

2015 No. 402

COURT OF SESSION

SHERIFF APPEAL COURT

SHERIFF COURT

The Courts Reform (Scotland) Act 2014 (Consequential and Supplemental Provisions) Order 2015

Made - - - - - *26th November 2015*

Coming into force - - - - - *1st January 2016*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 137 of the Courts Reform (Scotland) Act 2014(a) and all other powers enabling them to do so.

In accordance with section 133(2)(b) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Courts Reform (Scotland) Act 2014 (Consequential and Supplemental Provisions) Order 2015 and comes into force on 1st January 2016.

Enforcement of orders or determinations of the Sheriff Appeal Court

2. An order or determination of the Sheriff Appeal Court may be enforced as if it were a decree of a sheriff having jurisdiction in the area in which the order or determination is to be enforced.

Persons other than solicitors or advocates empowered to conduct proceedings before the Sheriff Appeal Court

3.—(1) Paragraph (2) applies to any provision of an enactment (other than an act of sederunt) passed or made before 1st January 2016 by virtue of which a person other than a solicitor or advocate would (but for section 109 of the Courts Reform (Scotland) Act 2014) be able to represent a party in an appeal from the sheriff to the sheriff principal.

(2) The provision permits such a person to represent the relevant party in an appeal from the sheriff to the Sheriff Appeal Court.

Modification of enactments

4. The modifications in the Schedule have effect.

Transitional provisions: appeals made before 1st January 2016

5. The modifications in paragraphs 2 to 7 and 9 of the Schedule do not apply to appeals made before 1st January 2016.

St Andrew's House,
Edinburgh
26th November 2015

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

SCHEDULE

Article 4

Modification of enactments

PART 1

Modification of primary legislation

Sheriff Courts Consignations (Scotland) Act 1893

1. After section 2 of the Sheriff Courts Consignations (Scotland) Act 1893(a) (definition), insert—

“2A. Application of this Act to the Sheriff Appeal Court

(1) This Act applies to the Sheriff Appeal Court as it applies to each sheriff court, subject to the following modifications.

(2) References to the sheriff court or to the ordinary sheriff court are to be read as references to the Sheriff Appeal Court.

(3) References to the sheriff principal are to be read as references to the President of the Sheriff Appeal Court.

(4) References to the sheriff clerk or to the sheriff clerk of the sheriffdom are to be read as references to the Clerk of the Sheriff Appeal Court.

(5) Section 3 has effect as if, for the words from “At” to “purpose” there is substituted “All consignations must be entered into a book kept at the office of the Clerk to the Sheriff Appeal Court for that purpose”.”.

Local Government (Scotland) Act 1973

2. In section 103J(6) of the Local Government (Scotland) Act 1973(b) (appeals from Accounts Commission for Scotland), for “section 28 (appeals to the Court of Session) of the Sheriff Courts (Scotland) Act 1907 (c.51)” substitute “section 114(1) (appeal from the sheriff principal to the Court of Session) of the Courts Reform (Scotland) Act 2014”.

Criminal Procedure (Scotland) Act 1995

3. In section 44A(6)(c) of the Criminal Procedure (Scotland) Act 1995(c) (appeal against detention in secure accommodation), for “sheriff principal” substitute “Sheriff Appeal Court”.

Ethical Standards in Public Life etc. (Scotland) Act 2000

4. In section 22(7) of the Ethical Standards in Public Life etc. (Scotland) Act 2000(d) (appeals from Standards Commission for Scotland), for “section 28 (appeals to the Court of Session) of the Sheriff Courts (Scotland) Act 1907 (c.51)” substitute “section 114(1) (appeal from the sheriff principal to the Court of Session) of the Courts Reform (Scotland) Act 2014”.

(a) 1893 c.44, as relevantly amended by the Sheriff Courts (Scotland) Act 1971 (c.58).

(b) 1973 c.65. Section 103J was inserted by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), section 33(3).

(c) 1995 c.46. Section 44A was inserted by the Children and Young People (Scotland) Act 2014 (asp 8), section 91.

(d) 2000 asp 7.

Antisocial Behaviour etc. (Scotland) Act 2004

5. In section 112(1)(b) of the Antisocial Behaviour etc. (Scotland) Act 2004(a) (conduct of proceedings by reporters), for “a sheriff principal” substitute “the Sheriff Appeal Court”.

Scottish Commission for Human Rights Act 2006

6. In section 14(9) of the Scottish Commission for Human Rights Act 2006(b) (power to intervene)—

- (a) in the definition of “children’s hearing proceedings”, after “otherwise)” insert “or in the Sheriff Appeal Court”; and
- (b) in the definition of “court”, after “appeal,” insert “the Sheriff Appeal Court”.

Children’s Hearings (Scotland) Act 2011

7.—(1) The Children’s Hearings (Scotland) Act 2011(c) is amended as follows.

(2) In section 19(1)(a) (rights of audience), for “or the sheriff principal” substitute “, the sheriff principal or the Sheriff Appeal Court”.

(3) In section 162(8)(d) (appeal to sheriff against decision to implement secure accommodation authorisation), for “sheriff principal” substitute “Sheriff Appeal Court”.

PART 2

Modification of secondary legislation

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003

8. In regulation 6(1)(a) of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003(d) (summary criminal proceedings) omit the words “to the High Court of Justiciary”.

The Children’s Hearings (Scotland) Act 2011 (Rights of Audience of the Principal Reporter) Regulations 2012

9. In regulation 2 of the Children’s Hearings (Scotland) Act 2011 (Rights of Audience of the Principal Reporter) Regulations 2012(e) (interpretation)—

- (a) after “Children’s Hearings (Scotland) Act 2011” omit “and”; and
- (b) at the end, insert—

“; and

references to the sheriff principal include the Sheriff Appeal Court”.

(a) 2004 asp 8. Section 112 was amended by S.S.I. 2013/211, Schedule 1, paragraph 14(2).
(b) 2006 asp 16.
(c) 2011 asp 1.
(d) S.S.I. 2003/179; relevant amending instruments are S.S.I. 2006/345 and S.S.I. 2008/251.
(e) S.S.I. 2012/335.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of and supplementary to the coming into force of certain provisions of the Courts Reform (Scotland) Act 2014 (“the Act”) on 1st January 2016. This Order comes into force on the same date. The principal provision of relevance is section 109 which, with effect from 1st January 2016, abolishes civil appeals from the sheriff to the sheriff principal and provides for any such appeals to be heard instead by the Sheriff Appeal Court.

Article 2 concerns the enforcement of orders or determinations of the Sheriff Appeal Court and has effect that sheriff officers may enforce such orders or determinations under their existing commissions from sheriff principals for particular sheriffdoms.

Article 3 concerns rights of audience before the Sheriff Appeal Court. The general rule is that only solicitors or advocates may conduct proceedings before the Court (with section 108 of the Act providing for sanction for counsel in relation to the recoverability of legal expenses). Exceptionally, enactments provide for persons other than solicitors or advocates to conduct appeal proceedings before sheriffs principal. Article 3 preserves such rights of audience in the context of the same types of appeal proceedings being heard by the Sheriff Appeal Court. Article 3 does not apply to acts of sederunt so that specific amending provision may be made by act of sederunt.

Article 4 introduces the Schedule which makes textual modifications to primary and secondary legislation in consequence of sections 109 and 114 of the Act and article 3 of this Order. Article 5 provides that these modifications do not apply to appeals made before 1st January 2016. Paragraph 8 of the Schedule is in consequence of the criminal jurisdiction and competence of the Sheriff Appeal Court which was assumed on 22nd September 2015.

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