

POLICY NOTE

THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993 (SCOTTISH LAND COURT) ORDER 2013

SSI 2013/2

The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 26(9)(a) and 29(3) of the Judicial Pensions and Retirement Act 1993. The instrument is subject to the affirmative procedure.

Policy Objective

The purpose of this instrument is to modify the compulsory retirement age for members of the Scottish Land Court. Presently, members of the Scottish Land Court are required to vacate office on reaching 65 years of age under paragraph 2 of Schedule 1 to the Scottish Land Court Act 1993. This compares unfavourably with the compulsory retirement ages for a number of other judicial offices. For example, sheriffs and sheriffs principal are only required to retire at the age of 70 under section 5A of the Sheriff Courts (Scotland) Act 1971 which is itself subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 which can enable a sheriff or sheriff principal to remain in office until reaching the age of 75.

The Scottish Government considers that paragraph 2 of Schedule 1 to the Scottish Land Court Act 1993 no longer pursues a legitimate aim and has concluded that it should be repealed in order to ensure compliance with Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303 02.12.2000 p.16).

The Scottish Government also considers that section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 should apply in respect of the Chairman and members of the Scottish Land Court.

By repealing paragraph 2 of Schedule 1 to the Scottish Land Court Act 1993 and adding an entry to Schedule 5 of the Judicial Pensions and Retirement Act 1993, the retirement age for the Chair and members of the Scottish Land Court will be 70 by virtue of section 26(1) of the Judicial Pensions and Retirement Act 1993. Section 26(4) to (6) of that Act will also enable the Chair and members of the Scottish Land Court to remain in office beyond reaching the age of 70 in accordance with the terms of those provisions.

Consultation

Given that there is a narrow interest in the changes, no formal public consultation was undertaken. The Scottish Government did, however, hold discussions with those involved in the administration of the Scottish Land Court, who were generally supportive of the proposals.

Financial effects

The changes made by this instrument are unlikely to have any financial effects. The Scottish Government presently meets the employer pension contributions for both the Chair and members of the Scottish Land Court. The requirement to pay these contributions will remain.

Choice of Procedure

The Scottish Government is relying on a combination of domestic powers and powers under the European Communities Act 1972 to make the necessary changes. While section 29(2) of the Judicial Pensions and Retirement Act 1993 provides for an order under section 26(9)(a) of that Act to be subject to the negative procedure, section 2(2) of the European Communities Act 1972 enables the Scottish Ministers to elect for an instrument to be subject to the affirmative or negative procedure. The Scottish Government has elected to adopt the affirmative procedure since section 2(2) of the European Communities Act 1972 is being relied upon to make a substantive amendment to the Scottish Land Court Act 1993.

As this means that the changes involve using two powers that are subject to different procedures, the Scottish Government has decided that the powers in the European Communities Act 1972 should be used to enable the changes to be dealt with in one instrument that is subject to the affirmative procedure.

Scottish Government
November 2012