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Justice Committee Comataidh a' Cheartais

The Sheriff Court Simple Procedure (Limits on Award of Expenses) Amendment Order 2019



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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

1. At its meeting on 19 February 2019, the Justice Committee considered the following instrument:
 - [The Sheriff Court Simple Procedure \(Limits on Award of Expenses\) Amendment Order 2019 \[draft\]](#).
2. The instrument was laid before the Parliament on 16 January 2019 and referred to the Justice Committee. The Justice Committee is required to report to the Parliament on the instrument by 4 March 2019. The instrument is subject to the affirmative procedure.
3. This instrument is made under section 81 of the Courts Reform (Scotland) Act 2014 (“the 2014 Act”).
4. The Order amends the Sheriff Court Simple Procedure (Limits on Award of Expenses) Order 2016 (“the 2016 Order”),¹ which set out the arrangements currently in place for awards of expenses. These mirrored those that applied previously for comparable cases under the previous small claims and summary cause procedures, which were replaced by the new simple procedure introduced on 28 November 2016.
5. Simple procedure is a new form of sheriff court procedure established by Chapter 1 of Part 3 of the 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.

Delegated Powers and Law Reform Committee consideration

11. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 22 January 2019 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

12. The Minister for Community Safety has lodged motion S5M-15526 proposing that the Justice Committee recommends approval of the instrument.
13. At its meeting on 19 February the Justice Committee took evidence on the instrument from Ash Denham, Minister for Community Safety.
14. The Minister outlined the purpose of the instrument in supporting the new simple procedure that was introduced on 28 November 2016.
15. There being no questions from Members, the Minister moved the motion in her name: S5M-15526—That the Justice Committee recommends that the Sheriff Court Simple Procedure (Limits on Award of Expenses) Amendment Order 2019 [draft] be approved.
16. The motion was agreed to without debate or division.

Conclusions

17. The Justice Committee recommends to the Parliament that it approve the Sheriff Court Simple Procedure (Limits on Award of Expenses) Amendment Order 2019 [draft].

- 1 The Sheriff Court Simple Procedure (Limits on Award of Expenses) Order 2016 (SSI 2016/388): <http://www.legislation.gov.uk/ssi/2016/388/contents/made>

