

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Schedule 5 – Modifications of enactments

Part 1 – Sheriff courts

Paragraph 1 – Promissory Oaths Act 1868

286. This paragraph amends the Schedule to the Promissory Oaths Act 1868 as a consequence of the creation of summary sheriffs and part-time summary sheriffs. The effect of the amendment is that summary sheriffs and part-time summary sheriffs will be required to take the oath of allegiance and the judicial oath.

Paragraph 2 – Promissory Oaths Act 1871

287. This paragraph amends section 2 of the Promissory Oaths Act 1871, making provision for persons before whom summary sheriffs and part-time summary sheriffs may take oaths.

Paragraph 3 – Sheriff Courts (Scotland) Act 1876

288. Section 54 of the Sheriff Courts (Scotland) Act 1876 is repealed by this section, so far as not previously repealed. Section 54 gave power to the Court of Session to allocate commissary business in the sheriff courts by act of sederunt. This power now rests with sheriffs principal as part of their general powers to organise the efficient disposal of business in the sheriff courts at sections 27 and 28 of the Act.

Paragraph 4 – Sheriff Courts (Scotland) Act 1907

289. This paragraph repeals various sections of the Sheriff Courts (Scotland) Act 1907.
290. Sub-paragraph (a) repeals sections 4 to 7 of the 1907 Act which made provision in relation to the jurisdiction of the sheriff court. These sections are largely replaced by Chapter 4 of Part 1 of the Act, which makes provision in respect of competence and jurisdiction of sheriffs.
291. Sub-paragraph (b) repeals sections 10 and 11 of the 1907 Act. The power of Her Majesty to appoint salaried sheriffs principal and sheriffs previously provided for by section 11 of that Act is recast in sections 3 and 4 of the Act.
292. Sub-paragraph (c) repeals section 14 of the 1907 Act. Provision for the salaries of sheriffs principal and sheriffs is now made by section 16 of the Act.
293. Sub-paragraph (d) repeals section 17 of the 1907 Act, which made provision for the appointment of honorary sheriffs by sheriffs principal. The office of honorary sheriff is abolished by section 26 of the Act.

*These notes relate to the Courts Reform (Scotland) Act 2014
(asp 18) which received Royal Assent on 10 November 2014*

294. Sub-paragraph (e) repeals section 27 to 29 of the 1907 Act, which dealt with appeals to the sheriff principal and the Court of Session as well as setting out the effect of an appeal. These repeals are in consequence of the creation of the Sheriff Appeal Court by the Act (see section 110).
295. Sub-paragraph (f) repeals sections 39 to 40 of the 1907 Act. Section 39 is repealed as consequence of the replacement of ordinary cause rules. The provision in section 40, relating to the Court of Session's power to regulate fees, is now recast at section 98 of the Act
296. Sub-paragraphs (g) and (h) repeal section 50 and Schedule 1 of the 1907 Act respectively. These repeals are in consequence of replacement by the Act of summary cause procedure by simple procedure (section 72 of the Act) and the replacement of ordinary cause procedure.

Paragraph 5 – Sheriff Courts and Legal Officers (Scotland) Act 1927

297. This paragraph makes amendments to section 8 of the Sheriff Courts and Legal Officers (Scotland) Act 1927. The amendments will allow the Lord Advocate to issue instructions to procurators fiscal both for the purpose of giving effect to the 1927 Act and for the purpose of the efficient disposal of business in the sheriff courts.

Paragraph 6 – Sheriff Courts (Scotland) Act 1971

298. The Sheriff Courts (Scotland) Act 1971 is repealed by this paragraph, with the exception of sections 2(3) and 3(4), which provide for compensation payment on loss of shrieval office and are to be repealed by Order under section 104 of the Scotland Act 1998. The other provisions of the 1971 Act are largely replaced or recast by the Act.

Paragraph 7 – Civil Jurisdiction and Judgments Act 1982

299. This paragraph amends section 20(3) of the Civil Jurisdiction and Judgments Act 1982 to reflect the recasting of section 6 of the Sheriff Courts (Scotland) Act 1907 as section 43 of the Act.

Paragraph 8 – Judicial Pensions and Retirement Act 1993

300. This paragraph amends the Judicial Pensions and Retirement Act 1993 to ensure that provisions concerning the retirement of judges apply to the offices created by this Act.

Paragraph 9 – Judiciary and Courts (Scotland) Act 2008

301. This paragraph makes various repeals and amendments in the Judiciary and Courts (Scotland) Act 2008. References to the 1971 Act are repealed or updated to refer to the Act as necessary.
302. Sub-paragraph (3) brings the offices of summary sheriff and part-time summary sheriff within the remit of JABS.
303. Sub-paragraph (4) adds the offices of summary sheriff and part-time summary sheriff to the definition of “judicial office holder” at section 43 of the Judiciary and Courts (Scotland) Act 2008. This has the effect of bringing these officer holders under the Lord President's responsibility for welfare, training and guidance at section 2 of the 2008 Act.