

Justice Committee
Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill
Written submission from the Society of Sheriff Court Auditors

Introduction

1. The Society of Sheriff Court Auditors (SoSCA) having considered the Bill and all related materials published on 1 June 2017 have opted to lodge submissions based on the Policy Memorandum. For ease of reference we have incorporated into this submissions note, the parts of that Memorandum which we consider merit comment from our organisation's perspective. Immediately after each of those 3 paragraphs are SoSCA's submissions.

Policy objectives of the Bill

Sheriff court auditors

2. Policy Memorandum paragraph 61: "At present, sheriff court auditors are commissioned by the sheriff principal. The majority are employed by the Scottish Courts and Tribunals Service (SCTS), but some are independent practitioners (ex sheriff clerks or ex sheriff clerk deutes, or in the case of Edinburgh, two solicitors). The appointment process does not include a formal assessment of skills to carry out the role of auditor. The sheriff clerks who have auditor of court commissions carry out judicial taxations as part of their SCTS employment. The independent practitioner auditors who currently provide this service to the sheriff courts are remunerated by means of a fee based on a percentage of account submitted for taxation."

SoSCA's comments

3. The Policy Memorandum (and elsewhere) contains a mis-understanding of the current position which has existed for several years now as it erroneously states that the majority of Sheriff Court Auditors are employed by the SCTS. We consider it to be important to correct this factual inaccuracy to ensure absolute clarity about the back-drop to the proposed changes. At present, with the exception of one in Glasgow (currently a pilot exercise), the other 14 active Sheriff Court Auditors are independent, self-employed practitioners. It is our understanding that any Sheriff Clerks who have Auditor of Court Commissions no longer carry out judicial taxations in any Sheriff Court.

Consultation

4. Policy Memorandum paragraph 70: "The Scottish Government concurred with majority view that auditors of court should be salaried posts. It noted the concerns of those with an interest who opposed the proposal and, although the Bill does not directly address this, it is intended that there be transitional arrangements in regulations under the Bill to allow the present incumbents to continue as self-employed until their retirement."

SoSCA's comments

5. We concur with the terms of paragraph 70 as we consider that there will be an essential need for continuity during any transitional phase. SoSCA's position is that from the existing pool of self-employed Auditors most (but perhaps not all), can and are willing to provide a service (still financed by taxation fees as at present), when the proposal to appoint new salaried auditors of court is implemented. That pool of existing Sheriff Court Auditors are prepared to continue to deal with taxations during any transitional arrangements, and for however long they are needed, including assisting SCTS with the training and mentoring of the new salaried Auditors to allow SCTS to phase in the new arrangements.
6. Can the Justice Committee be more specific about Policy Memorandum paragraph 70 relating to these transitional arrangements in regulations under the Bill to allow the present incumbents to continue as self-employed until their retirement?

Bill provisions

7. Policy Memorandum paragraph 72: "It is not proposed that the new employment arrangements will be applied to the current Auditor of the Court of Session who was appointed on a self-employed basis and has security of tenure until he reaches his 65th birthday. Recruitment and management of the Auditor will thereafter be a matter for SCTS which will have the power to appoint for such period and on such terms and conditions as it determines – as it does for all of its other staff bearing in mind its statutory obligations under the Judiciary and Courts (Scotland) Act 2008."

SoSCA's comments

8. We ask the question: Is there any prospect that this group of 14 Auditors might secure a transitional arrangement that allows them to remain *in situ* until they retire or attain a certain age? We submit that the retirement age arrangement in place for the Auditor of the Court of Session should be considered as applicable to the existing group of Sheriff Court Auditors also.

Society of Sheriff Court Auditors
24 August 2017