



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1966

## 1966 CHAPTER 19

An Act to exempt from arrestment on the dependence of an action sums falling to be paid by way of wages, salary or other earnings or by way of pension, to abolish the exemption from arrestment in execution of certain earnings payable by the Crown, and to provide for the variation from time to time of the amount of wages excepted from arrestment under the Wages Arrestment Limitation (Scotland) Act 1870; to amend section 5 of the Adoption Act 1958, and to provide in Scotland for the succession of an adopted person to the estate of his natural parent in certain circumstances; to amend section 5 of the Trusts (Scotland) Act 1961; to provide for the admission in evidence of certain documents in civil proceedings; to confer jurisdiction on the sheriff court to vary or recall certain orders of the Court of Session in respect of maintenance, custody and welfare of children; to provide for the extension of certain time limits in appeals under the Summary Jurisdiction (Scotland) Act 1954; and to provide that acts of adjournal and acts of sederunt shall be statutory instruments. [3rd August 1966]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Wages, pensions etc. to be exempt from arrestment on the dependence of an action**

- (1) After the passing of this Act it shall not be competent to arrest on the dependence of an action any earnings or any pension.
- (2) (a) For the purposes of this and of the next following section " earnings " means any sums payable by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages

or salary by the person paying the wages or salary or payable under a contract of service);

- (b) in this section " pension " includes—
- (i) any annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and any periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment;
  - (ii) any pension or allowance payable in respect of disablement or disability.

## **2 Certain earnings payable by the Crown to be arrestable in execution**

- (1) Subject to the provisions of this section, any rule of law which exempts from arrestment in execution earnings falling to be paid by the Crown or a Minister of the Crown or out of the public revenue of the United Kingdom shall cease to have effect, except in relation to earnings payable to a member of the armed forces of the Crown; and accordingly for paragraph (a) of the proviso to section 46 of the Crown Proceedings Act 1947 (provisions as to arrestment in the hands of the Crown), there shall be substituted the following paragraph—
  - “(a) any earnings payable to any officer of the Crown as such, except as provided by section 2 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966;”.
- (2) Earnings liable to arrestment by virtue of the last foregoing subsection shall be treated as falling to be paid by the chief officer in Scotland for the time being of the department, office or other body concerned.
- (3) If any question arises, in connection with any proceedings relating to such an arrestment as to who for the purposes of this section is the chief officer in Scotland of the department, office or other body, that question shall be referred to and determined by the Treasury.
- (4) A document purporting to set out a determination of the Treasury under the last foregoing subsection and to be signed by an official of the Treasury shall, in any such proceedings as aforesaid, be sufficient evidence of that determination, and deemed to contain an accurate statement thereof unless the contrary is shown.
- (5) In this section "earnings payable to a member of the armed forces of the Crown" means any sum (other than a pension) the assignation of which is precluded by virtue of section 203 of the Army Act 1955 or of section 203 of the Air Force Act 1955, or any like sum payable to a member of the naval forces of the Crown, or to a member of any women's service administered by the Defence Council.
- (6) The Wages Arrestment Limitation (Scotland) Act 1870 shall apply in relation to earnings arrestable by virtue of this section as it applies to other earnings.
- (7) Nothing in the provisions of this section shall affect the operation of section 163 of the Merchant Shipping Act 1894, which exempts from arrestment wages payable to seamen and apprentices within the meaning of that Act.

### **3 Power to vary amount of wages excepted from arrestment**

- (1) If at any time after the commencement of this Act it appears to Her Majesty in Council that the sum of four pounds specified in section 2 of the Wages Arrestment Limitation (Scotland) Act 1870 (limitation of liability of wages to arrestment) (whether by virtue of the said Act as amended by any other Act, or as previously amended under this section) should be further varied, Her Majesty may by Order in Council direct that the said section shall be further amended so as to substitute, for the sum specified in that section, such other sum as may be specified in the Order.
- (2) No recommendation shall be made to Her Majesty to make an Order in Council under the last preceding subsection unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (3) Any Order in Council made under this section may be revoked by a subsequent Order in Council under this section which substitutes another sum for the sum specified in the Order which is thereby revoked.
- (4) An Order in Council made under this section shall come into force on the expiration of a period of not less than one month beginning with the date on which it is made.

### **4 Power to dispense with the consent of minor who is incapable of giving his consent in adoption proceedings**

The power conferred on the court by section 5 of the Adoption Act 1958 to dispense with certain consents required by section 4 of that Act shall be extended to the case where a minor is incapable of giving his consent to the making of an order for his adoption, and accordingly at the end of the said section 5 there shall be added the following subsection—

“(5) Where the court in Scotland is satisfied, upon an application for an adoption order in respect of an infant who is a minor, that the infant is incapable of giving his consent to the making of the order, it may dispense with that consent.”

### **5 Adopted person to be treated as child of natural parents for purposes of succession in certain circumstances**

- (1) Notwithstanding section 23(1) of the Succession (Scotland) Act 1964 (adopted person to be treated for purposes of succession as the child of the adopter), where the adopter of an adopted person has died before 10th September 1964, the adopted person shall be treated for the purposes of succession to the estate of a natural parent, who dies after the commencement of this Act, as the child of that parent.
- (2) In the foregoing subsection, in relation to a person adopted jointly by spouses any reference, however worded, to the death of an adopter shall be construed as a reference to the death of both spouses; and other expressions shall have the same meaning as in Part IV of the Succession (Scotland) Act 1964.

### **6 Amendment of section 5 of Trusts (Scotland) Act 1961**

- (1) The periods for which accumulations of income under a settlement or other disposition are permitted by section 5 of the Trusts (Scotland) Act 1961 shall include—
  - (a) a term of twenty-one years from the date of the making of the settlement or other disposition, and

- (b) the duration of the minority or respective minorities of any person or persons living or in utero at that date,
- and a direction to accumulate income during a period specified in paragraph (a) or paragraph (b) of this subsection shall not be void, nor shall the accumulation of the income be contrary to the said section 5, solely by reason of the fact that the period begins during the life of the grantor and ends after his death.
- (2) The restrictions imposed by the said section 5 shall apply in relation to a power to accumulate income whether or not there is a duty to exercise that power, and they shall apply whether or not the power to accumulate extends to income produced by the investment of income previously accumulated.
- (3) This section shall apply only in relation to instruments taking effect after the passing of this Act, and in the case of an instrument made in the exercise of a special power of appointment shall apply only where the instrument creating the power takes effect after the passing of this Act.

## **7 Admissibility in evidence of certain records in civil proceedings**

- (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on the production of the document, be admissible as evidence of that fact if—
- (a) the document is, or forms part of, a record compiled in the performance of a duty to record information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and
- (b) the person who supplied the information recorded in the document in question is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he supplied the information and to all the circumstances) to have any recollection of the matters dealt with in the information he supplied.
- (2) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a fully registered medical practitioner.
- (3) In estimating the weight, if any, to be attached to a statement admissible as evidence by virtue of this section regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and, in particular, to the question whether or not the person who supplied the information recorded in the statement did so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person, or any person concerned with making or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.
- (4) In this section "statement" includes any representation of fact, whether made in words or otherwise, "document" includes any device by means of which information is recorded or stored, and "proceedings" includes arbitrations and references, and "court" shall be construed accordingly.

- (5) Nothing in this section shall prejudice the admissibility of any evidence which would apart from the provisions of this section be admissible.

**8 Variation and recall by the sheriff of certain orders made by the Court of Session in respect of maintenance, custody etc., and amendment of section 2 of the Divorce (Scotland) Act 1938**

- (1) The provisions of this section shall apply to the following orders made by the Court of Session, that is to say—
- (a) an award of aliment,
  - (b) an order for an annual or periodical allowance made under section 2 of the Divorce (Scotland) Act 1938, whether under that section as originally enacted or as amended by any subsequent enactment including this Act,
  - (c) an order for a periodical allowance made under subsection (2) or (3) of section 26 of the Succession (Scotland) Act 1964.
  - (d) an order made by virtue of section 9 of the Conjugal Rights (Scotland) (Amendment) Act 1861 or under Part II of the Matrimonial Proceedings (Children) Act 1958, and
  - (e) an order varying any such order as aforesaid.
- (2) Where any person has a right to make application for the variation or recall of any order made in a consistorial action to which the provisions of this section apply, he may make an application in that behalf to the sheriff, and, subject to the provisions of the next following subsection, the sheriff shall have the like powers in relation to the application as the Court of Session.
- (3) Where in any application under this section any other party to the action, not later than the first calling of the application in court, requests that it be remitted to the Court of Session, the sheriff shall so remit, and the Court of Session shall deal with it accordingly.
- (4) Notwithstanding anything in Part I of the Public Records (Scotland) Act 1937 (transmission of court records to and from the Keeper of the Records of Scotland etc.), the powers of the Court of Session, conferred by sections 16 and 34 respectively of the Administration of Justice (Scotland) Act 1933 to regulate its own procedure and that of the sheriff court, shall include power to provide for the transmission to and from the sheriff court of any process in the action to which an application under this section relates; and for the purposes of the said Act of 1937 and of this section any record of such an application shall be deemed to be a record of the Court of Session.
- (5) In section 2(2) of the Divorce (Scotland) Act 1938, at the end there shall be inserted the following words " , and any order made under section 2(2) of this Act as originally enacted shall be deemed for the purposes of this subsection to have been made under the last foregoing subsection " .
- (6) In this section—
- " order " includes a provision in a final decree, but does not include an interim order,
  - " party " means any person having a right to make application for the variation or recall of the order in question, and

" sheriff " means the sheriff having jurisdiction over any party on whom the application has to be served, on any of the grounds mentioned in paragraph (a), (b) or (i) of section 6 of the Sheriff Courts (Scotland) Act 1907.

## **9 Extension of certain time limits in appeals under Summary Jurisdiction (Scotland) Act 1954**

- (1) In sections 63(1) and 67(4) of the Summary Jurisdiction (Scotland) Act 1954 (time limits in appeals under section 62 of that Act) for the words " five days " there shall be substituted the words " ten days " ; and without prejudice to any other power of relief which the High Court of Justiciary may have, where it appears to the Court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of the said sections 63(1) and 67(4), the Court may direct that such further period of time, as it may think proper, be afforded to the applicant to comply with any requirements of the aforesaid provisions.
- (2) Any application for a direction under the last foregoing subsection shall be made in writing to the clerk of justiciary and shall state the grounds for the application, and, where that application relates to a failure to comply with the provisions of the said section 63(1), notification of the application shall be made by the appellant or his solicitor to the clerk of the court from which the appeal is to be taken, and the clerk shall thereupon transmit the complaint, documentary productions and any other proceedings in the cause to the clerk of justiciary.
- (3) The High Court shall dispose of any application under this section in like manner as an application to review the decision of an inferior court on a grant of interim liberation, but shall have power—
  - (a) to dispense with a hearing; and
  - (b) to make such enquiry in relation to the application as the Court may think fit; and when the Court has disposed of the application the clerk of justiciary shall inform the clerk of the court of the result.
- (4) Section 76(1)(a) of the said Act of 1954 (power of the High Court of Justiciary to make rules by acts of adjournal) shall apply for the purpose of giving effect to the provisions of this section as it applies to give effect to any of the provisions of that Act.

## **10 Acts of adjournal and acts of sederunt to be statutory instruments**

Where any Act passed after the commencement of the Statutory Instruments Act 1946, whether before or after the commencement of this Act, confers power on the High Court of Justiciary to make provision in respect of any matter by act of adjournal, or on the Court of Session to make such provision by act of sederunt, any document by which that power is exercised shall, unless the Act conferring the power otherwise provides, be a statutory instrument, and the provisions of the said Act of 1946 shall apply to it as they apply to a statutory instrument made by a Minister of the Crown.

## **11 Interpretation, repeals, citation and extent**

- (1) Any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by any other enactment including this Act.

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- (2) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column thereof.
- (3) This Act may be cited as the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966, and shall extend to Scotland only.

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## SCHEDULE

Section 11.

## ENACTMENTS REPEALED

## PART I

## REPEALS CONSEQUENTIAL ON SECTION 10

Session and Chapter	Short Title	Extent of Repeal
11 & 12 Geo. 6. c. 38.	Companies Act 1948.	In section 365, in subsection (5), paragraph (b).
12, 13 & 14 Geo. 6. c. 63.	Legal Aid and Solicitors (Scotland) Act 1949.	Section 13(6).
12, 13 & 14 Geo. 6. c. 68.	Representation of the People Act 1949.	In section 173, in subsection (5), the words from " and be " to the end of the subsection.
12, 13 & 14 Geo. 6. c. 90.	Election Commissioners Act 1949.	Section 15(4).
14 Geo. 6. c. 27.	Arbitration Act 1950.	In section 38 as read with section 41(4) in subsection (3), the words "exercisable by statutory instrument" and the words from " and the " to the end of the subsection.
14 Geo. 6. c. 34.	Housing (Scotland) Act 1950.	Section 166(5).
14 Geo. 6. c. 37.	Maintenance Orders Act 1950.	Section 29.
14 & 15 Geo. 6. c. 65.	Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951.	Section 11(3).
15 & 16 Geo. 6. and 1 Eliz. 2. c. 47.	Rating and Valuation (Scotland) Act 1952.	Section 6(2).
2 & 3 Eliz. 2. c.48.	Summary Jurisdiction (Scotland) Act 1954.	Section 76(4).
7 & 8 Eliz. 2. c. 5.	Adoption Act 1958.	In section 56(1), the words " or the Court of Session ", and subsection (2).
7 & 8 Eliz. 2. c. 24.	Building (Scotland) Act 1959.	Section 16(6).
7 & 8 Eliz. 2. c. 51.	Licensing (Scotland) Act 1959.	Section 29(3).



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Session and Chapter	Short Title	Extent of Repeal
8 & 9 Eliz. 2. c. 62.	Caravan Sites and Control of Development Act 1960.	Section 32(4).
10 & 11 Eliz. 2. c. 21.	Commonwealth Immigrants Act 1962.	In section 8, in subsection (6), from " ; and any " to the end of the subsection.
1963 c. 2.	Betting, Gaming and Lotteries Act 1963.	In section 55, in subsection (4), the words from the beginning to " instrument, and" and the words" of such a power or".
1964 c. 41.	Succession (Scotland) Act 1964.	Section 22(3).

## PART II

### OTHER REPEALS

Session and Chapter	Short Title	Extent of Repeal
8 & 9 Vict. c. 39.	The Wages Arrestment (Scotland) Act 1845.	The whole Act.