

## POLICY NOTE

### THE COURTS REFORM (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 7, TRANSITIONAL AND SAVING PROVISIONS) ORDER 2016

#### SSI 2016/291 (C. 26)

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

#### Policy objectives

The 2014 Act delivers an enabling framework to reform the civil courts both structurally and functionally in line with many of the recommendations of the Scottish Civil Courts Review. Reform of the civil courts forms part of the Scottish Government and multi-agency programme, ‘Making Justice Work’.

The policy objectives relating to the 2014 Act are fully described in the Policy Memorandum which accompanied the Bill for the 2014 Act (“the Bill”). The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

<http://www.parliament.scot/parliamentarybusiness/Bills/72771.aspx>

This Order brings into force provisions in the Act. The provisions set out in the schedule to the Order come into force on 28 November 2016. The principal measure commenced by this Order is the introduction of the new simple procedure which replaces the current small claims and summary cause procedures.

Simple procedure is a new form of sheriff court procedure established by Chapter 1 of Part 3 of the 2014 Act and will replace the existing small claims and summary cause procedures. Simple procedure is designed to be a speedy, inexpensive and informal procedure, usable by people who do not have legal representation to sort out problems about matters of lower monetary value. New Simple Procedure Rules 2016 have been developed by the Scottish Civil Justice Council using plain language and a flow-chart to make the rules as straightforward as possible for users. Simple procedure is to be introduced in two phases with the first phase commencing on 28 November 2016.

For phase one this Order commences the simple procedure parts of the 2014 Act only in respect of:

- Proceedings for the payment of a sum of money (but not proceedings for aliment or personal injury),
- Actions ad factum praestandum, and
- Proceedings for the recovery of moveable property (but not heritable property)

This includes all small claims.

The wider law on summary causes will remain in force for the purposes of a number of discrete, specialised types of claim. These will then be replaced at a date in 2017 with the Simple Procedure (Special Claims) Rules, covering:

- Proceedings for the recovery of heritable property
- Personal injury cases
- Aliment claims
- Multiple proceedings,
- Furthcomings, and
- Count, reckoning and payments (i.e. actions asking the court to make someone account for their handling of a matter involving money, calculate what is due and make arrangements for payment).

Other measures being commenced under this Order include:

- powers for sheriffs for extended interdicts having effect outwith their sheriffdom,
- new arrangements to deal with vexatious litigants in the Courts, on the application of the Lord Advocate, and
- new arrangements to allow lay representation for non-natural persons in the circumstances laid out in the Act.

### **Transitional and Saving Provision**

Article 3 makes transitional provision which applies to small claims raised before 28 November 2016. This ensures that even after the commencement of the new simple procedure, small claims that have been raised prior to that date will be dealt with under existing procedures.

Similarly, article 4 provides that an order or application made under the Vexatious Actions (Scotland) Act 1898 prior to the commencement of sections 100-102 of the 2014 Act on 28 November 2016 will continue under the procedures of the 1898 Act.

### **Previous commencement orders**

Provisions of the Act were commenced by S.S.I 2015/12 (C.2) on 2 February 2015, by S.S.I 2015/77 (C.17) on 12 March, and 1 April 2015, by S.S.I 2015/247 (C.35) on 22 September 2015, by S.S.I. 2015/336 (C. 41) on 19 October 2015, by SSI 2015/378 (C.47) on 1 January 2016 and by S.S.I. 2016/13 (C. 2) on 1 April 2016. 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 will commence remaining provisions relating to the phase two 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 related rules of court. 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](http://www.scotland.gov.uk/Publications/2013/02/5302) and [www.scotland.gov.uk/Publications/2013/05/6753](http://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](http://www.scotland.gov.uk/Publications/2013/09/8038) and [www.scotland.gov.uk/Publications/2013/05/6753](http://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](http://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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