# POLICY NOTE

# THE SHERIFF COURT SIMPLE PROCEDURE (LIMITS ON AWARD OF EXPENSES) AMENDMENT ORDER 2019

## SSI 2019/79

The above instrument is made in exercise of the powers conferred on Scottish Ministers by section 81 of the Courts Reform (Scotland) Act 2014 ("the 2014 Act") and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

## Background

The 2014 Act delivered 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

The instrument supports the new Simple Procedure that was introduced on 28 November 2016. Simple procedure is a new form of sheriff court procedure established by Chapter 1 of Part 3 of 2014 Act and replaced 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. This Order prescribes categories of simple procedure cases in which the award of legal expenses is limited. The rationale for this is that it is unreasonable to expose litigants to the possibility of expenses that may be out of all proportion to the value of the claim.

The Order amends The Sheriff Court Simple Procedure (Limits on Award of Expenses) Order 2016 2016/388 ("the 2016 Order") that set the arrangements that currently pertain for awards of expenses. These mirrored those that applied previously for comparable cases under the previous Small Claims and Summary Cause Procedures that Simple Procedure replaced.

Article 2 of the 2016 Order provides that no expenses are awardable where the value of a claim does not exceed £200. Article 2(2) of this Order raises this to £300.

Article 3 of the 2016 Order provides that, where the value of a claim is between £200 and £1,500, the maximum sum awardable as expenses is £150. Article 2(3) of this Order raises the lower value of the claim from £200 to £300. The effect of the Order is therefore to make a small adjustment so that claims valued at between £200 and £300 will no longer be susceptible to an award of expenses, whereas prior to this Order an award of up to £150 could be made.

Where the value of a claim is between £1,500 and £3,000, the maximum sum awardable as expenses continues to be 10% of the value of the claim.

The rationale for bringing this Order forward now is that The Sheriff Court Fees Order 2018 (2018/81) amended the level of claim that attracts the minimal court fee of £19 from £200 to £300 with effect from 1 April 2019. The Sheriff Court Simple Procedure (Limits On Award Of Expenses) Amendment Order 2019 is intended to continue the alignment between the court fee and the limit on expenses so that low value litigation is not rendered prohibitive either by the court fee or the possibility of an award of expenses.

It is worth noting that, by virtue of section 81(4) of the Courts Reform (Scotland) Act 2014 this Order does not apply to the cases and appeals referenced in that subsection. These cases are where the defender has not stated a defence, or having stated a defence not proceeded with it, or having proceeded with a defence not acted in good faith as to its merits or where a party to the case has behaved unreasonably. A sheriff or summary sheriff may also disapply this Order by direction under section 81(7) on the application of any party to a simple procedure case. An application might be made if it was considered that a difficult question of law, or a question of fact of exceptional complexity, is involved.

**Consultation**

Technical engagement on the drafting of the order has been had with the Lord President's Private Office. 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.

**Financial effects**

The Order will not have any financial effects on the Scottish Government, local government or on business. In a very narrow band of litigation, where the value of the claim is between £200 and £300, successful litigants will not be able to seek an award of expenses whereas hitherto they could have claimed up to £150. The cost of this is neutrally borne by both defenders and claimants depending upon who is successful in the action.

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