EXPLANATORY MEMORANDUM TO

THE SCOTTISH ADMINISTRATION (OFFICES) ORDER 2015

2015 No. 200 (S.1)

1. This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This Order specifies the Clerk to the Sheriff Appeal Court and Deputy Clerk to the Sheriff Appeal Court as offices in the Scottish Administration which are not ministerial offices for the purposes of the Scotland Act 1998.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Courts Reform (Scotland) Act 2014 ("the 2014 Act") implements the majority of the recommendations of the Scottish Civil Courts Review 2009, which was an independent review chaired by Lord Gill, the current Lord President. The 2014 Act is intended to make the civil justice system in Scotland more efficient, with most of that Act focusing on a restructure of the civil courts system in Scotland, and additional provisions relating to criminal matters.

4.2 Chapter 1 of Part 2 of the 2014 Act establishes a court of law in Scotland to be known as the Sheriff Appeal Court. The court consists of judges each to be known as an Appeal Sheriff. Chapter 4 of Part 2 of the 2014 Act makes provision for the administration of the new Sheriff Appeal Court. Section 59 of the 2014 Act provides for the new office of Clerk to the Sheriff Appeal Court while section 60 provides for the new office of Deputy Clerk to the Sheriff Appeal Court. Section 61 makes additional provision in relation to these new offices, including provision that the Clerk and Deputy Clerks of the Sheriff Appeal Court are also members of staff of the Scottish Courts and Tribunals Service (which is created in Chapter 10 of the 2014 Act).

4.3 This Order is to be made in exercise of the power conferred by section 126(8)(b) of the Scotland Act 1998. Section 126(8)(b) of that Act enables Her Majesty by Order in Council to specify offices in the Scottish Administration which are not ministerial offices, in addition to those specified in section 126(8)(a) of that Act.

4.4 This Order specifies the Clerk to the Sheriff Appeal Court and Deputy Clerk to the Sheriff Appeal Court as offices in the Scottish Administration which are not ministerial offices for the purposes of the Scotland Act 1998.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 As stated in paragraph 4.1 above, the 2014 Act implements the majority of the recommendations of the Scottish Civil Courts Review 2009, the independent review chaired by Lord Gill, the current Lord President. The Scottish Civil Courts Review 2009 recommended substantial changes to modernise and improve the structure and operation of the civil courts. It recommended a clearer jurisdiction for the Court of Session and for the Sheriff Court, greater judicial specialisation, and increasing the ability of the courts to control the pace and conduct of litigation – all designed to make the courts more efficient and effective. In summary, that review recommended:

- Establishment of a Civil Justice Council for Scotland;
- Creation of a new tier of judiciary (summary sheriffs);
- Establishment of a national Sheriff Appeal Court;
- Establishment of a national Personal Injury Court;
- Changes to the process for Judicial Review;
- A shift of business from the Court of Session to the Sheriff Courts; and
- A raft of changes to civil court rules to support modernisation of civil court procedures.

7.2 The majority of the 2014 Act focuses on a restructuring of the civil courts system in Scotland, with additional provisions on criminal matters: summary crime and a new Sheriff Appeal Court for both civil appeals from the Sheriff Court and summary criminal appeals. The 2014 Act also provides for the merger of the Scottish Court Service with the Scottish Tribunals Service.

7.3 As mentioned in paragraph 4.2 above, sections 59 and 60 of the 2014 Act provide for the new offices of Clerk to the Sheriff Appeal Court and Deputy Clerk to the Sheriff Appeal Court, respectively. It is the policy objective of the Scottish Government that these new offices will be office holders in the Scottish Administration in the same way that sheriff clerks and their deputes are at present.

7.4 Sections 59 to 61 of the 2014 Act (Clerk and Deputy Clerks of the Sheriff Appeal Court) will be commenced on 1st April 2015, in preparation for the operative provisions relative to the Sheriff Appeal Court taking effect from 22nd September 2015. Commencement on 1st April 2015 will allow the Scottish Courts and Tribunals Service to recruit officers to the positions of Clerk to the Sheriff Appeal Court and Deputy Clerks to the Sheriff Appeal Court and make other administrative arrangements prior to the Court becoming operational, accordingly this Order requires to take effect from 1st April 2015.

8. Consultation outcome

8.1 Although there has been no public consultation specific to the provisions of this Order, the UK Government departments with responsibility for the legislation which this Order affects have been consulted during the drafting of this Order. The specification of offices in the Scottish Administration contained in this Order have the approval of Cabinet Office.

8.2 With regard to wider consultation, the Scottish Government ran its *'Making Justice Work: Courts Reform (Scotland) Bill - A consultation paper'* from 27th February 2013 – 24th May 2013. That consultation sought views on proposals to restructure the way civil cases and summary criminal cases are dealt with by the courts in Scotland. On 13th September 2013, the Scottish Government published its analysis of the 115 responses to that consultation. That analysis showed there to be a very clear majority support for almost all proposals and concepts detailed in the consultation. The *'Courts Reform (Scotland) Bill - analysis of consultation responses'* can be viewed here: http://www.scotland.gov.uk/Publications/2013/09/8038

9. Guidance

This Order stands alone, guidance is not necessary.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 There will be no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

Monitoring and review of this Order is not considered necessary.

13. Contact

Emma Lopinska at the Scotland Office (Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.