

POLICY NOTE

THE COURTS REFORM (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 6 AND TRANSITIONAL PROVISIONS) ORDER 2016

SSI 2016/13 (C. 2)

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

Policy objectives

This Order brings into force the provisions in the Act. The provisions set out in the schedule to the Order come into force on 1 April 2016. The principal measures commenced by this Order are the abolition of the office of stipendiary magistrate and the transfer of the remuneration of certain judicial office holders and the members and the Chair of the Scottish Land Court, and members of the Lands Tribunal from the Scottish Government to the Scottish Courts and Tribunals Service (“SCTS”).

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/help/72771.aspx>

Transitional Provisions

Article 3 of the Order makes transitional arrangements relating to the abolition of stipendiary magistrates. Currently, Justice of the Peace courts – the lowest of the Scottish criminal courts, dealing with summary proceedings only – which are normally constituted by Justices of the Peace can also be constituted by stipendiary magistrates. Stipendiary magistrates, who are legally qualified, only hold office in the Sheriffdom of Glasgow and Strathkelvin. Generally a Justice of the Peace court’s sentencing powers are limited to a maximum fine £2,500 or a maximum prison sentence 60 days but where a court is constituted by a stipendiary magistrate the court can exercise the sentencing powers of a sheriff which are a maximum fine £5,000 or a maximum prison sentence 12 months.

Section 128 of the Act provides that persons formerly holding office as stipendiary magistrate will become summary sheriffs, unless they decline appointment. Section 5 of the Act allows for the appointment of other summary sheriffs and the first individuals are expected to take up office in April 2016. Section 129 ensures that, if required, a summary sheriff can sit in a JP Court but will only have the sentencing power of that court.

Transitional provision is required to ensure that criminal proceedings which have called before a stipendiary magistrate can proceed to sentencing by a summary sheriff with the same extended sentencing options that would have applied had the office of stipendiary magistrate not been abolished before sentencing. This may be necessary in more serious cases where the more extensive range of sentencing options available to a stipendiary magistrate may be necessary. There will be no prejudice to the accused because they or their agent will know

when the case calls before a stipendiary magistrate (as opposed to a Justice of the Peace) that their client will potentially be liable to an extended sentence. In most of the transitional cases the extended sentencing will not be relevant because the sentence imposed by the court for the offending before it will not be in the extended range.

The Crown Office and Procurator Fiscal Service ceased marking cases for the STIP court in October and therefore the transitional provision is expected to affect a limited number of cases and be required for a short period of time.

For future summary offences therefore, where a prosecutor feels that a sheriff's sentencing options are appropriate the case will be marked for the sheriff court (and not the Justice of the Peace court) and the case can be tried by either a sheriff or a summary sheriff, as is the case in all other sheriffdoms.

Previous commencement orders

Provisions of the Act were commenced on 2 February 2015 (by S.S.I 2015/12 (C.2)), by S.S.I 2015/77 (C.17) on 12 March and on 1 April 2015, by S.S.I 2015/247 (C.35) on 22 September 2015, by S.S.I. 2015/336 (C. 41) on 19 October 2015, and by SSI 2015/378 (C.47) on 1 January 2016. The Note as to earlier Commencement Orders within the Explanatory Note to this Order provides more detail on these commencements.

Future commencement orders

Further commencement orders under the Act will commence provisions relating to the commencement of simple procedure, and other aspects of the reforms set out in the Act.

Consultation

Technical engagement on the drafting of the Order has been had with the Lord President's Private Office and with 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 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.scotland.gov.uk/Publications/2013/02/5302 and www.scotland.gov.uk/Publications/2013/05/6753.

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

Impact Assessments

An Equality Impact Assessment (EQIA) for the Bill was published on the Scottish Government website at <http://www.scotland.gov.uk/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.scotland.gov.uk/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 & Legal System
Justice Directorate

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