Public Records (Scotland) Act 1937

1937 CHAPTER 43 1 Edw 8 and 1 Geo 6

U.K.

An Act to make better provision for the preservation, care and custody of the Public Records of Scotland, and for the discharge of the duties of Principal Extractor of the Court of Session. [6th July 1937]

Commencement Information

I1 Act wholly in force at Royal Assent

PART I U.K.

COURT RECORDS

Modifications etc. (not altering text)

C1 Pt. I excluded by Law Reform (Miscellaneous Provisions)(Scotland) Act 1966 (c. 19), s. 8(4)

1 High Court and Court of Session records. U.K.

(1) The records of the High Court of Justiciary and of the Court of Session shall be transmitted to the **[**[F1]Keeper of the Records of Scotland**]** (hereinafter referred to as the Keeper) at such times, and subject to such conditions, as may respectively be prescribed by Act of Adjournal or Act of Sederunt.

(2) An Act of Adjournal or an Act of Sederunt under the foregoing subsection may fix different times and conditions of transmission for different classes of records and may make provision for re-transmission of records to the Court when such re-transmission is necessary for the purpose of any proceedings before the Court, and for the return to the Keeper of records so re-transmitted as soon as may be after they have ceased to be required for such purpose.

[F2(3) Before making an Act of Adjournal or an Act of Sederunt under subsection (1), the High Court of Justiciary or, as the case may be, the Court of Session must consult the Keeper.]

Textual Amendments

F1 Words substituted by virtue of Public Registers and Records (Scotland) Act 1948 (c. 57), **s. 1(3)(7)**

F2 S. 1(3) added (S.) (1.1.2013) by Public Records (Scotland) Act 2011 (asp 12), **ss. 15(2)**, 16(1); S.S.I. 2012/247, art. 2

[F3 1A Sheriff Appeal Court records S

(1) The records of the Sheriff Appeal Court are to be transmitted to the Keeper at such times, and subject to such conditions as may be prescribed—

(a) in relation to records relating to criminal proceedings, by act of adjournal,

(b) in relation to other records, by act of sederunt.

(2) An act of adjournal or act of sederunt under subsection (1) may—

(a) fix different times and conditions of transmission for different descriptions or records,

(b) make provision for—

(i) re-transmission of records to the High Court of Justiciary, the Court of Session or the Sheriff Appeal Court when such re-transmission is necessary for the purposes of proceedings in any of the Courts, and

(ii) the return to the Keeper of any records so re-transmitted as soon as they have ceased to be required for such a purpose.

(3) Before making an act of adjournal or act of sederunt under subsection (1), the High Court of Justiciary or, as the case may be, the Court of Session must consult the Keeper.]

Textual Amendments

F3 S. 1A inserted (S.) (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 11(2)**; S.S.I. 2015/77, art. 2(2)(3), Sch.

2 Sheriff court records. U.K.

[F4(1) A sheriff principal may, with the agreement of the Keeper, transmit any of the sheriff court records of the sheriff principal's sheriffdom to the Keeper.]

(2) Where any record transmitted in pursuance of the foregoing subsection to the Keeper is required for the purpose of any proceedings in the High Court of Justiciary, the Court of Session [F5, the Sheriff Appeal Court] or any sheriff court, the Keeper shall re-transmit such record to the clerk of such court on any order of a judge of the said High Court or Court of Session [F6, of an Appeal Sheriff] or of the sheriff as the case may be, and any record so re-transmitted shall be returned by such clerk to the Keeper as soon as may be after it has ceased to be required for the said purpose.

(3) **[**[F7]The **[**[F8]sheriff principal**]** of each sheriffdom shall be responsible for the proper care and preservation of the sheriff court records of that sheriffdom which have not been transmitted under subsection (1) of this section to the Keeper and shall, in compliance with any request which the Keeper, with the consent of the Lord President, may from time to time make, cause a report to be prepared and sent by the sheriff clerk to the Keeper, giving such information as may be specified in the request, regarding—

(a) the nature, situation and condition of all buildings in which any such records are kept;

(b) the age and condition of such records;

(c) the arrangements made for their care and preservation, and for indexing them and rendering them available for inspection by the public; and

(d) any other matters connected with the care and preservation of such records.**]**

(4) In **[**[F9]subsections (1) and (3)**[**[F9]subsection (1)**]]** of this section, the expression "sheriff principal" does not include " **[**[F10]sheriff**]**".

Textual Amendments

F4 S. 2(1) substituted (S.) (1.1.2013) by Public Records (Scotland) Act 2011 (asp 12), **ss. 15(3)(a)**, 16(1); S.S.I. 2012/247, art. 2

F5 Words in s. 2(2) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 11(3)(a)**; S.S.I. 2015/77, art. 2(2)(3), sch.

F6 Words in s. 2(2) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 11(3)(b)**; S.S.I. 2015/77, art. 2(2)(3), sch.

F7 S. 2(3) repealed (S.) (1.1.2013) by Public Records (Scotland) Act 2011 (asp 12), **ss. 14(a)**, 16(1); S.S.I. 2012/247, art. 2

F8 Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), **s. 4**

F9 Words in s. 2(4) substituted (S.) (1.1.2013) by Public Records (Scotland) Act 2011 (asp 12), **ss. 15(3)(b)**, 16(1); S.S.I. 2012/247, art. 2

F10 Word substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), **s. 4**

[[F11]**2A JP court records** S

[[F12](1) A sheriff principal may, with the agreement of the Keeper, transmit any of the JP court records of the sheriff principal's sheriffdom to the Keeper.**]**

[F13](2) . . . . . .

(3) Where any record transmitted to the Keeper under subsection (1) above is required for the purpose of proceedings in the High Court of Justiciary, the Court of Session, **[**[F14]the Sheriff Appeal Court,**]** or any sheriff court or JP court, the Keeper shall re-transmit the record to the clerk of the relevant court on an order of a judge of the High Court or Court of Session**[**[F15], of an Appeal Sheriff**]**, of an Appeal Sheriff or of the sheriff or judge of a JP court (as the case may be), and a record so re-transmitted shall be returned by the clerk to the Keeper as soon as may be after it has ceased to be required for the purpose.

[F16](4)**]** . . . . . .

Textual Amendments

F11 S. 2A inserted (S.) (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, **Sch. para. 2(1)**; S.S.I. 2008/42, **art. 3**, Sch.

F12 S. 2A(1) substituted (1.1.2013) by Public Records (Scotland) Act 2011 (asp 12), **ss. 15(4)(a)**, 16(1); S.S.I. 2012/247, art. 2

F13 S. 2A(2) repealed (1.1.2013) by Public Records (Scotland) Act 2011 (asp 12), **ss. 15(4)(b)**, 16(1); S.S.I. 2012/247, art. 2

F14 Words in s. 2A(3) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 11(4)(a)**; S.S.I. 2015/77, art. 2(2)(3), sch.

F15 Words in s. 2A(3) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 11(4)(b)**; S.S.I. 2015/77, art. 2(2)(3), sch.

F16 S. 2A(4) repealed (1.1.2013) by Public Records (Scotland) Act 2011 (asp 12), **ss. 14(a)**, 16(1); S.S.I. 2012/247, art. 2

[F17]3 . . . . . **U.K.**

Textual Amendments

F17 S. 3 repealed by District Courts (Scotland) Act 1975 (c. 20), **Sch. 2**

PART II U.K.

STATE, DEPARTMENTAL AND LOCAL AUTHORITY RECORDS

[F18]4 . . . . . **U.K.**

Textual Amendments

F18 S. 4 repealed by Statute Law (Repeals) Act 1981 (c. 19), **Sch. 1 Pt. XII**

5 Provision for transfer of departmental and local authority records to the Keeper. S

(1) It shall be lawful for any Government Department, board of trustees, or other body or person having the custody of any records belonging to His Majesty and relating exclusively or mainly to Scotland (other than the documents specified in section four of this Act) to transmit such records to the Keeper:

[F19] . . . . . .

[[F20](2) Notwithstanding anything contained in any enactment, it shall be lawful for any local authority or any statutory body corporate in Scotland, with the consent of the Keeper, to transmit such of their records as relate exclusively or mainly to Scotland to the Keeper for custody.

(2A) For the purposes of this section, "statutory body corporate" means any body corporate established by or under a statute relating to Scotland other than such bodies, or such classes of such bodies, as may be specified by the Secretary of State in an order made by statutory instrument.

(2B) Nothing in subsection (2) above shall apply to any burgh register of sasines or to any book or public record relating thereto.**]**

(3) Any document transmitted under this section to the Keeper shall be re-transmitted by him to the Department, local authority, body or person from whom it was received **[**[F21]or to any part of the Scottish Administration**]**, on application to that effect made on the ground that such re-transmission is necessary for the purposes of such Department, local authority, body or person **[**[F21]or of such part of the Scottish Administration**]**. Any record so re-transmitted shall be returned to the Keeper as soon as may be after it has ceased to be required for the purposes for which it was re-transmitted.

Textual Amendments

F19 S. 5(1) proviso repealed by Public Records Act 1958 (c. 51), **Sch. 4**

F20 S. 5(2)(2A)(2B) substituted (1.4.1996) for s. 5(2) by 1994 c. 39, s. 180(1), **Sch. 13 para. 22(2)** (with s. 128(8)); S.I. 1996/323, **art. 4(1)(c)**

F21 Words in s. 5(3) inserted (1.7.1999 as specified in S.I. 1998/3178, **art. 3**) by S.I. 1999/1820, **arts. 1(2)**,4, Sch. 2 Pt. I para. 17(2)

Modifications etc. (not altering text)

C2 S. 5(1) extended by Coal Industry Nationalisation Act 1946 (c. 59), **s. 64(9)** and Transport Act 1968 (c. 73), **s. 144(9)**
S. 5(1) extended (1.4.1994) by 1993 c. 43, **s. 125(6)**; S.I. 1994/571, **art. 3**
S. 5(1) extended (18.9.1996) by 1996 c. 42, **ss. 5(4)**, 8(3)

[F22]**6** . . . . . **U.K.**

Textual Amendments

F22 S. 6 repealed by Public Records Act 1958 (c. 51), **Sch. 4**

PART III U.K.

GENERAL

7 Advisory Council. U.K.

[F23] . . . . . .

Textual Amendments

F23 S. 7 repealed (S.) (1.8.2010) by Public Services Reform (Scotland) Act 2010 (asp 8), **ss. 4(3)**, 134(7); S.S.I. 2010/221, **art. 3(2)(3)**, Sch.

8 Preservation, &c. of records. U.K.

The Keeper shall take such steps as may seem to him necessary for the cleaning, preserving, repairing and arranging of any records transmitted to him in pursuance of this Act or otherwise, and for the making of calendars, indexes and catalogues thereof.

Modifications etc. (not altering text)

C3 S. 8 modified (S.) (5.2.2009) by Scottish Register of Tartans Act 2008 (asp 7), **ss. 3(2)**, 18(2); S.S.I. 2009/5, **art. 2**

9 Extracts from records. U.K.

The Keeper shall have power to issue extracts or certified copies of any records transmitted to him in pursuance of this Act or otherwise, and any such extract or copy shall be of the like force and effect in all respects and for all purposes as if it had been an extract or copy issued in accordance with the law and practice existing immediately prior to the passing of this Act.

Modifications etc. (not altering text)

C4 S. 9 restricted by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47, SIF 81:2), **s. 20(11)(b)**

C5 S. 9 modified (S.) (5.2.2009) by Scottish Register of Tartans Act 2008 (asp 7), **ss. 3(2)**, 18(2); S.S.I. 2009/5, **art. 2**

10 Fees for inspection and search of records. U.K.

The Court of Session may from time to time, with the approval of the Treasury, prescribe by Act of Sederunt a table of fees to be charged for inspection, search, and making copies of any records transmitted to the Keeper in pursuance of this Act or otherwise. Provision may be made, in prescribing any such table, for the remission of fees for the inspection of records for historical or literary purposes.

Modifications etc. (not altering text)

C6 S. 10 modified (S.) (5.2.2009) by Scottish Register of Tartans Act 2008 (asp 7), **ss. 3(2)**, 18(2); S.S.I. 2009/5, **art. 2**

11 Catalogues, &c. of records. U.K.

The Keeper shall have power [F24]. . . to purchase any catalogues, calendars and indexes of records transmitted to him in pursuance of this Act or otherwise, which may have been prepared by any person or body, and to arrange for the sale of copies of any catalogue, calendar or index whether prepared by him or by any other person or body.

Textual Amendments

F24 Words in s. 11 repealed (1.7.1999 as specified in S.I. 1998/3178, **art. 3**) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 17(3)**, Pt. IV

Modifications etc. (not altering text)

C7 S. 11 modified (S.) (5.2.2009) by Scottish Register of Tartans Act 2008 (asp 7), **ss. 3(2)**, 18(2); S.S.I. 2009/5, **art. 2**

[F25 11A Powers of Keeper. U.K.

Without prejudice to any other power he may have under this or any other enactment, the Keeper may—

(a) accept responsibility for the safe keeping of records other than public records; and

(b) acquire records and accept gifts and loans of records.]

Textual Amendments

F25 S. 11A inserted by National Heritage (Scotland) Act 1985 (c. 16, SIF 78), **s. 19(2)**

12 Disposal of documents not be be preserved by the Keeper. U.K.

(1) The Lord Justice General, as regards records of the High Court of Justiciary, the Lord President, as regards other court records, and the Secretary of State, as regards any other records to which this Act applies, may make regulations regarding the disposal by destruction or otherwise of records which have been transmitted to the Keeper in pursuance of this Act or otherwise, and which are of insufficient value to justify their preservation or which would more appropriately be in the custody of any person, body or institution other than the Keeper.

[F26(2) Regulations under this section are subject to the negative procedure.]

(3) No regulations made under this section shall authorise—

(a) the disposal of records relating to a Government department or belonging to a local authority without the consent of that department or authority; or

[F27(b) the disposal by destruction of any records of older date than the year 1707.]

Textual Amendments

F26 S. 12(2) substituted (S.) (11.11.2011) by The Interpretation and Legislative Reform (Scotland) Act 2010 (Consequential, Savings and Transitional Provisions) Order 2011 (S.S.I. 2011/396), arts. 1, **4**

F27 S. 12(3)(b) substituted by National Heritage (Scotland) Act 1985 (c. 16, SIF 78), **s. 19(3)**

Modifications etc. (not altering text)

C8 S. 12 extended by Public Registers and Records (Scotland) Act 1948 (c. 57), **s. 5**

C9 S. 12 modified (S.) (5.2.2009) by Scottish Register of Tartans Act 2008 (asp 7), **ss. 3(2)**, 18(2); S.S.I. 2009/5, **art. 2**

[F28 12A Duty to afford facilities for inspection etc. of certain records U.K.

It shall be the duty of the Keeper to arrange that reasonable facilities are available to the public for—

(a) inspecting; and

(b) obtaining copies of,

such records held by the Keeper as either fall to be disclosed in accordance with the Freedom of Information (Scotland) Act 2002 (asp 13) or comprise information which is exempt information (within the meaning of that Act) by virtue of section 25(2)(b)(ii) of that Act.**]**

Textual Amendments

F28 S. 12A inserted (S.) (1.1.2005) by 2002 asp 13, ss. 70(3), 75(1) (with s. 66); S.S.I. 2004/203, **art. 3(2)**

13 Provision for discharge of duties of Extractor of the Court of Session. U.K.

(1) The Keeper shall exercise and perform the powers and duties conferred or imposed on the Principal Extractor of the Acts and Decrees of the Court of Session by any order made in pursuance of section seven of the [M1]Reorganisation of Offices (Scotland) Act 1928, and the other powers and duties of such Principal Extractor and of his Assistant shall be exercised and performed by such clerks and officers of the Court of Session as the Principal Clerk of Session may, subject to the directions of the Lord President, from time to time appoint.

[F29](2) . . . . . .

Textual Amendments

F29 S. 13(2) repealed by Statute Law (Repeals) Act 1981 (c. 19), **Sch. 1 Pt. XII**

Marginal Citations

M1 1928 c. 34.

14 Interpretation. U.K.

(1) In this Act, unless the context otherwise requires—

the expressions "records of the Court of Session" and "records of the High Court of Justiciary" mean the registers, minute books, processes, writs or documents belonging to or in the custody of the Court of Session (including the Court of Teinds as defined in the [M2]United Parishes (Scotland) Act 1876) and the High Court of Justiciary respectively;

[[F30]the expression "records of the Sheriff Appeal Court" includes the registers, minute books, processes, writs or documents belonging to or in the custody of the Sheriff Appeal Court;**]**

the expression "sheriff court records" includes the registers, minute books, processes, writs or documents belonging to or in the custody of sheriff courts or sheriff clerks;

[F31] . . .

[[F32] " court records " includes (in addition to records of the ordinary courts) records of the Scottish Land Court;

[[F33] the expression " JP court " means a justice of the peace court; **]**

[[F34] the expression " JP court records " includes the registers, minute books, processes, writs or documents belonging to or in the custody of JP courts; **]**

[[F35] the expression " local authority " means an authority constituted under section 2 of the Local Government etc. (Scotland) Act 1994, and includes a joint board and a joint committee;

the expression " statutory body corporate " shall be construed in accordance with section 5(2A) above.]

[[F36](2) Any question as to whether or not a document is part of the records of a particular court is to be determined—

(a) in the case of the High Court, by the Lord Justice General,

(b) in any other case, by the Lord President.]]

Textual Amendments

F30 Words in s. 14(1) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 11(5)**; S.S.I. 2015/77, art. 2(2)(3), sch.

F31 Definition of "justice of the peace records" repealed by District Courts (Scotland) Act 1975 (c. 20), **Sch. 2**

F32 S. 14: definition of "court records" substituted (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 203, 206(1), **Sch. 7 para. 4(a)**; S.S.I. 2010/413, **art. 2**, Sch.

F33 S. 14: words inserted (S.) (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, **Sch. para. 2(2)(b)**; S.S.I. 2008/42, **art. 3**, Sch.

F34 S. 14: words inserted (S.) (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, **Sch. para. 2(2)(a)**; S.S.I. 2008/42, **art. 3**, Sch.

F35 S. 14: definitions of "local authority" and "statutory body corporate" inserted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 22(3)** (with s. 128(8)); S.I. 1996/323, **art. 4(1)(c)**

F36 S. 14(2) substituted (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 203, 206(1), **Sch. 7 para. 4(b)**; S.S.I. 2010/413, **art. 2**, Sch.

Marginal Citations

M2 1876 c. 11.

[F37]15, 16. . . . . . **U.K.**

Textual Amendments

F37 Ss. 15, 16 repealed by Statute Law Revision Act 1950 (c. 6), **Sch. 1**

17 Short title. U.K.

This Act may be cited as the Public Records (Scotland) Act 1937.

[F38]FIRST SCHEDULE U.K.

Textual Amendments

F38 Sch. 1 repealed by Statute Law (Repeals) Act 1981 (c. 19), **Sch. 1 Pt. XII**

. . . . . .

[F39]SECOND SCHEDULE U.K.

Textual Amendments

F39 Sch. 2 repealed by Statute Law Revision Act 1950 (c. 6), **Sch. 1**

. . . . . .

Changes to legislation:
There are currently no known outstanding effects for the Public Records (Scotland) Act 1937.