POLICY NOTE

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

SSI 2016/

The above instrument is made in exercise of the powers conferred by sections 107(4) and 137 of the Courts Reform (Scotland) Act 2014 ("the 2014 Act") and is subject to the affirmative procedure.

Background

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

Policy Objectives

The instrument has two functions: to specify the auditor of the Sheriff Appeal Court as a "relevant officer" and to make provision in consequence of provisions of the 2014 Act.

Relevant officer

Section 107(3) of the 2014 Act lists "relevant officers" including the Auditor of the Court of Session and the auditor of a sheriff court. Section 107(1) is a power of the Scottish Ministers concerning the charging of fees by relevant officers. The first auditor of the Sheriff Appeal Court was appointed on 18 July 2016 and that office is added to the list of relevant officers in section 107(3). This means that fees orders under section 107(1) may provide for the charging of fees by the auditor of the Sheriff Appeal Court.

Consequential modifications

The Order supports the introduction of the new simple procedure on 28 November 2016. 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. Schedule 1 of the Order principally makes consequential modifications relating to the first phase of simple procedure including the repeal of the law of small claims, leaving the general law of summary cause procedure in place for the time being. Schedule 1 is subject to the transitional provision found in the related Commencement Order, therefore some cases will continue to be subject to the old law. Schedule 1 also includes modifications of the transitory provisions from previous Orders to reflect that simple procedure is now to be commenced in two phases. Lastly, there are modifications included in schedule 1 which are unrelated to simple procedure but where there is a natural opportunity to make modifications consequential on the 2014 Act.

Sections 100 and 101 of the 2014 Act – making provision for vexatious litigation orders – are to be commenced on 28 November 2016. These sections replace the Vexatious Actions (Scotland) Act 1898 and therefore, subject to transitional provision, that Act is repealed by paragraph 27 of schedule 5 of the 2014 Act. Schedule 2 makes consequential modifications where the 1898 Act is referenced on the statute book.

The Sheriff Appeal Court (Criminal) was commenced on 22 September 2015 and the Sheriff Appeal Court (Civil) commenced on 1 January 2016. Schedule 3 makes consequential modifications relating to the Court. Paragraphs 1 and 9 (concerning children's legal aid) are inter-related, as are paragraphs 4 and 8 (concerning antisocial behaviour legislation). Schedule 3 is subject to the transitional provision in the earlier Commencement Order reflecting that there will be transitional civil appeals heard by sheriffs principal.

The law on sheriffs is now contained in Part 1 of the 2014 Act. The new office of summary sheriff was commenced on 1 April 2016 and the office of stipendiary magistrate was abolished on the same date (all stipendiary magistrates became summary sheriffs). Schedule 4 makes consequential modifications so that the statute book reflects the prevailing position for these judicial offices. In the case of paragraph 5, which concerns the Justices of the Peace (Scotland) Order 2007, amendments are not made to the articles of that Order which may be amended by the Lord President of the Court of Session under section 69 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

The modifications provided for in the Order are additional to those provided for in the 2014 Act itself, S.I. 2015/700, S.S.I. 2015/150, 2015/338, 2015/402 and 2016/142. To the extent that consequential modifications have not been made contemporaneously to the commencements which they relate the Scottish Government considers there to be no adverse impact since the modifications are minor and consequential in nature.

Commencement

The Order is to come into force on 28 November 2016 which, as mentioned, is the date of phase one implementation of simple procedure.

Consultation

Technical engagement on the drafting of the instrument has been had with the Lord President's Private Office, the UK Government and 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 2014 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.gov.scot/Publications/2013/02/5302 and www.gov.scot/Publications/2013/05/6753.

The analyses of consultation responses, published on the Scottish Government website can be viewed at www.gov.scot/Publications/2013/09/8038 and www.gov.scot/Publications/2013/05/6753.

Impact assessments

An Equality Impact Assessment (EQIA) for the Bill was published on the Scottish Government website at http://www.gov.scot/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.gov.scot/Resource/0044/00446226.pdf. The Bill has no significant financial effects on the Scottish Government, local government or on business.

Scottish Government
Courts Reform Team,
Civil Law and Legal System Division,
Justice Directorate
September 2016