

# COURTS REFORM (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### THE ACT

#### Part 1 - Sheriff Courts

##### *Chapter 3 — Organisation of business*

#### Sheriff principal's general responsibilities

##### *Section 27 – Sheriff principal's responsibility for efficient disposal of business in sheriff courts*

52. *Section 27*, which substantially re-enacts the provisions of sections 15 and 16(1) of the Sheriff Courts (Scotland) Act 1971, gives the sheriff principal responsibility to ensure the efficient disposal of business in sheriff courts in his or her sheriffdom (subsection (1)) and the power to make such arrangements as appear necessary or expedient for the purpose of carrying out that responsibility (subsection (2)). In particular, the sheriff principal has power to allocate business among the judiciary of the sheriffdom (subsection (3)), and to give directions of an administrative character to such judiciary and to members of the staff of the SCTS (subsection (5)). The “judiciary of the sheriffdom” is defined in section 125(2) as all judicial officers within the sheriffdom, including part-time sheriffs and part-time summary sheriffs. Subsection (7) makes it clear that the powers of the sheriff principal under this section are subject to the Lord President's overall responsibility for the efficient disposal of business in the Scottish courts under provisions in the Judiciary and Courts (Scotland) Act 2008.

##### *Section 28 – Sheriff principal's power to fix sittings of sheriff courts*

53. *Section 28*, which re-enacts and updates section 17 of the Sheriff Courts (Scotland) Act 1971, gives the sheriff principal power by order to prescribe where and when sheriff courts will sit and the descriptions of business to be disposed of at those sittings. The provisions of section 28 are again subject to the Lord President's overall responsibility for the efficient disposal of business in the Scottish courts.

##### *Section 29 – Lord President's power to exercise functions under sections 27 and 28*

54. *Section 29* permits the Lord President to intervene where the Lord President considers that a sheriff principal has exercised functions under section 27 or 28 in a way which is prejudicial to the efficient disposal of business in the sheriff courts, or is prejudicial to the efficient organisation or administration of those courts, or is otherwise against the public interest (subsection (1)). In such a case, the Lord President may rescind the exercise of the function by the sheriff principal and exercise the function (subsection (2)). This section makes equivalent provision to section 17A of the Sheriff Courts (Scotland) Act 1971.

## **Deployment of judiciary**

55. Sections 30 to 33 enable the Lord President to deploy and re-allocate sheriffs principal, sheriffs and summary sheriffs across sheriffdoms, and, in the case of sheriffs and summary sheriffs, across sheriff court districts.

### ***Section 30 – Power to authorise a sheriff principal to act in another sheriffdom***

56. Section 30 permits the Lord President to authorise the sheriff principal of one sheriffdom to exercise all or some of the functions of sheriff principal of another sheriffdom in any of the circumstances set out in subsection (1). Subsection (6) removes any doubt that a temporary sheriff principal may be asked to act in another sheriffdom while appointed.

### ***Section 31 – Power to direct a sheriff or summary sheriff to act in another sheriffdom***

57. Section 31 provides that a sheriff or summary sheriff may be directed by the Lord President to perform the judicial functions that that individual already performs in another sheriffdom or sheriffdoms until the Lord President directs otherwise (subsections (1) and (3)). It also provides that this may be instead of, or in addition to, the performance of the duties that that individual already performs in the sheriffdom in which they are based (subsection (2)) or, where that individual has already been directed to act in another sheriffdom, to that individual's duties in that sheriffdom (subsection (4)).

### ***Section 32 – Power to re-allocate sheriffs principal, sheriffs and summary sheriffs between sheriffdoms***

58. This section enables the Lord President permanently to transfer sheriffs principal, sheriffs, and summary sheriffs between sheriffdoms. (So far as sheriffs are concerned, this power re-enacts the existing provision in section 14(4) of the Sheriff Courts (Scotland) Act 1971.)

### ***Section 33 – Allocation of sheriffs and summary sheriffs to sheriff court districts***

59. Section 33 updates and restates section 14(3) of the Sheriff Courts (Scotland) Act 1971 and extends its provisions to summary sheriffs. It provides that the Lord President is to designate in a direction a particular sheriff court district in which a sheriff or summary sheriff is to sit. Further it allows the Lord President to move a sheriff or summary sheriff to a different district within the sheriffdom by designation in a direction. Subsection (3) clarifies the interaction between the power in subsection (1) with the power of the sheriff principal to make temporary special provisions under section 27(3)(b), giving precedence to the sheriff principal's use of that power.

## **Judicial specialisation**

60. Sections 34 to 37 are new provisions which implement the recommendations of the Scottish Civil Courts Review in relation to the desirability of greater specialisation in the sheriff courts.

### ***Section 34 – Determination of categories of case for purposes of judicial specialisation***

61. This section permits the Lord President to decide categories of cases within the sheriff courts which should be heard by judicial officers who specialise in that category of case.
62. Subsection (2) provides that the categories of cases designated for specialisation by the Lord President may be determined by subject matter, value or other such criteria as the Lord President considers appropriate. Subsections (3) and (4) give the Lord

President further flexibility in relation to the operation of specialisation among the judicial officers.

***Section 35 – Designation of specialist judiciary***

63. Once categories of cases for specialist treatment have been determined by the Lord President, section 35 permits a sheriff principal to designate one or more sheriffs or summary sheriffs as specialists in one or more of those categories. Under subsections (5) and (6), the Lord President is similarly permitted to designate one or more part-time sheriffs or part-time summary sheriffs as specialists in cases falling within designated categories and which are within the competence of those judicial officers.
64. Subsection (7) provides that the designation of a judicial officer as a specialist in one of the categories determined by the Lord President does not affect that officer's ability to deal with cases other than those in relation to which they have been designated as specialist, nor does it mean that a judicial officer who has not been designated as a specialist cannot deal with a matter that falls within a specialisation.

***Section 36 – Allocation of business to specialist judiciary***

65. Section 36 places a duty on both the Lord President and the sheriff principal of a sheriffdom, when allocating business within a sheriffdom, to have regard to the desirability of ensuring that cases which fall within the specialist categories are dealt with by judicial officers who are designated as specialists in those categories.

***Section 37 – Saving for existing powers to provide for judicial specialisation***

66. Section 37 provides that, despite the provisions of sections 34 to 36, any other power which the Lord President already has to allocate business, including specialist business, among the judiciary of the sheriff courts is not affected by those sections.