

Judiciary and Courts (Scotland) Act 2008

2008 asp 6

PART 3

THE COURTS

Sheriff courts

47 Sheriff principal's responsibility

- (1) The 1971 Act is amended as follows.
- (2) For section 15 substitute—

“15 Efficient disposal of business in sheriff courts

- (1) The sheriff principal of each sheriffdom is responsible for securing the efficient disposal of business in the sheriff courts of that sheriffdom.
 - (2) If, in carrying out that responsibility, the sheriff principal gives a direction of an administrative character to a person mentioned in subsection (3), the person must comply with the direction.
 - (3) Those persons are—
 - (a) a sheriff authorised by virtue of any enactment to act in that sheriffdom,
 - (b) a member of staff of the Scottish Court Service.
 - (4) Subsections (1) and (2) are subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”
- (3) In section 16 (powers exercisable by sheriff principal in pursuance of responsibility imposed by section 15)—
 - (a) in subsection (1)—

Status: This is the original version (as it was originally enacted).

- (i) for the words from “securing” to “sheriffdom”, in the second place it appears, substitute “carrying out the responsibility imposed by section 15(1) of this Act”, and
- (ii) in paragraph (a), for the words from the beginning of the paragraph to “aforesaid” substitute “provide for the division of business in the sheriff courts of that sheriffdom”, and
- (b) after subsection (1) insert—
 - “(1A) Subsection (1) is subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”.
- (4) In section 17 (sheriff principal’s power to fix sittings and business of sheriff courts), after subsection (4) insert—
 - “(4A) Subsections (1) to (4) are subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”.
- (5) In section 20 (Lord Advocate’s instructions to procurators fiscal), the words “speedy and” are repealed.

48 Repeal of certain responsibilities of Scottish Ministers

Sections 1 and 9 of the 1971 Act (which respectively impose responsibility on the Scottish Ministers in relation to the organisation of sheriff courts and enable them to give directions) are repealed.

49 Lord President’s default power

- (1) The 1971 Act is amended as follows.
- (2) After section 17 insert—

“17A Lord President’s power to exercise functions in sections 15 to 17

- (1) Subsection (2) applies where in any case the Lord President considers that the exercise by the sheriff principal of a sheriffdom of a function conferred by any of sections 15 to 17 of this Act—
 - (a) is prejudicial to the efficient disposal of business in the sheriff courts of that sheriffdom,
 - (b) is prejudicial to the efficient organisation or administration of those sheriff courts, or
 - (c) is otherwise against the interests of the public.
- (2) The Lord President may in that case—
 - (a) rescind the sheriff principal’s exercise of the function, and
 - (b) exercise the function.

- (3) Subsection (2)(b) applies where in any case the Lord President considers that the failure of the sheriff principal of a sheriffdom to exercise a function conferred by any of sections 15 to 17 of this Act—
- (a) is prejudicial to the efficient disposal of business in the sheriff courts of that sheriffdom,
 - (b) is prejudicial to the efficient organisation or administration of those sheriff courts, or
 - (c) is otherwise against the interests of the public.
- (4) The exercise of a function by the Lord President by virtue of subsection (2)(b) is to be treated as if it were the exercise of the function by the sheriff principal.”.

(3) Section 18 (Scottish Ministers' default power) is repealed.

50 Alteration of boundaries of sheriffdoms

- (1) Section 2 (power to alter boundaries of sheriffdoms) of the 1971 Act is amended as follows.
- (2) In subsection (2), after paragraph (a) insert—
- “(aa) provision of the kind that may be made by an order under section 3(2) of this Act;”.
- (3) After subsection (2) insert—
- “(2A) An order under subsection (1) above may be made only with the consent of—
 - (a) the Lord President of the Court of Session, and
 - (b) where the order includes provision such as is mentioned in subsection (2)(a) or (aa) above, the Scottish Court Service.
 - (2B) Before consenting to the making of such an order, the Scottish Court Service must consult such persons as it considers appropriate.”.
- (4) In subsection (3)(b), for the words “Secretary of State” in the first place those words appear substitute “Scottish Court Service”.
- (5) In subsection (4), the words from “, but” to the end are repealed.
- (6) After subsection (4) add—
- “(5) A statutory instrument containing an order under subsection (1) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

51 Sheriff court districts and places where sheriff courts are to be held

- (1) Section 3 (sheriff court districts and places where sheriff courts are to be held) of the 1971 Act is amended as follows.
- (2) After subsection (2) insert—
- “(2A) An order under subsection (2) above may be made only with the consent of—
 - (a) the Lord President of the Court of Session, and
 - (b) the Scottish Court Service.

(2B) Before consenting to the making of such an order, the Scottish Court Service must consult such persons as it considers appropriate.”.

(3) In subsection (4), for “Secretary of State” in the first place those words appear substitute “Scottish Court Service”.

(4) After subsection (5) insert—

“(5A) A statutory instrument containing an order under subsection (2) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

52 Repeal of power to appoint sheriff to assist Scottish Ministers

Section 8 (power to appoint sheriff to assist Scottish Ministers) of the 1971 Act is repealed.

53 Sheriffs principal and sheriffs acting in other sheriffdoms

(1) Section 10 (ministerial powers to authorise sheriff principal or direct sheriff to act in another sheriffdom) of the 1971 Act is amended as follows.

(2) In subsection (1)—

- (a) for “Scottish Ministers” in the first place those words appear substitute “Lord President of the Court of Session”,
- (b) the words “to them” are repealed, and
- (c) for “Scottish Ministers otherwise decide” substitute “Lord President otherwise decides”.

(3) In subsection (1A)—

- (a) for “Scottish Ministers” in the first place those words appear substitute “Lord President”, and
- (b) for “Scottish Ministers otherwise decide” substitute “Lord President otherwise decides”.

(4) In subsection (2), for “Scottish Ministers”, in each place those words appear, substitute “Lord President”.

54 Residence and leave of absence of sheriffs principal

(1) Section 13 (ministerial functions in relation to residence and leave of absence of sheriffs principal) of the 1971 Act is amended as follows.

(2) In subsection (1)—

- (a) for “Secretary of State” in the first place those words appear substitute “Lord President of the Court of Session”, and
- (b) for “Secretary of State” in the second place those words appear substitute “Lord President”.

(3) In subsection (2)—

- (a) for “Secretary of State” in each place those words appear substitute “Lord President”,
- (b) after “absence” insert “for the purpose of holidays”, and
- (c) the words from “(other” to “ill-health)” are repealed.

(4) After subsection (2) add—

“(3) The Lord President may approve such leave of absence for any other purpose for any sheriff principal (being a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or to whom section 6(1) of this Act applies) as appears to the Lord President to be proper.”.

55 Number, residence and deployment of sheriffs

(1) Section 14 (number, residence and place of duties of sheriffs) of the 1971 Act is amended as follows.

(2) Subsection (1) is repealed.

(3) In subsection (2)—

- (a) for “Secretary of State” in the first place those words appear substitute “Lord President of the Court of Session”, and
- (b) for “Secretary of State” in the second place those words appear substitute “Lord President”.

(4) In subsection (3), for “Secretary of State” substitute “Lord President”.

(5) In subsection (4)—

- (a) for the words “and after consultation with the Lord President of the Court of Session, the Secretary of State” substitute “the Lord President”, and
- (b) for “Secretary of State” in the second place those words appear substitute “Lord President”.

56 Leave of absence of sheriffs

(1) Section 16 (functions of sheriff principal with respect to duties and leave of absence of sheriffs) of the 1971 Act is amended as follows.

(2) In subsection (2)—

- (a) after “absence” insert “for the purpose of holidays”,
- (b) the words from “(other” to “ill-health)” are repealed, and
- (c) for “Secretary of State” substitute “Lord President of the Court of Session”.

(3) After subsection (2) insert—

“(2A) The sheriff principal of any sheriffdom may approve such leave of absence for any other purpose for any sheriff appointed for that sheriffdom as appears to the sheriff principal to be proper.”.

(4) In subsection (3), for “subsection (2)” substitute “subsections (2) and (2A)”.