court Service was amalgamated with the Scottish Tribunals Service to form the Scottish Courts and Tribunals Service. This EQIA uses the latter name throughout.

Sheriff Personal Injury Court (“SPIC”) in Edinburgh Sheriff Court, though it would also allow other courts with similar or other specialist jurisdictions to be established in any other sheriff court in Scotland if this were desired. This Equality Impact Assessment (“EQIA”) is concerned with the section 41 Order in 2015 to create a SPIC at Edinburgh Sheriff Court.

This report provides and updates the results of the EQIA undertaken for the introduction of the Bill for the 2014 Act (“the Bill”) in relation to the proposals to set up an all-Scotland SPIC². This EQIA identified that the proposals in the Bill appear to have no significant differential effect on the basis of any of the protected characteristics. Whilst some minor effects may be present, they are not considered to have a disproportionate impact.

Background

The 2014 Act is part of the Scottish Government’s Making Justice Work (“MJW”) programme which states, “The Scottish justice system will be fair and accessible, cost-effective and efficient, and make proportionate use of resources.” The Act will increase the efficiency and effectiveness of the courts system.

In particular the Act contributes to the realisation of the following outcomes.

- National Outcome 1 on living in a Scotland that is the most attractive place for doing business in Europe.
- National Outcome 11 on resilient communities by increasing public confidence in justice institutions and processes.
- National Outcome 16 on high quality, continually improving public services that are efficient and responsive to local people’s needs.

In November 2005, the Civil Justice Advisory Group recommended that aspects of the civil justice system in Scotland be reviewed including whether there was a need for specialisation among courts or judges and the manner in which specialisation might be organised. Subsequently, in 2007, Scottish Ministers commissioned the SCCR with a view to improving access to civil justice in Scotland, promoting the best use of resources and ensuring that cases are dealt with in ways which are proportionate to the value, importance and complexity of the issues raised.

In September 2009, the then Lord Justice Clerk and now Lord President of the Court of Session, Lord Gill, published the report. It recommended

² <http://www.gov.scot/Publications/2014/03/9314>

substantial changes to modernise and improve the structure and operation of Scotland's civil courts including the introduction of a sheriff court that would function as a SPIC.

In November 2010, the Scottish Ministers accepted the vast majority of the SCCR's recommendations including the introduction of a SPIC. The 2014 Act delivers most of the recommendations that the Scottish Ministers accepted.

The Act sets out a package of measures including:

- the transfer of a proportion of lower value business out of the Court of Session giving it the status it deserves as the senior civil court;
- a new SPIC, replicating many of the advantages of the central hub currently in the Court of Session;
- a new Sheriff Appeal Court hearing summary criminal appeals from sheriff and JP courts and civil appeals from sheriff courts, reducing the number of criminal and civil appeals which require to be dealt with in the High Court and Inner House of the Court of Session respectively;
- new "summary sheriffs" in the sheriff courts, with the same qualifications as sheriffs, will focus on many civil proceedings adopting an interventionist approach. They will also hear summary criminal cases and bail applications;
- specialist sheriffs and/or specialist summary sheriffs will be introduced in specific areas of law such as family, personal injury ("PI"), housing or commercial; and
- new procedures for judicial review cases in the Court of Session will be introduced including a three month time limit to raise proceedings, as well as a requirement to obtain permission to bring the case, in order that challenges to the decisions of public bodies are made promptly and resolved quickly.

The Scope of the EQIA

The Scottish Government examined a wide variety of data sources in order to ascertain the impact of the policy behind the Bill on the protected characteristics, and on equality matters in general. Responses to the consultations on the Bill as well as stakeholder meetings and an EQIA workshop were also drawn on during the EQIA process.

The purpose of carrying out an EQIA is to aid the Scottish Government in discharging its Public Sector Equality Duty under section 149 of the Equality Act 2010. The protected characteristics that must be profiled against the policies are:

- Age (incl. children);
- sex; pregnancy and maternity
- disability;
- race;
- religion or belief;
- gender reassignment; and
- sexual orientation; marriage and civil partnership (to the extent to which the policy or practice relates to work)

In 2007, the team preparing the SCCR ran a consultation that informed the final review report receiving over 200 responses.

A consultation on the main policy proposals in the Bill including a draft Bill and draft explanatory notes was held from 27 February 2013 – 24 May 2013 including questions on the impact of each proposal as well as an equality impacts question: “Please tell us about any potential impacts, either positive or negative, you feel any or all of the proposals in this consultation may have on a particular group or groups of people.” There were 115 responses to the consultation paper, 99 from organisations and 16 from individuals. There was support for almost all proposals detailed in the consultation from the written responses. On 27 June 2013 the Scottish Government published the non-confidential consultation responses and on 13 September 2013 it published an independent analysis by ‘Why Research’. The links to these documents are as follows.

[Consultation paper](#)

[Consultation responses](#)

[Analysis of consultation responses](#)

There was a good range of responses from the judiciary, the legal profession, consumer and advocacy bodies, and public bodies.

Three events were held in the summer of 2012 for stakeholders to discuss the various proposals in the Scottish Civil Courts Review. One of these events related to the proposed change to the exclusive competence of the sheriff court and another regarding the criminal aspects of the Bill, including the proposed criminal competence of summary sheriffs and the

Sheriff Appeal Court. These are relevant because the establishment of a SPIC is part of a package that aims to transfer cases out of the Court of Session in order to reduce the cost of and the time involved in litigation and so improve access to justice. The other main elements in the package are the raising of the exclusive competence of the sheriff court and the establishment of the Sheriff Appeal Court.

In April and May 2013, over 100 people attended three further stakeholder events to discuss the issues raised in the draft Bill and consultation in Aberdeen, Edinburgh and Glasgow. Those attending included family lawyers, PI lawyers, family stakeholder groups, consumer groups, insurers, the judiciary, the Law Society of Scotland, the Scottish Legal Aid Board, Crown Office and the Procurator Fiscal Service, the Scottish Courts and Tribunals Service and local councils.

The Scottish Courts Service provided business cases on the various proposals in the Bill in assisting the Scottish Government to model their impact. This informed the Scottish Government's Financial Memorandum that accompanied the Bill.

Stakeholders key to implementation of the reforms have been kept involved in the developing proposals including the Scottish Courts & Tribunals Service, the Scottish Legal Aid Board, the Crown Office and Procurator Fiscal, and Judicial Office (the latter are responsible for supporting the Lord President in his role as head of the Scottish judiciary).

Policy officials undertook an EQIA framing exercise and a framing workshop on the Bill, facilitated by Scottish Government Justice Analytical Services, to identify those upon whom the policy may have an impact. From the results of the workshop, analysts and policy officials worked together to identify and, where possible, fill any evidence gaps, to ensure that the EQIA that was developed was evidence based.

Policy officials examined evidence from a range of studies, reports and discussions, including the:

- Scottish Government Equality Evidence Finder;
- Scottish Government Civil Law Statistics in Scotland 2012-13;
- interactive dataset for Civil Judicial Statistics Scotland - time series 2008-09 to 2011-12;
- Scottish household survey 2007;

- Experience of civil law problems in Scotland 1997-2004;
- Office of the Public Guardian website – statistics April 2012 - March 2013;
- Scottish Legal Aid Board, Single equality scheme: annual report 2011;
- Scottish Court Service court user survey 2011;
- Scottish crime and justice survey 2010-11;
- Scottish Government criminal proceedings in Scotland 2011-12;
- domestic abuse recorded by the police in Scotland statistics 2012-2013; and
- Law Society of Scotland survey 2006.

Impacts of the policy measures against the protected characteristics are profiled under the section on “key findings”.

Drawing on the previous work which informed the EQIA for the Bill and updating it in line with developments during the passage of the Bill and plans for implementation for the Act we provide the following results below.

Provisions related to the transfer of business and the SPIC

- The Act gives the Court of Session the status it deserves as Scotland’s most senior civil court.
- A new SPIC will replicate many of the advantages of PI cases currently being centralised to a large extent in the Court of Session in Edinburgh, so providing a specialist forum and ensuring that cases are heard at an appropriate level of the system with proportionate costs and reducing unnecessary delays for litigants.

By raising the exclusive competence of the Court of Session to £100,000, based on SCTS profiling, and reported in a letter to the Justice Committee from the Scottish Government on 23 September 2014, approximately 1,855 or 70% of the PI cases currently raised in the Court of Session per annum including many cases with a lower financial value are expected to be raised in the SPIC and local sheriff courts after the raising of the exclusive competence. The SPIC will offer a dedicated forum including replicating many of the benefits that are currently the basis for practitioners using the Court of Session so it is expected to

become the forum of choice for the majority of these cases. The SPIC will provide a central forum in Edinburgh with specialist sheriffs, e-motions, civil jury trials and specialist PI procedures and rules of court.

The next few paragraphs will set out an explanation of what this change is likely to mean for the distribution of PI cases to different courts, for ease of reference, as a precursor to any travel impacts mentioned under each of the specific protected characteristics in the “key findings” section.

PI cases will be subject to the following changes to arrangements on implementation of the reforms in the Act.

- At present, PI³ actions for claims of above £5000 may be raised in the sheriff court or the Court of Session. Those below £5,000 may only be raised in the sheriff court. This situation results in many low value PI cases being raised in the Court of Session.
- Under the new regime, PI claims below £100,000 will only be able to be raised in the SPIC or the sheriff court and will no longer be able to be raised in the Court of Session.
- Parties with PI claims above £100,000 will be able to raise them in the sheriff court, the SPIC or the Court of Session.
- Under the new arrangements, accident at work cases⁴ above £1,000 may be raised in the SPIC but those under £1,000 must be raised in local sheriff courts where the sheriff will decide, based on the importance or difficulty of the case whether it may be transferred to the SPIC. Cases dealt with in a local sheriff court may be heard before a specialist PI sheriff.⁵
- SCTS modelling suggests that a high proportion of PI actions above £5,000 that would previously have been heard in the Court of Session are likely to be heard in the SPIC after the reforms.
- The SPIC in Edinburgh will replicate the *status quo* to the extent that many PI cases below £100,000 currently heard in Edinburgh are likely to continue to be heard in Edinburgh (albeit at present they are heard in the Court of Session and in future will be raised in the SPIC). Travel impacts are therefore not expected for these cases.

³ The definition of personal injury is taken from established rules of court.

⁴ These are defined by reference to the Health and Safety at Work etc. Act 1974.

⁵ The sheriffs principal with reference to the Lord President’s designation of specialist categories may designate sheriffs or summary sheriffs as specialists in these categories in their sheriffdoms.

- However, parties with PI claims below £100,000 are likely not only to consider travel implications but also expertise as factors relevant to their decision about whether to raise their case in a local sheriff court (possibly in front of a specialist PI sheriff) or in the SPIC in Edinburgh.

One of the benefits of the SPIC is that the use of counsel (i.e. an advocate or solicitor advocate) is not mandatory as it is in the Court of Session and solicitors may be used instead. Counsel must be employed in the Court of Session, making the process more costly, especially where claims of lower financial value are, in our view, raised unnecessarily in the Court of Session. Parties are able to apply to the sheriff in the local court or the SPIC for sanction for Counsel which the sheriff is able to grant if they consider the request reasonable subject to a special statutory test (see section 108 of the Act). However, that being said, it is considered likely that in many asbestos cases for example, most of which are generally above £100,000 (where counsel will be mandatory in the Court of Session), but even for those that are not, the complexity of the cases is likely to be such that sanction for counsel will be granted. Scottish Ministers stated this several times on the record during the passage of the Bill.

Key findings

Age (incl. children)

The only finding related to the creation of the SPIC is that the elderly and less mobile might be impacted in terms of the relative accessibility of the court buildings involved (see the disability section below). Impacts on children have also been considered as part of this assessment.

Sex (incl. pregnancy and maternity)

- In 2012-13, road traffic accidents (“RTAs”) made up 54% of all the PI cases disposed of in the civil courts, and accident at work cases made up 20%.
- In terms of those cases described as accident at work cases, 262 such cases below £5000 were initiated and disposed of in the sheriff courts in Scotland in 2012-13. 397 accident at work cases under the

Ordinary Cause procedure were initiated and disposed of in the sheriff courts in Scotland in 2012-13. 797 accident at work cases were initiated and disposed of in the Court of Session in 2012-13.

- Statistics suggest that RTAs affect males more often than females and that men are more likely to raise a PI claim.
- The statistics also suggest that accidents at work are more likely to affect workplaces with a higher proportion of men than women.
- The policies for lower value PI cases to be raised in the sheriff court/SPIC rather than the Court of Session, including arrangements in the SPIC for specialist PI sheriffs, specialist rules, e-motions, civil jury trials and better case flow management mean that there will be resulting potential benefits of reduced costs and delays and a potential reduction in travel (depending on where parties wish to raise their PI cases where they have a choice of doing so) which are expected to be of equal benefit to all those involved in PI cases, regardless of gender. Specialist PI rules will be available in local sheriff courts, as may specialist PI sheriffs/summary sheriffs. In time, the SCJC plans to introduce Pre-Action Protocols to help facilitate swift and timely settlement of PI cases.
- Since more men than women are involved in both RTAs and accident at work cases, more men than women are likely to benefit but only to the extent to which they make up the population of those involved in PI claims.

Disability

The prevalence of civil legal problems is statistically higher for disabled people at 32% as opposed to 23% in the general population. They should benefit from the projected benefits of courts reform to the extent to which they make up the population of those involved in civil cases (including PI cases).

In terms of accessibility to Edinburgh Sheriff Court, disabled parking is available and there is wheelchair access to the building and all but one small courtroom. A loop induction service is available for the hard of hearing. Accessible means of contacting the court are available: for example phoning using a sign language interpreter. An additional courtroom is currently being added into the courthouse which will take the total number of courtrooms available to 18. The sittings of the SPIC will be allocated to one of those courtrooms (the new court 18) as part of the general civil court programme.

Where parties wish to raise their PI cases in the SPIC (rather than a local sheriff court) which previously they would have chosen to raise in the Court of Session there will be negligible travel impacts as both courts are in Edinburgh. Where parties wish to raise their claims in a local sheriff court they may have to travel less far than to the SPIC, although it is acknowledged by stakeholders that the expertise of the SPIC will be attractive to many parties so travel is not the only factor when parties decide which court they wish to raise these actions in. If they would have previously raised their action in their local sheriff court but now wish to do so in the SPIC there could be negative travel impacts. However, based on SCTS statistics supplied during the preparation of the Bill replicated in the Financial Memorandum for the Bill, most of the cases raised in the SPIC will formerly have been raised in the Court of Session.

Religion or belief

The EQIA identified no impacts in relation to religion or belief.

Race

During their lifetime, 33% of people classified as belonging to ethnic minorities are involved in civil legal disputes in Scotland as opposed to 25% of the general population. Those belonging to ethnic minorities could benefit to the extent to which they make up the population of those involved in civil cases (including PI cases).

Gender reassignment

The EQIA identified no significant impacts in relation to gender reassignment.

Sexual orientation; marriage and civil partnership

The EQIA identified no significant impacts in relation to the characteristics.

Recommendations and conclusion

The overall purpose of the Act is to attempt to tackle a civil justice system where there are unnecessary delays and disproportionate costs and improve it so that there are fewer delays and more proportionate costs. The key measure delivering this is the raising of the exclusive competence of the sheriff court, supported by several other measures, notably the creation of the SPIC, underpinned by other measures including specialisation. The SPIC is therefore expected to benefit all parties involved in PI claims in the civil justice system. No disproportionate impacts relating to the protected characteristics were identified. To the extent that

some groups benefit more than others in relation to certain measures, this is owing to their over-representation in the affected population rather than as a result of any differential treatment on the basis of the protected characteristics.

In that the SPIC is to be in Edinburgh, and as much of its business will be actions that would have been previously raised in the Court of Session in Edinburgh, there is expected to be little impact on travel. Where a litigant chooses to raise an action in a local sheriff court (possibly with a specialist PI sheriff) this may have either a positive or negative impact on the parties depending on whether their travel time and distance is greater to the local sheriff court or to Edinburgh. However parties have the option of weighing up below £100,000 PI claims (excluding the special arrangements for accident at work cases below £5000 and below £1,000) travel to a local court/SPIC and the expertise of the different fora and making their own choices.

The Scottish Government will monitor implementation through the MJW Programme Board including the SCTS, the Judicial Office, the Scottish Legal Aid Board and the Crown Office and Prosecution Service. The Scottish Government will have due regard to regular data it receives from SCTS. The case management system being introduced in 2016 is expected to be helpful in this context.

Annex – relevant civil court statistical data

The following tables and charts give the data that are relevant to the introduction of an all-Scotland SPIC and the transfer of PI cases from the Court of Session to this new specialist sheriff court.

Table 1 gives details of PI cases initiated and disposed of¹ in the civil courts² by case type between the years 2008-09 and 2012-13.

Table 1

| Cases | Case type | 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 | % change on 2011-12 |
|------------------|------------------------|--------------|--------------|--------------|--------------|--------------|---------------------|
| Initiated | Road traffic accident | 3,441 | 4,637 | 5,790 | 4,614 | 5,106 | 11 |
| | Accident at work | 1,921 | 1,844 | 1,802 | 1,751 | 1,758 | 0 |
| | Other | 1,211 | 2,559 | 955 | 931 | 1,190 | 28 |
| | Asbestos | 242 | 541 | 345 | 294 | 436 | 48 |
| | Clinical negligence | 173 | 235 | 242 | 256 | 235 | -8 |
| | Total initiated | 6,988 | 9,816 | 9,134 | 7,846 | 8,725 | 11 |
| Disposed | Road traffic accident | 1,588 | 2,977 | 4,607 | 4,619 | 4,130 | -11 |
| | Accident at work | 1,343 | 1,596 | 1,529 | 1,627 | 1,570 | -4 |
| | Other | 2,193 | 1,343 | 1,074 | 1,775 | 1,444 | -19 |
| | Asbestos | 214 | 181 | 168 | 216 | 365 | 69 |
| | Clinical negligence | 32 | 104 | 124 | 133 | 154 | 16 |
| | Total disposed | 5,370 | 6,201 | 7,502 | 8,370 | 7,663 | -8 |

1. Figures for initiations and disposals do not necessarily refer to the same cases.

2. Includes Court of Session and sheriff court

Table 2 gives a breakdown of and comparison between PI cases¹ initiated and disposed of² in the Court of Session and the sheriff court in the year 2012-13

Table 2:

| Case type | Court of Session | | Sheriff court | |
|-----------------------|------------------|--------------|---------------|--------------|
| | Initiated | Disposed | Initiated | Disposed |
| Road traffic accident | 821 | 797 | 4,285 | 3,333 |
| Accident at work | 894 | 911 | 864 | 659 |
| Asbestos | 404 | 350 | 32 | 15 |
| Clinical negligence | 154 | 100 | 81 | 54 |
| Other | 528 | 602 | 662 | 842 |
| Total | 2,801 | 2,760 | 5,924 | 4,903 |

1. PI cases are raised under a specific court procedure. Either party can request permission from the court to opt out of this procedure and use the ordinary procedure.

2. Figures for initiations and disposals do not necessarily refer to the same cases.

PI cases transfer

Table 3 shows that the cases expected not to be raised in the Court of Session after the exclusive competence is raised including PI cases account for around a less than 3% increase in the total volume of civil cases currently dealt with across sheriff courts (but represent around half of all cases currently in the Court of Session). The data shown is for the year 2012-13

Table 3

| | Court of Session | | Sheriff court | | Total |
|--------------------|--------------------|-------------|-----------------|--------------|---------------|
| | Count | Percentage | Count | Percentage | |
| Civil caseload | 4,754 | 6% | 80,502 | 94% | 85,256 |
| Expected shift | -2,273 (-47.8%) | | 2,273 (2.8%) | | |
| Post reform | 2,481 | 2.9% | 82,775 | 97.1% | 85,256 |

This table gives SCTS estimates of civil caseload split between Court of Session and sheriff court. Of the 2,273 cases expected no longer to be raised in the Court of Session after the reforms, by far the majority (1,855) are expected to be PI cases. The majority of these cases are expected to be dealt with centrally at the specialist PI court, rather than being redistributed across sheriff courts. This would leave around 418 cases to be heard across the network of sheriff courts throughout Scotland.

67% of all PI actions before the reforms are currently being heard in the sheriff courts, with 33% of cases being managed within the Court of Session.

Table 4 and the accompanying piechart illustrate the proportion of cases registered in the Court of Session before the reforms that are PI cases. The figures shown are an average for the three judicial years from 2011-12 to 2013-14.

Table 4

| | |
|-----------------|--------------|
| Personal injury | 2,668 |
| Other | 2,273 |
| Total | 4,941 |

Cases registered in Court of Session
(avg 2011-12 to 2013-14)

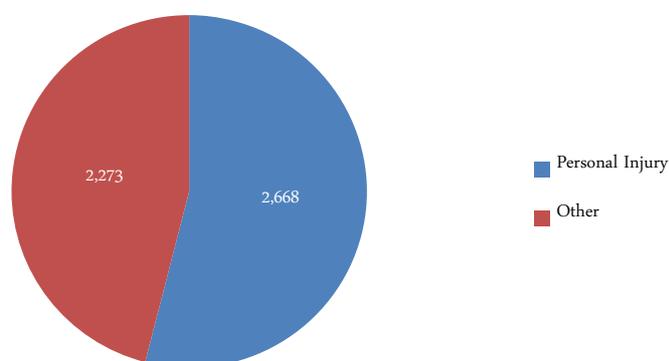


Table 5 shows the value of PI cases initiated in the Court of Session for the three legal years from 2011-12 to 2013-14.

Table 5

| Value of Case | 2011-12 | 2012-13 | 2013-14 | Average |
|--------------------|---------|---------|---------|---------|
| More than £100,000 | 695 | 1076 | 667 | 813 |
| Less than £100,000 | 1,840 | 1,871 | 1,854 | 1,855 |

Approved by.....

Title...Deputy Director, Civil Law & Legal System.....

Date...20 May 2015.....