POLICY NOTE

THE COURTS REFORM (SCOTLAND) ACT 2014 (CONSEQUENTIAL PROVISIONS) ORDER 2016

SSI 2016/xxx

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

Background

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'.

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

This Order contains provision in consequence of provisions of the Act. The principal measures of the Act of relevance are the abolition of the office of stipendiary magistrate and introduction of the office of summary sheriff, and the transfer of the remuneration of certain judicial office holders from the Scottish Government to the Scottish Courts and Tribunals Service ("SCTS"). These measures take effect on 1st April 2016.

Separately, articles 3 and 4 update the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 and the Tribunals (Scotland) Act 2014 in consequence of provisions of the Act commenced on 1st April 2015.

Abolition of the office of stipendiary magistrates

This is provided for in section 128 of the Act. Paragraph 3 of Schedule 1 to the Order amends the Criminal Justice (Scotland) Act 2003 to remove a redundant reference to Justice of the Peace courts constituted by a stipendiary magistrate in the context of drugs courts.

Paragraph 4 of Schedule 1 to the Order amends the Criminal Justice and Licensing (Scotland) Act 2010 as regards the Scottish Sentencing Council to reflect that there can no longer be a stipendiary magistrate member on the Council. The reference to a stipendiary magistrate is therefore substituted with a reference to a summary sheriff.

Introduction of the office of summary sheriff

Under section 128 of the Act, a person holding office as a stipendiary magistrate is appointed as a summary sheriff unless they decline appointment. Further summary sheriffs are to be appointed under section 5 of the Act with appointments expected in April 2016.

The judicial functions of summary sheriffs are provided for in sections 44 and 45 of the Act as regards civil and criminal functions respectively. Section 44 is to be read with schedule 1 to the Act. The judicial functions of summary sheriffs are a defined portion of the judicial functions of sheriffs. Sheriffs also, however, exercise certain non-judicial, administrative functions and the Order provides for certain specific functions also being exercisable by summary sheriffs. Paragraphs 2 and 5 of Schedule 1 to the Order amend the Prisons (Scotland) Act 1989 and the Police and Fire Reform (Scotland) Act 2012 so that summary sheriffs have the same right to visit prisons as sheriffs, and so that summary sheriffs can swear in constables or temporary constables of Police Scotland.

Under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, members of the judiciary are ineligible for jury service. Paragraph 1 of Schedule 1 to the Order therefore adds summary sheriffs to the relevant list of judicial office holders. The reference to stipendiary magistrates is not to be removed at this stage because a person is ineligible for jury service if they have held office as a listed judicial office holder at any point in the previous 10 years.

The modifications provided for in the Order are additional to those provided for in the Act itself, S.I. 2015/700, S.S.I. 2015/150, S.S.I. 2015/338 and S.I. 2015/402.

Commencement

The Order is scheduled to come into force on 1 April 2016.

Consultation

Technical engagement on the drafting of the Order has been had with the Lord President's Private Office and with the Crown Office and Procurator Fiscal Service. 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.

Scottish Government
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