EXECUTIVE NOTE

DRAFT : The Small Claims (Scotland) Amendment Order 2007

The above instrument, if passed, will be made in exercise of the powers conferred by sections 35(2) and 36B(2) of the Sheriff Courts (Scotland) Act 1971. The instrument is subject to affirmative resolution procedure.

Policy Objectives

The purpose of the instrument is to amend the Small Claims (Scotland) Order 1988-

- by raising the limit up to which small claim procedure applies from £750 (the limit set when the procedure was introduced in 1988) to £3,000;
- to add actions for personal injury to the actions excluded from small claims procedure; and
- to amend the limits on the amount of expenses which may be awarded where the value exceeds £200. By virtue of the Order, the sheriff, where the value of the claim is £1,500 or less, may award expenses up to £150. Where the value of the claim is greater that £1,500, the sheriff may award expenses up to 10% of the value of the claim.

The Order is set to come into force on 14 January 2008, to allow time for the Scottish Court Service and users of the court system to prepare for these changes.

Consultation

This issue was the subject of consultation in 1999. Extensive representations have been made at regular intervals in the period since by the different and divergent views of stakeholders. For that reason, the Government did not consider that further consultation ahead of laying the current Order was necessary.

Financial Effects

The instrument has minimal financial effects on the Scottish Government. Although the financial implications are not the key considerations in looking to change, there are financial implications for legal aid interests with a modest reduction in legal aid costs.

The instrument will enable a greater number of litigants to gain access to an inexpensive form of civil court procedure designed to allow litigants to pursue and defend claims without the need for legal representation.

The court will continue to be able to remit small claims to summary or ordinary cause procedure where parties jointly request this or on the motion of one party or of its own accord where a difficult question of law or of fact of exceptional complexity is involved.

The Scottish Government funds or contributes to the funding of a number of organisations which provide free advice to litigants in small claims procedures and in some instances are willing to represent parties in court.

Scottish Government Civil Justice and International Directive
12 September 2007