POLICY NOTE

THE CIVIL JURISDICTION AND JUDGMENTS (AMENDMENT) (SCOTLAND) REGULATIONS 2015

SSI 2015/1

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 ("the 1972 Act") and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Policy Objectives

These Regulations make provision to further facilitate the application in Scotland of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I recast) ("the recast Regulation").

The recast Regulation is directly applicable in Scotland with effect from 10 January 2015 and applies to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after that date. Therefore, the regulations made under section 2(2) of the 1972 Act only make provision insofar as this is needed to facilitate the application of the recast Regulation.

Regulation 44/2001 (Brussels I) is the bedrock instrument in European judicial cooperation in civil and commercial matters. It establishes common rules on jurisdiction in cross-border disputes; and provides for the mutual recognition and enforcement of judgments. The "recast" of Brussels I, Regulation 1215/2012, repeals and replaces Brussels I. The revision follows a review which sought to update Brussels I and address problems which had emerged since 2001.

The UK opted into the recast Regulation at an early stage, acknowledging the benefits that a streamlined process for the EU cross-border recognition and enforcement of civil and commercial judgments would have for the UK legal economy. Certain aspects of its operation in the UK require secondary legislation under the European Communities Act 1972 to remove inconsistencies in existing UK legislation (most notably the Civil Jurisdiction and Judgments Act 1982 and the Civil Jurisdiction and Judgments Order 2001). Agreement was reached to have Regulations for the whole of the UK, made at Westminster, on the basis that this is the most effective way of ensuring the continuing pan-UK operation of the Brussels Regulation in its recast form. These were made by the Civil Jurisdiction and Judgments (Amendment) Regulations 2014 (S.I. 2014/2947).

Regulations specific to Scotland are also required to make it clear which court is to be concerned in the adaptation of orders and measures under Article 54 of the recast Regulation. Regulation 3 of the Civil Jurisdiction and Judgments (Amendment)(Scotland) Regulations 2015 amends the Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929) ("the 2001 Order") to make it explicit that an application in terms of Article 54 of the recast Regulation for an order adapting an order or measure which is contained in a foreign judgment but is unknown under the law of Scotland (an "adaptation order"), or an application to challenge such an adaptation made without an order, must be made to the Court of Session.

Consultation

The Rules of Court require to be updated and the Scottish Government has worked closely with the Lord President's Private Office. Rules of Court are made by the Lord President of the Court of Session with the assistance of the Scottish Civil Justice Council.

Impact Assessments

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

No Equality Impact Assessment has been prepared as equality groups are not likely to be adversely affected by these Regulations.

Financial Effects

No financial impact is expected on business.

Scottish Government
Justice Directorate
6 January 2015