

# COURTS REFORM (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### THE ACT

3. The Act seeks to support the aims set out in the Policy Memorandum for the Bill<sup>1</sup> by introducing reforms to modernise and enhance the efficiency of the Scottish civil justice system. The provisions in the Act take forward many of the recommendations from Lord Gill's review of the civil courts, the Scottish Civil Courts Review,<sup>2</sup> which reported in 2009. The Scottish Government issued its response to the review in 2010.<sup>3</sup> Some recommendations from the Scottish Civil Courts Review have already been taken forward, such as modernising children's hearings. The Act will implement the majority of the recommendations that the Government accepted in its 2010 response. A consultation in 2007 informed the review. Further consultations on the draft Courts Reform (Scotland) Bill and treatment of civil appeals from the Court of Session were undertaken in 2013. Further information on the Scottish Government consultations can be found in the Policy Memorandum for the Bill.
4. The Act does not attempt to legislate for all of the recommendations made in the Scottish Civil Courts Review; some have been or are being taken forward separately, such as reforms to children's hearings and, in addition, many of the changes recommended have already been implemented, such as some of the reforms of the Inner House of the Court of Session, or will be implemented by court rules made by the Court of Session by act of sederunt, such as some of the procedural reforms within the Court of Session envisaged by the Act. The Act sets out the framework within which the court rules will add the necessary detail.
5. The opportunity has been taken to modernise and consolidate most of the remaining provisions of the Sheriff Courts (Scotland) Acts of 1907 and 1971 (although a few provisions of the 1907 Act will still remain). Not every provision has been restated and the wording has been changed in some provisions. Some provisions have been amalgamated whilst others have been expanded.
6. The Act amends the Judiciary and Courts (Scotland) Act 2008 to establish a joint administration for courts and tribunals. It renames the Scottish Court Service (SCS) and changes the board structure to allow the merged organisation to operate effectively for both courts and tribunals.
7. The Act is in twelve Parts.
8. [Part 1](#) (Sheriff courts) includes provisions on sheriffdoms, sheriff court districts and sheriff courts, the judiciary of the sheriffdoms, the organisation of the business, and competence and jurisdiction of the sheriffs. This part provides for the creation of the summary sheriff judicial office holder and for the designation of specialist judiciary.

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<sup>1</sup> The Policy Memorandum and other documents relating to the Bill for the Act were published at <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/72771.aspx>.

<sup>2</sup> The Scottish Civil Courts Review - <http://www.scotcourts.gov.uk/about-the-scottish-court-service/the-scottish-civil-courts-reform>

<sup>3</sup> The Scottish Government Response to the Report and Recommendations of the Scottish Civil Courts Review - <http://www.scotland.gov.uk/Resource/Doc/330272/0107186.pdf>

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It also provides for the power to confer an all-Scotland jurisdiction for specified cases on a specific sheriff court which is intended to enable a Sheriff Personal Injury Court. It provides for the raising of the exclusive competence of the sheriff court. Schedule 1 specifies the civil proceedings etc. in relation to which a summary sheriff will have competence.

9. **Part 2** (The Sheriff Appeal Court) makes provision for the Sheriff Appeal Court which will hear certain criminal appeals from the sheriff court and the justice of the peace (JP) court, as well as civil appeals from the sheriff court. The provisions specify the jurisdiction and competence of the Sheriff Appeal Court as well as the status of its decisions in precedent, and sets out the arrangements for the President and Vice President of the Sheriff Appeal Court. The provisions set out how sheriffs principal and sheriffs are able to be Appeal Sheriffs. They confer on the President the responsibility for the efficient disposal of business in the Sheriff Appeal Court. They make further provision about court sittings, the Clerk and Deputy Clerks. (Further provision on criminal appeals is made in Part 6.) Schedule 2 makes temporary provision for Senators of the College of Justice to act as Appeal Sheriffs during a period of 3 years beginning with the day on which the Sheriff Appeal Court is established.
10. **Part 3** (Civil procedure) makes provision for civil jury trials in an all-Scotland sheriff court, for example the proposed Sheriff Personal Injury Court to which there has been reference. It also includes provisions for simple procedure which will replace small claims and summary cause procedures in the sheriff court. (The Court of Session is able to make further general provision about simple procedure in an act of sederunt made under section 104.) This part also includes provisions on the granting and enforcement of interdicts with effect in more than one sheriffdom, the execution of deeds relating to heritage by the sheriff clerk and interim orders. It includes provision on judicial review and warrants of ejection. In addition, this part makes provision for the remit of cases to or from the Court of Session, and to the Scottish Land Court. It includes provision on lay representation in simple procedure cases and in other proceedings. It includes provision on jury service. It also contains provisions on vexatious litigants.
11. **Part 4** (Procedure and Fees) includes provisions to allow the Court of Session to regulate its own procedure and that of the sheriff court and Sheriff Appeal Court. It also includes provisions allowing the Court of Session to regulate the fees of those who provide services in the Court of Session, Sheriff Appeal Court and sheriff courts. This part also makes provisions for the charging of fees by the Scottish Courts and Tribunals Service (SCTS) and relevant officers of court in relation to the running costs of the courts, re-enacting the previous provisions relating to such charges contained in the Court of Law Fees (Scotland) Act 1895. This part also sets out the rules to be applied by the courts in determining for the purposes of determinations on expenses, whether to grant sanction for the employment of counsel in the sheriff and Sheriff Appeal Courts.
12. **Part 5** (Civil appeals) includes provisions on civil appeals to the Sheriff Appeal Court and to the Court of Session, the effect of appeal, and appeals to the Supreme Court.
13. **Part 6** (Criminal appeals) makes provision for appeals from summary criminal proceedings including appeals from the Sheriff Appeal Court to the High Court and bail appeals. Schedule 3 makes modifications to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) consequential upon the transfer of summary appeal jurisdiction from the High Court to the Sheriff Appeal Court.
14. **Part 7** (Judges of the Court of Session) makes provision for payment of salaries and expenses of judges of the Court of Session by the SCTS.
15. **Part 8** (Scottish Land Court) makes provision for remuneration, expenses, and expenditure relating to the Scottish Land Court.
16. **Part 9** (Justice of the peace courts) makes provision relating to the establishment, relocation and disestablishment of justice of the peace courts, the abolition of the

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office of stipendiary magistrate, the conversion of existing stipendiary magistrates to be summary sheriffs, and a provision enabling summary sheriffs to sit in justice of the peace courts.

17. **Part 10** (The Scottish Courts and Tribunals Service), together with schedule 4 amends the Judiciary and Courts (Scotland) Act 2008 to change the name of the SCS to the Scottish Courts and Tribunals Service and confers power on the merged organisation to provide administrative support for the Scottish Tribunals and the members of those Tribunals.
18. **Part 11** (The Judicial Appointments Board for Scotland) provides for the appointment of persons to assist the Board with the carrying out of its functions.
19. **Part 12** (General) includes provision in relation to subordinate legislation, interpretation and commencement, and gives effect to schedule 5 which makes minor and consequential amendments to a number of enactments.