

POLICY NOTE

THE COURTS REFORM (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 5, TRANSITIONAL AND SAVING PROVISIONS) ORDER 2015

SSI 2015/378 (C. 47)

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

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 1 January 2016. The principal measure commenced by this Order is the civil jurisdiction and competence of the Sheriff Appeal Court. Broadly, the Sheriff Appeal Court (Civil) will take over the appellate jurisdiction of sheriffs principal in terms of hearing appeals against decisions of sheriffs.

The policy objective 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/help/72771.aspx>

Transitional and saving provisions

Articles 3 to 5 make transitional and saving provision in consequence of the Sheriff Appeal Court assuming its civil jurisdiction and competence on 1 January 2016.

Article 3 makes provision for appeals against decisions of sheriffs made before 1 January 2016 to continue to be subject to the existing arrangements in the Sheriff Courts (Scotland) Act 1907 (“the 1907 Act”). It follows that appeals against decisions of sheriffs made on or after that date are subject to the new arrangements for civil appeals in sections 110 to 113 of the Act. Where the 1907 Act arrangements continue to apply, an appeal or second appeal may be made to the Inner House of the Court of Session without the need for permission.

Article 4 reflects that the existing arrangements for appeals in summary causes will continue for the time being until summary cause procedure is replaced by simple procedure. These existing arrangements are modified however for appeals from decisions of sheriffs made on or after 1 January 2016 in which case appeals are directed to the Sheriff Appeal Court (Civil) rather than the sheriff principal.

Article 5 ensures that a transitory provision in the Courts Reform (Scotland) Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2015 continues to have effect where an application arising out of Sheriff Personal Injury Court proceedings would be heard by the Inner House of the Court of Session rather than the Sheriff Appeal Court (Civil).

Previous commencement orders

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, by S.S.I 2015/247 (C.35) on 22 September 2015 and by S.S.I. 2015/336 (C. 41) on 19 October 2015. The Note as to earlier Commencement Orders within the Explanatory Note to this Order provides more detail on these commencements.

Future commencement orders

Further commencement orders under the Act in 2016 will commence provisions relating to the abolition of stipendiary magistrates, the commencement of simple procedure, and other aspects of the reforms set out in the Act.

Consultation

Technical engagement on the drafting of the Order has been had with the Lord President's Private Office (particularly given interaction with the acts of sederunt they are preparing). 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

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

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

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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