



Administration of Justice (Scotland) Act 1972

1972 CHAPTER 59

An Act to confer extended powers on the courts in Scotland to order the inspection of documents and other property, and related matters; to enable an appeal to be taken to the House of Lords from an interlocutor of the Court of Session on a motion for a new trial; to enable a case to be stated on a question of law to the Court of Session in an arbitration; and to enable alterations to be made by act of sederunt in the rate of interest to be included in sheriff court decrees or extracts. [9th August 1972]

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 Extended powers of courts to order inspection of documents and other property, etc.**
- (1) Without prejudice to the existing powers of the Court of Session and of the sheriff court, those courts shall have power, subject to the provisions of subsection (4) of this section, to order the inspection, photographing, preservation, custody and detention of documents and other property (including, where appropriate, land) which appear to the court to be property as to which any question may relevantly arise in any existing civil proceedings before that court or in civil proceedings which are likely to be brought, and to order the production and recovery of any such property, the taking of samples thereof and the carrying out of any experiment thereon or therewith.
- (2) Notwithstanding any rule of law or practice to the contrary, the court may exercise the powers mentioned in subsection (1) of this section—
- (a) where proceedings have been commenced, on the application, at any time after such commencement, of a party to or minuter in the proceedings, or any other person who appears to the court to have an interest to be joined as such party or minuter;

Status: This is the original version (as it was originally enacted).

(b) where proceedings have not been commenced, on the application at any time of a person who appears to the court to be likely to be a party to or minuter in proceedings which are likely to be brought;
unless there is special reason why the application should not be granted.

- (3) The powers conferred on the Court of Session by section 16 of the Administration of Justice (Scotland) Act 1933 to regulate its own procedure and the powers conferred on that Court by section 32 of the Sheriff Courts (Scotland) Act 1971 to regulate the procedure of the sheriff court shall include power to regulate and prescribe the procedure to be followed, and the form of any document to be used, in any application under the foregoing provisions of this section in a case where the application is in respect of proceedings which have not been commenced, and such incidental, supplementary and consequential provisions as appear appropriate; and without prejudice to the said generality, the said powers shall include power to provide in such a case for the application to be granted *ex parte*, for the intimation of the application to such persons (if any) as the court thinks fit, and for the finding of caution where appropriate for any loss, damage or expenses which may be incurred as a result of the application.
- (4) Nothing in this section shall affect any rule of law or practice relating to the privilege of witnesses and havers, confidentiality of communications and withholding or non-disclosure of information on the grounds of public interest; and section 47 of the Crown Proceedings Act 1947 (recovery of documents in possession of Crown) shall apply in relation to any application under this section in respect of a document or other property as it applied before the commencement of this section to an application for commission and diligence for the recovery of a document.

2 Appeal to House of Lords from interlocutor of Court of Session on motion for new trial.

- (1) An appeal shall lie to the House of Lords without the leave of the Court of Session from an interlocutor of that Court on a motion for a new trial in terms of section 6 of the Jury Trials (Scotland) Act 1815; and accordingly, the following enactments are hereby repealed—
- (a) in the said section 6, the words from " Provided also " onwards;
 - (b) in section 17 of the Jury Trials (Scotland) Act 1819, the words from " Provided nevertheless " onwards.
- (2) In an appeal under this section, the House of Lords shall have the same powers as are exercisable by the Court of Session on such a motion as aforesaid, and in particular shall have the same power—
- (a) under the said section 6, to grant a new trial which shall be restricted to the question of the amount of damages only;
 - (b) under section 2 of the Jury Trials Amendment (Scotland) Act 1910, in place of granting a new trial, to enter judgment for the party unsuccessful at the trial.

3 Power of arbiter to state case to Court of Session.

- (1) Subject to express provision to the contrary in an agreement to refer to arbitration, the arbiter or oversman may, on the application of a party to the arbitration, and shall, if the Court of Session on such an application so directs, at any stage in the arbitration state a case for the opinion of that Court on any question of law arising in the arbitration.

- (2) This section shall not apply to an arbitration under any enactment which confers a power to appeal to or state a case for the opinion of a court or tribunal in relation to that arbitration.
- (3) This section shall not apply to any form of arbitration relating to a trade dispute within the meaning of the Industrial Courts Act 1919 or relating to an industrial dispute within the meaning of the Industrial Relations Act 1971; to any other arbitration arising from a collective agreement within the meaning of the said Act of 1971; or to proceedings before the Industrial Arbitration Board described in section 124 of that Act.
- (4) This section shall not apply in relation to an agreement to refer to arbitration made before the commencement of this Act.

4 Rate of interest in sheriff court decrees or extracts.

The Court of Session may by act of sederunt direct that section 9 of the Sheriff Courts (Scotland) Extracts Act 1892 (interest included in sheriff court decree or extract), as that enactment has effect for the time being whether by virtue of this section or otherwise, shall be amended so as to substitute, for the rate of interest specified in that section, such rate as may be specified in the act of sederunt.

5 Short title, interpretation, commencement and extent.

- (1) This Act may be cited as the Administration of Justice (Scotland) Act 1972.
- (2) In this Act any reference to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment.
- (3) Sections 1 and 3 of this Act shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different purposes.
- (4) This Act shall extend to Scotland only.