

POLICY NOTE

THE COURTS REFORM (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 3, TRANSITIONAL AND SAVING PROVISIONS) ORDER 2015

SSI 2015/247 (C. 35)

1. The above instrument is made in exercise of the powers conferred by section 138(2) and (3) of the Courts Reform (Scotland) Act 2014 and is not subject to any parliamentary procedure.

Policy Objectives

2. This Order brings into force provisions of the Courts Reform (Scotland) Act 2014 (“the Act”). The provisions set out in the schedule to the Order come into force on 22 September 2015. Some provisions are commenced in their entirety and others for the specific purposes set out in column 3 of the table in the schedule.

3. 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>

Transitional and saving provisions

4. Section 39 of the Act (exclusive competence of the sheriff court) is commenced by the present Order as is a repeal of section 7 of the Sheriff Court (Scotland) Act 1907 (“the 1907 Act”). The effect of these changes is to change a sheriff’s exclusive competence (formerly known as privative jurisdiction) from £5,000 to £100,000. By virtue of article 3, section 7 of the 1907 Act applies to proceedings raised before 22 September 2015 and section 39 of the Act applies to proceedings raised on or after that date. In terms of remits (transfers of proceedings between courts), section 93 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 applies to proceedings raised before 22 September 2015 and section 93 of the Act applies to proceedings raised on or after that date.

5. Article 4 makes transitional provision in relation to the introduction of a permission requirement and statutory time limits for applications for judicial review made to the Court of Session. Statutory time limits will not apply to applications made before 22 September 2015. However, from 22 September 2015, where an application is made for a judicial review it will be subject to the three month time limit. Under the transitional provision, where the grounds giving rise to an application (this would usually be the decision in respect of which judicial review is sought) first arose before 22 September 2015 the relevant date is taken to be 22 September 2015. Therefore petitioners subject to the transitional provision will have until 22 December 2015 to make their application. For applications made on or after 22 September 2015 no transitional provision will apply and the three months will run from the date on which the grounds giving rise to the application first arose.

6. Article 5 makes transitional provision in relation to appeals from the Inner House of the Court of Session to the Supreme Court. Where appeals were the subject of an Inner House decision before 22 September they are subject to Supreme Court Practice Direction 4¹ in terms of which a 42 day time limit applies. There is no requirement for permission to appeal but the notice of appeal must be certified as reasonable by two counsel. Where appeals involve an Inner House decision on or after 22 September, they become subject to the new arrangements requiring them to seek permission to appeal from the Inner House, and in the case of refusal, the Supreme Court. A 28 day time limit applies for each application for permission.

7. Articles 6 and 7 make transitional provision in relation to summary criminal appeals and bail appeals (including bail appeals from sheriffs in solemn proceedings). Under section 118 of the Act the powers and jurisdiction of the High Court of Justiciary in relation to appeals from courts of summary criminal jurisdiction are transferred to the new Sheriff Appeal Court. All criminal appeals made to the High Court of Justiciary before 22 September 2015 will continue in that court and the new arrangements will take effect for criminal appeals made on or after that date.

8. Article 8 makes transitional provision for appeals from the Sheriff Personal Injury Court (an all-Scotland sheriff court established by the All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015 (S.S.I. 2015/213) to go to the Inner House of the Court of Session until the Sheriff Appeal Court has its civil competence and jurisdiction conferred upon it early in 2016.

9. Article 9 makes provision equivalent to section 73 of the Act (which concerns simple procedure) to cover the period where it is summary cause procedure and not simple procedure that is relevant to cases below £5,000 in the sheriff courts. Article 9 ensures that summary cause procedure does not apply in the Sheriff Personal Injury Court.

10. Article 10 makes provision equivalent to section 79 of the Act (which again concerns simple procedure) for cases transferred out of the Sheriff Personal Injury Court to be able to continue subject to summary cause procedure.

11. Article 11 makes transitional provision reflecting that section 92 of the Act (remit of cases to the Court of Session) is commenced in relation to proceedings raised on or after 22 September 2015 but simple procedure is not yet commenced. Article 11 allow cases not subject to summary cause procedure to be remitted to the Court of Session.

12. Article 12 provides summary sheriffs with the competence to deal with summary causes until simple procedure is commenced.

13. Articles 10 to 12 will cease to apply when simple procedure is commenced.

Previous commencement orders

14. Section 10 of the Act and certain provisions in Parts 1 and 2 of Schedule 4 were brought into force for limited purposes on 2 February 2015 (by S.S.I 2015/12 (C.2)). Further provisions were commenced by S.S.I 2015/77 (C.17) on 12 March and on 1 April 2015. The Note as to earlier Commencement Orders within the Explanatory Note to this Order provides more detail on these commencements.

¹ <https://www.supremecourt.uk/procedures/practice-direction-04.html>.

Future commencement orders

15. Further commencement orders under the Act in 2015-16 will commence provisions relating to the Sheriff Appeal Court (civil), simple procedure, the abolition of stipendiary magistrates and other aspects of the reforms set out in the Act.

Consultation

16. 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 Crown Office and Procurator Fiscal. 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 and www.scotland.gov.uk/Publications/2013/05/6753

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

Impact Assessments

18. 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

19. 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. The Bill has no significant financial effects on the Scottish Government, local government or on business.

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