

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Part 3 – Civil Procedure

Chapter 6 – Vexatious proceedings

Section 100 – Vexatious litigation orders

Section 101 – Vexatious litigation orders: further provision

170. Sections 100 and 101 replace and update the Vexatious Actions (Scotland) Act 1898. They retain the role of the Lord Advocate as guardian of the public interest, permitting the Lord Advocate to seek a “vexatious litigation order” from the Inner House of the Court of Session which requires the vexatious litigant to obtain the consent of a Lord Ordinary prior to raising a civil action (section 100(2)(a)). The test for obtaining an order from the Inner House and the test which requires to be met by a litigant in seeking permission from a judge of the Outer House remain mostly the same but have been updated with a more modern form of drafting (section 101(1) and (4) respectively). For the first time however, the Court in determining whether to grant a vexatious litigation order will be able to take into account the proposed vexatious litigant’s behaviour in proceedings outwith Scotland (section 101(2)).
171. The sections also allow the Lord Advocate to seek to prevent a vexatious litigant from taking a specified step in specified on-going proceedings (section 100(2)(b)). This power is based on the similar powers of the Attorney General of England and Wales in section 42 of the Senior Courts Act 1981 and the existing power of the Lord Advocate in 33(2)(b) the Employment Tribunals Act 1996. Further, the court may also determine that a vexatious litigation order has effect only for such a period as specified in the order (section 100(4)).
172. Subsections (6) to (8) of section 101 make provision permitting a court dealing with on-going civil proceedings that are halted by an order under section 100(2)(b) to make orders in those proceedings in consequence, including with regard to the disposal of those proceedings.