



# Church of Scotland Courts Act 1863

1863 CHAPTER 47 26 and 27 Vict

**1 When a libel is found relevant against a minister, Presbytery may require and enjoin him to abstain from the discharge of his functions.**

Whenever any Presbytery or other court of the Church of Scotland shall have found a libel relevant, charging the minister of any parish with immoral conduct or with error in doctrine, and shall have resolved to proceed to a proof of the said libel, it is hereby declared and enacted that it is and shall be held to be the right of the said Presbytery to pronounce a deliverance requiring and enjoining such minister to abstain from the exercise and discharge of all ministerial functions of his office as minister of the parish until the libel shall have been fully investigated and finally disposed of; and in the event of an appeal against such deliverance the same shall continue in force until the same shall have been recalled by the Court of Appeal; and the ordinances of religion in the said parish shall, so long as such deliverance is unrecalled, be administered in the same way as if the parish were vacant by the decease of the minister thereof: Provided always, that nothing herein contained shall affect the right of such minister to his stipend.

**2 †When a minister has become insane, Presbytery to appoint an assistant.**

When, in the course of any judicial process affecting the status of a minister, or on the representation of any party having interest, it has been established to the satisfaction of a Presbytery or other superior court of the Church, on a certificate by the sheriff of the county, which he is hereby authorized to grant after due investigation, that the minister of any parish is [<sup>F1</sup>suffering from mental disorder within the meaning of the <sup>M1</sup>Mental Health (Scotland) Act 1960], and thereby disabled from discharging the duties of his office, it is and shall be the right of the Presbytery, unless an arrangement for the purposes after mentioned shall have been made on behalf of the said minister to the satisfaction of the Presbytery, to appoint a qualified assistant to perform the duties of the charge until the said minister shall be enabled to resume the same, or until the parish shall be declared vacant<sup>F2</sup>...: Provided, that it shall at all times be competent to such minister to apply to the Presbytery to be restored to the duties of his office on the ground of his recovery; and the Presbytery, on being satisfied that such minister has recovered, shall recall the deliverance; and from the date of such recall all right and interest under the deliverance shall cease and determine.

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*Changes to legislation: There are currently no known outstanding effects for the Church of Scotland Courts Act 1863. (See end of Document for details)*

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#### Textual Amendments

- F1** Words substituted by [Mental Health \(Scotland\) Act 1960 \(c. 61\), Sch. 4](#)
- F2** Words in s. 2 repealed (S.) (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\), ss. 71, 77\(2\), sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### Modifications etc. (not altering text)

- C1** Unreliable marginal note

#### Marginal Citations

- M1** [1960 c. 61.](#)

### 3 Provision in case of a minister being suspended.

When, by their final sentence upon a libel, a Presbytery or other church court shall suspend a minister from the discharge of the duties of his office for a term specified in the said sentence, it is hereby further declared and enacted, that it is and shall be held to be the right of the Presbytery to appoint a qualified assistant to discharge the said duties<sup>F3</sup>....

#### Textual Amendments

- F3** Words in s. 3 repealed (S.) (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\), ss. 71, 77\(2\), sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

### 4 Church court may appoint a person to dictate the evidence of witnesses, or appoint a shorthand writer to take it down.

Where in any cause depending before a Presbytery or other superior court of the Church a proof shall have been allowed, it shall be lawful and competent for such court to appoint a qualified person being an advocate, writer to the signet, solicitor before the Supreme Courts, or a procurator duly entered as a practitioner in any sheriff court in Scotland, of not less than three years standing, to sit with them for the purpose of dictating to the clerk of court the evidence given by the witnesses examined in the course of the proof; and the oath de fidei administratione officii shall be administered by the moderator to any person so appointed; and it shall be lawful and competent for such court, if it see fit, to appoint the evidence of the witnesses examined in the course of such proof to be taken down by a writer skilled in shorthand writing, to whom the oath de fidei administratione officii shall be administered; and the said shorthand writer shall afterwards, and within such time as may be fixed by the court, write out in full the evidence so taken down by him in shorthand; and the extended notes, so written out, certified by the moderator and clerk of court to be correct, shall be the record of the oral evidence in the cause: Provided always, that nothing herein contained shall prevent any Church court, if it see fit, from taking down and recording the evidence adduced in any cause, according to the form hitherto in use.

**Changes to legislation:**

There are currently no known outstanding effects for the Church of Scotland Courts Act 1863.