# POLICY NOTE

# THE COURTS REFORM (SCOTLAND) ACT 2014 (CONSEQUENTIAL PROVISIONS NO. 2) ORDER 2015

## SSI 2015/338

The above instrument is made in exercise of the powers conferred by section 137 of the Courts Reform (Scotland) Act 2014 ("the Act").

### Policy objectives of the Act

The 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" and is part of the 2014-2015 Programme for Government.

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

http://www.scottish.parliament.uk/parliamentarybusiness/Bills/72771.aspx

### Policy objectives of this instrument

This Order modifies primary and secondary legislation in consequence of provisions of the Act commenced on 22 September 2015 by the Courts Reform (Scotland) Act 2014 (Commencement No.3, Transitional and Saving Provisions) Order 2015 (S.S.I. 2015/247). With one exception the amendments are made in consequence of provisions of the Act which–

- Provide for the exclusive competence of a sheriff (formerly known as the privative jurisdiction) (Schedule 1); and
- Establish the Sheriff Appeal Court in respect of its criminal competence and jurisdiction (Schedule 2).

The modifications in this Order are additional to those provided for in the Act itself, the Courts Reform (Scotland) Act 2014 (Consequential Provisions and Modifications) Order 2015 (S.I. 2015/700) and the Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2015 (S.S.I. 2015/150).

### Modifications

*Modernised power of the Scottish Ministers to make court fees Orders*

Article 2 of the Order modifies section 305(5) of the Criminal Procedure (Scotland) Act 1995 to reflect that the power of the Scottish Ministers to make court fees orders is now contained in section 107(1) of the Act.

*Exclusive competence of a sheriff*

The modifications in Schedule 1 to the Order concern the increase in a sheriff's exclusive competence (formerly known as privative jurisdiction) from £5,000 to £100,000, as provided for in section 39 of the Act.

*Appeals from summary criminal proceedings made on or after 22 September 2015*

Section 118 of and schedule 3 to the Act transfer to the Sheriff Appeal Court all the powers and jurisdiction of the High Court of Justiciary so far as relating to appeals from courts of summary criminal jurisdiction (sheriff courts and JP courts). In other words, summary criminal appeals on or after 22 September 2015 are to be directed to the Sheriff Appeal Court instead of the High Court. The High Court will continue to deal with solemn criminal appeals.

Schedule 2 to the Order includes modifications consequential on these changes. Where enactments provide for appeals relating to summary-only offences, the modification made is to simply replace references to the High Court with references to the Sheriff Appeal Court. See for example the modifications made to the Protection of Wild Mammals (Scotland) Act 2002 (paragraph 6), the Fur Farming (Prohibition) (Scotland) Act 2002 (paragraph 7), the Animal Health and Welfare (Scotland) Act 2006 (paragraph 10) and the Control of Dogs (Scotland) Act 2010 (paragraph 12).

In other instances, more complex modifications are required to reflect than an appeal arising out of solemn proceedings will continue to go to the High Court but an appeal arising out of summary proceedings will go to the Sheriff Appeal Court. The modifications made to the Proceeds of Crime (Scotland) Act 1995 for example (paragraph 4) refer to the "appropriate Appeal Court", as defined. In the particular case of section 96 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (paragraph 9) the Scottish Government considers that the tidiest legislative approach is to split out the possible modifications of section 96 into a new section 96A for the Sheriff Appeal Court.

*Bail-related appeals made on or after 22 September 2015*

Section 122 of the Act amends the Criminal Procedure (Scotland) Act 1995 with the result that appeals against bail decisions of sheriffs or JP courts on or after 22 September 2015 are to be directed to the Sheriff Appeal Court instead of the High Court. In the case of appeals against bail decisions of sheriffs it does not matter if the decision was in solemn or summary proceedings. Appeals against bail decisions of the High Court are unaffected.

In addition to the modifications already mentioned, Schedule 2 to the Order modifies sections 200, 201 and 245J of the Criminal Procedure (Scotland) Act 1995 in a similar manner because those sections provide for bail-related appeals (see paragraph 5(5) to (8)).

*References to criminal courts in Scotland*

Lastly, Schedule 2 to the Order inserts new entries for the Sheriff Appeal Court into relevant lists of Scottish criminal courts, for example those in the Restriction of Liberty Order etc. (Scotland) Regulations 2013 (paragraph 19) and the Mutual Recognition of Supervision Measures in the European Union (Scotland) Regulations 2014 (paragraph 20).

**Commencement**

The Order is scheduled to come into force on 22 September 2015 to coincide with the commencement of provisions in the Courts Reform (Scotland) Act 2014 (Commencement No.3, Transitional and Saving Provisions) Order 2015 (S.S.I. 2015/247).

**Consultation**

Technical engagement on the drafting of the Order has been had with the Lord President's Private Office (particularly given interaction with the package of acts of sederunt and adjournal they are preparing) and the Crown Office and Procurator Fiscal. 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 and 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 and 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. The Bill has no significant financial effects on the Scottish Government, local government or on business.

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