Courts Reform (Scotland) Act 2014

2014 asp 18

PART 1

SHERIFF COURTS

CHAPTER 4

COMPETENCE AND JURISDICTION

Sheriffs: civil competence and jurisdiction

38 Jurisdiction and competence of sheriffs

(1) A sheriff continues to have the jurisdiction and competence that attached to the office of sheriff in relation to civil proceedings immediately before this section comes into force.

(2) Without limiting that generality, a sheriff has competence as respects proceedings for or in relation to—

(a) declarator,

(b) aliment or separation,

(c) recovery of maintenance arising out of an application under section 31(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972,

(d) divorce,

(e) division of commonty and division, or division and sale, of common property,

(f) questions of heritable right or title, including declarator of irritancy and removing,

(g) reduction, other than reduction of a decree of any court,

(h) proving the tenor,

(i) suspension of charges or threatened charges upon decrees of court granted by a sheriff or upon decrees of registration proceeding upon bonds, bills, contracts or other obligations registered in the books of a sheriff court or the Books of Council and Session,

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(j) all civil maritime proceedings formerly competent in the High Court of Admiralty in Scotland.

(3) For the purpose of subsection (2)(e), the Division of Commonties Act 1695 has effect as if it conferred the same competence on a sheriff as it confers on the Court of Session.

Commencement Information

I1 S. 38 in force at 1.4.2015 by S.S.I. 2015/77, art. 2(2)(3), **Sch.**

39 Exclusive competence

(1) This section applies to any civil proceedings—

(a) which a sheriff has competence to deal with, and

(b) in which—

(i) one or more orders of value are sought, and

(ii) the aggregate total value of all such orders sought, exclusive of interest and expenses, does not exceed £100,000.

(2) The proceedings may be brought only in the sheriff court and may not be brought in any other court.

(3) This section does not apply to family proceedings unless the only order sought in the proceedings is an order for payment of aliment.

(4) Subsection (2) is subject to section 92(7) (remit of cases in exceptional circumstances to the Court of Session).

(5) The Scottish Ministers may by order substitute another sum for the sum for the time being specified in subsection (1)(b)(ii).

(6) For the purposes of this Act, an order is an order of value if it is—

(a) an order for payment of money, or

(b) an order determining rights in relation to property.

(7) Provision may be made by the Court of Session by act of sederunt for determining, for the purposes of this Act—

(a) the value of an order,

(b) the aggregate total value of all the orders of value sought in any proceedings.

(8) An act of sederunt under subsection (7) may make different provision for different purposes.

Commencement Information

I2 S. 39 in force at 1.4.2015 for specified purposes by S.S.I. 2015/77, art. 2(2)(3), **Sch.**

40 Territorial jurisdiction

(1) This section applies for the purpose of determining the territorial extent of the jurisdiction of a sheriff of a sheriffdom in relation to matters other than criminal matters.

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(2) The sheriff's jurisdiction extends throughout the sheriffdom and includes all of the following so far as located in or adjoining the sheriffdom—
  (a) navigable rivers,
  (b) ports,
  (c) harbours,
  (d) creeks,
  (e) shores,
  (f) anchoring grounds.

(3) Where two sheriffdoms are separated by a river, firth or estuary, the sheriffs of each sheriffdom on either side have concurrent jurisdiction over the intervening space occupied by the water.

(4) This section does not affect any other enactment or rule of law that has effect for the purpose of determining the territorial extent of the jurisdiction of a sheriff of a sheriffdom, whether generally or in relation to a particular case or description of case.

(5) This section is subject to an order under section 41(1).

Commencement Information
I3 S. 40 in force at 1.4.2015 by S.S.I. 2015/77, art. 2(2)(3), **Sch.**

41 Power to confer all-Scotland jurisdiction for specified cases

(1) The Scottish Ministers may by order provide that the jurisdiction of a sheriff of a specified sheriffdom sitting at a specified sheriff court extends territorially throughout Scotland for the purposes of dealing with specified types of civil proceedings.

(2) In subsection (1), “specified” means specified in an order under that subsection.

(3) An order under subsection (1) may be made only with the consent of the Lord President of the Court of Session.

(4) An order under subsection (1) does not affect—
  (a) in relation to the sheriffdom specified in the order, the jurisdiction or competence of a sheriff of any other sheriffdom to deal with proceedings of the type specified in the order, or
  (b) in relation to the sheriff court specified in the order, the jurisdiction or competence of a sheriff sitting at any other sheriff court to deal with such proceedings.

(5) This section does not apply in relation to proceedings under the Children's Hearings (Scotland) Act 2011.

Commencement Information
I4 S. 41 in force at 1.4.2015 by S.S.I. 2015/77, art. 2(2)(3), **Sch.**

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42 All-Scotland jurisdiction: further provision

(1) This section applies in relation to a sheriff sitting at a sheriff court specified in an order under section 41(1) (referred to in this section as a "specified sheriff court").

(2) The sheriff's all-Scotland jurisdiction is concurrent with, and alternative to, the sheriff's local jurisdiction.

(3) The sheriff's "all-Scotland jurisdiction" is the extended jurisdiction in relation to specified proceedings that the sheriff has by virtue of the order under section 41(1).

(4) The sheriff's "local jurisdiction" is the jurisdiction that the sheriff would have in relation to specified proceedings apart from the order under section 41(1).

(5) A party bringing specified proceedings in the specified sheriff court must indicate, at the time the proceedings are brought, whether they are for determination in the exercise of a sheriff's all-Scotland jurisdiction or a sheriff's local jurisdiction.

(6) Subsection (5) does not affect any power that a sheriff has to decline jurisdiction in any case.

(7) In this Act, references to an "all-Scotland sheriff court" are references to a specified sheriff court so far as the court is constituted by a sheriff sitting in the exercise of the sheriff's all-Scotland jurisdiction.

(8) For the purposes of any provision of this Act, or any other enactment, relating to the transfer or remit of proceedings between courts, a specified sheriff court is, when constituted as an all-Scotland sheriff court, taken to be a separate sheriff court from the court as constituted by a sheriff sitting in the exercise of the sheriff's local jurisdiction.

(9) In this section, "specified proceedings" means, in relation to a specified sheriff court, civil proceedings of a type that are specified in relation to that court in the order under section 41(1).

Commencement Information
I5 S. 42 in force at 1.4.2015 by S.S.I. 2015/77, art. 2(2)(3), **Sch.**

43 Jurisdiction over persons, etc.

(1) Subsection (2) applies for the purpose of determining the jurisdiction of a sheriff in relation to any civil proceedings that may competently be dealt with by a sheriff.

(2) The proceedings may be brought before the sheriff of a particular sheriffdom if—
- (a) the defender (or, where there is more than one defender, one of them) resides in the sheriffdom,
- (b) the defender (or, where there is more than one defender, one of them) formerly resided in the sheriffdom for at least 40 days and the defender—
  - (i) has ceased to reside there for fewer than 40 days, and
  - (ii) has no known residence in Scotland,
- (c) the defender—
  - (i) carries on business in the sheriffdom,
  - (ii) has a place of business in the sheriffdom, and
  - (iii) is cited in the sheriffdom, either personally or at the place of business,

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(d) where the defender is not otherwise subject to the jurisdiction of any court in Scotland, there has been arrested in the sheriffdom—
  (i) a ship or vessel of which the defender is an owner or part-owner, demise charterer or master, or
  (ii) goods, debts, money or other moveable property belonging to the defender,

(e) any property of which the defender is (either individually or as trustee) the owner, part-owner, tenant or joint tenant is located in the sheriffdom and the proceedings relate to such property or to the defender's interest in it,

(f) in proceedings for interdict, the alleged wrong is being committed or threatened to be committed in the sheriffdom,

(g) in proceedings relating to a contract—
  (i) the place of execution or performance of the contract is located in the sheriffdom, and
  (ii) the defender is personally cited in the sheriffdom,

(h) in actions of furthcoming or multiplepoinding—
  (i) the fund or property that is the subject of the proceedings is located in the sheriffdom, or
  (ii) the sheriff otherwise has jurisdiction over the arrestee or holder of the fund or property that is the subject of the proceedings,

(i) the party sued is the pursuer in any proceedings pending in the sheriffdom against the party suing,

(j) where the proceedings are founded in delict, the delict was committed in the sheriffdom,

(k) the defender has prorogated the jurisdiction of the sheriff or courts of the sheriffdom.

(3) Subsection (2) is subject to—
  (a) section 8 of, and Schedule 1B to, the Domicile and Matrimonial Proceedings Act 1973,
  (b) the Civil Jurisdiction and Judgments Act 1982,
  (c) Chapter 3 of Part 1 of the Family Law Act 1986, and
  (d) any other enactment or rule of law that applies for the purpose of determining the jurisdiction of a sheriff in relation to persons or subject-matter.

Commencement Information
I6 S. 43 in force at 1.4.2015 by S.S.I. 2015/77, art. 2(2)(3), **Sch.**

VALID FROM 22/09/2015

Summary sheriffs: civil and criminal competence and jurisdiction

44 Summary sheriff: civil competence and jurisdiction

(1) A summary sheriff may, in relation to civil proceedings in the sheriff court, exercise the jurisdiction and powers that attach to the office of sheriff, but only in relation to the proceedings and other matters listed in schedule 1.

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(2) This section does not affect the jurisdiction and competence of a sheriff in relation to the proceedings and other matters listed in schedule 1.

(3) The Scottish Ministers may by order modify schedule 1.

45 Summary sheriff: criminal competence and jurisdiction

(1) A summary sheriff may, in relation to criminal investigations and proceedings (whether summary or solemn proceedings), exercise the jurisdiction and powers that attach to the office of sheriff.

(2) Without limiting the generality of subsection (1), the jurisdiction and powers exercisable by a summary sheriff under that subsection include, in particular, those of a sheriff under the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act").

(3) Despite subsections (1) and (2), a summary sheriff does not have jurisdiction or power to do any of the following in solemn criminal proceedings—

(a) to preside at any of the following diets, other than for the purpose of adjourning the diet—

(i) a first diet,

(ii) a diet under section 76(1) of the 1995 Act,

(iii) a trial diet,

(b) to pass sentence on an offender, or make any other order or disposal in respect of the conviction of an offender of an offence,

(c) to review, vary, revoke or discharge any sentence or such other order or disposal.

(4) This section does not affect the jurisdiction and competence of a sheriff in relation to any matter mentioned in subsection (1).

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