

# COURTS REFORM (SCOTLAND) BILL



## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

MEDICAL PROTECTION SOCIETY

Title Mr  Ms Mrs Miss Dr *Please tick as appropriate*

Surname

URBANEK

Forename

ANDREW

### 2. Postal Address

39 GEORGE STREET

EDINBURGH

Postcode EH2 2HN

Phone  
0131 240 1840

Email  
andrew.urbanek@mps.org.uk

### 3. Permissions - I am responding as...

Individual

Group/Organisation

*Please tick as appropriate*

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*  Yes  No

## CONSULTATION QUESTIONS

### CHAPTER 1

#### Moving civil business from the Court of Session to the sheriff courts

Q1. Do you agree that the provisions in the Bill raising the exclusive competence and providing powers of remit will help achieve the aim of ensuring that cases are heard at the appropriate level?

Yes  No

The Court of Session is the wrong forum for low value, uncomplicated clinical negligence and personal injury cases.

Raising the exclusive competence of the Court of Session should reduce litigation costs to a level more proportionate to the value of the claim. However, an exclusive competence of £150,000 is too high. The level should be high enough to ensure low value, low complexity claims are raised in the sheriff court, providing specialist sheriff courts with sufficient business. However there is concern that preventing access to the Court of Session, save in exceptionally high value cases could damage a specialist, independent bar.

A discretionary power of remit is necessary. This ought to be discretionary in both directions, including the power to remit from Court of Session to the sheriff court if it becomes evident that a case has a significantly lower value than the sum sued for. Section 82 provides for this.

Q2. Do you think that the Court of Session should retain concurrent jurisdiction for all family cases regardless of the value of the claim?

Yes  No

Not applicable to MPS

Q3. Do you think that the Court of Session should retain concurrent jurisdiction in any other areas?

Yes  No

Not applicable to MPS

Q4. What impact do you think these proposals will have on you or your organisation?

Less reliance on counsel and better case management ought to reduce litigation costs and allow for earlier resolution of uncomplicated, lower value claims.

## CHAPTER 2

### Creating a new judicial tier within the sheriff court

Q5. Do you think that the term "summary sheriff" adequately reflects the new tier and its jurisdiction?

Yes  No

Q6. Do you agree with the proposal that the qualifications for appointment as a summary sheriff should be the same as that for a sheriff?

Yes  No

This will ensure that complex legal matters continue to be dealt with by persons with the necessary qualifications and experience i.e. the same competence as the sheriff. It will also allow experienced summary sheriffs to apply for the role of sheriff as and when positions become available.

Q7. Do you agree with the proposed competence of summary sheriffs in family cases?

Yes  No

Not applicable to MPS

Q8. Do you agree that summary sheriffs should deal with referrals from children's hearings?

Yes  No

Not applicable to MPS

Q9. Do you think that in addition to summary crime, summary sheriffs should have powers in other areas of criminal jurisdiction?

Yes  No

Not applicable to MPS

Q10. Do you agree that the allocation of cases where there is concurrent competence between sheriffs and summary sheriffs should be an administrative matter for the relevant Sheriff Principal?

Yes  No

We note that Section 26(3) of the draft Bill provides that the allocation of

business amongst the judiciary will be the preserve of the Sheriff Principal.  
This would seem appropriate.

Q11. What impact do you think these proposals will have on you or your organisation?

These proposals ought to minimise delays and allow for better case management, which should in turn reduce the cost of litigating.

### **CHAPTER 3**

#### **Creating a new sheriff appeal court**

Q12. Do you agree that criminal appeals should be held in a centralised national appeal court?

Yes  No

Not applicable to MPS

Q13. Do you think that civil appeals should be heard in the sheriff appeal court sitting in the sheriffdom in which they originated?

Yes  No

This is potentially problematic depending on the quorum used in appeals. We foresee logistical difficulties in organising three sheriffs to attend appeals in more remote sheriffdoms. This could lead to delays and increased litigation costs.

Q14. Do you agree that the sheriff appeal court should be composed of appeal sheriffs who are Sheriffs Principal and sheriffs of at least five years experience?

Yes  No

Provided a Sheriff Principal sits in each appeal, sheriffs of more than five years experience are considered sufficiently qualified to make up the quorum.

Q15. What impact do you think these proposals will have on you or your organisation?

While there is potential for a simplified appeals process, clarification is needed on the resources available i.e. whether sheriffs would come from other sheriffdoms, the quorum and logistics.

## CHAPTER 4

### Creating a specialist personal injury court

Q16. Do you agree that establishment of a specialist personal injury court?

Yes  No

It is appropriate for lower value, uncomplicated PI and clinical negligence claims to be heard in a specialist personal injury court. There are benefits to be gained in litigating before a specialist reparation judge. A regional justice centre with a specialist personal injury court would encourage specialisation.

Q17. Do you agree that civil jury trials should be available in the specialist personal injury court?

Yes  No

Juries in high value, complex clinical negligence claims rarely reach an appropriate determination in Court of Session cases. It is not in the interests of justice to re-introduce civil jury trials in the sheriff court.

There are concerns over the advocacy skills of some PI/clinical negligence practitioners, more accustomed to raising actions in the Court of Session, advising juries on complex medical and legal points in the sheriff court.

There is greater potential for inconsistencies in awards for damages and the use of civil juries will likely lead to more delays.

Q18. What impact do you think these proposals will have on you or your organisation?

If the specialist sheriff takes a firm view on case management there is potential for early resolution of claims and more proportionate awards of expenses. There is however concern that there will be an increase in applications for jury trial, which will lead to excessive awards in clinical negligence claims. This may in turn have a knock on effect in terms of the number of appeals being heard.

## CHAPTER 5

### Improving judicial review procedure in the Court of Session

Q19. Do you agree with the three month time limit for judicial review claims to be brought?

Yes  No

Q20. Do you agree that the introduction of the leave to proceed with an application for judicial review will filter out unmeritorious cases?

Yes  No

Q21. Do you agree that these proposals to amend the judicial review procedure will maintain access to justice?

Yes  No

Q22. What impact do you think these proposals will have on you or your organisation?

There will be minimal impact, however MPS welcomes the certainty that a fixed time limit will bring.

## CHAPTER 6

### Facilitating the modernisation of procedures in the Court of Session and sheriff courts

#### Replace the existing rule making powers with more general and generic powers

Q23. Do you agree that the new rule making provisions in sections 85 and 86 of the draft Bill will help improve the civil procedure in the Court of Session and sheriff courts?

Yes  No

If there is greater emphasis on case management to promote increased parity between the parties and early narrowing of issues in dispute, this ought to result in earlier resolution of claims and more proportionate awards of expenses.

Q24. Are there any deficiencies in the rule making provisions that would restrict the ability of the Court of Session to improve civil procedure in the Court of Session and sheriff courts?

Yes  No

None that were identified

Q25. What impact do you think these proposals will have on you or your organisation?

Subject to there being sufficient resources, there ought to be earlier resolution of claims.

#### **The creation of new powers in the Inner House of the Court of Session to sift and dispose of appeals with no reasonable prospects of success.**

Q26. Do you agree that a single judge of the Inner House should be able to consider the grounds of an appeal or motion?

Yes  No

Q27. What impact do you think these proposals will have on you or your organisation?

It would reduce the number of unmeritorious appeals/motions from party litigants.

**The abolition of the distinction between ordinary and petition procedure in the Court of Session.**

Q28. Do you agree that the distinction between ordinary and petition procedure should be abolished?

Yes  No

There seems to be no practical reason for a distinction between ordinary and petition procedure. A single system to standardise the process is favoured.

Q29. Do you foresee any unintended consequences for this change?

Yes  No

Q30. What impact do you think these proposals will have on you or your organisation?

Minimal impact.

**New procedures for dealing with vexatious litigants.**

Q31. Do you agree that the new procedure will ensure that courts are able to deal appropriately with vexatious litigants?

Yes  No

The new procedures ought to help ensure the courts are better equipped to deal appropriately with vexatious litigants.

We agree that the court should be able to take into account proceedings either active or historic in other jurisdictions.

Q32. What impact do you think these proposals will have on you or your organisation?

A reduction in the number of unmeritorious claims and greater certainty for defenders when dealing with vexatious litigants.

**Scotland-wide enforcement of interdict and interim orders**

Q33. Do you agree that an order for interdict should be capable of being enforced at any sheriff court in Scotland?



Yes  No

Q34. Should interim orders and warrants have similar all-Scotland effect and be capable of enforcement at any sheriff court?

Yes  No

Q35. What impact do you think that these proposals will have on you or your organisation?

Minimal impact.

## CHAPTER 7: THE PROPOSALS: Alternative Dispute Resolution

Q36. Do you think that ADR should be promoted by means of court rules?

Yes  No

We actively encourage ADR as it can benefit both pursuer and defender in reaching a resolution.

ADR should be an option that parties are required to give due consideration to. However, we acknowledge that it is not suitable in every case.

Q37. What impact do you think these proposals will have on you or your organisation?

We already encourage ADR where appropriate and therefore the proposals can only be beneficial.

## **ASSESSING IMPACT**

### **Equality**

Q38. Please tell us about any potential impacts, either positive or negative, you feel any or all of the proposals in this consultation may have on a particular group or groups of people.

None

### **Business and Regulatory**

Q39. Please tell us about any potential economic or regulatory impacts, either positive or negative, you feel any or all of the proposals in this consultation may have.

None

### **Legislation**

Q40. Please give any comments on the legislation as set out in the Draft Bill. Are there any omissions or areas you think have not been covered.

None were identified.