

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Part 1 - Sheriff Courts

20. The provisions in Part 1 are principally designed to give effect to those recommendations of the Scottish Civil Courts Review which relate to the sheriff court. The principal changes included in this Part involve:
- the increase in the exclusive competence, of the sheriff court from £5,000 to £100,000;
 - the creation of a new judicial office in the sheriff court to be known as the summary sheriff with concurrent jurisdiction with sheriffs but in a more restricted range of both civil and criminal matters; and
 - the ability for Scottish Ministers to confer an all-Scotland jurisdiction on a sheriff in a specified sheriffdom sitting at a specified sheriff court for the purposes of dealing with specified types of civil proceedings (e.g. the proposed Sheriff Personal Injury Court).
21. The introduction of such fundamental changes by way of amendment to the Sheriff Courts (Scotland) Acts of 1907 and 1971 would almost inevitably result in a very unsatisfactory and fractured product which would be very difficult for legal practitioners and others. The opportunity has therefore been taken to restate (sometimes with modification) the relevant provisions which will now sit together in this single Part of the Act.

Chapter 1 - Sheriffdoms, sheriff court districts and sheriff courts

Section 1 – Sheriffdoms, sheriff court districts and sheriff courts

22. Subsections (1) to (3) set out that Scotland is to be divided into sheriffdoms which are to be further divided into sheriff court districts. They take account of the fact that not all sheriffdoms are divided into more than one sheriff court district (Glasgow and Strathkelvin is currently the only sheriffdom that exists as a single sheriff court district) and retain flexibility to cater for the possibility that in the future other sheriffdoms may be undivided. Subsections (4) to (6) provide that, subject to any order under section 2, existing sheriffdoms, sheriff court districts and sheriff court locations will continue as they are following the coming into force of section 1.

Section 2 – Power to alter sheriffdoms, sheriff court districts and sheriff courts

23. Section 2 updates the powers to alter sheriffdoms and sheriff court districts in sections 2(1) and 3(2) of the Sheriff Courts (Scotland) Act 1971, combining the two powers into one section, and also adds new provisions. Previously the Scottish Ministers were only able to make changes with the consent of the Lord President of the Court of Session and the Scottish Court Service, the latter being placed under a duty to consult parties

who are likely to have an interest. This meant that the Scottish Court Service first had to consult, the Scottish Ministers then made an order and then the Lord President had to consent to the order including further consultation with, for example, the sheriffs principal. The process was bureaucratic and not well sequenced. The provisions now set out in subsections (2) to (5) make the process more straightforward. Firstly, the SCTS (as the SCS is renamed by section 130 of the Act) must consult such persons as it considers appropriate before submitting a proposal under subsection (1). Then it may, with the agreement of the Lord President, submit a proposal to the Scottish Ministers. The Scottish Ministers must then consider the proposal, and decide whether to make an order and what provision to make in the order. The making of the order is subject to the consent of the SCTS and the Lord President. The order made by the Scottish Ministers is subject to the affirmative procedure.

Chapter 2 - Judiciary of the sheriffdoms

Permanent and full-time judiciary

Section 3 – Sheriffs principal

24. **Section 3** provides that there continues to be the office of sheriff principal, appointed by Her Majesty on the same basis as prior to the Act (that is, on the recommendation of the First Minister, after consulting the Lord President, in accordance with section 95(4)(b) of the Scotland Act 1998). The appointment procedure set out in section 3 does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008, the effect of which is that the First Minister may only recommend an individual who has been recommended for appointment by the Judicial Appointments Board for Scotland (subsection (4)).

Section 4 – Sheriffs

25. **Section 4** provides that there continues to be the office of sheriff, appointed by Her Majesty on the same basis as prior to the Act (that is, on the recommendation of the First Minister, after consulting the Lord President, in accordance with section 95(4)(b) of the Scotland Act 1998). The appointment procedure set out in section 4 does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008, the effect of which is that the First Minister may only recommend an individual who has been recommended for appointment by the Judicial Appointments Board for Scotland (subsection (4)).

Section 5 – Summary sheriffs

26. **Section 5** introduces a new office of summary sheriff who will be subject to the same appointment procedures as for sheriffs – that is, subject to the qualification requirements contained in section 14, and appointed by Her Majesty on the recommendation of the First Minister, after consulting the Lord President. The appointment procedure set out in section 5 does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008, the effect of which is that the First Minister may only recommend an individual who has been recommended for appointment by the Judicial Appointments Board for Scotland (subsection (4) – paragraph 9(3) of schedule 5 amends section 10 of the 2008 Act to bring the office of summary sheriff and part-time summary sheriff within the remit of the Judicial Appointments Board). Sections 44 and 45 and schedule 1 make provision about the competence and jurisdiction of summary sheriffs.

Temporary and part-time judiciary

Section 6 – Temporary sheriff principal

27. **Section 6** which effectively re-enacts, with amendments, section 11 of the Sheriff Courts (Scotland) Act 1971 makes provision for the appointment of a temporary sheriff principal in the circumstances set out in subsection (1). In these circumstances, and if the Lord President requests, the Scottish Ministers must appoint a temporary sheriff principal. Those eligible for appointment are a sheriff (subsection (2)(a)) or a “qualifying former sheriff principal” (subsection (2)(b)) defined in subsection (3) as an individual who ceased to hold office as sheriff principal other than by virtue of an order under section 25 (removal from office) and who has not reached the age of 75. Subsection (4) sets out that a temporary sheriff principal may be appointed to exercise either all of the sheriff principal’s functions or only those which the sheriff principal is unable to perform or is precluded from exercising. The Lord President may request the appointment of a temporary sheriff principal on the ground that a vacancy has occurred in the office of sheriff principal, but only if the Lord President considers such an appointment to be necessary or expedient in order to avoid a delay in the administration of justice in the sheriffdom (subsection (6)).

Section 7 – Temporary sheriff principal: further provision

28. **Section 7** makes further provision for the arrangements for a temporary sheriff principal. An appointment as a temporary sheriff principal ceases when it is recalled by the Scottish Ministers on the request of the Lord President (subsection (2)) or when the individual concerned ceases to be a sheriff or is suspended from that office (subsection (3)). (For suspension and removal of sheriffs, see section 22 and 25 respectively.) Except where the temporary sheriff principal is appointed to exercise only limited functions (in terms of section 6(4)(b)), he or she may exercise the jurisdiction and powers of sheriff principal of the sheriffdom (subsection (4)). A temporary sheriff principal retains his or her appointment as a sheriff (subsection (5)), but where the appointment is as a temporary sheriff principal of a sheriffdom other than that for which the person is a sheriff, he or she will only be able to act as a sheriff within the sheriffdom in which appointment as the temporary sheriff principal is held and not in his or her “home” sheriffdom (subsection (6)).

Section 8 – Part-time sheriffs

29. **Section 8**, which governs the appointment of part-time sheriffs, restates the majority of section 11A of the Sheriff Courts (Scotland) Act 1971 (sections 11A to 11D of which were inserted by the Bail, Judicial Appointments etc (Scotland) Act 2000). Subsection (1) provides for the Scottish Ministers to appoint individuals to “act as” sheriffs, and for individuals so appointed to be known as “part-time sheriffs”. The qualifications for appointment, set out in section 14, are the same as for sheriffs, and the Scottish Ministers may make an appointment only after consulting the Lord President (subsection (2)). In terms of subsection (3), an appointment as part-time sheriff lasts for five years, unless it ceases in accordance with section 20 (Cessation of appointment of judicial officers); but see section 9, which provides (with exceptions) for automatic re-appointment at the end of each five-year period. A part-time sheriff may exercise the powers and jurisdiction that attach to the office of sheriff in every sheriffdom (subsection (4)) and is subject to the administrative direction of the sheriff principal of the sheriffdom in which the part time sheriff is for the time being sitting (subsection (5)) (for the powers of sheriffs principal in this regard, see sections 27 and 28). Sheriffs principal are directed by subsection (6) to have regard to the desirability of ensuring that each part-time sheriff is given the opportunity of sitting for at least 20 days, and not more than 100 days, per year. Section 11A(5) of the 1971 Act, as amended by the [Maximum Number of Part-Time Sheriffs \(Scotland\) Order 2006 \(S.S.I 2006/257\)](#) imposed a limit of 80 upon the number of part-time sheriffs. Section 11A(5) is not re-enacted, and there is therefore no longer a limit on the number of part-time sheriffs.

Section 9 – Reappointment of part-time sheriffs

30. **Section 9** restates, with some amendments, section 11B of the Sheriff Courts (Scotland) Act 1971. The Act does not, however, re-enact the prohibition on those aged 69 from being reappointed. Retirement ages in general are not reproduced in the Act and are instead consolidated through amendments made to the Judicial Pensions and Retirement Act 1993 by schedule 5, paragraph 8. Section 11B(9), of the 1971 Act which prevented part-time sheriffs who were solicitors from acting as part-time sheriffs in the same sheriff court district as that individual's principal place of business, is substantially re-enacted in section 15(3).
31. The effect of section 9 is that, except where one of the conditions in subsection (1)(a)(c) is met, or the individual in question has reached the statutory retirement age of 70 contained in section 26(1) of the Judicial Pensions and Retirement Act 1993, that individual must be re-appointed at the expiry of each five-year appointment.

Section 10 – Part-time summary sheriffs

32. This section creates the office of part-time summary sheriff on terms identical to those applying to part-time sheriffs. Reference is made to the notes at paragraph 29.

Section 11 – Reappointment of part-time summary sheriffs

33. **Section 11** replicates the provisions of section 9 in respect of part-time summary sheriffs. Reference is made to the notes at paragraph 30.

Re-employment of former holders of certain judicial offices

Section 12 – Re-employment of former judicial office holders

34. **Section 12** substantially re-enacts section 14A of the Sheriff Courts (Scotland) Act 1971, as inserted by the Judiciary and Courts (Scotland) Act 2008. That section provided for the re-appointment of retired sheriffs principal and sheriffs; section 12 also allows for the re-appointment of former qualifying part-time sheriffs and summary sheriffs and part-time summary sheriffs. The section allows a sheriff principal to appoint a qualifying former sheriff principal, a qualifying former sheriff or a qualifying former part-time sheriff to act as a sheriff of the sheriffdom and a qualifying former summary sheriff or part-time summary sheriff to act as a summary sheriff of the sheriffdom. Such an appointment only permits the individual in question to act during such period or periods as the sheriff principal may determine (subsection (2)), and an appointment may only be made where it appears to the sheriff principal to be expedient as a temporary measure in order to facilitate the disposal of business in the sheriff courts of the sheriffdom (subsection (3)). So, for example, a former judicial office holder might be appointed to fill a temporary gap created by the appointment of one of the sheriffs of the sheriffdom as a temporary sheriff principal in terms of section 6. Subsections (4) to (8) define what is meant by a “qualifying” former judicial office holder: in order to be “qualifying”, the former office holder must not have been removed from office under section 25, nor have reached the age of 75. In the case of former part-time sheriffs and former part-time summary sheriffs, the former office holder must not have left office by virtue of the sheriff principal recommending against their reappointment (sections 9(1)(b) and 11(1)(b)), nor by virtue of not having sat for the minimum number of days in a 5-year period (sections 9(1)(c) and 11(1)(c)).

Section 13 – Re-employment of former judicial office holders: further provision

35. This section makes further provisions about the use of former judicial office holders. Subsection (1) provides that an appointment continues until recalled by the relevant sheriff principal. Subsections (2) and (3) provide that a re-appointed judicial officer may exercise the powers of a sheriff or, as the case may be, a summary sheriff of the sheriffdom. Subsection (4) provides that an appointment under section 12(1) comes to

an end when the individual reaches the age of 75. Subsection (5) permits an individual to continue to deal with ancillary matters relating to a case begun before the ending of his or her appointment under section 12(1) and providing that for that purpose the individual concerned is to be treated as acting under that appointment.

Qualification and disqualification

Section 14 – Qualification for appointment

36. **Section 14** sets out the qualification for appointment as a sheriff principal, sheriff, summary sheriff, part-time sheriff or part-time summary sheriff. It re-enacts the substance of section 5 of the Sheriff Courts (Scotland) Act 1971 by requiring that an individual must have been a solicitor or advocate during the 10 years immediately prior to appointment. Subsection (1)(a) makes it explicit that experience in a judicial office specified in subsection (2) immediately prior to appointment also qualifies an individual for appointment.

Section 15 – Disqualification from practice, etc.

37. Subsections (1) and (2) of section 15 prohibit sheriffs principal, sheriffs and summary sheriffs from engaging in practise as an advocate or a solicitor or in any other business, or being in partnership with or employed by or acting as agent for any person so engaged. In doing so, they substantially re-enact, and extend to summary sheriffs, section 6 of the Sheriff Courts (Scotland) Act 1971. The prohibition on private practice and business is intended to cover all private business as there would be an obvious potential for conflict of interest if a sheriff had outside business interests.
38. Subsection (3) makes it clear that part-time sheriffs and part-time summary sheriffs cannot act in the part-time judicial capacity in the sheriff court district in which their place of business as a solicitor is situated. This prohibition now extends to any place of business as a solicitor, not just the main place of business.

Remuneration and expenses

Section 16 – Remuneration

39. **Section 16** consolidates a number of provision of the Sheriff Courts (Scotland) Acts 1907 and 1971 dealing with the remuneration of sheriffs, sheriffs principal, part-time sheriffs and re-employed former judiciary and makes new provision for the remuneration of summary sheriffs and part-time summary sheriffs. The remuneration of sheriffs principal and sheriffs is a reserved matter under the Scotland Act 1998. Subsections (1) and (2) in providing for the determination of the remuneration of sheriffs and sheriffs principal by the Secretary of State with consent of the Treasury, re-enact section 14 of the 1907 Act. Subsections (3) and (4) provide for the remuneration of summary sheriffs to be determined and paid by the Scottish Ministers. Subsections (5), (6), and (7) deal with the remuneration of part-time and re-employed judiciary. Again the remuneration of these judiciary is determined by the Scottish Ministers. Subsections (8) and (9) restate section 10(4) of the 1971 Act in relation to payments to be made to sheriffs principal and sheriffs who are directed to perform the judicial functions of sheriffs principal and sheriffs in another sheriffdom. Subsections (10) and (11) make similar provision in relation to summary sheriffs who act in another sheriffdom; in contrast to sheriffs principal and sheriffs, in respect of whom the function of determining remuneration continues to rest with the Secretary of State with the consent of the Treasury, any additional remuneration of summary sheriffs is to be determined by the Scottish Ministers.
40. Subsection (12) makes it clear that salaries and remuneration for the judicial officers listed under subsections (1) to (11) will be paid by the SCTS. Subsection (13) provides

that the salaries of sheriffs principal and sheriffs and the remuneration due to summary sheriffs will be charged on the Scottish Consolidated Fund.

Section 17 – Expenses

41. There are a variety of provisions in the Sheriff Courts (Scotland) Act 1971 that make provision for the payment of expenses and allowances to holders of judicial offices in the sheriff court and which are distinct from remuneration provisions. These are section 10(4) (sheriff directed to perform duties in a sheriffdom other than that which he was appointed), section 11(8) (temporary sheriffs principal), section 11A(8) (part-time sheriffs), section 14A(6) (re-employment of retired sheriffs) and section 19 (travelling expenses for sheriffs principal). Section 17 consolidates these provisions and provides that the judicial officers listed in subsection (3) may be paid expenses by the SCTS if they were reasonably incurred in the performance of the officer's duties. There is now no provision for the payment of "allowances".

Leave of absence

Section 18 – Leave of absence

42. **Section 18** provides for leave of absence for sheriff court judiciary. In terms of subsection (1), it is for the Lord President to approve leave of absence for sheriffs principal and temporary sheriffs principal. In terms of subsection (2), it is for the sheriff principal to approve leave of absence for a sheriff or summary sheriff. The maximum amount of recreational leave which may be approved for any one judicial officer in a given year is seven weeks (subsection (3)), although this limit may be exceeded with the permission of the Lord President (subsection (4)), which the Lord President may give only if there are special reasons which justify exceeding the limit in the particular case (subsection (5)). There is no limit upon the amount of leave which may be approved for non-recreational purposes (defined in subsection (7) as including, without limitation, sick leave, compassionate leave, and study leave). Subsection (6) allows the Lord President to delegate to another judge of the Court of Session any of the functions conferred upon the Lord President by this section. (So far as leave of absence for sheriffs principal and sheriffs is concerned, the provision made by section 18 is substantially equivalent to that previously provided for in sections 13(2) and (3) and 16(2) and (2A) of the Sheriff Courts (Scotland) Act 1971.)

Residence

Section 19 – Place of residence

43. **Section 19** restates sections 13(1) and 14(2) of the Sheriff Courts (Scotland) Act 1971 to preserve, and extend to summary sheriffs, the existing power of the Lord President to require a judicial officer to have an ordinary residence at such place as the Lord President may require – which would normally be within reasonable travelling distance to the court or courts where that judicial officer sits.

Cessation of appointment

Section 20 – Cessation of appointment of judicial officers

44. **Section 20** sets out the grounds upon which the appointment of a sheriff principal, a sheriff, a summary sheriff, a part-time sheriff, or a part-time summary sheriff may come to an end. Subsection (1) allows for resignation at any time by giving notice to that effect to the Scottish Ministers. Subsection (2) provides that the appointment of that officer will end on giving such notice or resignation, upon retirement (under the Judicial Pensions and Retirement Act 1993), upon removal from office in accordance with section 25 or upon appointment as another judicial officer specified in subsection (3).

Fitness for office

45. Sections 21 to 25 re-enact, and extend to summary sheriffs and part-time summary sheriffs, sections 12A to 12E of the Sheriff Courts (Scotland) Act 1971, as inserted by the Judiciary and Courts (Scotland) Act 2008. These provisions are consistent with those which apply to the senior judiciary by virtue of sections 35 to 39 of the latter Act.

Section 21 – Tribunal to consider fitness for office

46. Section 21 provides that the First Minister must set up a tribunal to investigate and report on whether a person is unfit to hold judicial office by reason of inability, neglect of duty, or misbehaviour where requested to do so by the Lord President (subsection (1)). The First Minister may set up such a tribunal in other such circumstances as the First Minister thinks fit, having consulted the Lord President (subsection (2)). Subsection (3) provides that sheriffs principal, sheriffs, summary sheriffs, part-time sheriffs, and part-time summary sheriffs are all potentially subject to the jurisdiction of such tribunals. Subsection (4) provides that the tribunal is to consist of one judge who must be a qualifying member of the Judicial Committee of the Privy Council (and who will, by virtue of subsection (7), chair the tribunal and have a casting vote); one holder of the relevant judicial office; one individual who has been qualified for at least 10 years as a solicitor or advocate; and one individual who does not, and never has, fallen within any of the other categories. The terms “qualifying member of the Judicial Committee of the Privy Council” and “relevant judicial office” are defined in subsection (5). The membership of the tribunal is to be selected by the First Minister, with the agreement of the Lord President (subsection (6)).

Section 22 – Tribunal investigations: suspension from office

47. Section 22 provides for the suspension from judicial office of the individual who is the subject of the tribunal’s investigation. This suspension may be effected by the Lord President, where the tribunal was constituted at the Lord President’s request (subsections (1) and (2)), or by the First Minister, on receiving a recommendation to that effect from the tribunal (subsections (4) and (5)). In each case, the suspension lasts until the person who made it orders otherwise (subsections (3) and (6)). Suspension does not affect the remuneration of the suspended judicial officer (subsection (7)).

Section 23 – Further provision about tribunals

48. Section 23 provides that a tribunal may require any person to attend its proceedings to give evidence or may require any person to produce documents (subsection (1)). The limits upon the requirements which may be made are the same as those which apply to requirements made by a court (subsection (2)). Subsection (3) provides for the enforcement of these requirements by providing that if a person fails to comply with either or both of these requirements the tribunal may make an application to the Court of Session. The Court of Session may, in turn, make an order enforcing compliance or deal with the matter as if it were a contempt of the court (subsection (4)). Subsection (5) gives the Court of Session power, by act of sederunt, to make provision as to the procedure to be followed by and before a tribunal constituted under section 21 (subsection (5)). The expenses of a tribunal, and the payment of remuneration and expenses to its members are for the Scottish Ministers (subsection (6)).

Section 24 – Tribunal report

49. Section 24 provides that the report of a tribunal must be in writing, contain the reasons for the tribunal’s decision, and be submitted to the First Minister (subsection (1)) who must then lay the report before the Parliament (subsection (2)).

Section 25 – Removal from office

50. **Section 25** provides for a judicial office holder's removal from office following the report of a tribunal constituted under section 21. Subsection (1) provides that the First Minister may remove an individual from the office of sheriff principal, sheriff, part-time sheriff, summary sheriff, or part-time summary sheriff if the tribunal has reported that the individual is unfit to hold that office and after that report has been laid before the Parliament. In the case of a sheriff principal, sheriff, or summary sheriff, such removal requires an order under the negative procedure (subsections (2) and (3)).

Section 26 – Abolition of the office of honorary sheriff

51. **Section 26** abolishes the office of honorary sheriff. Honorary sheriffs hold office under section 17 of the Sheriff Courts (Scotland) Act 1907 and have not been subject to the usual requirements for shrieval qualification in section 5 of the Sheriff Courts (Scotland) Act 1971 (which are re-enacted in section 14 of the Act). Therefore after all honorary sheriffs have left office all of the judiciary of a sheriffdom will be legally qualified.

Chapter 3 — Organisation of business

Sheriff principal's general responsibilities

Section 27 – Sheriff principal's responsibility for efficient disposal of business in sheriff courts

52. **Section 27**, which substantially re-enacts the provisions of sections 15 and 16(1) of the Sheriff Courts (Scotland) Act 1971, gives the sheriff principal responsibility to ensure the efficient disposal of business in sheriff courts in his or her sheriffdom (subsection (1)) and the power to make such arrangements as appear necessary or expedient for the purpose of carrying out that responsibility (subsection (2)). In particular, the sheriff principal has power to allocate business among the judiciary of the sheriffdom (subsection (3)), and to give directions of an administrative character to such judiciary and to members of the staff of the SCTS (subsection (5)). The "judiciary of the sheriffdom" is defined in section 125(2) as all judicial officers within the sheriffdom, including part-time sheriffs and part-time summary sheriffs. Subsection (7) makes it clear that the powers of the sheriff principal under this section are subject to the Lord President's overall responsibility for the efficient disposal of business in the Scottish courts under provisions in the Judiciary and Courts (Scotland) Act 2008.

Section 28 – Sheriff principal's power to fix sittings of sheriff courts

53. **Section 28**, which re-enacts and updates section 17 of the Sheriff Courts (Scotland) Act 1971, gives the sheriff principal power by order to prescribe where and when sheriff courts will sit and the descriptions of business to be disposed of at those sittings. The provisions of section 28 are again subject to the Lord President's overall responsibility for the efficient disposal of business in the Scottish courts.

Section 29 – Lord President's power to exercise functions under sections 27 and 28

54. **Section 29** permits the Lord President to intervene where the Lord President considers that a sheriff principal has exercised functions under section 27 or 28 in a way which is prejudicial to the efficient disposal of business in the sheriff courts, or is prejudicial to the efficient organisation or administration of those courts, or is otherwise against the public interest (subsection (1)). In such a case, the Lord President may rescind the exercise of the function by the sheriff principal and exercise the function (subsection (2)). This section makes equivalent provision to section 17A of the Sheriff Courts (Scotland) Act 1971.

Deployment of judiciary

55. [Sections 30 to 33](#) enable the Lord President to deploy and re-allocate sheriffs principal, sheriffs and summary sheriffs across sheriffdoms, and, in the case of sheriffs and summary sheriffs, across sheriff court districts.

Section 30 – Power to authorise a sheriff principal to act in another sheriffdom

56. [Section 30](#) permits the Lord President to authorise the sheriff principal of one sheriffdom to exercise all or some of the functions of sheriff principal of another sheriffdom in any of the circumstances set out in subsection (1). Subsection (6) removes any doubt that a temporary sheriff principal may be asked to act in another sheriffdom while appointed.

Section 31 – Power to direct a sheriff or summary sheriff to act in another sheriffdom

57. [Section 31](#) provides that a sheriff or summary sheriff may be directed by the Lord President to perform the judicial functions that that individual already performs in another sheriffdom or sheriffdoms until the Lord President directs otherwise (subsections (1) and (3)). It also provides that this may be instead of, or in addition to, the performance of the duties that that individual already performs in the sheriffdom in which they are based (subsection (2)) or, where that individual has already been directed to act in another sheriffdom, to that individual's duties in that sheriffdom (subsection (4)).

Section 32 – Power to re-allocate sheriffs principal, sheriffs and summary sheriffs between sheriffdoms

58. This section enables the Lord President permanently to transfer sheriffs principal, sheriffs, and summary sheriffs between sheriffdoms. (So far as sheriffs are concerned, this power re-enacts the existing provision in section 14(4) of the Sheriff Courts (Scotland) Act 1971.)

Section 33 – Allocation of sheriffs and summary sheriffs to sheriff court districts

59. [Section 33](#) updates and restates section 14(3) of the Sheriff Courts (Scotland) Act 1971 and extends its provisions to summary sheriffs. It provides that the Lord President is to designate in a direction a particular sheriff court district in which a sheriff or summary sheriff is to sit. Further it allows the Lord President to move a sheriff or summary sheriff to a different district within the sheriffdom by designation in a direction. Subsection (3) clarifies the interaction between the power in subsection (1) with the power of the sheriff principal to make temporary special provisions under section 27(3)(b), giving precedence to the sheriff principal's use of that power.

Judicial specialisation

60. [Sections 34 to 37](#) are new provisions which implement the recommendations of the Scottish Civil Courts Review in relation to the desirability of greater specialisation in the sheriff courts.

Section 34 – Determination of categories of case for purposes of judicial specialisation

61. This section permits the Lord President to decide categories of cases within the sheriff courts which should be heard by judicial officers who specialise in that category of case.
62. Subsection (2) provides that the categories of cases designated for specialisation by the Lord President may be determined by subject matter, value or other such criteria as the Lord President considers appropriate. Subsections (3) and (4) give the Lord

President further flexibility in relation to the operation of specialisation among the judicial officers.

Section 35 – Designation of specialist judiciary

63. Once categories of cases for specialist treatment have been determined by the Lord President, section 35 permits a sheriff principal to designate one or more sheriffs or summary sheriffs as specialists in one or more of those categories. Under subsections (5) and (6), the Lord President is similarly permitted to designate one or more part-time sheriffs or part-time summary sheriffs as specialists in cases falling within designated categories and which are within the competence of those judicial officers.
64. Subsection (7) provides that the designation of a judicial officer as a specialist in one of the categories determined by the Lord President does not affect that officer's ability to deal with cases other than those in relation to which they have been designated as specialist, nor does it mean that a judicial officer who has not been designated as a specialist cannot deal with a matter that falls within a specialisation.

Section 36 – Allocation of business to specialist judiciary

65. Section 36 places a duty on both the Lord President and the sheriff principal of a sheriffdom, when allocating business within a sheriffdom, to have regard to the desirability of ensuring that cases which fall within the specialist categories are dealt with by judicial officers who are designated as specialists in those categories.

Section 37 – Saving for existing powers to provide for judicial specialisation

66. Section 37 provides that, despite the provisions of sections 34 to 36, any other power which the Lord President already has to allocate business, including specialist business, among the judiciary of the sheriff courts is not affected by those sections.

Chapter 4 - Competence and jurisdiction

67. This chapter of Part 1 of the Act restates and updates the existing provisions of the Sheriff Courts (Scotland) Acts 1907 and 1971 concerning those actions and other applications that can competently be brought in the sheriff court and the competence and jurisdiction of that court. It makes certain additions to the range of actions that can competently be raised in the sheriff court in line with recommendations made by the Scottish Civil Courts Review and also makes fresh provision regarding the exclusive competence of the sheriff court. It specifies the competence and jurisdiction of the summary sheriff. The territorial jurisdiction of sheriffs is re-stated and extended to summary sheriffs.

Sheriffs: civil competence and jurisdiction

Section 38 – Jurisdiction and competence of sheriffs

68. Subsection (1) is a statement of the civil competence of sheriffs. The approach taken in the Act is to frame this in terms of the competence of a sheriff, rather than the sheriff court. The generality provided for in subsection (1) that sheriffs will retain all the competence and jurisdiction which they had before this Act is enacted is not restricted by the specific kinds of actions listed in subsection (2). This list reflects extensions to competence and jurisdiction after the Sheriff Courts (Scotland) Act 1907.
69. Actions for proving the tenor of documents and reduction are added to the list as recommended by the Scottish Civil Courts Review.

Section 39 – Exclusive competence

70. **Section 39** sets out which cases fall within the exclusive competence of the sheriff court. It provides that in civil proceedings about which the sheriff has competence, and, in which an order of value of £100,000 or less is sought (or where more than one order is sought, the aggregate total of such orders is £100,000 or less), the proceedings must be brought in the sheriff court.
71. Subsection (3) exempts family proceedings (defined in section 135), from the operation of this section, unless the only order sought is an order for payment of aliment. Subsection (4) provides that this section is subject to the operation of section 92(7) of the Act which permits remit of cases to the Court of Session in exceptional circumstances. Subsection (5) provides that the Scottish Ministers may by order (subject to the affirmative procedure) substitute for the sum of £100,000 another sum. Subsection (6) defines what is meant by an “order of value”. Subsections (7) and (8) provide that further detail on how the value of an order or the aggregate total value of orders is to be determined may be provided in an act of sederunt made by the Court of Session which may make different provision for different purposes.

Section 40 – Territorial jurisdiction

72. **Section 40** re-enacts section 4 of the Sheriff Courts (Scotland) Act 1907 so far as it applies to civil proceedings and provides for the territorial jurisdiction of the sheriff. Given the operation of section 134 which governs reference to “sheriff” throughout the Act, the reference to sheriff in this provision includes reference to any other member of the judiciary of the sheriffdom. The general provisions of the section are without prejudice to any other enactment or rule of law which has effect for the purposes of determining the territorial jurisdiction of a sheriff (subsection (4)), and are subject to an order under section 41(1) (subsection (5)).

Section 41 – Power to confer all-Scotland jurisdiction for specified cases

73. **Section 41** provides that the Scottish Ministers may by order (subject to negative procedure) set out that the jurisdiction of a sheriff of a specified sheriffdom sitting at a specified sheriff court will extend throughout Scotland for specified kinds of civil proceedings, for example, personal injury proceedings (subsection (1)). An order may be made by the Scottish Ministers only with the consent of the Lord President (subsection (2)). Such an order does not affect the jurisdiction of any other sheriff court which may still deal with the specified type of proceedings, nor does it restrict the specified court to only deal with the specified types of proceedings (subsection (4)). The section does not apply in relation to proceedings under the Children’s Hearings (Scotland) Act 2011 (subsection (5)). See also Chapter 1 of Part 3 of the Act which provides for civil jury trials in an all-Scotland sheriff court.

Section 42 – All-Scotland jurisdiction: further provision

74. This section preserves the option of a sheriff court designated as one with an all-Scotland jurisdiction (for example, the proposed Sheriff Personal Injury Court) being used as a “local court” in relation to the specified types of action (subsections (2) to (4)). Cases that happen to fall within that court’s local jurisdiction can either be raised under normal sheriff court procedure paying standard court fees, or be raised under specialised rules in the specialist court paying the fees specified in a fees order for that court. Subsection (5) has the effect that, where a case before an all-Scotland sheriff court would have fallen within the jurisdiction of that court anyway (even without an order specifying that it has all Scotland jurisdiction), it is up to the litigant to decide whether their case will be heard by the court sitting in exercise of its usual local jurisdiction or its specialist all-Scotland jurisdiction. (It is likely that the court fees in the specialist court will be higher to reflect its specialist nature.) Subsection (6) preserves the sheriff’s

power to decline to hear the case on the basis that it would be better dealt with by the specialist all-Scotland court, or the “local” court, as the case may be.

Section 43 – Jurisdiction over persons etc

75. **Section 43** makes provision in relation to the civil jurisdiction in the sheriff court. It is a re-enactment of section 6 of the Sheriff Courts (Scotland) Act 1907. Section 6 is a source of jurisdiction in relation to certain civil matters where no other legislation has impliedly or explicitly displaced its operation and accordingly, its re-enactment is required in this section. In recognition, however, that section 6 has been largely but not completely displaced, subsection (3) provides that its re-enactment in section 43 is subject to those other rules of jurisdiction.

Summary sheriffs: civil and criminal competence and jurisdiction

Section 44 – Summary sheriff: civil competence and jurisdiction

76. **Section 44** provides that a summary sheriff may exercise all of the jurisdiction and powers of the sheriff in relation to civil proceedings, but only with regard to the proceedings and matters listed in schedule 1 (subsection (1)). Subsection (2) provides that a sheriff still has jurisdiction and competence over the matters in schedule 1. Subsection (3) permits the Scottish Ministers by order (subject to the affirmative procedure) to amend schedule 1.

Section 45 – Summary sheriff: criminal competence and jurisdiction

77. **Section 45** provides that a summary sheriff may exercise all of the jurisdiction and powers of the sheriff in criminal investigations and proceedings (subsection (1)) including the powers of a sheriff under the 1995 Act (subsection (2)). This is subject to subsection (3), which exempts most aspects of solemn criminal proceedings from the powers and jurisdiction of the summary sheriff. Therefore a summary sheriff will deal with summary criminal proceedings and certain preliminary procedural steps in solemn criminal proceedings (and in none of these proceedings will sit with a jury). The provisions of this section are without prejudice to the jurisdiction and competence of a sheriff in relation to summary or solemn criminal investigations and proceedings (subsection (4)).