

# COURTS REFORM (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### THE ACT

#### Part 2 - Sheriff Appeal Court

78. The Scottish Civil Courts Review recommended the establishment of a Sheriff Appeal Court to deal with all civil appeals from the sheriff court and all summary criminal appeals by an accused on conviction or sentence; appeals by the Crown on acquittal or sentence; and bail appeals (emanating from the sheriff court or the justice of the peace court).
79. In civil appeals, the appellate jurisdiction that presently attaches to the office of sheriff principal will cease, as will the general right to take an appeal directly from the sheriff court to the Inner House of the Court of Session. Instead all civil appeals from cases heard at first instance by the sheriff court will lie to the Sheriff Appeal Court, except where specific legislation has established a specific right of appeal to the Court of Session. The Sheriff Appeal Court will have power to remit or transfer a particularly important or complex appeal to the Inner House. Onward appeal to the Inner House from the Sheriff Appeal Court will require the permission of the Sheriff Appeal Court, failing which the Inner House, and permission will only be given if “the second appeals” test is met.
80. In summary criminal cases, there will no longer be a right of appeal directly to the High Court against conviction or sentence or, in the case of the Crown, against acquittal or sentence. Such appeals will now lie to the Sheriff Appeal Court in the first instance, although there will be a corresponding power to remit complex appeals to the High Court. An onward appeal to the High Court would require permission, which would only be granted where there are clearly arguable grounds of appeal on a point of law.
81. The provisions in this Part of the Act provide for the establishment of the Sheriff Appeal Court, its membership, its clerking arrangements and its rules of court etc. Certain statutory appeals will continue to be heard by Sheriffs Principal sitting alone, not the Sheriff Appeal Court.
82. For details of the Sheriff Appeal Court’s appeal jurisdiction see Part 5 (sections 109-117) and Part 6 of the Act and the relevant sections of these notes.

#### Chapter 1 - Establishment and role

#### Section 46 – The Sheriff Appeal Court

83. This section provides for the establishment of the Sheriff Appeal Court as a “court of law”. This point is expanded upon in section 47. Subsection (2) provides that the court is made up of judicial office holders each known as an Appeal Sheriff.

### ***Section 47 – Jurisdiction and competence***

84. Subsection (1) sets out the jurisdiction and competence of the Sheriff Appeal Court, providing that it will determine appeals to such extent as is provided for in the Act or in any other enactment. With regard to the Act, the court will hear civil appeals under the provisions set out in Part 5 and criminal appeals under the provisions set out in Part 6. The court is a collegiate one with a decision of the court being constituted by a decision of one or more Appeal Sheriffs. Subsection (3) expands upon the phrase “court of law” used in section 46, putting beyond any doubt that the Sheriff Appeal Court is a court with the same inherent features as other courts in Scotland. This is intended to make clear that the court has the inherent jurisdiction of a court of law and thus ensures that, for example, the law on contempt of court and other rules relative to courts and court proceedings, such as rules about privilege and power to make reporting restrictions (*A v BBC*[2014] UKSC 25), are to apply.

### ***Section 48 – Status of decisions of the Sheriff Appeal Court in precedent***

85. This section makes specific provision about precedent. Whilst the position of the court in the hierarchy of courts in Scotland should ensure that its decisions will be binding upon those courts whose appeals it hears, this section puts that beyond doubt. Accordingly this section provides that in its interpretation or application of the law, the criminal decisions of the Sheriff Appeal Court will be binding on all justice of the peace courts throughout Scotland and the civil and criminal decisions of the Sheriff Appeal Court will be binding on all sheriffs throughout Scotland, as well as on the Sheriff Appeal Court (unless that Court is composed of a greater number of Appeal Sheriffs than that which composed the Court which made the decision). The use of “sheriff” in subsections (1)(a) and (2) will take on the definition in section 134 and will therefore bind the decisions of a sheriff principal sitting as a judge of first instance and any other judicial officer in the sheriff court.
86. Subsection (2) puts beyond doubt that a decision of the Sheriff Appeal Court also binds sheriffs in solemn criminal proceedings (before a sheriff and jury). Part 6 of the Act does not provide for an appeal from a solemn case in the sheriff court. Accordingly it is necessary to ensure that, despite the absence of such an appeal, the interpretation and application of the law as set out by the Sheriff Appeal Court will be the same when applied by the sheriff, whether in a summary or solemn case.

## ***Chapter 2 – Appeal sheriffs***

### ***Section 49 – Sheriffs principal to be Appeal Sheriffs***

87. This section makes provision for sheriffs principal to automatically become Appeal Sheriffs without the need for formal appointment. Sheriffs principal will thus hold two offices. Holding office as an Appeal Sheriff is dependent upon the sheriff principal continuing to hold office as a sheriff principal; suspension from the office of sheriff principal will mean suspension from the office of Appeal Sheriff.

### ***Section 50 – Appointment of sheriffs as Appeal Sheriffs***

88. Section 50 provides that sheriffs who have held office as such for at least five years may be appointed by the Lord President to be Appeal Sheriffs. The Act makes no distinction between Appeal Sheriffs who hold office as such by virtue of section 49 or 50 in terms of the judicial functions of Appeal Sheriffs or judicial authority. Accordingly an Appeal Sheriff holding office as such by virtue of section 49 is not to be treated as a more senior Appeal Sheriff to an Appeal Sheriff appointed under section 50.
89. Appeal Sheriffs appointed under this section may continue to act as sheriffs. The number of appointed Appeal Sheriffs will be a matter for the Lord President. In a similar way to section 49, holding office as an Appeal Sheriff is dependent upon the sheriff

continuing to hold office as a sheriff, and suspension from the office of sheriff will mean suspension from the office of Appeal Sheriff.

### ***Section 51 – Re-employment of former Appeal Sheriffs***

90. **Section 51** enables the Lord President to appoint retired Appeal Sheriffs to sit in the Sheriff Appeal Court in the same way and under the same conditions as retired sheriffs principal, sheriffs and summary sheriffs may be re-employed in the sheriff court. Accordingly, it provides that the Lord President may appoint as a temporary measure, in order to facilitate the disposal of business, former Appeal Sheriffs to act as Appeal Sheriffs. In order to be able to be appointed, the former Appeal Sheriff must not have been removed from office under sections 25 or 50(7), nor be aged 75 or over. Subsections (7) to (9) make provision for the Scottish Ministers to determine the amounts to be paid to re-employed Appeal Sheriffs by the SCTS.

### ***Section 52 – Expenses***

91. This section allows the SCTS, as it sees fit, to pay expenses to Appeal Sheriffs which are reasonably incurred in the performance of their duties as Appeal Sheriffs.

### ***Section 53 – Temporary provision***

92. **Section 53** introduces schedule 2 to the Act. This schedule makes provision for the Lord President of the Court of Session to appoint Senators of the College of Justice to act as Appeal Sheriffs in the Sheriff Appeal Court. The intention is that Senators will be able to assist the Appeal Sheriffs in the new court with appellate work. The appointment of Senators to act as Appeal Sheriffs will only be possible for a period of three years from the commencement of the provisions establishing the Sheriff Appeal Court

## ***Chapter 3 - Organisation of business***

### **President and Vice President**

#### ***Section 54 – President and Vice President of the Sheriff Appeal Court***

#### ***Section 55 – President and Vice President: incapacity and suspension***

93. **Sections 54** and **55** make provision for the appointment of the President and Vice President of the Sheriff Appeal Court who will be appointed from the ranks of those Appeal Sheriffs who are also sheriffs principal. Provision is also made here for where the President or Vice President is unable to carry out the function of the office that these individuals hold or is suspended from office. It is intended that the role of the President and Vice President will be purely administrative and will be concerned solely with the organisation of sittings of the Sheriff Appeal Court. Accordingly the President or Vice President will, in terms of judicial functions or judicial authority, not be treated as a more senior Appeal Sheriff to an Appeal Sheriff who does not hold that role.

### **Disposal of business**

#### ***Section 56 – President's responsibility for efficient disposal of business***

94. The President of the Sheriff Appeal Court is tasked with the organisation of the efficient disposal of business in the Court similar to the sheriff principal's responsibility for this in his or her sherifffdom (see section 27). The President has wide powers in subsection (2) to make such arrangements as are necessary or expedient in the carrying out of that responsibility. Subsection (4) provides that, in carrying out the responsibility imposed by subsection (1), the President may give administrative directions to those persons referred to in subsection (5). Subsection (6) makes it clear however that the President's responsibilities conferred by this section are subject to the overall

responsibility of the Lord President for the efficient disposal of business in the Scottish courts.

## **Sittings**

### ***Section 57 – Sittings of the Sheriff Appeal Court***

95. Subsection (1) permits maximum flexibility to allow the Sheriff Appeal Court to sit at any place in Scotland designated by the Act as a place for the holding of a sheriff court (which may be as general as a reference to a town or city – see sections 1 and 2). For example, this means that, although the Sheriff Appeal Court could sit centrally in Edinburgh for criminal appeals, there will remain the possibility of civil appeals being heard in the sheriffdom in which they originated. (This also includes the possibility that criminal and civil appeals could be heard in Parliament House in Edinburgh as “Edinburgh” is currently (and will remain) a place designated where a sheriff court is to be held.) Under subsection (5), these arrangements are subject to the overall responsibility for the efficient disposal of business in the Scottish courts placed on the Lord President.

### ***Section 58 – Rehearing of pending case by a larger Court***

96. Section 58 provides for the Appeal Sheriffs to determine that a case be reheard by a fuller bench of the Sheriff Appeal Court in circumstances where they are equally divided or where they consider the matter to merit such treatment.

## ***Chapter 4 – Administration***

## **Clerks**

### ***Section 59 – Clerk of the Sheriff Appeal Court***

### ***Section 60 – Deputy Clerks of the Sheriff Appeal Court***

### ***Section 61 – Clerk and Deputy Clerks: further provision***

97. Sections 59, 60, and 61 make provision for the clerking arrangements in the Sheriff Appeal Court. Individuals can hold the office of the Clerk of the Sheriff Appeal Court only if they also hold the office of sheriff clerk. Provision is made for the SCTS to determine periods of appointment and terms and conditions for individuals appointed as Clerk and Deputy Clerks. The Clerk and Deputy Clerks of the Sheriff Appeal Court are staff of the SCTS. The Clerk, with permission of the SCTS, may delegate his or her functions to a Deputy Clerk of the Sheriff Appeal Court or a member of staff of the SCTS, for example the functions conferred by section 62(1)(b). Further provision is made for the SCTS to make arrangements to cover temporary absences of the Clerk, or Deputy Clerk, with other members of staff of the SCTS.

## **Records**

### ***Section 62 – Records of the Sheriff Appeal Court***

98. Section 62 provides for the authentication of records of the Sheriff Appeal Court and includes provision enabling the records to be in electronic form. See also paragraph 11 of Part 2 of schedule 5 to the Act which amends the Public Records (Scotland) Act 1937 in relation to Sheriff Appeal Court records.