

POLICY NOTE

THE COURTS REFORM (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 2, TRANSITIONAL AND SAVING PROVISIONS) ORDER 2015

SSI 2015/77 (C. 17)

1. The above instrument is made in exercise of the powers conferred by section 138(2) and (3) of the Courts Reform (Scotland) Act 2014 and is not subject to any parliamentary procedure.

Policy Objectives

2. This Order brings into force provisions of the Courts Reform (Scotland) Act 2014 (“the Act”). Section 23(5) (power of Court of Session to make provision as to the procedure to be followed by a tribunal to consider judicial fitness for office) comes into force on 12th March; the provisions set out in the schedule to the Order come into force on 1 April 2015. Some provisions are commenced in their entirety and others for the specific purposes set out in column 3 of the table in the schedule.

3. The policy objectives relating to the Act are fully described in the Policy Memorandum which accompanied 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>

Transitional and saving provision

4. Section 16(2) of the Act (salaries and remuneration payable by SCTS) is not commenced by the present Order. Article 3 makes transitional provision which applies until the commencement of that section. It provides for the salaries and remuneration of sheriffs principal and sheriffs to continue to be paid by the Scottish Ministers, as a charge on the Scottish Consolidated Fund, and for summary sheriffs to be paid on the same basis. It also provides for the payment of the other remuneration payable under section 16 of the Act to be paid by the Scottish Courts and Tribunals Service.

5. Article 4 makes transitional provision in relation to judicial fitness tribunals established under section 21 of the Act, providing that evidence of judicial conduct which took place prior to the 1st April 2015 may be taken into account in proceedings before a tribunal established under section 21.

6. Article 5 makes transitional provision in relation to the appointment of people to act as Appeal Sheriffs under section 51 of the Act. Section 49 of the Act provides that each person who holds office as a sheriff principal also holds office as an appeal sheriff. Section 51 enables the Lord President of the Court of Session to appoint a qualifying former Appeal Sheriff (defined in section 51(3)) to act as an Appeal Sheriff during such periods or on such occasions as the Lord President may determine. A sheriff principal who vacates office before 1st April 2015 will not have been an Appeal Sheriff by virtue of section 49, and so would not be eligible to be appointed under section 51 as a qualifying former Appeal Sheriff. Article 5 extends the eligibility for appointment to allow such former sheriffs principal to be appointed.

7. Article 6 saves acts of sederunt made under section 54 of the Sheriff Courts (Scotland) Act 1876 (“the 1876 Act”), which regulate the places at which commissary business may be dealt with, which would otherwise cease to have effect with the repeal of that section by paragraph 3 of schedule 5 to the Act. Article 6(2) provides for section 54 of the 1876 Act to continue to have effect for the purpose of enabling the revocation of any orders made under it.

8. Article 7 saves existing subordinate legislation made under the enactments specified in subsection (2). The reference to these enactments includes reference to the enactments as extended, applied or modified by any other enactment. The subordinate legislation saved by this article includes court fee orders made by the Scottish Ministers under the Court of Law Fees (Scotland) Act 1895 and rules of court made by the Court of Session under sections 32 and 32A of the Sheriff Courts (Scotland) Act 1971 and sections 5, 5A and 6 of the Court of Session Act 1988.

Previous commencement orders

9. Section 130 of the Act and certain provisions in Parts 1 and 2 of Schedule 4 were brought into force for limited purposes on 2nd February 2015 (by S.S.I. 2015/12 (C. 2)).

Future commencement orders

10. Further commencement orders under the Act in 2015-2016 will commence provisions relating to major reforms including the exclusive competence, the personal injury court, judicial review, the Sheriff Appeal Court, appeals to the Supreme Court, simple procedure and the abolition of Stipendiary Magistrates (STIPs)

Consultation

11. 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 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

12. Analyses of responses can be found at: www.scotland.gov.uk/Publications/2013/09/8038 and www.scotland.gov.uk/Publications/2013/05/6753

Impact Assessments

13. An equality impact assessment and a Business and Regulatory Impact Assessment have already been completed on the Courts Reform (Scotland) Bill – see links below.

<http://www.scotland.gov.uk/Publications/2014/03/9822>

<http://www.scotland.gov.uk/Publications/2014/03/9314>

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