

POLICY NOTE

THE ALL-SCOTLAND SHERIFF COURT (SHERIFF PERSONAL INJURY COURT) ORDER 2015

SSI 2015/213

The above instrument was made in exercise of the powers conferred by sections 41(1) and 133(1) of the Courts Reform (Scotland) Act 2014 (“the Act”) and article 5 of the Courts Reform (Scotland) Act 2014 (Consequential Provisions and Modifications) Order 2015. The instrument is subject to negative procedure.

Background

The Report of the Scottish Civil Courts Review headed by Lord Gill, published in 2009 recommended: “An all-Scotland jurisdiction for personal injury actions should be conferred on Edinburgh Sheriff Court.” The reason for the creation of this court is the raising of the exclusive competence of a sheriff from £5,000 to £100,000 on 22nd September 2015, the beginning of the new legal year, as announced by the Lord President of the Court of Session on 28th January 2015¹.

Under the existing arrangements, there are economies and efficiencies of scale that accrue through centralising all but the lowest financial value personal injury (“PI”) litigation in the Court of Session. The creation of the Sheriff Personal Injury court (“SPIC”) will replicate many of the benefits of the Court of Session by continuing to provide a central forum for PI cases in Edinburgh including specialist PI sheriffs and procedures, e-motions and the availability of civil jury trials.

Section 41 of the 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 the 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 Policy Note is concerned with the Order which creates the SPIC in September 2015, the first Order to be made under section 41.

Policy objectives

The main policy objectives are that Edinburgh Sheriff Court be designated as the SPIC and exercise all-Scotland jurisdiction in cases above £5,000 (the sum below which proceedings are currently a summary cause, and in future will be subject to simple procedure) and jurisdiction in cases below £5,000 for specific cases designated by the Order.

The definition of “personal injuries” in article 1(2) of the Order is derived from rules of court and will be familiar to practitioners². PI cases below £5,000 are only within the jurisdiction of the SPIC if they are workplace-related according to definitions in that article which should

¹ <https://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2015/01/28/lord-president-sets-out-court-reform-timetable>

² See rule 36.A1(2) of the Ordinary Cause Rules 1993 and rule 43.1(2) of the Rules of the Court of Session 1994.

also be familiar to practitioners. Below £1,000 the Order specifies that workplace cases may be transferred to the SPIC if a local sheriff considers that they are of sufficient importance or difficulty. Otherwise they will be heard in the local sheriff court. Proceedings certified for transfer to the SPIC in this way will cease to be subject to summary cause procedure, or simple procedure, as the case may be. Under section 79 of the Act, if a party raises a case in SPIC it is possible on “special cause shown” for any party in the case to apply to have it transferred out of that court and into summary cause procedure or simple procedure in another sheriff court.

The issue of workplace cases was raised at Stage 2 of the passage of the Bill for the Act (“the Bill”) by the Scottish Trades Union Congress (“STUC”) as a partial countermeasure to the UK Government’s repeal of section 69 of the Health and Safety at Work etc. Act 1974 through its Enterprise & Regulatory Reform Act 2013 (removal of an employer’s strict liability in health and safety at work cases). An Order made under section 41 is able, by virtue of article 5 of the Courts Reform (Scotland) Act 2014 (Consequential Provisions and Modifications) Order 2015, to specify cases that relate to reserved matters, as in this case.

Section 41(4) provides that an Order under section 41(1) does not affect the jurisdiction of any other sheriff court which has jurisdiction i.e. a sheriff court other than Edinburgh Sheriff Court.

In addition, section 42 of the Act preserves the option of Edinburgh sheriff court being used as a “local court” in relation to PI claims for which there would be “local jurisdiction” anyway. Cases across Scotland can either be raised under normal sheriff court procedure in the local sheriff court, specialist PI procedure in that court, or be raised under specialist PI rules in the SPIC at Edinburgh Sheriff Court. The expectation is that the SPIC will be a forum of choice given the advantages referred to above. Where the claim is for more than £100,000 the Court of Session will have concurrent jurisdiction with local sheriff courts and the SPIC.

Consultation

There is no requirement in the Act for a public consultation relating to an Order under section 41(1). There is a requirement in section 41(3) of the Act for the consent of the Lord President of the Court of Session to the Order. This has been obtained. Technical engagement on the drafting of the Order has been had with the Lord President’s Private Office (particularly given interaction with the package of acts of sederunt they are preparing) and the STUC.

The Scottish Government consulted on the Bill in early 2013. This consultation included questions on the SPIC. The analysis of consultation responses, published on the Scottish Government website on 13 September 2013, can be viewed at: www.scotland.gov.uk/Publications/2013/09/8038. The new element to the policy since the consultation is the treatment of sub-£5,000 cases as described above. At the Stage One evidence sessions for the Bill, the STUC made representations that complex workplace PI cases should not be heard under simple procedure.

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. A further EQIA relating to the Order will be published alongside the Order. The instrument 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. A further BRIA relating to the Order will be published alongside the Order. The instrument has no significant financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate

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