

# Courts Reform (Scotland) Act 2014

## 2014 asp 18

### PART 3

#### CIVIL PROCEDURE

#### CHAPTER 1

#### SHERIFF COURT

#### *Simple procedure*

#### 72      **Simple procedure**

- (1) For the purposes of the procedure and practice in civil proceedings in the sheriff court, there is to be a form of procedure to be known as “simple procedure”.
- (2) Subject to the provisions of this Part, further provision about simple procedure is to be made by act of sederunt under section 104(1).
- (3) The following types of proceedings may only be brought subject to simple procedure (and no other types of proceedings may be so brought)—
  - (a) proceedings for payment of a sum of money not exceeding £5,000,
  - (b) actions of multiplepoinding where the value of the fund or property that is the subject of the action does not exceed £5,000,
  - (c) actions of furthcoming where the value of the arrested fund or subject does not exceed £5,000,
  - (d) actions ad factum praestandum, other than actions in which there is claimed, in addition or as an alternative to a decree ad factum praestandum, a decree for payment of a sum of money exceeding £5,000,
  - (e) proceedings for the recovery of possession of heritable property or moveable property, other than proceedings in which there is claimed, in addition or as an alternative to a decree for such recovery, a decree for payment of a sum of money exceeding £5,000.

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- (4) Subsection (3) is subject to sections 78 (transfer of cases to simple procedure), 80 (transfer of cases from simple procedure) and 83 (transitional provision: summary cause).
- (5) Subsection (3)(a) is subject to sections 73 and 74.
- (6) The calculation of a sum for the time being mentioned in subsection (3) is to be determined in accordance with provision made by the Court of Session by act of sederunt.
- (7) An act of sederunt under subsection (6) may make different provision for different purposes.
- (8) An act of sederunt under section 104(1) may make provision for the purposes of this Act for determining whether proceedings are of a type mentioned in subsection (3).
- (9) Proceedings that—
  - (a) are subject to simple procedure under subsection (3) or by virtue of any other enactment,
  - (b) are brought subject to simple procedure under section 74, or
  - (c) are continued subject to simple procedure by virtue of section 78 or 79,
 are referred to in this Part as a “simple procedure case”.
- (10) Subsection (9) is subject to section 80.
- (11) References in subsection (3) to a sum of money is to that amount exclusive of interest and expenses.
- (12) The Scottish Ministers may by order substitute for any sum for the time being specified in this section a different sum.

### **73 Proceedings in an all-Scotland sheriff court**

- (1) Section 72(3), so far as requiring any relevant proceedings to be brought subject to simple procedure, does not apply to any such proceedings in an all-Scotland sheriff court, and no such proceedings may be brought or continued in such a court subject to simple procedure.
- (2) Subsection (1) does not affect the application of section 72(3) in relation to any relevant proceedings brought in any other sheriff court.
- (3) In this section, “relevant proceedings” means proceedings of a type mentioned in section 72(3)(a) so far as they are also of a type specified in an order under section 41(1).

### **74 Proceedings for aliment of small amounts under simple procedure**

- (1) Subsection (2) applies to a claim for aliment only (whether or not expenses are also sought) under section 2 of the Family Law (Scotland) Act 1985 (actions for aliment).
- (2) The claim may be brought subject to simple procedure if the aliment claimed does not exceed—
  - (a) in respect of a child under the age of 18 years, the sum of £100 per week, and
  - (b) in any other case, the sum of £200 per week.

- (3) A provision such as is mentioned in subsection (4) does not apply in relation to a claim brought subject to simple procedure under subsection (2).
- (4) The provision referred to in subsection (3) is provision in any enactment—
  - (a) limiting the jurisdiction of a sheriff in a simple procedure case by reference to any amount, or
  - (b) limiting the period for which a decree granted by a sheriff is to have effect.
- (5) The Scottish Ministers may by order substitute for any sum for the time being mentioned in subsection (2) a different sum.

#### **75 Rule-making: matters to be taken into consideration**

The power to make provision relating to simple procedure by act of sederunt under section 104(1) is to be exercised so far as possible with a view to ensuring that the sheriff before whom a simple procedure case is conducted—

- (a) is able to identify the issues in dispute,
- (b) may facilitate negotiation between or among the parties with a view to securing a settlement,
- (c) may otherwise assist the parties in reaching a settlement,
- (d) can adopt a procedure that is appropriate to and takes account of the particular circumstances of the case.

#### **76 Service of documents**

- (1) An act of sederunt under section 104(1) may permit a party to a simple procedure case, in such circumstances as may be specified in the act, to require the sheriff clerk to effect service of any document relating to the case on behalf of the party.
- (2) In subsection (1)—
  - (a) the reference to a party to a simple procedure case includes a reference to a description of such a party as may be specified in an act of sederunt mentioned in that subsection,
  - (b) the reference to any document relating to the case includes a reference to a description of any such document as may be so specified.

#### **77 Evidence in simple procedure cases**

- (1) Any enactment or rule of law that prevents evidence being led on grounds of admissibility before a court of law does not apply in simple procedure cases.
- (2) The evidence, if any, given in simple procedure cases is not to be recorded.

#### **78 Transfer of cases to simple procedure**

- (1) This section applies to any civil proceedings in the sheriff court that are being conducted otherwise than as a simple procedure case.
- (2) The parties to the proceedings may, at any stage, make a joint application for the proceedings to continue subject to simple procedure if the proceedings are of a type that, if brought at the time when the application is made—

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- (a) would or could be brought subject to simple procedure by virtue of any enactment, or
  - (b) would or could be so brought but for the fact that a financial limit specified in section 72(3) or 74(2) is exceeded.
- (3) Where such a joint application is made, the sheriff must direct that the proceedings are to continue subject to simple procedure for all purposes (including appeal).

**79 Proceedings in an all-Scotland sheriff court: transfer to simple procedure**

- (1) This section applies to any relevant proceedings in an all-Scotland sheriff court.
- (2) A party to the proceedings may, at any stage, make an application for the proceedings to continue subject to simple procedure in another sheriff court.
- (3) Where such an application is made, the sheriff may, on special cause shown—
- (a) direct that the proceedings are to continue subject to simple procedure for all purposes (including appeal), and
  - (b) make an order transferring the proceedings to another sheriff court having jurisdiction in relation to the proceedings.
- (4) Where a sheriff makes a direction under section 78(3) in relation to proceedings to which this section applies, the sheriff must make an order transferring the proceedings to another sheriff court having jurisdiction in relation to the proceedings.
- (5) In this section, “relevant proceedings” has the same meaning as in section 73.

**80 Transfer of cases from simple procedure**

- (1) A party to a simple procedure case may, at any stage, make an application for the case not to proceed subject to simple procedure.
- (2) Where such an application is made, the sheriff may direct that the proceedings are no longer subject to simple procedure.
- (3) Where a direction is made under subsection (2), the proceedings are to continue for all purposes (including appeal) subject to such procedure as would have been applicable to them had they not been subject to simple procedure.

**81 Expenses in simple procedure cases**

- (1) The Scottish Ministers may by order provide that—
- (a) in such category of simple procedure cases as may be prescribed in the order, no award of expenses may be made,
  - (b) in such other category of simple procedure cases as may be so prescribed, any expenses awarded may not exceed such sum as may be so prescribed.
- (2) The categories of simple procedure cases mentioned in subsection (1) may be prescribed by reference to—
- (a) the value of the claim in the cases,
  - (b) the subject matter of the claim in the cases.
- (3) Categories may be prescribed subject to specified exceptions.

- (4) An order under subsection (1) does not apply—
  - (a) to simple procedure cases such as those mentioned in subsection (5),
  - (b) in relation to an appeal to the Sheriff Appeal Court from any decision in a simple procedure case, or
  - (c) to a simple procedure case in respect of which a direction under subsection (7) is made.
- (5) The simple procedure cases referred to in subsection (4)(a) are those in which—
  - (a) the defender—
    - (i) has not stated a defence,
    - (ii) having stated a defence, has not proceeded with it, or
    - (iii) having stated and proceeded with a defence, has not acted in good faith as to its merits, or
  - (b) a party to the case has behaved unreasonably in relation to the case.
- (6) Subsection (7) applies where the sheriff in a simple procedure case is of the opinion that a difficult question of law, or a question of fact of exceptional complexity, is involved.
- (7) The sheriff may, at any stage, on the application of any party to the case, direct that an order under subsection (1) is not to apply in relation to the case.

## **82 Appeals from simple procedure cases**

- (1) An appeal may be taken to the Sheriff Appeal Court under section 110 on a point of law only against a decision of the sheriff constituting final judgment in a simple procedure case.
- (2) Any other decision of the sheriff in such a case is not subject to review.

## **83 Transitional provision: summary causes**

- (1) Any reference, however expressed, in a pre-commencement enactment to proceedings being subject to summary cause procedure is, on and after the coming into force of this section, to be construed as a reference to proceedings being subject to simple procedure.
- (2) Accordingly, any reference to proceedings being taken by way of summary cause is to be construed as a reference to proceedings being subject to simple procedure.
- (3) In subsection (1), “pre-commencement enactment” means any enactment passed or made before this section comes into force.