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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 291**

**SHERIFF COURT**

**Act of Sederunt (Commissary Business) 2013**

*Made - - - - 11th October 2013*  
*Laid before the Scottish*  
*Parliament - - - - 14th October 2013*  
*Coming into force in accordance with paragraph 1(2),*  
*(3) and (4)*

The Lords of Council and Session, under and by virtue of the powers conferred by section 54 of the Sheriff Courts (Scotland) Act 1876<sup>(1)</sup> and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation, commencement and effect**

- 1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Commissary Business) 2013.  
(2) Subject to subparagraphs (3) and (4), it comes into force on 30th November 2013.  
(3) Paragraph 3(2) and Schedule 2 come into force, and paragraph 3(1) and Schedule 1 cease to have effect, on 31st May 2014.  
(4) Paragraph 3(3) and Schedule 3 come into force, and paragraph 3(2) and Schedule 2 cease to have effect, on 31st January 2015.  
(5) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

**Interpretation**

2. In this Act of Sederunt—

“commissary business” means the business conducted prior to the Sheriff Courts (Scotland) Act 1876 in the commissary courts and transferred by that Act to the sheriff court, other than the presentation of petitions for appointment of executors dative;

“presentation of petitions for appointment of executors dative” includes the conduct of proceedings in respect of such petitions;

“sheriff clerk” includes sheriff clerk depute.

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<sup>(1)</sup> 1876 c.70. Section 54 was repealed, except in so far as it relates to commissary regulations, by the Sheriff Courts (Scotland) Act 1907 (c.51), Schedule 2. Section 54 was amended by the Public Records (Scotland) Act 1937 (c.43), Schedule 2 and the Sheriff Courts (Scotland) Act 1971 (c.58), Schedule 1, paragraph 1.

### **Places where commissary business may be conducted**

3.—(1) With effect from 30th November 2013, commissary business may be conducted in the commissariat of each sheriffdom listed in column 1 of Schedule 1 at the places specified in column 2.

(2) With effect from 31st May 2014, commissary business may be conducted in the commissariat of each sheriffdom listed in column 1 of Schedule 2 at the places specified in column 2.

(3) With effect from 31st January 2015, commissary business may be conducted in the commissariat of each sheriffdom listed in column 1 of Schedule 3 at the places specified in column 2.

### **Presentation of petitions for the appointment of executors dative**

4. The presentation of petitions for appointment of executors dative may occur at any place in each sheriffdom where sheriff courts are held.

### **Caveats**

5.—(1) This paragraph applies where commissary business, including the presentation of petitions for appointment of executors dative, may be conducted at more than one place in a sheriffdom.

(2) A caveat against the disposal of a commissary application lodged with the sheriff clerk at any such place applies to the whole sheriffdom.

(3) The sheriff clerk must transmit a copy of such a caveat to the sheriff clerk at every other place in the sheriffdom where the application against which the caveat is lodged might competently be made.

(4) In this paragraph, “commissary application” has the meaning given by rule 2(2)(b) of the Act of Sederunt (Sheriff Court Caveat Rules) 2006(2).

### **Transitional, savings and revocation provisions**

6.—(1) Commissary business, including the presentation of petitions for appointment of executors dative, commenced but not disposed of by the relevant date specified in column 3 of Part 1 of Schedule 4 at a place mentioned in column 1 of Part 1 is to continue at the place mentioned in column 2 of Part 1 as if commenced there.

(2) Petitions for appointment of executors dative presented but not disposed of by the relevant date specified in column 3 of Part 2 of Schedule 4 at a place mentioned in column 1 of Part 2 are to continue at the place mentioned in column 2 of Part 2 as if presented there.

(3) The Acts of Sederunt specified in Schedule 5 are revoked.

(4) Notwithstanding the revocation of the Act of Sederunt (Commissary Business) 1975(3), Banff continues to be a place where commissary business may be conducted in the commissariat of the sheriffdom of Grampian, Highland and Islands in respect of any commissary business commenced there and not disposed of by 30th November 2013.

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(2) S.S.I. 2006/198.

(3) S.I. 1975/539, as amended by S.I. 1978/1509, 1979/1405, 1984/969, 1986/267 and S.S.I. 2009/292.

Edinburgh  
11th October 2013

*BRIAN GILL*  
Lord President  
I.P.D.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE 1

Paragraph 3(1)

Places where commissary business may be conducted from 30th November 2013

<i>Column 1</i> <b>Sheriffdom</b>	<i>Column 2</i> <b>Places where commissary business may be conducted in the commissariat of the sheriffdom</b>
Glasgow and Strathkelvin	Glasgow
Grampian, Highland and Islands	Aberdeen, Dingwall, Elgin, Inverness, Kirkwall, Lerwick, Peterhead, Stonehaven, Tain and Wick
Lothian and Borders	Edinburgh, Haddington, Jedburgh, Livingston, Peebles and Selkirk
North Strathclyde	Dumbarton, Greenock, Kilmarnock and Paisley
South Strathclyde, Dumfries and Galloway	Airdrie, Ayr, Dumfries, Hamilton, Lanark and Stranraer
Tayside, Central and Fife	Alloa, Arbroath, Cupar, Dundee, Dunfermline, Falkirk, Forfar, Kirkcaldy, Perth and Stirling

## SCHEDULE 2

Paragraph 3(2)

Places where commissary business may be conducted from 31st May 2014

<i>Column 1</i> <b>Sheriffdom</b>	<i>Column 2</i> <b>Places where commissary business may be conducted in the commissariat of the sheriffdom</b>
Glasgow and Strathkelvin	Glasgow
Grampian, Highland and Islands	Aberdeen, Dingwall, Elgin, Inverness, Kirkwall, Lerwick, Peterhead, Tain and Wick
Lothian and Borders	Edinburgh, Haddington, Jedburgh, Livingston, Peebles and Selkirk
North Strathclyde	Dumbarton, Greenock, Kilmarnock and Paisley
South Strathclyde, Dumfries and Galloway	Airdrie, Ayr, Dumfries, Hamilton, Lanark and Stranraer
Tayside, Central and Fife	Alloa, Dundee, Dunfermline, Falkirk, Forfar, Kirkcaldy, Perth and Stirling

SCHEDULE 3

Paragraph 3(3)

Places where commissary business may be conducted from 31st January 2015

<i>Column 1</i> <b>Sheriffdom</b>	<i>Column 2</i> <b>Places where commissary business may be conducted in the commissariat of the sheriffdom</b>
Glasgow and Strathkelvin	Glasgow
Grampian, Highland and Islands	Aberdeen, Elgin, Inverness, Kirkwall, Lerwick, Peterhead, Tain and Wick
Lothian and Borders	Edinburgh, Jedburgh, Livingston and Selkirk
North Strathclyde	Dumbarton, Greenock, Kilmarnock and Paisley
South Strathclyde, Dumfries and Galloway	Airdrie, Ayr, Dumfries, Hamilton, Lanark and Stranraer
Tayside, Central and Fife	Alloa, Dundee, Dunfermline, Falkirk, Forfar, Kirkcaldy, Perth and Stirling

SCHEDULE 4

Paragraph 6(1) and (2)

Continuation of existing business

PART 1

<i>Column 1</i> <b>Place where commissary business commenced</b>	<i>Column 2</i> <b>Place where commissary business is to continue</b>	<i>Column 3</i> <b>Relevant date</b>
Dornoch	Tain	30th November 2013
Kirkcudbright	Dumfries	30th November 2013
Arbroath	Forfar	31st May 2014
Cupar	Dundee	31st May 2014
Stonehaven	Aberdeen	31st May 2014
Dingwall	Tain	31st January 2015
Haddington	Edinburgh	31st January 2015
Peebles	Selkirk	31st January 2015

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## PART 2

<i>Column 1</i> <b>Place where petition for appointment of executors dative presented</b>	<i>Column 2</i> <b>Place where petition is to continue</b>	<i>Column 3</i> <b>Relevant date</b>
Rothsay	Greenock	30th November 2013
Duns	Jedburgh	31st January 2015

### SCHEDULE 5

Paragraph 6(3)

#### Revocations

<i>Column 1</i> <b>Act of Sederunt</b>	<i>Column 2</i> <b>Reference</b>
Act of Sederunt (Commissary Business) 1975	<a href="#">S.I. 1975/539</a>
Act of Sederunt (Commissary Business) (Amendment) 1978	<a href="#">S.I. 1978/1509</a>
Act of Sederunt (Commissary Business) (Amendment) 1979	<a href="#">S.I. 1979/1405</a>
Act of Sederunt (Commissary Business) (Amendment) 1984	<a href="#">S.I. 1984/969</a>
Act of Sederunt (Commissary Business) (Amendment) 1986	<a href="#">S.I. 1986/267</a>
Act of Sederunt (Commissary Business) (Amendment) 2009	<a href="#">S.S.I. 2009/292</a>

## EXPLANATORY NOTE

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt consolidates and restates the Act of Sederunt (Commissary Business) 1975 (“the 1975 Act of Sederunt”) with modifications.

Paragraph 3 and Schedules 1, 2 and 3 regulate the places in each sheriffdom where the business conducted prior to 1st October 1876 in the commissary courts is to be conducted in the sheriff court of that place. The sheriff courts presently held at certain places specified in the Schedule to the 1975 Act of Sederunt are to close in terms of the Sheriff Court Districts Amendment Order 2013<sup>(4)</sup> (“the 2013 Order”).

Schedule 1 accordingly omits Dornoch and Kirkcudbright, where the sheriff courts close on 30th November 2013. It also omits Banff, where commissary business is to be discontinued from 30th November 2013 although the sheriff court is not to close. It ceases to have effect when Schedule 2 (omitting Arbroath, Cupar and Stonehaven) comes into force on 31st May 2014, and in

<sup>(4)</sup> [S.S.I. 2013/152](#).

turn Schedule 2 ceases to have effect when Schedule 3 (omitting Dingwall, Haddington and Peebles) comes into force on 31st January 2015.

Tain is specified in Schedule 1 as a new place in the sheriffdom of Grampian, Highland and Islands where commissary business may be conducted, in consequence of the closure of the sheriff courts at Dornoch and Dingwall.

Paragraph 4 restates paragraph 3(2) of the 1975 Act of Sederunt. It provides that, unlike other commissary business, petitions for the appointment of executors dative may be presented, and proceedings in respect of such petitions may be conducted, in any sheriff court.

Paragraph 5 restates paragraph 4 of the 1975 Act of Sederunt. It applies where commissary business may be conducted at multiple places within a sheriffdom. A caveat lodged at any one of those places is to apply to the whole sheriffdom, and the sheriff clerk must accordingly transmit a copy of the caveat to the sheriff clerk of every other court in the sheriffdom where the application against which the caveat is lodged might competently be made.

Paragraph 6(1) and Part 1 of Schedule 4 makes transitional provision in respect of commissary business which has been commenced but not yet disposed of at a place which is no longer specified as a place where commissary business may be conducted. With the exception of commissary business at Dingwall, which is to continue at Tain, provision is made for the business to continue as if commenced at the place to which the sheriff court business of the closing court is to transfer under the 2013 Order.

Paragraph 6(2) and Part 2 of Schedule 4 makes similar provision in respect of petitions for appointment of executors dative presented at closing sheriff courts other than those held at places presently specified as places where commissary business may be conducted.

Paragraph 6(3) and Schedule 5 revoke the 1975 Act of Sederunt and amending instruments.

Paragraph 6(4) makes transitional provision in respect of commissary business commenced at Banff before it ceases to be a place at which commissary business may be conducted: that business is to be concluded there and Banff is accordingly specified as a place where commissary business may be conducted for that purpose only.