



# Courts Reform (Scotland) Act 2014

## 2014 asp 18

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 7th October 2014 and received Royal Assent on 10th November 2014**

An Act of the Scottish Parliament to make provision about the sheriff courts; to establish a Sheriff Appeal Court; to make provision about civil court procedure; to make provision about appeals in civil proceedings; to make provision about appeals in criminal proceedings; to make provision about judges of the Court of Session; to make provision about the Scottish Land Court; to make provision about justice of the peace courts; to rename the Scottish Court Service and give it functions in relation to tribunals; to provide for assistants to the Judicial Appointments Board for Scotland; and for connected purposes.

VALID FROM 12/03/2015

### PART 1

#### SHERIFF COURTS

VALID FROM 01/04/2015

### CHAPTER 1

#### SHERIFFDOMS, SHERIFF COURT DISTRICTS AND SHERIFF COURTS

##### **1 Sheriffdoms, sheriff court districts and sheriff courts**

- (1) For the purposes of the administration of justice, Scotland is to be divided into areas, each to be known as a “sheriffdom”.
- (2) A sheriffdom is to comprise one or more areas, each to be known as a “sheriff court district”.

**Status:** Point in time view as at 11/11/2014. This version of this Act contains provisions that are not valid for this point in time.

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- (3) Within each sheriff court district a place is to be designated at which the judiciary of the sheriffdom are to sit and hold court for the purpose of exercising their judicial functions; and such sittings are to be known as a “sheriff court”.
- (4) The sheriffdoms and sheriff court districts existing immediately before the date on which this section comes into force are to continue to exist on and after that date, and are accordingly the first sheriffdoms and sheriff court districts for the purposes of subsections (1) and (2).
- (5) On and after the date on which this section comes into force, sheriff courts are to continue to be held at the places at which they were held immediately before that date, and accordingly those places are the first places designated for the holding of sheriff courts for the purposes of subsection (3).
- (6) Subsections (4) and (5) are subject to an order under section 2.

## 2 Power to alter sheriffdoms, sheriff court districts and sheriff courts

- (1) The Scottish Ministers may, following submission of a proposal under subsection (2), by order do any of the following—
  - (a) alter the boundaries of sheriffdoms or sheriff court districts,
  - (b) abolish sheriffdoms or sheriff court districts,
  - (c) form new sheriffdoms or sheriff court districts,
  - (d) provide that sheriff courts are to be held, or to cease being held, at any place specified in the order.
- (2) The Scottish Courts and Tribunals Service may, with the agreement of the Lord President of the Court of Session, submit a proposal to the Scottish Ministers for the making of an order under subsection (1).
- (3) Before submitting a proposal to the Scottish Ministers, the Scottish Courts and Tribunals Service must consult such persons as it considers appropriate.
- (4) If, following submission of a proposal, the Scottish Ministers decide to make an order, they must have regard to the proposal in deciding what provision to make in the order.
- (5) The Scottish Ministers may make an order under subsection (1) only with the consent of—
  - (a) the Lord President, and
  - (b) the Scottish Courts and Tribunals Service.
- (6) An order under subsection (1) may—
  - (a) abolish any office in consequence of any provision made under subsection (1),
  - (b) modify any enactment (including this Act).

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## CHAPTER 2

### JUDICIARY OF THE SHERIFFDOMS

VALID FROM 01/04/2015

#### *Permanent and full-time judiciary*

#### **3 Sheriffs principal**

- (1) For each sheriffdom, there is to continue to be a judicial officer to be known as the “sheriff principal” of the sheriffdom.
- (2) It is for Her Majesty to appoint an individual to the office of sheriff principal.
- (3) The First Minister may, under section 95(4) of the Scotland Act 1998, recommend to Her Majesty the appointment of an individual to the office of sheriff principal only if the individual is qualified for appointment (see section 14).
- (4) Subsection (3) does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008 (recommendation by the Judicial Appointments Board for Scotland).
- (5) In addition to the jurisdiction and powers that attach specifically to the office of sheriff principal, the sheriff principal of a sheriffdom may also exercise in the sheriffdom the jurisdiction and powers that attach to the office of sheriff.
- (6) Subsection (5) is subject to any provision, express or implied, to the contrary in any other enactment.

#### **4 Sheriffs**

- (1) For each sheriffdom, there are to continue to be judicial officers each to be known as a “sheriff” of the sheriffdom.
- (2) It is for Her Majesty to appoint an individual to the office of sheriff.
- (3) The First Minister may, under section 95(4) of the Scotland Act 1998, recommend to Her Majesty the appointment of an individual to the office of sheriff only if the individual is qualified for appointment (see section 14).
- (4) Subsection (3) does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008 (recommendation by the Judicial Appointments Board for Scotland).

#### **5 Summary sheriffs**

- (1) For each sheriffdom, there are to be judicial officers each to be known as a “summary sheriff” of the sheriffdom.
- (2) It is for Her Majesty to appoint an individual to the office of summary sheriff.
- (3) Her Majesty may appoint an individual only if the individual has been recommended for appointment by the First Minister.

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- (4) The First Minister may recommend to Her Majesty the appointment of an individual only if the individual is qualified for appointment (see section 14).
- (5) Before making a recommendation under subsection (3), the First Minister must consult the Lord President of the Court of Session.
- (6) Subsection (4) does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008 (recommendation by the Judicial Appointments Board for Scotland).

VALID FROM 01/04/2015

*Temporary and part-time judiciary*

**6 Temporary sheriff principal**

- (1) Subsection (2) applies where, in relation to a sheriffdom—
  - (a) a vacancy occurs in the office of sheriff principal,
  - (b) the Lord President of the Court of Session believes that the sheriff principal is unable to perform all or some of the functions of the office, or
  - (c) the sheriff principal rules that he or she is precluded from performing all or some of those functions.
- (2) If the Lord President so requests, the Scottish Ministers must appoint—
  - (a) a person holding the office of sheriff (whether of the same or another sheriffdom), or
  - (b) a qualifying former sheriff principal (whether of the same or another sheriffdom),
 to act as sheriff principal of the sheriffdom.
- (3) A “qualifying former sheriff principal” is an individual who—
  - (a) ceased to hold that office other than by virtue of an order under section 25, and
  - (b) has not reached the age of 75.
- (4) The appointment may be made for the purposes of the exercise of—
  - (a) all of the sheriff principal's functions, or
  - (b) only those functions that the sheriff principal is unable to perform or is precluded from performing.
- (5) An individual appointed under subsection (2) is to be known as a “temporary sheriff principal”.
- (6) The Lord President may request the appointment of a temporary sheriff principal for a sheriffdom in the circumstances specified in subsection (1)(a) only if the Lord President considers such an appointment to be necessary or expedient in order to avoid a delay in the administration of justice in the sheriffdom.

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## **7 Temporary sheriff principal: further provision**

- (1) Subject to subsection (3), an individual's appointment as a temporary sheriff principal lasts until recalled under subsection (2).
- (2) The Scottish Ministers must, if requested to do so by the Lord President of the Court of Session, recall the appointment of a temporary sheriff principal.
- (3) A sheriff's appointment as a temporary sheriff principal ceases if the sheriff—
  - (a) ceases to hold office as sheriff, or
  - (b) is suspended from office as sheriff.
- (4) Subject to section 6(4)(b), a temporary sheriff principal of a sheriffdom may exercise the jurisdiction and powers that attach to the office of sheriff principal of the sheriffdom, and does not need a commission for that purpose.
- (5) The appointment of a sheriff as a temporary sheriff principal does not affect the sheriff's appointment as sheriff.
- (6) Where a sheriff of one sheriffdom ("sheriffdom A") is appointed as temporary sheriff principal of another sheriffdom ("sheriffdom B")—
  - (a) the sheriff must not, while remaining temporary sheriff principal of sheriffdom B, act in the capacity of sheriff of sheriffdom A, but
  - (b) in addition to the jurisdiction and powers that attach specifically to the office of sheriff principal, the sheriff, by virtue of the appointment as temporary sheriff principal of sheriffdom B, may also exercise in that sheriffdom the jurisdiction and powers that attach to the office of sheriff of that sheriffdom.

## **8 Part-time sheriffs**

- (1) The Scottish Ministers may appoint individuals to act as sheriffs; and individuals so appointed are to be known as "part-time sheriffs".
- (2) The Scottish Ministers may appoint an individual only if—
  - (a) the individual is qualified for appointment (see section 14), and
  - (b) the Scottish Ministers have consulted the Lord President of the Court of Session before making the appointment.
- (3) Subject to section 20, an appointment as a part-time sheriff lasts for 5 years.
- (4) A part-time sheriff may exercise the jurisdiction and powers that attach to the office of sheriff in every sheriffdom, and does not need a commission for that purpose.
- (5) A part-time sheriff is subject to such instructions, arrangements and other provisions as may be made under this Act by the sheriff principal of the sheriffdom in which the part-time sheriff is for the time being sitting.
- (6) In carrying out their functions under this Act, sheriffs principal must together have regard to the desirability of securing that every part-time sheriff—
  - (a) is given the opportunity of sitting on not fewer than 20 days in each successive period of 12 months beginning with the day of the part-time sheriff's appointment, and
  - (b) does not sit for more than 100 days in each such successive period.

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## **9 Reappointment of part-time sheriffs**

- (1) A part-time sheriff whose appointment comes to an end by virtue of the expiry of the 5 year period mentioned in section 8(3) is to be reappointed unless—
  - (a) the part-time sheriff declines reappointment,
  - (b) a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment, or
  - (c) the part-time sheriff has sat for fewer than 50 days in total in that 5 year period.
- (2) Section 8 (apart from subsection (2)) applies to a reappointment under subsection (1) as it applies to an appointment.
- (3) A part-time sheriff whose appointment comes to an end by resignation under section 20 may be reappointed.
- (4) Section 8 applies to a reappointment under subsection (3) as it applies to an appointment.

## **10 Part-time summary sheriffs**

- (1) The Scottish Ministers may appoint individuals to act as summary sheriffs; and individuals so appointed are to be known as “part-time summary sheriffs”.
- (2) The Scottish Ministers may appoint an individual only if—
  - (a) the individual is qualified for appointment (see section 14), and
  - (b) the Scottish Ministers have consulted the Lord President of the Court of Session before making the appointment.
- (3) Subject to section 20, an appointment as a part-time summary sheriff lasts for 5 years.
- (4) A part-time summary sheriff may exercise the jurisdiction and powers that attach to the office of summary sheriff in every sheriffdom, and does not need a commission for that purpose.
- (5) A part-time summary sheriff is subject to such instructions, arrangements and other provisions as may be made under this Act by the sheriff principal of the sheriffdom in which the part-time summary sheriff is for the time being sitting.
- (6) In carrying out their functions under this Act, sheriffs principal must together have regard to the desirability of securing that every part-time summary sheriff—
  - (a) is given the opportunity of sitting on not fewer than 20 days in each successive period of 12 months beginning with the day of the part-time summary sheriff’s appointment, and
  - (b) does not sit for more than 100 days in each such successive period.

## **11 Reappointment of part-time summary sheriffs**

- (1) A part-time summary sheriff whose appointment comes to an end by virtue of the expiry of the 5 year period mentioned in section 10(3) is to be reappointed unless—
  - (a) the part-time summary sheriff declines reappointment,
  - (b) a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment, or

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- (c) the part-time summary sheriff has sat for fewer than 50 days in total in that 5 year period.
- (2) Section 10 (apart from subsection (2)) applies to a reappointment under subsection (1) as it applies to an appointment.
- (3) A part-time summary sheriff whose appointment comes to an end by resignation under section 20 may be reappointed.
- (4) Section 10 applies to a reappointment under subsection (3) as it applies to an appointment.

VALID FROM 01/04/2015

*Re-employment of former holders of certain judicial offices*

**12 Re-employment of former judicial office holders**

- (1) A sheriff principal of a sheriffdom may appoint—
  - (a) a qualifying former sheriff principal to act as a sheriff of the sheriffdom,
  - (b) a qualifying former sheriff to act as such a sheriff,
  - (c) a qualifying former part-time sheriff to act as such a sheriff,
  - (d) a qualifying former summary sheriff to act as a summary sheriff of the sheriffdom,
  - (e) a qualifying former part-time summary sheriff to act as such a summary sheriff.
- (2) An individual appointed to act as mentioned in any of paragraphs (a) to (e) of subsection (1) may so act only during such periods or on such occasions as the sheriff principal may determine.
- (3) A sheriff principal may make an appointment under subsection (1) only if it appears to the sheriff principal to be expedient as a temporary measure in order to facilitate the disposal of business in the sheriff courts of the sheriffdom.
- (4) A “qualifying former sheriff principal” is an individual who—
  - (a) ceased to hold that office other than by virtue of an order under section 25, and
  - (b) has not reached the age of 75.
- (5) A “qualifying former sheriff” is an individual who—
  - (a) ceased to hold that office other than—
    - (i) by virtue of an order under section 25, or
    - (ii) by being appointed as a sheriff principal, and
  - (b) has not reached the age of 75.
- (6) A “qualifying former part-time sheriff” is an individual who—
  - (a) ceased to hold that office other than—
    - (i) by virtue of removal under section 25,
    - (ii) by virtue of not being reappointed to the office on either of the grounds mentioned in section 9(1)(b) and (c), or

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- (iii) by being appointed as a sheriff principal, and
- (b) has not reached the age of 75.

(7) A “qualifying former summary sheriff” is an individual who—

- (a) ceased to hold that office other than—
  - (i) by virtue of an order under section 25, or
  - (ii) by being appointed as a sheriff, and
- (b) has not reached the age of 75.

(8) A “qualifying former part-time summary sheriff” is an individual who—

- (a) ceased to hold that office other than—
  - (i) by virtue of removal under section 25,
  - (ii) by virtue of not being reappointed to the office on either of the grounds mentioned in section 11(1)(b) and (c), or
  - (iii) by being appointed as a sheriff, and
- (b) has not reached the age of 75.

### **13 Re-employment of former judicial office holders: further provision**

- (1) Subject to subsection (4), an individual's appointment under section 12(1) lasts until the sheriff principal by whom the individual was appointed (or a successor to that sheriff principal) recalls the individual's appointment.
- (2) An individual appointed under section 12(1) to act as a sheriff of a sheriffdom may exercise in the sheriffdom the jurisdiction and powers that attach to the office of sheriff, and does not need a commission for that purpose.
- (3) An individual appointed under section 12(1) to act as a summary sheriff of a sheriffdom may exercise in the sheriffdom the jurisdiction and powers that attach to the office of summary sheriff, and does not need a commission for that purpose.
- (4) An individual's appointment under section 12(1) ceases when the individual reaches the age of 75.
- (5) Despite the ending (whether by virtue of subsection (4) or otherwise) of an individual's appointment under section 12(1)—
  - (a) the individual may continue to deal with, give judgment in or deal with an ancillary matter relating to, a case begun before the individual while acting under that appointment,
  - (b) so far as necessary for that purpose, and for the purpose of any subsequent proceedings arising out of the case or matter, the individual is to be treated as acting or, as the case may be, having acted under that appointment.



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### *Qualification and disqualification*

#### **14 Qualification for appointment**

- (1) An individual is qualified for appointment to a judicial office mentioned in subsection (2) if the individual—
  - (a) immediately before the appointment, held any other judicial office specified in that subsection, or
  - (b) at the time of appointment—
    - (i) is legally qualified, and
    - (ii) has been so qualified throughout the period of 10 years immediately preceding the appointment.
- (2) The judicial offices are—
  - (a) sheriff principal,
  - (b) sheriff,
  - (c) summary sheriff,
  - (d) part-time sheriff,
  - (e) part-time summary sheriff.
- (3) For the purposes of subsection (1), an individual is legally qualified if the individual is a solicitor or an advocate.

#### **15 Disqualification from practice, etc.**

- (1) An individual holding a judicial office mentioned in subsection (2) must not, for so long as the individual holds the office—
  - (a) engage, whether directly or indirectly, in practice as a solicitor or advocate or in any other business,
  - (b) be in partnership with, or employed by, a person so engaged, or
  - (c) act as agent for a person so engaged.
- (2) The judicial offices are—
  - (a) sheriff principal,
  - (b) sheriff,
  - (c) summary sheriff.
- (3) A part-time sheriff, or a part-time summary sheriff, who is a solicitor in practice must not carry out any function as a part-time sheriff or, as the case may be, a part-time summary sheriff in a sheriff court district in which his or her place of business as such solicitor is situated.

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### *Remuneration and expenses*

#### **16 Remuneration**

- (1) Each sheriff principal and sheriff is to be paid such salary as the Treasury may determine.
- (2) Such salary is to be paid quarterly or otherwise in every year, as the Treasury may determine.
- (3) Each summary sheriff is to be paid such remuneration as the Scottish Ministers may determine.
- (4) The Scottish Ministers may determine different amounts of remuneration for—
  - (a) different summary sheriffs, or
  - (b) different descriptions of summary sheriff.
- (5) Each judicial officer mentioned in subsection (7) is to be paid such remuneration as the Scottish Ministers may determine.
- (6) The Scottish Ministers may determine different amounts of remuneration for—
  - (a) different judicial officers mentioned in subsection (7), or
  - (b) different descriptions of such judicial officers.
- (7) The judicial officers are—
  - (a) a part-time sheriff,
  - (b) a part-time summary sheriff,
  - (c) an individual appointed to act as a sheriff or summary sheriff under section 12(1).
- (8) Subsection (9) applies in relation to—
  - (a) a sheriff principal of a sheriffdom authorised under section 30 to perform the functions of a sheriff principal in another sheriffdom, and
  - (b) a sheriff of a sheriffdom (“sheriffdom A”) directed under section 31 to perform the functions of sheriff in another sheriffdom in addition to sheriffdom A.
- (9) The sheriff principal or sheriff is to be paid, in respect of the additional functions, such remuneration as appears to the Secretary of State, with the consent of the Treasury, to be reasonable in all the circumstances.
- (10) Subsection (11) applies in relation to a summary sheriff of a sheriffdom (“sheriffdom B”) directed under section 31 to perform the functions of a summary sheriff in another sheriffdom in addition to sheriffdom B.
- (11) The summary sheriff is to be paid, in respect of the additional functions, such remuneration as appears to the Scottish Ministers to be reasonable in all the circumstances.
- (12) Salaries and remuneration under subsections (1) to (11) are to be paid by the Scottish Courts and Tribunals Service.

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- (13) Sums required by the Scottish Courts and Tribunals Service for the payment of a salary under subsection (1) or remuneration under subsection (3) are charged on the Scottish Consolidated Fund.

## **17 Expenses**

- (1) The Scottish Courts and Tribunals Service may pay to a judicial officer mentioned in subsection (3) such sums as it may determine in respect of expenses reasonably incurred by the officer in the performance of, or in connection with, the officer's duties.
- (2) The Scottish Courts and Tribunals Service may—
- (a) determine the circumstances in which such sums may be paid, and
  - (b) determine different circumstances for—
    - (i) different judicial officers, or
    - (ii) different descriptions of judicial officers.
- (3) The judicial officers are—
- (a) a sheriff principal,
  - (b) a sheriff,
  - (c) a summary sheriff,
  - (d) a temporary sheriff principal,
  - (e) a part-time sheriff,
  - (f) a part-time summary sheriff,
  - (g) individuals appointed to act as a sheriff or summary sheriff under section 12(1).

VALID FROM 01/04/2015

## *Leave of absence*

## **18 Leave of absence**

- (1) The Lord President of the Court of Session may, for any sheriff principal or temporary sheriff principal, approve leave of absence for recreational or other purposes.
- (2) The sheriff principal of a sheriffdom may, for any sheriff or summary sheriff of the sheriffdom, approve leave of absence for recreational or other purposes.
- (3) The amount of leave for recreational purposes approved under this section for any sheriff principal, temporary sheriff principal, sheriff or summary sheriff must not exceed 7 weeks in any year.
- (4) That limit may be exceeded in any case with the permission of the Lord President.
- (5) The Lord President may grant permission under subsection (4) only if there are special reasons in the particular case that justify exceeding the limit.

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(6) The Lord President may delegate to a judge of the Court of Session a function conferred on the Lord President by this section.

(7) In subsections (1) and (2), the references to leave of absence for purposes other than recreational purposes include (but are not limited to) references to sick leave, compassionate leave and study leave.

VALID FROM 01/04/2015

### *Residence*

#### **19 Place of residence**

- (1) The Lord President of the Court of Session may require a judicial officer mentioned in subsection (2) to reside ordinarily at such place as the Lord President may specify.
- (2) The judicial officers are—
- (a) a sheriff principal,
  - (b) a sheriff,
  - (c) a summary sheriff.

VALID FROM 01/04/2015

### *Cessation of appointment*

#### **20 Cessation of appointment of judicial officers**

- (1) A judicial officer mentioned in subsection (3) may resign at any time by giving notice to that effect to the Scottish Ministers.
- (2) An individual's appointment as such a judicial officer ends—
- (a) when the individual resigns in accordance with subsection (1),
  - (b) when the individual retires from office,
  - (c) if the individual is removed from office as such under section 25, or
  - (d) if the individual is appointed as another such judicial officer.
- (3) The judicial officers are—
- (a) a sheriff principal,
  - (b) a sheriff,
  - (c) a summary sheriff,
  - (d) a part-time sheriff,
  - (e) a part-time summary sheriff.

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### *Fitness for office*

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#### **21 Tribunal to consider fitness for office**

- (1) The First Minister must, if requested to do so by the Lord President of the Court of Session, constitute a tribunal to investigate and report on whether an individual holding a judicial office mentioned in subsection (3) is unfit to hold the office by reason of inability, neglect of duty or misbehaviour.
- (2) Subject to subsection (1), the First Minister may, in such circumstances as the First Minister thinks fit and after consulting the Lord President, constitute such a tribunal.
- (3) The judicial offices are—
  - (a) sheriff principal,
  - (b) sheriff,
  - (c) summary sheriff,
  - (d) part-time sheriff, and
  - (e) part-time summary sheriff.
- (4) A tribunal constituted under this section is to consist of—
  - (a) one individual who is a qualifying member of the Judicial Committee of the Privy Council,
  - (b) one individual who holds the relevant judicial office,
  - (c) one individual who is, and has been for at least 10 years—
    - (i) an advocate, or
    - (ii) a solicitor, and
  - (d) one individual who—
    - (i) is not and never has been a qualifying member of the Judicial Committee of the Privy Council,
    - (ii) does not hold and never has held a judicial office mentioned in subsection (3), and
    - (iii) is not and never has been an advocate or solicitor.
- (5) In subsection (4)—

“a qualifying member of the Judicial Committee of the Privy Council” means someone who is a member of that Committee by virtue of section 1(2)(a) of the Judicial Committee Act 1833 (that is, someone who holds or has held high judicial office),

“the relevant judicial office” means—

  - (a) in respect of an investigation into whether an individual is fit to hold the office of sheriff principal, that office,
  - (b) in respect of an investigation into whether an individual is fit to hold the office of sheriff or part-time sheriff, the office of sheriff,
  - (c) in respect of an investigation into whether an individual is fit to hold the office of summary sheriff or part-time summary sheriff, the office of summary sheriff.

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- (6) It is for the First Minister, with the agreement of the Lord President, to select persons to be members of a tribunal constituted under this section.
- (7) The person who is an individual mentioned in subsection (4)(a) is to chair the tribunal and has a casting vote.

VALID FROM 01/04/2015

## 22 Tribunal investigations: suspension from office

- (1) Subsection (2) applies where the Lord President of the Court of Session has requested that the First Minister constitute a tribunal under section 21.
- (2) The Lord President may, at any time before the tribunal reports to the First Minister, suspend from office the individual who is, or is to be, the subject of the tribunal's investigation.
- (3) Such a suspension lasts until the Lord President orders otherwise.
- (4) A tribunal constituted under section 21 may, at any time before the tribunal reports to the First Minister, recommend in writing to the First Minister that the individual who is the subject of the tribunal's investigation be suspended from office.
- (5) On receiving such a recommendation, the First Minister may suspend the individual from office.
- (6) Such a suspension lasts until the First Minister orders otherwise.
- (7) Suspension of an individual from the office of sheriff principal, sheriff or summary sheriff under this section does not affect any remuneration payable to, or in respect of, the individual in respect of the period of suspension.

## 23 Further provision about tribunals

- (1) A tribunal constituted under section 21 may require any person—
  - (a) to attend its proceedings for the purpose of giving evidence,
  - (b) to produce documents in the person's custody or under the person's control.
- (2) A person on whom such a requirement is imposed is not obliged—
  - (a) to answer any question which the person would be entitled to refuse to answer in a court in Scotland,
  - (b) to produce any document which the person would be entitled to refuse to produce in such a court.
- (3) Subsection (4) applies where a person on whom a requirement has been imposed under subsection (1)—
  - (a) refuses or fails, without reasonable excuse, to comply with the requirement,
  - (b) refuses or fails, without reasonable excuse, to answer any question while attending the tribunal proceedings to give evidence,
  - (c) deliberately alters, conceals or destroys any document that the person is required to produce.

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- (4) The Court of Session may, on an application made to it by the tribunal—
  - (a) make such order for enforcing compliance as it sees fit, or
  - (b) deal with the matter as if it were a contempt of the Court.
- (5) The Court of Session may by act of sederunt make provision as to the procedure to be followed by and before a tribunal constituted under section 21.
- (6) The Scottish Ministers—
  - (a) must pay such expenses as they consider are reasonably required to be incurred to enable a tribunal constituted under section 21 to carry out its functions, and
  - (b) may pay such remuneration to, and such expenses of, the members of such a tribunal as they think fit.

VALID FROM 01/04/2015

#### **24 Tribunal report**

- (1) The report of a tribunal constituted under section 21 must—
  - (a) be in writing,
  - (b) contain reasons for its conclusion, and
  - (c) be submitted to the First Minister.
- (2) The First Minister must lay the report before the Scottish Parliament.

VALID FROM 01/04/2015

#### **25 Removal from office**

- (1) The First Minister may remove an individual from the office of sheriff principal, sheriff, part-time sheriff, summary sheriff or part-time summary sheriff—
  - (a) if a tribunal constituted under section 21 reports to the First Minister that the individual is unfit to hold that office by reason of inability, neglect of duty or misbehaviour, and
  - (b) only after the First Minister has laid the report before the Scottish Parliament under section 24(2).
- (2) The First Minister may remove a sheriff principal, sheriff or summary sheriff under subsection (1) only by order.
- (3) Such an order is subject to the negative procedure.

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PROSPECTIVE

*Honorary sheriffs*

**26 Abolition of the office of honorary sheriff**

The office of honorary sheriff is abolished.

VALID FROM 01/04/2015

**CHAPTER 3**

**ORGANISATION OF BUSINESS**

*Sheriff principal's general responsibilities*

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

- (1) The sheriff principal of a sheriffdom is responsible for ensuring the efficient disposal of business in the sheriff courts of the sheriffdom.
- (2) The sheriff principal must make such arrangements as appear necessary or expedient for the purpose of carrying out the responsibility imposed by subsection (1).
- (3) In particular, the sheriff principal may—
  - (a) provide for the allocation of business among the judiciary of the sheriffdom,
  - (b) make special provision of a temporary nature for the disposal of any business by any member of the judiciary of the sheriffdom in addition to or in place of that member's own duties.
- (4) If, in carrying out the responsibility imposed by subsection (1), the sheriff principal gives a direction of an administrative character to a person mentioned in subsection (5), the person must comply with the direction.
- (5) Those persons are—
  - (a) any other member of the judiciary of the sheriffdom,
  - (b) a member of the staff of the Scottish Courts and Tribunals Service.
- (6) Nothing in subsections (1) to (4) enables a member of the judiciary of the sheriffdom to dispose of any business which that member could not otherwise competently dispose of in the exercise of the jurisdiction and powers that attach to the member's office.
- (7) Subsections (1) to (4) are subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (the Head of the Scottish Judiciary's responsibility for efficient disposal of business in the Scottish courts).



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

- (1) The sheriff principal of a sheriffdom may by order prescribe—
  - (a) the number of sittings of sheriff courts to be held at each place designated for the holding of sheriff courts in the sheriffdom,
  - (b) the days on which, and the times at which, those sittings are to be held, and
  - (c) the descriptions of business to be disposed of at those sittings.
- (2) The sheriff principal must publish notice of the matters prescribed by an order under subsection (1) in such manner as the sheriff principal thinks appropriate in order to bring those matters to the attention of persons having an interest in them.
- (3) Subsection (1) is subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008.

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

- (1) Subsection (2) applies where in any case the Lord President of the Court of Session considers that the exercise by the sheriff principal of a sheriffdom of a function under section 27 or 28—
  - (a) is prejudicial to the efficient disposal of business in the sheriff courts of the sheriffdom,
  - (b) is prejudicial to the efficient organisation or administration of those courts, or
  - (c) is otherwise against the interest of the public.
- (2) The Lord President may in that case—
  - (a) rescind the sheriff principal's exercise of the function, and
  - (b) exercise the function.
- (3) Subsections (1) and (2) apply in relation to a failure to exercise a function mentioned in subsection (1) as they apply to the exercise of such a function, but as if paragraph (a) of subsection (2) were omitted.
- (4) The exercise of a function by the Lord President by virtue of subsection (2)(b) is to be treated as if it were the exercise of the function by the sheriff principal.

### *Deployment of judiciary*

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

- (1) Subsection (2) applies where, in relation to a sheriffdom (“sheriffdom A”)—
  - (a) a vacancy occurs in the office of sheriff principal,
  - (b) the Lord President of the Court of Session believes that the sheriff principal is unable to perform all or some of the functions of the office, or
  - (c) the sheriff principal rules that he or she is precluded from performing all or some of those functions.
- (2) The Lord President may authorise the sheriff principal of another sheriffdom (“sheriffdom B”) to perform the functions of sheriff principal in sheriffdom A (in addition to sheriffdom B) until the Lord President decides otherwise.
- (3) The authorisation may be made for the purpose of the performance of—

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- (a) all of the functions of the sheriff principal of sheriffdom A, or
- (b) only those functions that that sheriff principal is unable to perform or is precluded from performing.

- (4) The Lord President may make an authorisation in the circumstances specified in subsection (1)(a) only if the Lord President considers such an authorisation to be necessary or expedient in order to avoid a delay in the administration of justice in sheriffdom A.
- (5) A sheriff principal authorised under this section to perform the functions of sheriff principal in another sheriffdom may exercise the jurisdiction and powers that attach to the office of sheriff principal in the other sheriffdom and does not need a commission for that purpose.
- (6) References in this section to the sheriff principal of a sheriffdom include references to any temporary sheriff principal of the sheriffdom.

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

- (1) The Lord President of the Court of Session may direct a sheriff or summary sheriff of a sheriffdom (“sheriffdom A”) to perform the functions of sheriff or, as the case may be, summary sheriff in another sheriffdom (“sheriffdom B”) until the Lord President decides otherwise.
- (2) The direction may require the sheriff or summary sheriff to perform the functions in sheriffdom B either in addition to or instead of performing the functions in sheriffdom A.
- (3) The Lord President may at any time give a further direction to the sheriff or summary sheriff directing the sheriff or, as the case may be, summary sheriff to perform the functions of sheriff or, as the case may be, summary sheriff in another sheriffdom until the Lord President decides otherwise.
- (4) Where a further direction is given under subsection (3) requiring functions to be carried out in another sheriffdom, the direction may require the sheriff or summary sheriff to perform the functions in that other sheriffdom in addition to or instead of performing the functions—
  - (a) in sheriffdom A, or
  - (b) in any other sheriffdom by virtue of—
    - (i) a direction under subsection (1), or
    - (ii) a further direction under subsection (3).
- (5) A sheriff or summary sheriff directed under this section to perform the functions of sheriff or summary sheriff in another sheriffdom may exercise the jurisdiction and powers that attach to the office of sheriff or, as the case may be, summary sheriff in the other sheriffdom and does not need a commission for that purpose.

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

- (1) The Lord President of the Court of Session may direct that—
  - (a) the sheriff principal of a sheriffdom is to cease to be the sheriff principal of that sheriffdom and is instead to be sheriff principal of such other sheriffdom as is specified in the direction,

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- (b) a sheriff of a sheriffdom is to cease to be a sheriff of that sheriffdom and is instead to be a sheriff of such other sheriffdom as is specified in the direction,
  - (c) a summary sheriff of a sheriffdom is to cease to be a summary sheriff of that sheriffdom and is instead to be a summary sheriff of such other sheriffdom as is specified in the direction.
- (2) A direction under subsection (1) takes effect on such date as is specified in the direction.
- (3) The reference in subsection (1) to the sheriff principal, a sheriff or summary sheriff of a sheriffdom is to one—
- (a) appointed for the sheriffdom, or
  - (b) who is the sheriff principal, a sheriff or, as the case may be, summary sheriff of the sheriffdom by virtue of a previous direction under subsection (1).
- (4) A sheriff principal, sheriff or summary sheriff directed under subsection (1) to be the sheriff principal, a sheriff or summary sheriff of another sheriffdom may exercise the jurisdiction and powers that attach to the office of sheriff principal, sheriff or, as the case may be, summary sheriff in the other sheriffdom and does not need a commission for that purpose.

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

- (1) On the appointment of a sheriff or summary sheriff of a sheriffdom, the Lord President of the Court of Session must give the sheriff or summary sheriff a direction designating the sheriff court district or districts in which the sheriff or summary sheriff is to sit and perform the functions of sheriff or, as the case may be, summary sheriff.
- (2) The Lord President may at any time give a further direction to the sheriff or summary sheriff designating a different sheriff court district in which the sheriff or summary sheriff is to sit and perform the functions of sheriff or, as the case may be, summary sheriff.
- (3) A direction given to a sheriff or summary sheriff of a sheriffdom under this section is subject to any direction given under section 27 to the sheriff or summary sheriff by the sheriff principal of the sheriffdom for the purpose of giving effect to special provision made under subsection (3)(b) of that section.
- (4) Subsection (1) applies in the case where a direction under section 32(1) is made in relation to a sheriff or summary sheriff as it applies in the case where a sheriff or, as the case may be, summary sheriff is appointed.

#### *Judicial specialisation*

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

- (1) The Lord President of the Court of Session may, by direction, determine categories of sheriff court case that the Lord President considers to be suited to being dealt with by judicial officers that specialise in the category of case.

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- (2) The Lord President may determine categories of case under subsection (1) by reference to subject matter, value or such other criteria as the Lord President considers appropriate.
- (3) The Lord President may issue different directions under subsection (1) in relation to different types of judicial officer.
- (4) The Lord President may vary or revoke any direction made under subsection (1).
- (5) In this section—
  - “judicial officer” means—
    - (a) a sheriff,
    - (b) a summary sheriff,
    - (c) a part-time sheriff,
    - (d) a part-time summary sheriff,
  - “sheriff court case” means any type of proceedings (whether civil or criminal) that may competently be brought in the sheriff court.

### **35 Designation of specialist judiciary**

- (1) This section applies where the Lord President of the Court of Session has made a direction under section 34.
- (2) The sheriff principal of a sheriffdom may—
  - (a) in relation to any category of case determined in the direction that may competently be dealt with by a sheriff, designate one or more sheriffs of the sheriffdom as specialists in that category of case,
  - (b) in relation to any category of case determined in the direction that may competently be dealt with by a summary sheriff, designate one or more summary sheriffs of the sheriffdom as specialists in that category of case.
- (3) The sheriff principal may designate the same sheriff or summary sheriff in relation to more than one category of case determined in the direction.
- (4) The sheriff principal of a sheriffdom may at any time withdraw a designation made (whether by that sheriff principal or another) under subsection (2) in relation to any sheriff, or summary sheriff, of the sheriffdom.
- (5) The Lord President may—
  - (a) in relation to any category of case determined in the direction that may competently be dealt with by a part-time sheriff, designate one or more part-time sheriffs as specialists in that category,
  - (b) in relation to any category of case determined in the direction that may competently be dealt with by a part-time summary sheriff, designate one or more part-time summary sheriffs as specialists in that category.
- (6) The Lord President may at any time withdraw a designation made under subsection (5).
- (7) The designation of a sheriff, summary sheriff, part-time sheriff or part-time summary sheriff (a “designated judicial officer”) under this section does not affect—

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- (a) the designated judicial officer's competence to deal with any category of case other than the one in relation to which the designation is made, or
- (b) the competence of any other sheriff, summary sheriff, part-time sheriff or part-time summary sheriff to deal with the category of case in relation to which the designation is made.

### **36 Allocation of business to specialist judiciary**

- (1) Subsection (2) applies where the Lord President of the Court of Session or the sheriff principal of a sheriffdom is exercising any function relating to the allocation of business among the judiciary of a sheriffdom.
- (2) The Lord President or, as the case may be, the sheriff principal must have regard to the desirability of ensuring that cases falling within a category determined under section 34 are dealt with by sheriffs, summary sheriffs, part-time sheriffs or, as the case may be, part-time summary sheriffs designated under section 35 as specialists in that category of case.

### **37 Saving for existing powers to provide for judicial specialisation**

Sections 34 to 36 do not affect any power that the Lord President of the Court of Session has apart from those sections to provide for judicial specialisation in the sheriff courts.

VALID FROM 01/04/2015

## **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 commonalty and division, or division and sale, of common property,

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- (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,
  - (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.

### **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.

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#### **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.
- (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).

#### **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.

#### **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”).

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- (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).

#### **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,
  - (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,



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- (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.

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.
- (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.

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#### **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).

VALID FROM 01/04/2015

## **PART 2**

### **THE SHERIFF APPEAL COURT**

#### **CHAPTER 1**

##### **ESTABLISHMENT AND ROLE**

#### **46 The Sheriff Appeal Court**

- (1) There is established a court of law to be known as the Sheriff Appeal Court.
- (2) The Court consists of judges each to be known as an Appeal Sheriff.

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VALID FROM 22/09/2015

#### **47 Jurisdiction and competence**

- (1) The Sheriff Appeal Court has jurisdiction and competence to hear and determine appeals to such extent as is provided by or under—
  - (a) this Act, or
  - (b) any other enactment.
- (2) The Court's jurisdiction and competence is exercisable by one or more of the Appeal Sheriffs at sittings of the Court.
- (3) The Court has all such powers as are, under the law of Scotland, inherently possessed by a court of law for the purposes of the discharge of its jurisdiction and competence and giving full effect to its decisions.
- (4) Subsection (3) is subject to any other provision of this Act or any other enactment that restricts or excludes any power of the Court in determining or disposing of an appeal.

VALID FROM 22/09/2015

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

- (1) A decision of the Sheriff Appeal Court on the interpretation or application of the law is binding—
  - (a) in proceedings before a sheriff anywhere in Scotland,
  - (b) in proceedings before a justice of the peace court anywhere in Scotland,
  - (c) in proceedings before the Sheriff Appeal Court, except in a case where the Court hearing the proceedings is constituted by a greater number of Appeal Sheriffs than those constituting the Court which made the decision.
- (2) In subsection (1)(a), the reference to proceedings before a sheriff includes, in the case of criminal proceedings, a reference to solemn proceedings before a sheriff and jury.

## **CHAPTER 2**

### **APPEAL SHERIFFS**

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

- (1) Each person who holds office as a sheriff principal also holds office as an Appeal Sheriff by virtue of this subsection.
- (2) A person holding office as a sheriff principal ceases to hold office as an Appeal Sheriff if the person ceases to hold office as a sheriff principal.

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- (3) If a person holding office as a sheriff principal is suspended from that office for any period, the person is also suspended from office as an Appeal Sheriff for the same period.

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

- (1) The Lord President of the Court of Session may appoint persons holding the office of sheriff to hold office also as Appeal Sheriffs.
- (2) The Lord President may appoint as many Appeal Sheriffs under subsection (1) as the Lord President considers necessary for the purposes of the Sheriff Appeal Court.
- (3) A person may be appointed under subsection (1) only if the individual has held office as a sheriff for at least 5 years.
- (4) The appointment of a sheriff as an Appeal Sheriff does not affect the sheriff's appointment as a sheriff and the sheriff may accordingly continue to act in that capacity.
- (5) A person holding office as an Appeal Sheriff under this section ceases to hold that office if the person ceases to hold office as a sheriff.
- (6) If a person holding office as an Appeal Sheriff under this section is suspended from the office of sheriff for any period, the person is also suspended from office as an Appeal Sheriff for the same period.
- (7) The Lord President may, with the consent of a majority of the sheriffs principal, remove a sheriff from office as an Appeal Sheriff.
- (8) Removal of a sheriff from the office of Appeal Sheriff under subsection (7) does not affect the sheriff's appointment as a sheriff.

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

- (1) The Lord President of the Court of Session may appoint a qualifying former Appeal Sheriff to act as an Appeal Sheriff during such periods or on such occasions as the Lord President may determine.
- (2) The Lord President may make such an appointment only if the appointment appears to the Lord President to be expedient as a temporary measure in order to facilitate the disposal of business in the Sheriff Appeal Court.
- (3) A “qualifying former Appeal Sheriff” is an individual who—
- (a) ceased to hold that office other than by virtue of—
    - (i) an order under section 25 (as read with sections 49(2) and 50(5)), or
    - (ii) removal from office under section 50(7), and
  - (b) has not reached the age of 75.
- (4) An individual appointed under subsection (1) is to be treated for all purposes (other than for the purposes of section 50) as an Appeal Sheriff and may exercise the jurisdiction and powers that attach to the office of Appeal Sheriff.
- (5) An individual's appointment under subsection (1) ceases when the individual reaches the age of 75.

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- (6) Despite the ending (whether by virtue of subsection (5) or otherwise) of an individual's appointment under subsection (1)—
- (a) the individual may continue to deal with, give judgment in or deal with an ancillary matter relating to, a case begun before the individual while acting under that appointment,
  - (b) so far as necessary for that purpose, and for the purpose of any subsequent proceedings arising out of the case or matter, the individual is to be treated as acting or, as the case may be, having acted under that appointment.
- (7) An individual appointed under subsection (1) is to be paid such remuneration as the Scottish Ministers may determine.
- (8) The Scottish Ministers may determine different amounts of remuneration for—
- (a) different individuals so appointed, or
  - (b) different descriptions of individuals so appointed.
- (9) Remuneration under subsection (7) is to be paid by the Scottish Courts and Tribunals Service.

## **52 Expenses**

- (1) The Scottish Courts and Tribunals Service may pay to an Appeal Sheriff such sums as it may determine in respect of expenses reasonably incurred by the Appeal Sheriff in the performance of, or in connection with, the Appeal Sheriff's duties as such.
- (2) The Scottish Courts and Tribunals Service may—
- (a) determine the circumstances in which such sums may be paid, and
  - (b) determine different circumstances for different Appeal Sheriffs.

## **53 Temporary provision**

Schedule 2 (which makes further provision, for a temporary period, in relation to Appeal Sheriffs) has effect.

# **CHAPTER 3**

## **ORGANISATION OF BUSINESS**

### *President and Vice President*

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

- (1) The Lord President of the Court of Session is to appoint, in accordance with this section—
- (a) one of the sheriffs principal to be the President of the Sheriff Appeal Court, and
  - (b) another sheriff principal to be the Vice President of the Court.
- (2) A sheriff principal holds office as President or Vice President for such period as the Lord President may determine.

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- (3) The President or Vice President may at any time resign office by giving notice in writing to the Lord President.
- (4) The Lord President may at any time remove a sheriff principal from office as President or Vice President.
- (5) If a person holding office as President or Vice President is suspended from office as a sheriff principal for any period, the person is also suspended from office as President or, as the case may be, Vice President for the same period.

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

- (1) Subsection (2) applies during any period when the President of the Sheriff Appeal Court—
  - (a) is unable (for any reason) to carry out the functions of the office, or
  - (b) is suspended from office.
- (2) During such a period—
  - (a) the functions of the President are to be carried out instead by the Vice President, and
  - (b) anything that falls to be done in relation to the President falls to be done instead in relation to the Vice President.
- (3) Subsection (4) applies during any period when—
  - (a) subsection (2) would, but for subsection (4), apply, and
  - (b) the Vice President of the Sheriff Appeal Court—
    - (i) is unable (for any reason) to carry out the functions of the President, or
    - (ii) is suspended from office.
- (4) During such a period, subsection (2) does not apply and, instead—
  - (a) the functions of the President are to be carried out instead by such sheriff principal (other than the President or Vice President) as the Lord President of the Court of Session may appoint to act in place of the President, and
  - (b) anything that falls to be done in relation to the President falls to be done instead in relation to that sheriff principal.

### *Disposal of business*

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

- (1) The President of the Sheriff Appeal Court is responsible for ensuring the efficient disposal of business in the Sheriff Appeal Court.
- (2) The President must make such arrangements as appear necessary or expedient for the purpose of carrying out the responsibility imposed by subsection (1).
- (3) In particular, the President may provide for the allocation of business among the Appeal Sheriffs.

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- (4) If, in carrying out the responsibility imposed by subsection (1), the President gives a direction of an administrative character to a person specified in subsection (5), the person must comply with the direction.
- (5) Those persons are—
  - (a) an Appeal Sheriff,
  - (b) a member of the staff of the Scottish Courts and Tribunals Service.
- (6) This section is subject to section 2(2)(a) and (2A) of the Judiciary and Courts (Scotland) Act 2008 (the Head of the Scottish Judiciary's responsibility for efficient disposal of business in the Scottish courts).

### *Sittings*

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

- (1) Sittings of the Sheriff Appeal Court may be held at any place in Scotland designated by virtue of this Act for the holding of sheriff courts.
- (2) More than one sitting of the Court may take place at the same time, and at different places.
- (3) The President of the Sheriff Appeal Court may by order prescribe—
  - (a) the number of sittings of the Court that are to be held at each place at which they may be held,
  - (b) the days on which, and the times at which, those sittings are to be held, and
  - (c) the descriptions of business to be disposed of at those sittings.
- (4) The President must publish notice of the matters prescribed by an order under subsection (3) in such manner as the President thinks appropriate in order to bring those matters to the attention of persons having an interest in them.
- (5) Subsection (3) is subject to section 2(2)(a) and (2A) of the Judiciary and Courts (Scotland) Act 2008.

VALID FROM 22/09/2015

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

- (1) Subsection (2) applies where, in relation to any appeal pending before the Sheriff Appeal Court—
  - (a) the Appeal Sheriff or Appeal Sheriffs constituting the Court consider the appeal to be one of particular difficulty or importance, or
  - (b) where the Court is constituted by more than one Appeal Sheriff, they are equally divided on any matter, whether of fact or law.
- (2) The Appeal Sheriff or Appeal Sheriffs may appoint the appeal to be reheard at another sitting of the Court constituted by such larger number of Appeal Sheriffs as may be necessary for the proper disposal of the appeal.

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## CHAPTER 4

### ADMINISTRATION

#### *Clerks*

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

- (1) The Scottish Courts and Tribunals Service must appoint a person holding office as a sheriff clerk also to hold the office of Clerk of the Sheriff Appeal Court.
- (2) A person's appointment as Clerk of the Sheriff Appeal Court does not affect the person's appointment as a sheriff clerk.
- (3) A person holding office as Clerk of the Sheriff Appeal Court ceases to hold that office if the person ceases to hold office as a sheriff clerk.
- (4) Otherwise, a person's appointment as Clerk of the Sheriff Appeal court—
  - (a) lasts for such period, and
  - (b) is on such other terms and conditions,
 as the Scottish Courts and Tribunals Service may determine.
- (5) In this section, “sheriff clerk” does not include sheriff clerk depute.

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

- (1) The Scottish Courts and Tribunals Service may appoint individuals to be Deputy Clerks of the Sheriff Appeal Court.
- (2) The number of Deputy Clerks is for the Scottish Courts and Tribunals Service to determine.
- (3) An individual's appointment as Deputy Clerk—
  - (a) lasts for such period, and
  - (b) is on such other terms and conditions,
 as the Scottish Courts and Tribunals Service may determine.
- (4) An individual may hold office as a Deputy Clerk of the Sheriff Appeal Court at the same time as holding office as clerk, or deputy or assistant clerk, of another court.

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

- (1) The Clerk and Deputy Clerks of the Sheriff Appeal Court are also members of staff of the Scottish Courts and Tribunals Service.
- (2) Accordingly, a reference in any enactment to the staff of the Scottish Courts and Tribunals Service includes, except where the context requires otherwise, a reference to the Clerk and Deputy Clerks of the Sheriff Appeal Court.
- (3) The Clerk of the Sheriff Appeal Court may, with the consent of the Scottish Courts and Tribunals Service, delegate the carrying out of any of the Clerk's functions to—
  - (a) a Deputy Clerk of the Sheriff Appeal Court, or
  - (b) any other member of staff of the Scottish Courts and Tribunals Service.



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- (4) Subsection (5) applies in relation to any period during which—
  - (a) the office of Clerk of the Sheriff Appeal Court is vacant, or
  - (b) the holder of that office is for any reason unable to carry out the functions of the office.
- (5) The Scottish Courts and Tribunals Service may make arrangements for the functions of the Clerk of the Sheriff Appeal Court to be carried out during the period referred to in subsection (4) by—
  - (a) a Deputy Clerk of the Sheriff Appeal Court, or
  - (b) any other member of staff of the Scottish Courts and Tribunals Service.
- (6) The Scottish Courts and Tribunals Service may give such instructions to the Clerk of the Sheriff Appeal Court, or a person carrying out the Clerk's functions under subsection (5), as it considers necessary for the purposes of this Act; and the Clerk or, as the case may be, such person must comply with any such instructions.

### *Records*

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

- (1) A record of the Sheriff Appeal Court is authenticated by being signed by—
  - (a) an Appeal Sheriff, or
  - (b) the Clerk of the Court.
- (2) A record authenticated in accordance with subsection (1), or a certified copy of such a record or of an extract of such a record, is sufficient evidence of the facts recorded in the record.
- (3) The Sheriff Appeal Court may keep (and produce) records in electronic form.
- (4) For the purposes of this section, a reference to a record or a copy of a record being signed or, as the case may be, certified, includes a reference to the record or copy being authenticated by means of—
  - (a) an electronic signature, or
  - (b) such other means of authentication as may be specified for that purpose by an act of sederunt under section 104(1).
- (5) In this section—
  - “certified copy” means a copy certified by the Clerk of the Sheriff Appeal Court as a true copy,
  - “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document,
  - “record” means any interlocutor, decree, minute or other document by which the proceedings and decisions of the Sheriff Appeal Court are recorded.

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VALID FROM 01/04/2015

## PART 3

### CIVIL PROCEDURE

#### CHAPTER 1

#### SHERIFF COURT

VALID FROM 22/09/2015

#### *Civil jury trials*

#### **63 Civil jury trials in an all-Scotland sheriff court**

- (1) This section applies in relation to relevant proceedings in an all-Scotland sheriff court.
- (2) If the proceedings are remitted to probation, they must be tried by jury unless—
  - (a) the parties agree otherwise, or
  - (b) special cause is shown.
- (3) Facts or circumstances constitute special cause for the purposes of subsection (2) (b) only if they would constitute special cause for the purpose of section 9(b) of the Court of Session Act 1988 (allowing of proof by Lord Ordinary).
- (4) The questions to be put to the jury are to be—
  - (a) approved by the sheriff, and
  - (b) specified by the sheriff in an interlocutor.
- (5) The jury is to consist of 12 jurors.
- (6) Proceedings which are to be tried by jury under this section are referred to in this Chapter as “jury proceedings”.
- (7) In this section, “relevant proceedings” means proceedings—
  - (a) of a type specified in an order under section 41(1), and
  - (b) which would be a jury action within the meaning of section 11 of the Court of Session Act 1988 if the same proceedings were (disregarding section 39) —
    - (i) taken by an action in the Court of Session, and
    - (ii) remitted to probation there.

#### **64 Selection of the jury**

- (1) The jurors for the trial in jury proceedings are to be selected in open court by ballot.

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- (2) Each party to the proceedings may challenge the selection of any juror whose name is drawn in the ballot.
- (3) A party may, under subsection (2), at any time during the selection of jurors—
  - (a) challenge the selection of up to 4 jurors without having to give a reason, and
  - (b) challenge the selection of any other juror, provided a reason for the challenge is stated.

#### **65 Application to allow the jury to view property**

- (1) A party to jury proceedings may apply to the sheriff to allow the jury to view any heritable or moveable property relevant to the proceedings.
- (2) Where an application is made under subsection (1), the sheriff may grant the application if the sheriff considers it proper and necessary for the jury to view the property.

#### **66 Discharge or death of juror during trial**

- (1) In jury proceedings, the sheriff may, in the course of the trial, discharge a member of the jury from further service on the jury if satisfied that the juror—
  - (a) is, by reason of illness, unable to continue to serve on the jury, or
  - (b) should, for any other reason, be discharged from further service on the jury.
- (2) Subsections (3) and (4) apply where a member of the jury—
  - (a) is discharged under subsection (1), or
  - (b) dies.
- (3) So long as there remain at least 10 members of the jury—
  - (a) the remaining members of the jury are in all respects deemed to constitute the jury for the purpose of the trial, and
  - (b) any verdict returned by the remaining members of the jury, whether unanimous or by majority, is to have the same force and effect as if it were a unanimous or, as the case may be, majority verdict of the whole number of the jury.
- (4) If there remain fewer than 10 members of the jury, the sheriff must—
  - (a) discharge the jury, and
  - (b) order the proceedings to be tried by another jury.

#### **67 Trial to proceed despite objection to opinion and direction of the sheriff**

- In jury proceedings, despite any objection being taken in the course of the trial to the opinion and direction of the sheriff—
- (a) the trial is to proceed, and
  - (b) the jury are to return their verdict and, where necessary, assess damages.

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## **68 Return of verdict**

- (1) In jury proceedings, the sheriff must, at the end of the sheriff's charge to the jury, direct the jury to select one of their members to speak for them when returning their verdict.
- (2) The jury may at any time return a verdict by a simple majority of their members.
- (3) Subsection (4) applies if the jury—
  - (a) have been enclosed for at least 3 hours, and
  - (b) at the end of that time are unable to agree a verdict or to return a verdict by majority.
- (4) The sheriff may—
  - (a) discharge the jury without their having returned a verdict, and
  - (b) order the proceedings to be tried by another jury.
- (5) When the verdict is returned, it is to be—
  - (a) declared orally in open court by the juror selected under subsection (1), and
  - (b) taken down in writing by the sheriff clerk before the jury is discharged.
- (6) In jury proceedings containing a claim for damages, where the jury return a verdict for the pursuer, the jury must also assess the amount of damages.
- (7) The verdict of the jury is final so far as relating to the facts found by the jury.
- (8) Subsection (7) is subject to sections 69 and 71.

## **69 Application for new trial**

- (1) After the jury have returned their verdict in jury proceedings, any party to the proceedings may, on any ground specified in subsection (2), apply to the Sheriff Appeal Court for a new trial.
- (2) The grounds are—
  - (a) the sheriff misdirected the jury,
  - (b) undue admission or rejection of evidence,
  - (c) the verdict is contrary to the evidence,
  - (d) damages awarded are excessive or inadequate,
  - (e) new evidence or information has come to light since the trial,
  - (f) any other ground essential to the justice of the case.
- (3) On an application under subsection (1), the Sheriff Appeal Court may grant or refuse a new trial.
- (4) Subsection (3) is subject to section 70.
- (5) Where the Court grants a new trial—
  - (a) the verdict of the jury is set aside, and
  - (b) the proceedings are to be tried by another jury.
- (6) Subsection (7) applies where—
  - (a) an application is made under subsection (1) on the ground that the verdict is contrary to the evidence, and

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- (b) after hearing the parties, the Sheriff Appeal Court is of the opinion that—
  - (i) the ground is established, and
  - (ii) it has before it all the relevant evidence that could reasonably be expected to be obtained in relation to the proceedings.
- (7) The Court may, instead of granting a new trial—
  - (a) set aside the verdict of the jury, and
  - (b) enter judgment for the party unsuccessful at the trial.
- (8) In a case where the Court is constituted by more than one Appeal Sheriff, the opinion referred to in subsection (6)(b) must be the opinion of all of them.

## **70 Restrictions on granting a new trial**

- (1) Subsection (2) applies where—
  - (a) an application is made under section 69(1) on the ground of undue admission of evidence, and
  - (b) the Sheriff Appeal Court is of the opinion that exclusion of the evidence in question could not have led to a different verdict from the one actually returned.
- (2) The Court must refuse to grant a new trial.
- (3) Subsection (4) applies where—
  - (a) an application is made under section 69(1) on the ground of undue rejection of documentary evidence, and
  - (b) the Sheriff Appeal Court is of the opinion that the documents in question would not have affected the jury's verdict.
- (4) The Court must refuse to grant a new trial.
- (5) Subsection (6) applies where—
  - (a) an application is made under section 69(1), and
  - (b) the Sheriff Appeal Court is of the opinion that—
    - (i) the only ground for granting a new trial is that damages awarded are excessive or inadequate, and
    - (ii) a new trial is essential to the justice of the case.
- (6) The Court may grant a new trial restricted to the question of the amount of damages only.
- (7) On an application under section 69(1), where the Sheriff Appeal Court is constituted by more than one Appeal Sheriff—
  - (a) the Court may not grant a new trial except in conformity with the opinion of a majority of the Appeal Sheriffs hearing the application, and
  - (b) in the case of equal division, the Court must refuse to grant a new trial.

## **71 Verdict subject to opinion of the Sheriff Appeal Court**

- (1) This section applies in relation to any jury proceedings in which the sheriff has directed the jury on any matter.

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- (2) A party against whom the verdict of the jury is returned may apply to the Sheriff Appeal Court for the verdict instead to be entered in the party's favour.
- (3) On an application under subsection (2), the Court may—
  - (a) set aside the verdict and exercise either of the powers in subsections (4) and (6), or
  - (b) refuse the application.
- (4) Where the Court is of the opinion—
  - (a) that the sheriff's direction was erroneous, and
  - (b) that the party making the application was entitled to the verdict in whole or in part,
 it may direct the verdict to be entered in that party's favour.
- (5) The Court may direct the verdict to be so entered—
  - (a) either in whole or in part, and
  - (b) either absolutely or on such terms as the Court thinks fit.
- (6) Where the Court is of the opinion that it is necessary to do so, it may order the proceedings to be tried by another jury.

### *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.
- (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.

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- (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.

VALID FROM 28/11/2016

### **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).

PROSPECTIVE

### **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

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- (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.

VALID FROM 28/11/2016

#### **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.



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VALID FROM 28/11/2016

### **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—
  - (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).

VALID FROM 22/09/2015

### **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.

VALID FROM 28/11/2016

### **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.

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- (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.

VALID FROM 28/11/2016

## **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.

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PROSPECTIVE

**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.

*Interdicts and other orders: effect outside sheriffdom*

VALID FROM 28/11/2016

**84 Interdicts having effect in more than one sheriffdom**

- (1) A sheriff has competence to grant an interdict having effect in relation to conduct at places outside the sheriff's sheriffdom as well as at places within the sheriff's sheriffdom.
- (2) In this section, “interdict” includes “interim interdict”.

VALID FROM 28/11/2016

**85 Proceedings for breach of an extended interdict**

- (1) In this section, “extended interdict” means an interdict granted by a sheriff, by virtue of section 84(1), having effect in relation to conduct at places outside the sheriff's sheriffdom.
- (2) Proceedings for breach of an extended interdict may be brought before a sheriff of the sheriffdom—
  - (a) in which the defender is domiciled,
  - (b) in which the interdict was granted,
  - (c) in which the alleged breach occurred.
- (3) A sheriff before whom proceedings for breach of an extended interdict are brought may make an order transferring the proceedings to a sheriff of another sheriffdom (whether or not one mentioned in subsection (2)) if satisfied that it would be more appropriate for the proceedings to be dealt with by a sheriff of the other sheriffdom.
- (4) A sheriff may make an order under subsection (3)—
  - (a) on the application of a party to the proceedings, or
  - (b) on the sheriff's own initiative.

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- (5) Where an order is made under subsection (3), a sheriff of the sheriffdom to whom the proceedings are to be transferred has jurisdiction and competence to consider and determine the proceedings.
- (6) This section does not affect any power that a sheriff has to decline jurisdiction in any case.

## **86 Power to enable sheriff to make orders having effect outside sheriffdom**

- (1) In this section, “relevant order” means an order—
- (a) which a sheriff has competence and jurisdiction to make in civil proceedings, but
  - (b) which, apart from this section, the sheriff could make only so as to have effect or be enforceable within the sheriff’s sheriffdom.
- (2) The Scottish Ministers may by order provide for a sheriff to have competence to make relevant orders having effect (and being capable of being enforced) outside the sheriff’s sheriffdom as well as within that sheriffdom (referred to in this section as “extended competence”).
- (3) An order under subsection (2) may—
- (a) make provision in relation to all relevant orders or in relation only to specified categories or descriptions of relevant order,
  - (b) make different provision in relation to different categories or descriptions of relevant order,
  - (c) provide for a sheriff to have extended competence only—
    - (i) in such circumstances,
    - (ii) in relation to such civil proceedings, or
    - (iii) subject to such conditions,
 as are specified in the order,
  - (d) make provision about jurisdiction in relation to proceedings for relevant orders,
  - (e) make provision for the transfer of proceedings for relevant orders between different sheriffdoms,
  - (f) make provision about the enforcement of orders made in the exercise of extended competence (including provision about jurisdiction in relation to enforcement proceedings).
- (4) Subsection (3) does not affect the generality of section 133(1).
- (5) In subsection (1), “order”—
- (a) includes “interim order”, but
  - (b) does not include an interdict or an interim interdict.

### *Execution of deeds relating to heritage*

## **87 Power of sheriff to order sheriff clerk to execute deed relating to heritage**

- (1) This section applies where—
- (a) an action relating to heritable property is before a sheriff, or

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- (b) it appears to a sheriff that an order under this section is necessary to implement a decree of a sheriff relating to heritable property.
- (2) The sheriff may make an order such as is mentioned in subsection (4)—
  - (a) on an application by the grantee of any deed relating to the heritable property, and
  - (b) if satisfied as to the matters mentioned in subsection (3).
- (3) The matters are that the grantor of any deed relating to the heritable property—
  - (a) cannot be found,
  - (b) refuses to execute the deed,
  - (c) is unable, or otherwise fails, to execute the deed.
- (4) The order is one—
  - (a) dispensing with the execution of the deed by the grantor, and
  - (b) directing the sheriff clerk to execute the deed.
- (5) A deed executed by the sheriff clerk in accordance with a direction in an order under this section has the same force and effect as if it had been executed by the grantor.
- (6) In this section—
  - “grantor”, in relation to a deed relating to the heritable property, means a person who is under an obligation to execute the deed,
  - “grantee” means the person to whom that obligation is owed.

#### *Interim orders*

### **88 Interim orders**

- (1) A sheriff may, on the application of a party to any civil proceedings before the sheriff, make—
  - (a) such interim order as the sheriff thinks fit in relation to—
    - (i) the possession of any heritable or movable property to which the proceedings relate,
    - (ii) the subject matter of the proceedings,
  - (b) an interim order ad factum praestandum.
- (2) Subsection (1) does not apply in relation to proceedings under the Children's Hearings (Scotland) Act 2011.

## **CHAPTER 2**

### **COURT OF SESSION**

VALID FROM 22/09/2015

### **89 Judicial review**

After section 27 of the Court of Session Act 1988, insert—

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### *“Applications to the supervisory jurisdiction of the Court*

#### **27A Time limits**

- (1) An application to the supervisory jurisdiction of the Court must be made before the end of—
  - (a) the period of 3 months beginning with the date on which the grounds giving rise to the application first arise, or
  - (b) such longer period as the Court considers equitable having regard to all the circumstances.
- (2) Subsection (1) does not apply to an application to the supervisory jurisdiction of the Court which, by virtue of any enactment, is to be made before the end of a period ending before the period of 3 months mentioned in that subsection (however that first-ending period may be expressed).

#### **27B Requirement for permission**

- (1) No proceedings may be taken in respect of an application to the supervisory jurisdiction of the Court unless the Court has granted permission for the application to proceed.
- (2) Subject to subsection (3), the Court may grant permission under subsection (1) for an application to proceed only if it is satisfied that—
  - (a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and
  - (b) the application has a real prospect of success.
- (3) Where the application relates to a decision of the Upper Tribunal for Scotland in an appeal from the First-tier Tribunal for Scotland under section 46 of the Tribunals (Scotland) Act 2014, the Court may grant permission under subsection (1) for the application to proceed only if it is satisfied that—
  - (a) the applicant can demonstrate a sufficient interest in the subject matter of the application,
  - (b) the application has a real prospect of success, and
  - (c) either—
    - (i) the application would raise an important point of principle or practice, or
    - (ii) there is some other compelling reason for allowing the application to proceed.
- (4) The Court may grant permission under subsection (1) for an application to proceed—
  - (a) subject to such conditions as the Court thinks fit,
  - (b) only on such of the grounds specified in the application as the Court thinks fit.
- (5) The Court may decide whether or not to grant permission without an oral hearing having been held.

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### **27C Oral hearings where permission refused, etc.**

- (1) Subsection (2) applies where, in relation to an application to the supervisory jurisdiction of the Court—
  - (a) the Court—
    - (i) refuses permission under subsection 27B(1) for the application to proceed, or
    - (ii) grants permission for the application to proceed subject to conditions or only on particular grounds, and
  - (b) the Court decides to refuse permission, or grant permission as mentioned in paragraph (a)(ii), without an oral hearing having been held.
- (2) The person making the application may, within the period of 7 days beginning with the day on which that decision is made, request a review of the decision at an oral hearing.
- (3) A request under subsection (2) must be considered by a different Lord Ordinary from the one who refused permission or granted permission as mentioned in subsection (1)(a)(ii).
- (4) Where a request under subsection (2) is granted, the oral hearing must be conducted before a different Lord Ordinary from the one who refused or so granted permission.
- (5) At a review following a request under subsection (2), the Court must consider whether to grant permission for the application to proceed; and subsections (2), (3) and (4) of section 27B apply for that purpose.
- (6) Section 28 does not apply—
  - (a) where subsection (2) applies, or
  - (b) in relation to the refusal of a request made under subsection (2).

### **27D Appeals following oral hearings**

- (1) Subsection (2) applies where, after an oral hearing to determine whether or not to grant permission for an application to the supervisory jurisdiction of the Court to proceed, the Court—
  - (a) refuses permission for the application to proceed, or
  - (b) grants permission for the application to proceed subject to conditions or only on particular grounds.
- (2) The person making the application may, within the period of 7 days beginning with the day on which the Court makes its decision, appeal under this section to the Inner House (but may not appeal under any other provision of this Act).
- (3) In an appeal under subsection (2), the Inner House must consider whether to grant permission for the application to proceed; and subsections (2), (3) and (4) of section 27B apply for that purpose.

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(4) In subsection (1), the reference to an oral hearing is to an oral hearing whether following a request under section 27C(2) or otherwise.”.

**90 Interim orders**

In section 47 of the Court of Session Act 1988 (interim interdict and other interim orders), after subsection (2) insert—

“(2A) The power under subsection (2) to make an order includes, in particular, power to make an order ad factum praestandum (including an interim order).”.

**91 Warrants for ejection**

After section 47 of the Court of Session Act 1988, insert—

**“47A Power to grant warrant for ejection**

In any proceedings where the Court has competence to grant a decree of removing, it also has competence to grant a warrant for ejection.”.

VALID FROM 22/09/2015

**CHAPTER 3**

REMIT OF CASES BETWEEN COURTS

**92 Remit of cases to the Court of Session**

- (1) Subsection (2) applies to any civil proceedings before a sheriff that are—
  - (a) proceedings that the Court of Session also has competence and jurisdiction to deal with,
  - (b) not proceedings to which section 39 applies, and
  - (c) not subject to simple procedure.
- (2) On the application of any of the parties to the proceedings, the sheriff may, at any stage, remit the proceedings to the Court of Session if the sheriff considers that the importance or difficulty of the proceedings makes it appropriate to do so.
- (3) Subsection (4) applies to any civil proceedings before a sheriff that are—
  - (a) proceedings to which section 39 applies,
  - (b) proceedings that the Court of Session would (but for that section) also have competence and jurisdiction to deal with, and
  - (c) not subject to simple procedure.
- (4) On the application of any of the parties to the proceedings, the sheriff may, at any stage, request the Court of Session to allow the proceedings to be remitted to that Court if the sheriff considers that the importance or difficulty of the proceedings makes it appropriate to do so.



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- (5) On receiving a request under subsection (4), the Court of Session may, on cause shown, allow the proceedings to be remitted to the Court.
- (6) If the Court of Session allows the proceedings to be remitted to that Court, the sheriff is to remit the proceedings to that Court.
- (7) Where the proceedings are remitted to the Court of Session under subsection (6), the proceedings may be dealt with and disposed of by that Court despite section 39(2).

### **93 Remit of cases from the Court of Session**

- (1) Subsection (2) applies to any proceedings in the Court of Session if—
  - (a) they are proceedings that a sheriff also has competence and jurisdiction to deal with,
  - (b) they would be proceedings to which section 39 applies but for the fact that subsection (1)(b)(ii) of that section is not satisfied, and
  - (c) the Court considers, at any stage, that it is unlikely that the aggregate total value of all the orders of value granted in the proceedings, exclusive of interest and expenses, will be greater than the sum specified in that subsection.
- (2) The Court must remit the proceedings to an appropriate sheriff, unless the Court considers, on cause shown, that the proceedings should remain in the Court of Session.
- (3) In considering the matter in subsection (1)(c), the Court is to assume—
  - (a) that liability for the order sought is established, and
  - (b) that there will, where appropriate, be no deduction for contributory negligence.
- (4) Subsection (5) applies to any proceedings in the Court of Session if—
  - (a) they are proceedings that a sheriff also has competence and jurisdiction to deal with, but
  - (b) are not proceedings to which paragraph (b) or (c) of subsection (1) applies.
- (5) The Court may, at any stage, remit the proceedings to an appropriate sheriff if the Court considers that the nature of the proceedings makes it appropriate to do so.
- (6) The Court may remit proceedings under subsection (2) or (5)—
  - (a) on the application of any party to the proceedings, or
  - (b) on its own initiative.
- (7) In this section, “an appropriate sheriff” means, in relation to proceedings remitted from the Court of Session under this section, a sheriff having competence and jurisdiction to deal with the proceedings sitting at such sheriff court as the Court may, at the time of the remit, specify.

### **94 Remit of cases to the Scottish Land Court**

- (1) Subsection (2) applies to any proceedings before a sheriff where the matter to which the proceedings relate could competently be determined by the Scottish Land Court under—
  - (a) the Agricultural Holdings (Scotland) Act 1991, or

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- (b) the Agricultural Holdings (Scotland) Act 2003.
- (2) The sheriff may, at any stage, remit the proceedings to the Scottish Land Court if the sheriff considers that it is appropriate to do so.
- (3) The sheriff may remit proceedings under subsection (2)—
  - (a) on the application of any party to the proceedings, or
  - (b) on the sheriff's own initiative.
- (4) A decision of the sheriff to remit, or not to remit, the proceedings under subsection (2) is final and no appeal may be taken against it.

## CHAPTER 4

### LAY REPRESENTATION FOR NON-NATURAL PERSONS

VALID FROM 28/11/2016

#### 95 Key defined terms

- (1) This section applies for the purposes of the interpretation of this Chapter.
- (2) “Non-natural person” means—
  - (a) a company (whether incorporated in the United Kingdom or elsewhere),
  - (b) a limited liability partnership,
  - (c) any other partnership,
  - (d) an unincorporated association of persons.
- (3) “Lay representative” means an individual who is not a legal representative.
- (4) “Legal representative” means—
  - (a) a solicitor,
  - (b) an advocate, or
  - (c) a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.
- (5) An individual holds a relevant position with a non-natural person if the individual—
  - (a) in the case of a company, is a director or secretary of the company,
  - (b) in the case of a limited liability partnership, is a member of the partnership,
  - (c) in the case of any other partnership, is a partner in the partnership,
  - (d) in the case of an unincorporated association, is a member or office holder of the association.
- (6) For the purposes of section 96, an individual also holds a relevant position with a non-natural person if the individual is an employee of the non-natural person.
- (7) References to conducting proceedings are references to exercising, in relation to the proceedings, a function or right (including a right of audience) that a legal representative could exercise in the proceedings.

**Status:** Point in time view as at 11/11/2014. This version of this Act contains provisions that are not valid for this point in time.  
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VALID FROM 28/11/2016

## 96 Lay representation in simple procedure cases

- (1) This section applies in any simple procedure case to which a non-natural person is a party.
- (2) A lay representative may conduct proceedings in the case on behalf of the non-natural person if—
  - (a) the lay representative holds a relevant position with the non-natural person,
  - (b) the responsibilities of the lay representative in that position do not consist wholly or mainly of conducting legal proceedings on behalf of the non-natural person or another person,
  - (c) the lay representative is authorised by the non-natural person to conduct the proceedings,
  - (d) the lay representative does not have a personal interest in the subject matter of the proceedings, and
  - (e) the lay representative is not the subject of an order such as is mentioned in section 98(2)(f).
- (3) In subsection (2)(d), “personal interest” means an interest other than one that anyone holding the position that the lay representative holds with the non-natural person would have.
- (4) Subsection (2) is subject to provision made by an act of sederunt under section 98.

VALID FROM 28/11/2016

## 97 Lay representation in other proceedings

- (1) This section applies in civil proceedings (other than a simple procedure case) to which a non-natural person is a party.
- (2) A lay representative may, if the court grants permission, conduct the proceedings on behalf of the non-natural person.
- (3) The court may grant permission if satisfied that—
  - (a) the non-natural person is unable to pay for the services of a legal representative to conduct the proceedings,
  - (b) the lay representative is a suitable person to conduct the proceedings, and
  - (c) it is in the interests of justice to grant permission.
- (4) For the purposes of subsection (3)(b), a lay representative is a suitable person to conduct the proceedings if—
  - (a) the lay representative holds a relevant position with the non-natural person,
  - (b) the responsibilities of the lay representative in that position do not consist wholly or mainly of conducting legal proceedings on behalf of the non-natural person or another person,
  - (c) the lay representative is authorised by the non-natural person to conduct the proceedings,

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- (d) the lay representative does not have a personal interest in the subject matter of the proceedings, and
  - (e) the lay representative is not the subject of an order such as is mentioned in section 98(2)(f).
- (5) In subsection (4)(d), “personal interest” means an interest other than one that anyone holding the position that the lay representative holds with the non-natural person would have.
- (6) For the purposes of subsection (3)(c), in deciding whether it is in the interests of justice to grant permission, the court must have regard, in particular, to—
- (a) the non-natural person's prospects of success in the proceedings, and
  - (b) the likely complexity of the proceedings.
- (7) Subsection (2) is subject to provision made by an act of sederunt under section 98.
- (8) In this section—
- “civil proceedings” means civil proceedings in—
    - (a) the Court of Session,
    - (b) the Sheriff Appeal Court, or
    - (c) the sheriff court,
  - “the court”, in the case of proceedings in the sheriff court, means the sheriff.

## **98 Lay representation: supplementary provision**

- (1) The Court of Session may, by act of sederunt, make further provision about—
- (a) the granting of permission under section 97, and
  - (b) the conduct of proceedings by lay representatives by virtue of this Chapter.
- (2) Provision under subsection (1) may include, in particular, provision—
- (a) about the procedure to be followed in considering applications for permission under section 97 (including provision for applications to be considered in chambers and without hearing the parties),
  - (b) regulating the conduct of lay representatives in exercising a function or right by virtue of this Chapter,
  - (c) about the authorisation of lay representatives for the purposes of this Chapter,
  - (d) imposing conditions on the exercise by lay representatives of a function or right by virtue of this Chapter or enabling the court to impose such conditions in particular cases,
  - (e) enabling the court, in particular cases, to withdraw a lay representative's right to exercise a function or right by virtue of this Chapter if the representative contravenes provision made by virtue of the act of sederunt,
  - (f) enabling the court to make an order preventing a lay representative from conducting any proceedings before any court on behalf of non-natural persons,
  - (g) enabling the court, in awarding expenses against a non-natural person in any case, to find a lay representative jointly and severally liable for the expenses.
- (3) An act of sederunt under subsection (1) may make different provision for different purposes.

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(4) In this section, “the court”, in the case of proceedings in the sheriff court, means the sheriff.

VALID FROM 22/09/2015

## CHAPTER 5

### JURY SERVICE

#### 99 Jury service

- (1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 is amended in accordance with this section.
- (2) In section 1 (qualification of jurors)—
  - (a) in subsection (1)—
    - (i) the words “to subsections (2) and (3) below and” are repealed, and
    - (ii) for paragraph (b) substitute—

“(b) is not less than 18 years of age;”,
  - (b) subsections (1A), (2) and (3) are repealed,
  - (c) in subsection (5), the words “under subsection (2) or (3) above or” are repealed.
- (3) In section 1A (excusal of jurors in relation to criminal proceedings)—
  - (a) in each of subsections (1), (2) and (3), the words “in relation to criminal proceedings” are repealed,
  - (b) in subsection (3), for “(a)(iii)” substitute “(ab)”,
  - (c) the title of the section becomes “**Excusal of jurors as of right**”.
- (4) In Part III of Schedule 1 (persons excusable from jury service as of right), in Group F, for paragraphs (a) and (aa) substitute—
  - “(a) persons who have served as a juror in the period of 5 years ending with the date on which the person is cited first to attend;
  - (aa) persons who have attended for jury service, but have not served as a juror, in the period of 2 years ending with the date on which the person is cited first to attend;
  - (ab) persons who have attained the age of 71;”.

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## CHAPTER 6

### VEXATIOUS PROCEEDINGS

VALID FROM 28/11/2016

#### 100 Vexatious litigation orders

- (1) The Inner House may, on the application of the Lord Advocate, make a vexatious litigation order in relation to a person (a “vexatious litigant”).
- (2) A vexatious litigation order is an order which has either or both of the following effects—
  - (a) the vexatious litigant may institute civil proceedings only with the permission of a judge of the Outer House,
  - (b) the vexatious litigant may take a specified step in specified ongoing civil proceedings only with such permission.
- (3) In subsection (2)(b)—
  - (a) “specified ongoing civil proceedings” means civil proceedings which—
    - (i) were instituted by the vexatious litigant before the order was made, and
    - (ii) are specified in the order,
  - (b) “specified step” means a step specified in the order.
- (4) A vexatious litigation order has effect—
  - (a) during such period as is specified in the order, or
  - (b) if no period is so specified, indefinitely.
- (5) In this section and section 101—
  - (a) “the Inner House” means the Inner House of the Court of Session,
  - (b) “the Outer House” means the Outer House of the Court of Session,
  - (c) “vexatious litigant” means, in relation to a vexatious litigation order, the person to whom the order relates,
  - (d) “vexatious litigation order” means an order made under subsection (1).

VALID FROM 28/11/2016

#### 101 Vexatious litigation orders: further provision

- (1) The Inner House may make a vexatious litigation order in relation to a person only if satisfied that the person has habitually and persistently, without any reasonable ground for doing so—
  - (a) instituted vexatious civil proceedings, or
  - (b) made vexatious applications to the court in the course of civil proceedings (whether or not instituted by the person).
- (2) For the purpose of subsection (1), it does not matter whether the proceedings—
  - (a) were instituted in Scotland or elsewhere,

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- (b) involved the same parties or different parties.
- (3) A copy of a vexatious litigation order must be published in the Edinburgh Gazette.
- (4) A judge of the Outer House may grant permission to a vexatious litigant to institute civil proceedings or, as the case may be, to take a step in such proceedings only if satisfied that there is a reasonable ground for the proceedings or the taking of the step.
- (5) The decision of the judge to refuse to grant permission under subsection (4) is final.
- (6) Subsection (7) applies in relation to civil proceedings instituted in any court by a vexatious litigant before the Inner House makes a vexatious litigation order in relation to the vexatious litigant.
- (7) The court may make such order as it sees fit in consequence of the vexatious litigation order.
- (8) In subsection (7), “the court” means—
  - (a) the court which is dealing with the proceedings,
  - (b) in the case of proceedings in the sheriff court, the sheriff.

## **102 Power to make orders in relation to vexatious behaviour**

- (1) The Scottish Ministers may by regulations confer on the Court of Session, a sheriff or the Sheriff Appeal Court the power to make an order of a kind mentioned in subsection (2) in relation to a person who has behaved in a vexatious manner in civil proceedings before the Court of Session, sheriff or, as the case may be, Sheriff Appeal Court.
- (2) The order referred to in subsection (1) is an order that the person may do any of the following only with the permission of a court or a judge of any court—
  - (a) take such a step in those proceedings as is specified in the order,
  - (b) take such a step as is so specified in such other civil proceedings (whether or not those proceedings are before the Court of Session, sheriff or, as the case may be, Sheriff Appeal Court) as are so specified,
  - (c) institute civil proceedings in such a court as is so specified.
- (3) For the purpose of subsection (1), a person behaves in a vexatious manner in civil proceedings if the person—
  - (a) institutes the proceedings and they are vexatious, or
  - (b) makes a vexatious application in the course of the proceedings (whether or not they were instituted by the person).
- (4) Regulations under subsection (1) may include provision for—
  - (a) an order to be made on the application of a party to the proceedings or on the Court's or, as the case may be, sheriff's own initiative,
  - (b) circumstances in which the Court or sheriff may make an order, and the requirements as to permission which may be imposed in an order in those circumstances,
  - (c) the factors which the Court or sheriff may take into account in deciding whether to make an order (including the person's behaviour in other civil proceedings, whether in Scotland or elsewhere),

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- (d) the courts in relation to which an order may have effect,
  - (e) the maximum period for which an order may have effect,
  - (f) the effect of an order in any other respects.
- (5) The Scottish Ministers must consult the Lord President of the Court of Session before making regulations under subsection (1).
- (6) Regulations under subsection (1)—
- (a) are subject to the negative procedure,
  - (b) may make different provision for different purposes,
  - (c) may make incidental, supplemental, consequential, transitional, transitory or saving provision.

VALID FROM 01/04/2015

## PART 4

### PROCEDURE AND FEES

#### *Procedure*

#### **103 Power to regulate procedure etc. in the Court of Session**

- (1) The Court of Session may by act of sederunt make provision for or about—
- (a) the procedure and practice to be followed in proceedings in the Court,
  - (b) any matter incidental or ancillary to such proceedings.
- (2) Without limiting that generality, the power in subsection (1) includes power to make provision for or about—
- (a) execution or diligence following on such proceedings,
  - (b) avoiding the need for, or mitigating the length and complexity of, such proceedings, including—
    - (i) encouraging settlement of disputes and the use of alternative dispute resolution procedures,
    - (ii) action to be taken before such proceedings are brought by persons who will be party to the proceedings,
  - (c) other aspects of the conduct and management of such proceedings, including the use of technology,
  - (d) simplifying the language used in connection with such proceedings or matters incidental or ancillary to them,
  - (e) the form of any document to be used in connection with such proceedings, matters incidental or ancillary to them or matters specified in this subsection,
  - (f) appeals against a decision of the Court,
  - (g) applications that may be made to the Court,
  - (h) time limits in relation to proceedings mentioned in subsection (1), matters incidental or ancillary to them or matters specified in this subsection,



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- (i) the steps that the Court may take where there has been an abuse of process by a party to such proceedings,
  - (j) expenses that may be awarded to parties to such proceedings,
  - (k) other payments such parties may be required to make in respect of their conduct relating to such proceedings,
  - (l) the payment, investment or application of any sum of money awarded in such proceedings to or in respect of a person under a legal disability,
  - (m) the representation of parties to such proceedings, and others, including representation by persons who—
    - (i) are neither solicitors nor advocates, or
    - (ii) do not have the right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
  - (n) the functions and rights of persons appointed by the Court in connection with such proceedings,
  - (o) witnesses and evidence, including modifying the rules of evidence as they apply to such proceedings,
  - (p) the quorum for a Division of the Inner House considering purely procedural matters and, in the case of an extra Division, as to which judge is to preside and to sign any judgment or interlocutor pronounced by the extra Division,
  - (q) such other matters as the Court thinks necessary or appropriate for the purposes of carrying out or giving effect to the provisions of any enactment (including this Act) relating to such proceedings or matters incidental or ancillary to them.
- (3) An act of sederunt under subsection (1) may make—
- (a) incidental, supplemental, consequential, transitional, transitory or saving provision,
  - (b) provision amending, repealing or revoking any enactment (including any provision of this Act) relating to matters with respect to which an act of sederunt may be made,
  - (c) different provision for different purposes.
- (4) This section is without prejudice to—
- (a) any enactment that enables the Court to make rules (by act of sederunt or otherwise) regulating the practice and procedure to be followed in proceedings to which this section applies, or
  - (b) the inherent powers of the Court.

#### **104 Power to regulate procedure etc. in the sheriff court and the Sheriff Appeal Court**

- (1) The Court of Session may by act of sederunt make provision for or about—
- (a) the procedure and practice to be followed in civil proceedings in the sheriff court or in the Sheriff Appeal Court,
  - (b) any matter incidental or ancillary to such proceedings.
- (2) Without limiting that generality, the power in subsection (1) includes power to make provision for or about—
- (a) execution or diligence following on such proceedings,

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- (b) avoiding the need for, or mitigating the length and complexity of, such proceedings, including—
    - (i) encouraging settlement of disputes and the use of alternative dispute resolution procedures,
    - (ii) action to be taken before such proceedings are brought by persons who will be party to the proceedings,
  - (c) other aspects of the conduct and management of such proceedings, including the use of technology,
  - (d) simplifying the language used in connection with such proceedings or matters incidental or ancillary to them,
  - (e) the form of any document to be used in connection with such proceedings, matters incidental or ancillary to them or matters specified in this subsection,
  - (f) appeals against a decision of a sheriff or the Sheriff Appeal Court,
  - (g) applications that may be made to a sheriff or the Sheriff Appeal Court,
  - (h) time limits in relation to proceedings mentioned in subsection (1), matters incidental or ancillary to them or matters specified in this subsection,
  - (i) the steps that a sheriff or the Sheriff Appeal Court may take where there has been an abuse of process by a party to such proceedings,
  - (j) expenses that may be awarded to parties to such proceedings,
  - (k) other payments such parties may be required to make in respect of their conduct relating to such proceedings,
  - (l) the payment, investment or application of any sum of money awarded in such proceedings to or in respect of a person under a legal disability,
  - (m) the representation of parties to such proceedings, and others, including representation by persons who—
    - (i) are neither solicitors nor advocates, or
    - (ii) do not have the right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
  - (n) the functions and rights of persons appointed by a sheriff or the Sheriff Appeal Court in connection with such proceedings,
  - (o) witnesses and evidence, including modifying the rules of evidence as they apply to such proceedings,
  - (p) the quorum for sittings of the Sheriff Appeal Court,
  - (q) determining which Appeal Sheriff is to preside at such sittings where the Court is constituted by more than one Appeal Sheriff,
  - (r) such other matters as the Court of Session thinks necessary or appropriate for the purposes of carrying out or giving effect to the provisions of any enactment (including this Act) relating to such proceedings or matters incidental or ancillary to them.
- (3) Nothing in an act of sederunt under subsection (1) is to derogate from the provisions of sections 72 to 82 (simple procedure).
- (4) An act of sederunt under subsection (1) may make—
- (a) incidental, supplemental, consequential, transitional, transitory or saving provision,
  - (b) provision amending, repealing or revoking any enactment (including any provision of this Act) relating to matters with respect to which an act of sederunt under subsection (1) may be made,

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- (c) different provision for different purposes.
- (5) Before making an act of sederunt under subsection (1) with respect to any matter, the Court of Session must—
  - (a) consult the Scottish Civil Justice Council, and
  - (b) take into consideration any views expressed by the Council with respect to that matter.
- (6) Subsection (5) does not apply in relation to an act of sederunt that embodies, with or without modifications, draft rules submitted by the Scottish Civil Justice Council to the Court of Session.
- (7) This section is without prejudice to—
  - (a) any enactment that enables the Court of Session to make rules (by act of sederunt or otherwise) regulating the practice and procedure to be followed in proceedings to which this section applies, or
  - (b) the inherent powers of a sheriff or the Sheriff Appeal Court.

*Fees of solicitors etc.*

**105 Power to regulate fees in the Court of Session**

- (1) The Court of Session may, in relation to any proceedings in the Court (including any execution or diligence following such proceedings), by act of sederunt make provision for or about the fees of—
  - (a) solicitors,
  - (b) messengers-at-arms,
  - (c) persons acting under the Execution of Diligence (Scotland) Act 1926,
  - (d) witnesses,
  - (e) shorthand writers,
  - (f) such other persons, or persons of such descriptions, as the Scottish Ministers may by order specify.
- (2) An act of sederunt under subsection (1) may not make any provision for or about the fees that the Scottish Ministers may regulate under or by virtue of section 33 of the Legal Aid (Scotland) Act 1986 (fees and outlays of solicitors and counsel).
- (3) An act of sederunt under subsection (1) and an order under subsection (1)(f) may make—
  - (a) incidental, supplemental, consequential, transitional, transitory or saving provision,
  - (b) different provision for different purposes.
- (4) Before making an order under subsection (1)(f), the Scottish Ministers must consult the Lord President of the Court of Session.
- (5) An act of sederunt under subsection (1) is subject to the negative procedure.

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### **106 Power to regulate fees in the sheriff court and the Sheriff Appeal Court**

- (1) The Court of Session may, in relation to civil proceedings in the sheriff court or the Sheriff Appeal Court (including any execution or diligence following such proceedings), by act of sederunt make provision for or about the fees of—
  - (a) solicitors,
  - (b) sheriff officers,
  - (c) persons acting under the Execution of Diligence (Scotland) Act 1926,
  - (d) witnesses,
  - (e) shorthand writers,
  - (f) such other persons, or persons of such descriptions, as the Scottish Ministers may by order specify.
- (2) An act of sederunt under subsection (1) may not make any provision for or about the fees that the Scottish Ministers may regulate under or by virtue of section 33 of the Legal Aid (Scotland) Act 1986 (fees and outlays of solicitors and counsel).
- (3) An act of sederunt under subsection (1) may make—
  - (a) incidental, supplemental, consequential, transitional, transitory or saving provision,
  - (b) different provision for different purposes.
- (4) Before making an order under subsection (1)(f), the Scottish Ministers must consult the Lord President of the Court of Session.
- (5) An act of sederunt under subsection (1) is subject to the negative procedure.

#### *Court fees*

### **107 Power to provide for fees for SCTS, court clerks and other officers**

- (1) The Scottish Ministers may by order make provision for the charging of fees in respect of the carrying out of the functions of the Scottish Courts and Tribunals Service (“the SCTS”) or a relevant officer in connection with—
  - (a) proceedings in the Scottish Courts, or
  - (b) any other matter dealt with by a relevant officer.
- (2) An order under subsection (1) may—
  - (a) in particular include provision—
    - (i) specifying, or for determining, the amount of fees,
    - (ii) specifying, or for determining, the persons or types of person who are to pay the fees,
    - (iii) specifying the times when, places where and persons to whom the fees are to be paid,
    - (iv) for exemptions from the requirement to pay fees,
    - (v) for the remission of fees,
    - (vi) for modification of fees,
  - (b) make different provision for different purposes or circumstances including, in particular, different provision for—
    - (i) different Scottish Courts,
    - (ii) different relevant officers,

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(iii) different proceedings or types of proceedings.

(3) In this section—

“relevant officer” means—

- (a) a clerk, deputy clerk or assistant clerk of any of the Scottish Courts,
- (b) the Accountant of Court,
- (c) the Auditor of the Court of Session,
- (d) the auditor of a sheriff court,
- (e) any other officer who is a member of the staff of the SCTS,

“Scottish Courts” means—

- (a) the Court of Session,
- (b) the High Court of Justiciary,
- (c) the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983,
- (d) the election court in Scotland constituted under section 123 of that Act,
- (e) the Scottish Land Court,
- (f) the Lands Valuation Appeal Court,
- (g) the Sheriff Appeal Court,
- (h) sheriff courts,
- (i) justice of the peace courts.

(4) The Scottish Ministers may by order modify (either or both of) the definitions of “relevant officer” and “Scottish Courts” in subsection (3).

VALID FROM 22/09/2015

### *Sanction for counsel*

#### **108 Sanction for counsel in the sheriff court and Sheriff Appeal Court**

- (1) This section applies in civil proceedings in the sheriff court or the Sheriff Appeal Court where the court is deciding, for the purposes of any relevant expenses rule, whether to sanction the employment of counsel by a party for the purposes of the proceedings.
- (2) The court must sanction the employment of counsel if the court considers, in all the circumstances of the case, that it is reasonable to do so.
- (3) In considering that matter, the court must have regard to—
  - (a) whether the proceedings are such as to merit the employment of counsel, having particular regard to—
    - (i) the difficulty or complexity, or likely difficulty or complexity, of the proceedings,
    - (ii) the importance or value of any claim in the proceedings, and
  - (b) the desirability of ensuring that no party gains an unfair advantage by virtue of the employment of counsel.
- (4) The court may have regard to such other matters as it considers appropriate.

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(5) References in this section to proceedings include references to any part or aspect of the proceedings.

(6) In this section—

“counsel” means—

- (a) an advocate,
- (b) a solicitor having a right of audience in the Court of Session under section 25A of the Solicitors (Scotland) Act 1980,

“court”, in relation to proceedings in the sheriff court, means the sheriff,

“relevant expenses rule” means, in relation to any proceedings mentioned in subsection (1), any provision of an act of sederunt requiring, or having the effect of requiring, that the employment of counsel by a party for the purposes of the proceedings be sanctioned by the court before the fees of counsel are allowable as expenses that may be awarded to the party.

(7) This section is subject to an act of sederunt under section 104(1) or 106(1).

VALID FROM 01/04/2015

## PART 5

### CIVIL APPEALS

VALID FROM 01/01/2016

#### *Appeals to the Sheriff Appeal Court*

#### **109 Abolition of appeal from a sheriff to the sheriff principal**

- (1) No appeal may be taken to the sheriff principal against any decision of a sheriff in civil proceedings.
- (2) Subsection (3) applies to any provision of any pre-commencement enactment that—
  - (a) provides for an appeal to the sheriff principal from any decision of a sheriff in civil proceedings, or
  - (b) restricts or excludes any such appeal.
- (3) The provision has effect as if for the reference to the sheriff principal there were substituted a reference to the Sheriff Appeal Court.
- (4) In subsection (2), “pre-commencement enactment” means an enactment passed or made before this section comes into force.

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## **110 Appeal from a sheriff to the Sheriff Appeal Court**

- (1) An appeal may be taken to the Sheriff Appeal Court, without the need for permission, against—
  - (a) a decision of a sheriff constituting final judgment in civil proceedings, or
  - (b) any decision of a sheriff in civil proceedings—
    - (i) granting, refusing or recalling an interdict, whether interim or final,
    - (ii) granting interim decree for payment of money other than a decree for expenses,
    - (iii) making an order ad factum praestandum,
    - (iv) sisting an action,
    - (v) allowing, refusing or limiting the mode of proof, or
    - (vi) refusing a reponing note.
- (2) An appeal may be taken to the Sheriff Appeal Court against any other decision of a sheriff in civil proceedings if the sheriff, on the sheriff's own initiative or on the application of any party to the proceedings, grants permission for the appeal.
- (3) In an appeal to the Sheriff Appeal Court, the Court may allow further proof.
- (4) This section does not affect any other right of appeal to the Sheriff Appeal Court under any other enactment.
- (5) This section does not affect any right of appeal against any decision of a sheriff to the Court of Session under any other enactment.
- (6) This section is subject to any provision of this or any other enactment that restricts or excludes a right of appeal from a sheriff to the Sheriff Appeal Court.

## **111 Sheriff Appeal Court's powers of disposal in appeals**

- (1) In determining an appeal under section 110, the Court has power to—
  - (a) grant such disposal as the Court sees fit, including by (in whole or in part) —
    - (i) adhering to the decision that is subject to the appeal,
    - (ii) recalling the decision,
    - (iii) varying the decision,
    - (iv) remitting the case back to the sheriff,
    - (v) dismissing the appeal,
  - (b) make such incidental or interim orders as may be necessary, and
  - (c) determine any incidental or other issue that needs to be determined for the purpose of doing justice in the appeal.
- (2) Subsection (1)—
  - (a) does not affect the generality of section 47(3), but
  - (b) is subject to any other provision of this Act or any other enactment that restricts or excludes any power of the Court in determining or disposing of an appeal.

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### **112 Remit of appeal from the Sheriff Appeal Court to the Court of Session**

- (1) This section applies in relation to an appeal to the Sheriff Appeal Court against a decision of a sheriff in civil proceedings.
- (2) The Sheriff Appeal Court may—
  - (a) on the application of a party to the appeal, and
  - (b) if satisfied that the appeal raises a complex or novel point of law, remit the appeal to the Court of Session.
- (3) Where an appeal is remitted to the Court of Session under subsection (2), the Court of Session may deal with and dispose of the appeal as if it had originally been made direct to that Court.

*Appeals to the Court of Session*

VALID FROM 01/01/2016

### **113 Appeal from the Sheriff Appeal Court to the Court of Session**

- (1) An appeal may be taken to the Court of Session against a decision of the Sheriff Appeal Court constituting final judgment in civil proceedings, but only—
  - (a) with the permission of the Sheriff Appeal Court, or
  - (b) if that Court has refused permission, with the permission of the Court of Session.
- (2) The Sheriff Appeal Court or the Court of Session may grant permission under subsection (1) only if the Court considers that—
  - (a) the appeal would raise an important point of principle or practice, or
  - (b) there is some other compelling reason for the Court of Session to hear the appeal.
- (3) This section does not affect any other right of appeal against any decision of the Sheriff Appeal Court to the Court of Session under any other enactment.
- (4) This section is subject to any provision of any other enactment that restricts or excludes a right of appeal from the Sheriff Appeal Court to the Court of Session.

VALID FROM 01/01/2016

### **114 Appeal from the sheriff principal to the Court of Session**

- (1) An appeal may be taken to the Court of Session against a decision of a sheriff principal constituting a final judgment in relevant civil proceedings.
- (2) This section does not affect any other right of appeal against any decision of a sheriff principal to the Court of Session under any other enactment.
- (3) This section is subject to any provision of any other enactment that restricts or excludes any right of appeal from a sheriff principal to the Court of Session.



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- (4) In subsection (1), “relevant civil proceedings” means civil proceedings (other than an appeal) under an enactment that provides for the proceedings to be brought before a sheriff principal rather than a sheriff.

## 115 Appeals: granting of leave or permission and assessment of grounds of appeal

In the Court of Session Act 1988, after section 31 insert—

### “31A Power to provide for single judge of Inner House to determine leave or permission and assess grounds of appeal

- (1) The Court may by act of sederunt provide for any applications to the Court for leave or permission to appeal to the Inner House to be determined by a single judge of the Inner House.
- (2) The Court may by act of sederunt provide for—
- (a) any appeal proceedings to be considered initially (and, where required, after leave or permission to appeal has been granted) by a single judge of the Inner House, and
  - (b) for the single judge to decide, by reference to whether the grounds of appeal or any of them are arguable—
    - (i) whether the appeal proceedings should be allowed to proceed in the Inner House, and
    - (ii) if so, on which grounds.
- (3) An act of sederunt under subsection (1) or (2)—
- (a) must include provision—
    - (i) about the procedure to be followed in the proceedings before the single judge, including provision for the parties to be heard before the judge makes a decision,
    - (ii) for review, on the application of any party to the proceedings, of the decision of the single judge by a Division of the Inner House,
    - (iii) about the grounds on which the decision may be so reviewed,
    - (iv) about the procedure to be followed in such a review,
    - (v) about the matters that may be considered in such a review and the powers available to the Division on disposing of the review, and
  - (b) may make different provision in relation to different types of—
    - (i) applications for leave or permission,
    - (ii) appeal proceedings.
- (4) Subject to any provision made in an act of sederunt by virtue of subsection (3)(a)(ii) to (v), the decision of any single judge under an act of sederunt under subsection (1) or (2) is final.
- (5) Subsection (6) applies in appeal proceedings in which—

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- (a) a single judge has granted leave or permission for the appeal by virtue of subsection (1), and
  - (b) the judge's decision is subject to review by a Division of the Inner House by virtue of subsection (3)(a)(ii).
- (6) Where this subsection applies, the reference in subsection (2)(a) to leave or permission to appeal having been granted is a reference to its having been confirmed following review by the Division of the Inner House.
- (7) In subsection (2)(a), “appeal proceedings” means proceedings on—
- (a) a reclaiming application under section 28 (reclaiming against decisions of a Lord Ordinary),
  - (b) an application under section 29 (application for a new trial),
  - (c) an application under section 31 (application to overturn jury verdict),
  - (d) an appeal from the Sheriff Appeal Court under section 113 of the Courts Reform (Scotland) Act 2014,
  - (e) an appeal from a sheriff principal under section 114 of that Act,
  - (f) any other appeal taken to the Court (whether under an enactment or otherwise).<sup>7</sup>.

VALID FROM 01/01/2016

### *Effect of appeal*

#### **116 Effect of appeal**

- (1) This section applies to—
  - (a) an appeal to the Sheriff Appeal Court under section 110 (including such an appeal remitted to the Court of Session under section 112), and
  - (b) an appeal to the Court of Session under section 113 or 114.
- (2) In the appeal, all prior decisions in the proceedings (whether made at first instance or at any stage of appeal) are open to review.
- (3) Any party to the proceedings may insist in the appeal even though the party is not the one who initiated the appeal.
- (4) An appeal to which this section applies does not prevent the immediate execution of any of the following, which may continue to have effect despite the appeal until recalled—
  - (a) a warrant to take inventories,
  - (b) a warrant to place effects in custody for the interim,
  - (c) a warrant for interim preservation,
  - (d) an interim interdict.

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VALID FROM 22/09/2015

### *Appeals to the Supreme Court*

#### **117 Appeals to the Supreme Court**

In the Court of Session Act 1988, for section 40 (appeals to the Supreme Court: appealable interlocutors) substitute—

##### **“40 Appeals to the Supreme Court**

- (1) An appeal may be taken to the Supreme Court against a decision of the Inner House mentioned in subsection (2), but only—
  - (a) with the permission of the Inner House, or
  - (b) if the Inner House has refused permission, with the permission of the Supreme Court.
- (2) The decisions are—
  - (a) a decision constituting final judgment in any proceedings,
  - (b) a decision in an exchequer cause,
  - (c) a decision, on an application under section 29, to grant or refuse a new trial in any proceedings,
  - (d) any other decision in any proceedings if—
    - (i) there is a difference of opinion among the judges making the decision, or
    - (ii) the decision is one sustaining a preliminary defence and dismissing the proceedings.
- (3) An appeal may be taken to the Supreme Court against any other decision of the Inner House in any proceedings, but only with the permission of the Inner House.
- (4) In an appeal against a decision mentioned in subsection (2)(c), the Supreme Court has the same powers as the Inner House had in relation to the application under section 29, including, in particular, the powers under sections 29(3) and 30(3).
- (5) No appeal may be taken to the Supreme Court against any decision of a Lord Ordinary.
- (6) But subsection (5) does not affect the operation of subsections (1) and (3) in relation to a decision of the Inner House in a review of a decision of a Lord Ordinary.
- (7) In an appeal to the Supreme Court under this section against a decision of the Inner House in any proceedings, all prior decisions in the proceedings (whether made at first instance or at any stage of appeal) are open to review by the Supreme Court.
- (8) This section is subject to—
  - (a) sections 27(5) and 32(5),

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- (b) any provision of any other enactment that restricts or excludes an appeal from the Court of Session to the Supreme Court.
- (9) This section does not affect any right of appeal from the Court of Session to the Supreme Court that arises apart from this section.
- (10) In this section—
  - “final judgment”, in relation to any proceedings, means a decision which, by itself or taken along with prior decisions in the proceedings, disposes of the subject matter of the proceedings on its merits, even though judgment may not have been pronounced on every question raised or expenses found due may not have been modified, taxed or decerned for,
  - “preliminary defence”, in relation to any proceedings, means a defence that does not relate to the merits of the proceedings.

#### **40A Permission for appeal under section 40**

- (1) An application to the Inner House for permission to take an appeal under section 40(1) or (3) must be made—
  - (a) within the period of 28 days beginning with the date of the decision against which the appeal is to be taken, or
  - (b) within such longer period as the Inner House considers equitable having regard to all the circumstances.
- (2) An application to the Supreme Court for permission to take an appeal under section 40(1) must be made—
  - (a) within the period of 28 days beginning with the date on which the Inner House refuses permission for the appeal, or
  - (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.
- (3) The Inner House or the Supreme Court may grant permission for an appeal under section 40(1) or (3) only if the Inner House or, as the case may be, the Supreme Court considers that the appeal raises an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time.”.

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VALID FROM 01/04/2015

## PART 6

### CRIMINAL APPEALS

#### *Appeals from summary criminal proceedings*

VALID FROM 22/09/2015

#### **118 Appeals to the Sheriff Appeal Court from summary criminal proceedings**

- (1) There are transferred to and vested in the Sheriff Appeal Court all the powers and jurisdiction of the High Court of Justiciary (whether under an enactment or otherwise) so far as relating to appeals from courts of summary criminal jurisdiction.
- (2) Subsection (1) does not apply to the nobile officium of the High Court.
- (3) Schedule 3 (which modifies the Criminal Procedure (Scotland) Act 1995 in consequence of subsection (1)) has effect.

#### **119 Appeals from the Sheriff Appeal Court to the High Court**

In the Criminal Procedure (Scotland) Act 1995, after Part X (appeals from summary proceedings), insert—

#### “PART 10ZA

#### APPEALS FROM SHERIFF APPEAL COURT

##### **194ZB Appeal from the Sheriff Appeal Court**

- (1) An appeal on a point of law may be taken to the High Court against any decision of the Sheriff Appeal Court in criminal proceedings, but only with the permission of the High Court.
- (2) An appeal under subsection (1) may be taken by any party to the appeal in the Sheriff Appeal Court.
- (3) The High Court may give permission for an appeal under subsection (1) only if the Court considers that—
  - (a) the appeal would raise an important point of principle or practice, or
  - (b) there is some other compelling reason for the Court to hear the appeal.
- (4) An application for permission for an appeal under subsection (1) must be made before the end of the period of 14 days beginning with the day on

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which the decision of the Sheriff Appeal Court that would be the subject of the appeal was made.

- (5) The High Court may extend the period of 14 days mentioned in subsection (4) if satisfied that doing so is justified by exceptional circumstances.

#### 194ZC Appeals: applications and procedure

- (1) An appeal under section 194ZB(1) is to be made by way of note of appeal.
- (2) A note of appeal must specify the point of law on which the appeal is being made.
- (3) For the purposes of considering and deciding an appeal under section 194ZB(1)—
  - (a) three of the judges of the High Court are to constitute a quorum of the Court,
  - (b) decisions are to be taken by a majority vote of the members of the Court sitting (including the presiding judge),
  - (c) each judge sitting may pronounce a separate opinion.

#### 194ZD Application for permission for appeal: determination by single judge

- (1) An application to the High Court for permission for an appeal under section 194ZB(1) is to be determined by a single judge of the High Court.
- (2) If the judge gives permission for the appeal, the judge may make comments in writing in relation to the appeal.
- (3) If the judge refuses permission for the appeal—
  - (a) the judge must give reasons in writing for the refusal, and
  - (b) where the appellant is on bail and the sentence imposed on the appellant on conviction is one of imprisonment, the judge must grant a warrant to apprehend and imprison the appellant.
- (4) A warrant under subsection (3)(b) does not take effect until the expiry of the period of 14 days mentioned in section 194ZE(1) (or, where that period is extended under section 194ZE(2) before the period being extended expires, until the expiry of the period as so extended) without an application for permission having been lodged by the appellant under section 194ZE(1).

#### 194ZE Further application for permission where single judge refuses permission

- (1) Where the judge refuses permission for the appeal under section 194ZD, the appellant may, within the period of 14 days beginning with the day on which intimation of the decision is given under section 194ZF(2), apply again to the High Court for permission for the appeal.
- (2) The High Court may extend the period of 14 days mentioned in subsection (1), or that period as extended under this subsection, whether or not the period to be extended has expired.

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- (3) The High Court may extend a period under subsection (2) only if satisfied that doing so is justified by exceptional circumstances.
- (4) Three of the judges of the High Court are to constitute a quorum for the purposes of considering an application under subsection (1).
- (5) If the High Court gives permission for the appeal, the Court may make comments in writing in relation to the appeal.
- (6) If the High Court refuses permission for the appeal—
  - (a) the Court must give reasons in writing for the refusal, and
  - (b) where the appellant is on bail and the sentence imposed on the appellant on conviction is one of imprisonment, the Court must grant a warrant to apprehend and imprison the appellant.

#### 194ZF Applications for permission: further provision

- (1) An application for permission for an appeal under section 194ZB(1) is to be considered and determined (whether under section 194ZD or 194ZE)—
  - (a) in chambers without the parties being present,
  - (b) by reference to section 194ZB(3), and
  - (c) on the basis of consideration of—
    - (i) the note of appeal under section 194ZC(1), and
    - (ii) such other document or information (if any) as may be specified by act of adjournal.
- (2) The Clerk of Justiciary must, as soon as possible, intimate to the appellant or the appellant's solicitor and to the Crown Agent—
  - (a) a decision under section 194ZD or 194ZE determining the application for permission for an appeal, and
  - (b) in the case of a refusal of permission for the appeal, the reasons for the decision.

#### 194ZG Restriction of grounds of appeal

- (1) Comments in writing made under section 194ZD(2) or 194ZE(5) may specify the arguable grounds of appeal (whether or not they were stated in the note of appeal) on the basis of which permission for the appeal was given.
- (2) Where the arguable grounds of appeal are specified under subsection (1), the appellant may not, except with the permission of the High Court on cause shown, found any aspect of the appeal on a ground of appeal stated in the application for permission but not specified under subsection (1).
- (3) An application by the appellant for permission under subsection (2) must—
  - (a) be made before the end of the period of 14 days beginning with the date of intimation under section 194ZF(2), and
  - (b) be intimated by the appellant to the Crown Agent before the end of that period.

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- (4) The High Court may extend the period of 14 days mentioned in subsection (3) if satisfied that doing so is justified by exceptional circumstances.
- (5) The appellant may not, except with the permission of the High Court on cause shown, found any aspect of the appeal on a matter not stated in the note of appeal (or in a duly made amendment or addition to the note of appeal).
- (6) Subsection (5) does not apply in relation to a matter specified as an arguable ground of appeal under subsection (1).

#### 194ZH Disposal of appeals

- (1) In disposing of an appeal under section 194ZB(1), the High Court may—
  - (a) remit the case back to the Sheriff Appeal Court with its opinion and any direction as to further procedure in, or disposal of, the case, or
  - (b) exercise any power that the Sheriff Appeal Court could have exercised in relation to disposal of the appeal proceedings before that Court.
- (2) So far as necessary for the purposes or in consequence of the exercise of a power by the High Court by virtue of subsection (1)(b)—
  - (a) references in Part X to the Sheriff Appeal Court are to be read as including references to the High Court, and
  - (b) references in Part X to a verdict of or sentence passed by the inferior court are to be read as including references to a verdict of or sentence passed by the Sheriff Appeal Court in disposing of the appeal before it.
- (3) Subsections (1)(b) and (2) do not affect any power in relation to the consideration or disposal of appeals that the High Court has apart from those subsections.

#### 194ZI Procedure where appellant in custody

- (1) Section 177 (procedure where appellant in custody) applies in the case where a party making an appeal (other than an excepted appeal) under section 194ZB(1) is in custody as it applies in the case where an appellant making an application under section 176 is in custody.
- (2) In subsection (1), “excepted appeal” means an appeal against a decision of the Sheriff Appeal Court in—
  - (a) an appeal under section 32, or
  - (b) an appeal under section 177(3).

#### 194ZJ Abandonment of appeal

An appellant in an appeal under section 194ZB(1) may at any time abandon the appeal by minute to that effect—

- (a) signed by the appellant or the appellant's solicitor,
- (b) lodged with the Clerk of Justiciary, and
- (c) intimated to the respondent or the respondent's solicitor.



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### 194ZK Finality of proceedings

- (1) Every interlocutor and sentence (including disposal or order) pronounced by the High Court in disposing of an appeal relating to summary proceedings is final and conclusive and not subject to review by any court whatsoever.
- (2) Subsection (1) is subject to—
  - (a) Part XA and section 288AA, and
  - (b) paragraph 13(a) of Schedule 6 to the Scotland Act 1998.
- (3) It is incompetent to stay or suspend any execution or diligence issuing from the High Court under this Part, except for the purposes of an appeal under—
  - (a) section 288AA, or
  - (b) paragraph 13(a) of Schedule 6 to the Scotland Act 1998.

### 194ZL Computation of time

If any period of time specified in this Part expires on a Saturday, Sunday or court holiday prescribed for the relevant court, the period is extended to expire on the next day which is not a Saturday, Sunday or such a court holiday.”.

VALID FROM 22/09/2015

### 120 Power to refer points of law for the opinion of the High Court

In the Criminal Procedure (Scotland) Act 1995, after section 175, insert—

#### “175A Power to refer points of law for the opinion of the High Court

- (1) In an appeal under this Part, the Sheriff Appeal Court may refer a point of law to the High Court for its opinion if it considers that the point is a complex or novel one.
- (2) The Sheriff Appeal Court may make a reference under subsection (1)—
  - (a) on the application of a party to the appeal proceedings, or
  - (b) on its own initiative.
- (3) On giving its opinion on a reference under subsection (1), the High Court may also give a direction as to further procedure in, or disposal of, the appeal.”.

VALID FROM 22/09/2015

### 121 References by the Scottish Criminal Cases Review Commission

- (1) In the Criminal Procedure (Scotland) Act 1995, section 194B (references by the Commission) is amended in accordance with this section.

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(2) In subsection (1), after “High Court”, in the first place where those words appear, insert “ or the Sheriff Appeal Court ”.

(3) After subsection (3), insert—

“(3A) For the purposes of an appeal under Part X of this Act in a case referred to the High Court under subsection (1)—

- (a) the High Court may exercise in the case all the powers and jurisdiction that the Sheriff Appeal Court would, had the case been an appeal to that Court, have had in relation to the case by virtue of section 118 of the Courts Reform (Scotland) Act 2014, and
- (b) accordingly, Part X of this Act has effect in relation to the case subject to the following modifications—
  - (i) references to the Sheriff Appeal Court are to be read as references to the High Court,
  - (ii) references to an Appeal Sheriff are to be read as references to a judge of the High Court,
  - (iii) references to the Clerk of the Sheriff Appeal Court are to be read as reference to the Clerk of Justiciary.”.

VALID FROM 22/09/2015

### *Bail appeals*

#### **122 Bail appeals**

(1) Section 32 of the Criminal Procedure (Scotland) Act 1995 (bail appeals) is amended in accordance with this section.

(2) In each of subsections (1), (2), (3H)(a), (3I), (4), (5) and (7) for “High Court” substitute “ appropriate Appeal Court ”.

(3) For subsections (3D) and (3E) substitute—

“(3CA) The clerk of the court from which the appeal is to be taken (unless that clerk is the Clerk of Justiciary) must—

- (a) send the notice of appeal without delay to the clerk of the appropriate Appeal Court, and
- (b) before the end of the day after the day of receipt of the notice of appeal, send the judge's report (if provided by then) to the clerk of the appropriate Appeal Court.”.

(4) In each of subsections (3F), (3G) and (10), for “Clerk of Justiciary” in each place it occurs substitute “ clerk of the appropriate Appeal Court ”.

(5) In subsection (3H)—

- (a) for “Where” substitute “ In a case where the Sheriff Appeal Court is the appropriate Appeal Court, if ”, and
- (b) for “(3E)” substitute “ (3CA) ”.

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- (6) In each of subsections (4) and (5), for “Lord Commissioner of Justiciary” substitute “judge of the appropriate Appeal Court”.
- (7) In subsection (7B)(a), for “High Court” substitute “the appropriate Appeal Court”.
- (8) After subsection (10), insert—
- “(11) In this section—
- “appropriate Appeal Court” means—
- (a) in the case of an appeal under this section against a bail decision of the High Court or a judge of the High Court, that Court,
- (b) in the case of an appeal under this section against a bail decision of the Sheriff Appeal Court, the High Court,
- (c) in the case of an appeal under this section against a bail decision of a sheriff (whether in solemn or summary proceedings) or a JP court, the Sheriff Appeal Court,
- “judge of the appropriate Appeal Court” means—
- (a) in a case where the High Court is the appropriate Appeal Court, judge of that Court,
- (b) in a case where the Sheriff Appeal Court is the appropriate Appeal Court, Appeal Sheriff,
- “the clerk of the appropriate Appeal Court” means—
- (a) in a case where the High Court is the appropriate Appeal Court, the Clerk of Justiciary,
- (b) in a case where the Sheriff Appeal Court is the appropriate Appeal Court, the Clerk of that Court.
- (12) In a case where the Sheriff Appeal Court is the appropriate Appeal Court, the references in subsections (3G)(b) and (10) to the Crown Agent are to be read as references to the prosecutor.”.

VALID FROM 01/04/2015

## PART 7

### JUDGES OF THE COURT OF SESSION

#### 123 Appointment of Court of Session judges, etc.

In the Judiciary and Courts (Scotland) Act 2008, for sections 21 to 23 substitute—

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*“Other Court of Session judges*

**20A Qualification of certain individuals for appointment as Court of Session judge**

- (1) An individual is qualified for appointment as a judge of the Court of Session if the individual—
  - (a) immediately before the appointment—
    - (i) held the office of sheriff principal or sheriff, and
    - (ii) had held office as either sheriff principal or sheriff throughout the period of 5 years immediately preceding the appointment, or
  - (b) at the time of appointment—
    - (i) is a solicitor having a right of audience in the Court of Session or the High Court of Justiciary under section 25A of the Solicitors (Scotland) Act 1980 (rights of audience), and
    - (ii) has been such a solicitor throughout the period of 5 years immediately preceding the appointment.
- (2) Subsection (1) does not affect an individual's qualification for appointment as a judge of the Court of Session by virtue of article xix of the Union with England Act 1707.

**20B Temporary judges**

- (1) The Scottish Ministers may appoint an individual to act as a judge of the Court of Session; and an individual so appointed is to be known as a “temporary judge”.
- (2) An individual appointed under subsection (1) may also, by virtue of the appointment, act as a judge of the High Court of Justiciary.
- (3) The Scottish Ministers may appoint an individual under subsection (1) only if—
  - (a) the individual is qualified for appointment as a judge of the Court of Session, and
  - (b) the Scottish Ministers have consulted the Lord President before making the appointment.
- (4) Subject to section 20C, an appointment as a temporary judge lasts for 5 years.
- (5) Subject to subsection (6), an individual appointed under subsection (1) is, while acting as a judge of the Court of Session or the High Court of Justiciary, to be treated for all purposes as a judge of that Court and may exercise the jurisdiction and powers that attach to that office.
- (6) Such an individual is not to be treated as a judge of the Court of Session for the purposes of any enactment or rule of law relating to—
  - (a) the appointment, tenure of office, retirement, removal or disqualification of judges of that Court (including, without limiting

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- that generality, any enactment or rule of law relating to the number of judges who may be appointed),
- (b) the remuneration, allowances or pensions of such a judge.
- (7) The appointment of an individual under subsection (1) does not affect—
- (a) any appointment of the individual as a sheriff principal or sheriff, or
- (b) the individual's continuing with any business or professional occupation not inconsistent with the individual acting as a judge.

### **20C Reappointment of temporary judges**

- (1) A temporary judge whose appointment comes to an end by virtue of the expiry of the 5 year period mentioned in section 20B(4) is to be reappointed unless—
- (a) the temporary judge declines reappointment,
- (b) the Lord President has made a recommendation to the Scottish Ministers against the reappointment, or
- (c) the temporary judge has sat for fewer than 50 days in total in that 5 year period.
- (2) Section 20B (apart from subsection (3)) applies to a reappointment under subsection (1) as it applies to an appointment.
- (3) A temporary judge whose appointment comes to an end by resignation under section 20D may be reappointed.
- (4) Section 20B applies to a reappointment under subsection (3) as it applies to an appointment.

### **20D Cessation of appointment of temporary judges**

- (1) A temporary judge may resign at any time by giving notice to that effect to the Scottish Ministers.
- (2) An individual's appointment as a temporary judge ends—
- (a) when the individual resigns in accordance with subsection (1),
- (b) when the individual retires from office, or
- (c) if the individual is removed from office as such under section 39 (temporary judges: removal from office).

### **20E Re-employment of former Court of Session and Supreme Court judges**

- (1) The Lord President may appoint a qualifying former judge to act as a judge of the Court of Session.
- (2) An individual appointed under subsection (1) may also, by virtue of the appointment, act as a judge of the High Court of Justiciary.
- (3) An individual so appointed may act as a judge only during such periods or on such occasions as the Lord President may determine.

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- (4) The Lord President may make an appointment under subsection (1) only if it appears to the Lord President to be expedient as a temporary measure in order to facilitate the disposal of business in the Court of Session or the High Court of Justiciary.
- (5) A “qualifying former judge” is an individual who—
  - (a) has ceased to hold the office of—
    - (i) judge of the Court of Session other than by virtue of section 95(6) of the Scotland Act 1998, or
    - (ii) Justice of the Supreme Court or President or Deputy President of that Court and who, at the time of being appointed to the office in question, was eligible for appointment as a judge in the Court of Session, and
  - (b) has not reached the age of 75.

#### **20F Re-employment of former judges: further provision**

- (1) Subject to subsection (2), an individual's appointment under section 20E(1) lasts until recalled by the Lord President.
- (2) An individual's appointment under section 20E(1) ceases when the individual reaches the age of 75.
- (3) Despite the ending of an individual's appointment under section 20E(1)—
  - (a) the individual may continue to deal with, give judgment in or deal with an ancillary matter relating to, a case begun before the individual while acting under that appointment,
  - (b) so far as necessary for that purpose, and for the purpose of any subsequent proceedings arising out of the case or matter, the individual is to be treated as acting or, as the case may be, having acted under that appointment.
- (4) Subject to subsection (5), an individual appointed under section 20E(1) is, while acting as a judge of the Court of Session or the High Court of Justiciary, to be treated for all purposes as a judge of that Court and may exercise the jurisdiction and powers that attach to that office.
- (5) Such an individual is not to be treated as a judge of the Court of Session for the purposes of any enactment or rule of law relating to—
  - (a) the appointment, tenure of office, retirement, removal or disqualification of judges of that Court (including, without limiting that generality, any enactment or rule of law relating to the number of judges who may be appointed),
  - (b) the oaths to be taken by such judges,
  - (c) the remuneration, allowances or pensions of such a judge.

#### **20G Remuneration and expenses of temporary and former judges**

- (1) The Scottish Courts and Tribunals Service (“the SCTS”) is to pay to an individual appointed under section 20B(1) or 20E(1) such remuneration as the Scottish Ministers may determine.

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- (2) The Scottish Ministers may determine different amounts of remuneration for—
  - (a) different individuals so appointed, or
  - (b) different descriptions of individuals so appointed.
- (3) The SCTS may pay to an individual appointed under section 20B(1) or 20E(1) such sums as it may determine in respect of expenses reasonably incurred by the individual in the performance of, or in connection with, the individual's duties.
- (4) The SCTS may—
  - (a) determine the circumstances in which such sums may be paid, and
  - (b) determine different circumstances for different individuals.”.

VALID FROM 01/04/2016

#### **124 Payment of salaries of Court of Session judges**

- (1) The salaries of judges of the Court of Session determined under section 9 of the Administration of Justice Act 1973 (judicial salaries) are to be paid by the Scottish Courts and Tribunals Service.
- (2) Sums required by the Scottish Courts and Tribunals Service for the payment of such salaries are charged on the Scottish Consolidated Fund.

#### **125 Expenses**

- (1) The Scottish Courts and Tribunals Service may pay to a Senator of the College of Justice such sums as it may determine in respect of expenses reasonably incurred by the Senator in the performance of, or in connection with, the Senator's duties.
- (2) The Scottish Courts and Tribunals Service may—
  - (a) determine the circumstances in which sums may be paid, and
  - (b) determine different circumstances for—
    - (i) different Senators,
    - (ii) different descriptions of Senators,
    - (iii) the different duties of Senators.

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VALID FROM 01/04/2016

## PART 8

### SCOTTISH LAND COURT

#### 126 Scottish Land Court: remuneration and expenses

(1) Schedule 1 to the Scottish Land Court Act 1993 (the Land Court) is amended in accordance with this section.

(2) For paragraph 3 substitute—

“3

- (1) The Scottish Courts and Tribunals Service (“the SCTS”) is to pay to the Chairman of the Land Court such salary as the Treasury may determine.
- (2) The SCTS is to pay to each of the other members of the Land Court such salary as the SCTS may determine.
- (3) Sums required by the SCTS for the payment of a salary under this paragraph are charged on the Scottish Consolidated Fund.

3A

- (1) The SCTS may pay to a member of the Land Court such sums as it may determine in respect of expenses reasonably incurred by the member in the performance of, or in connection with, the member's duties.
- (2) The SCTS may—
  - (a) determine the circumstances in which sums may be paid, and
  - (b) determine different circumstances for different members.”.

(3) For paragraph 18 substitute—

“18

- (1) The Scottish Ministers are to pay to each of the following persons such remuneration as they may determine—
  - (a) the principal clerk of the Land Court,
  - (b) persons appointed or employed under paragraph 8 of this Schedule.
- (2) The Scottish Courts and Tribunals Service (“the SCTS”) is to pay to each of the following persons such remuneration as the SCTS may determine—
  - (a) persons nominated under paragraph 7A of this Schedule,
  - (b) persons appointed under paragraph 10 of this Schedule.
- (3) The SCTS may pay to each of the following persons such sums as it may determine in respect of expenses reasonably incurred by the person in the performance of, or in connection with, the person's duties—
  - (a) persons nominated under paragraph 7A of this Schedule,
  - (b) persons appointed under paragraph 10 of this Schedule.



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- (4) The SCTS may—
- (a) determine the circumstances in which sums may be paid, and
  - (b) determine different circumstances for different persons.
- (5) Expenditure incurred by the Land Court in the performance of its functions may be paid by the Scottish Ministers.”.

VALID FROM 01/04/2015

## PART 9

### JUSTICE OF THE PEACE COURTS

#### 127 Establishing, relocating and disestablishing justice of the peace courts

- (1) Section 59 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (establishing etc. JP courts) is amended in accordance with subsections (2) and (3).
- (2) In each of subsections (2) and (6), after “may” insert “, following submission of a proposal under subsection (7), ”.
- (3) For subsections (7) and (7A) substitute—
- “(7) The Scottish Courts and Tribunals Service may, with the agreement of the Lord President, submit a proposal to the Scottish Ministers for the making of an order under subsection (2) or (6).
  - (7A) Before submitting a proposal to the Scottish Ministers, the Scottish Courts and Tribunals Service must consult such persons as it considers appropriate.
  - (7B) If, following submission of a proposal, the Scottish Ministers decide to make an order, they must have regard to the proposal in deciding what provision to make in the order.
  - (7C) The Scottish Ministers may make an order under subsection (2) or (6) only with the consent of—
    - (a) the Lord President, and
    - (b) the Scottish Courts and Tribunals Service.”.
- (4) In section 81(3)(a) of that Act (orders under the Act that are subject to affirmative procedure), after “56” insert “, 59(2) or (6) ”.

VALID FROM 01/04/2016

#### 128 Abolition of the office of stipendiary magistrate

- (1) The office of stipendiary magistrate is abolished.
- (2) Subsection (3) applies to a person who, immediately before this section comes into force, holds office as a full-time stipendiary magistrate.

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- (3) The person is to be appointed, by virtue of this subsection, as a summary sheriff unless the person declines the appointment.
- (4) Subsection (3) applies regardless of whether the person is qualified for appointment as a summary sheriff.
- (5) Subsection (6) applies to a person who, immediately before this section comes into force, holds office as a part-time stipendiary magistrate.
- (6) The person is to be appointed, by virtue of this subsection, as a part-time summary sheriff unless the person declines the appointment.
- (7) Subsection (6) applies regardless of whether the person is qualified for appointment as a part-time summary sheriff.
- (8) A person appointed—
  - (a) as a summary sheriff by virtue of subsection (3) is to be treated for all purposes as if appointed as such under section 5(2),
  - (b) as a part-time summary sheriff by virtue of subsection (6) is to be treated for all purposes as if appointed as such under section 10(1).

VALID FROM 01/04/2016

**129 Summary sheriffs to sit in justice of the peace courts**

A summary sheriff of a sheriffdom may constitute, and exercise the jurisdiction and powers of, any justice of the peace court established for any sheriff court district in the sheriffdom.

VALID FROM 02/02/2015

**PART 10**

THE SCOTTISH COURTS AND TRIBUNALS SERVICE

**130 The Scottish Courts and Tribunals Service**

- (1) The Scottish Court Service is renamed and is to be known as the Scottish Courts and Tribunals Service (“the SCTS”).
- (2) After section 61 of the Judiciary and Courts (Scotland) Act 2008 insert—

**“61A Administrative support for the Scottish Tribunals and their members etc.**

- (1) The SCTS has the function of providing, or ensuring the provision of, the property, services, officers and other staff required for the purposes of—
  - (a) the Scottish Tribunals,

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- (b) the members of those Tribunals, and
  - (c) such other tribunals (and their members) as the Scottish Ministers may by order specify.
- (2) In carrying out that function, the SCTS must—
- (a) take account, in particular, of the needs of members of the public and those involved in proceedings in the tribunals, and
  - (b) so far as practicable and appropriate, co-operate and co-ordinate activity with any other person having functions in relation to the administration of justice.
- (3) In this Part, references to—
- (a) the Scottish Tribunals are to the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland,
  - (b) the members of the Scottish Tribunals are to be construed in accordance with the Tribunals (Scotland) Act 2014.”.
- (3) Schedule 4, which makes further provision in relation to the Scottish Courts and Tribunals Service, has effect.
- (4) Any reference in any enactment to the Scottish Court Service is, unless the contrary intention appears, to be construed as a reference to the Scottish Courts and Tribunals Service.

VALID FROM 01/04/2015

## PART 11

### THE JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

#### 131 Assistants to the Judicial Appointments Board for Scotland

- (1) In schedule 1 to the Judiciary and Courts (Scotland) Act 2008 (the Judicial Appointments Board for Scotland)—
- (a) after paragraph 13 insert—

##### 13A “Appointment of persons to assist the Board

- (1) The Board may appoint persons (other than Board members) to assist the Board with the carrying out of its functions.
- (2) The Board may appoint persons under sub-paragraph (1) as—
  - (a) legal assistants, or
  - (b) lay assistants.
- (3) A person may be appointed as a legal assistant if the person is a solicitor or advocate practising as such in Scotland.
- (4) A person may be appointed as a lay assistant if the person is eligible for appointment as a lay member of the Board.

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- (5) It is for the Board to determine the number of persons who may be appointed under this paragraph.
- (6) A person who is disqualified from membership of the Board by virtue of paragraph 5 is also disqualified from being a legal assistant or a lay assistant.
- (7) Persons appointed under this paragraph are to be appointed for such period of not more than 3 years as the Board may determine.
- (8) At the end of a period of appointment, a person may be reappointed.
- (9) A person appointed under this paragraph may resign by giving notice in writing to the Board.
- (10) The Chairing Member may, by notice in writing, rescind a person's appointment under this paragraph if satisfied that the person—
  - (a) has been convicted of any offence,
  - (b) has become insolvent, or
  - (c) is otherwise unfit to be a legal assistant or, as the case may be, a lay assistant or unable for any reason to discharge the functions of such an assistant.
- (11) Each person appointed under this paragraph is entitled to such fees and expenses, if any, as the Scottish Ministers may determine.
- (12) It is for the Scottish Ministers to pay those fees and expenses.

### **13B Powers and conduct of persons appointed to assist the Board**

- (1) A person appointed under paragraph 13A(1) as a legal assistant may, so far as authorised by the Board, do anything that a legal member of the Board may do, other than take part in a decision of the Board to recommend an individual for appointment.
  - (2) A person appointed under paragraph 13A(1) as a lay assistant may, so far as authorised by the Board, do anything that a lay member of the Board may do, other than take part in a decision of the Board to recommend an individual for appointment.
  - (3) The Board must issue (and may from time to time revise) a code of conduct for persons appointed under paragraph 13A(1).
  - (4) Persons appointed under paragraph 13A(1) must have regard to the provisions of the code of conduct while assisting the Board in the carrying out of its functions.”
- (b) in paragraph 16A (proceedings relating to the Scottish Tribunals), after sub-paragraph (6) insert—
- “(6A) Sub-paragraph (6B) applies if—
- (a) the Board is exercising any function under this Act in connection with a position mentioned in section 10(2A),
  - (b) the Board authorises a person appointed under paragraph 13A(1) to assist it in relation to any proceedings relating to the function, and

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(c) the person authorised to assist the Board in relation to the proceedings is a member of the Scottish Tribunals.

(6B) The member of the Scottish Tribunals selected under subparagraph (3) may elect not to take part in the proceedings in respect of which the assistant is authorised to assist.”

(2) In paragraph 10(1)(b) of schedule 9 to the Tribunals (Scotland) Act 2014, (transitional provision: making appointments), for “and (3)” substitute “, (3), (6A) and (6B)”.

## PART 12

### GENERAL

VALID FROM 01/04/2015

#### 132 Modifications of enactments

Schedule 5 makes minor modifications of enactments and modifications consequential on the provisions of this Act.

#### 133 Subordinate legislation

- (1) Any power of the Scottish Ministers to make an order under this Act includes power to make—
  - (a) different provision for different purposes or areas,
  - (b) incidental, supplemental, consequential, transitional, transitory or saving provision.
- (2) The following orders are subject to the affirmative procedure—
  - (a) an order under section 2(1), 39(5), 44(3), 72(12), 81(1), 107(4) or 135(2) or paragraph 3(5) of schedule 4, or
  - (b) an order under section 137(1) containing provisions which add to, replace or omit any part of the text of an Act.
- (3) All other orders made by the Scottish Ministers under this Act are subject to negative procedure.
- (4) This section does not apply to an order under section 138(2).

#### 134 References to “sheriff”

- (1) In this Act, references to a sheriff include references to any other member of the judiciary of a sheriffdom, so far as that member has the jurisdiction and competence that attaches to the office of sheriff.
- (2) So far as necessary for the purposes, or in consequence, of the exercise by a member of the judiciary of a sheriffdom other than a sheriff of the jurisdiction and competence

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of a sheriff, references in any other enactment to a sheriff are to be read as including references to any of the members of the judiciary of a sheriffdom.

- (3) Subsections (1) and (2) do not apply—
- (a) to references to the office of sheriff,
  - (b) to any provision of this Act or any other enactment relating to—
    - (i) the appointment, retirement, removal or disqualification of sheriffs,
    - (ii) the tenure of office of, and oaths to be taken by, sheriffs,
    - (iii) the remuneration, allowances or pensions of sheriffs,
  - (c) where the context requires otherwise.

#### Commencement Information

**II** S. 134 partly in force; s. 134(1)(3) in force at 11.11.2014, see s. 138(1)

### 135 Definition of “family proceedings”

- (1) In this Act, “family proceedings” means proceedings for or in relation to—
- (a) divorce,
  - (b) separation,
  - (c) declarator of parentage,
  - (d) declarator of non-parentage,
  - (e) an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities, etc.) other than an application for the appointment of a judicial factor mentioned in subsection (2)(g) of that section to which Part 1 of the Act of Sederunt (Judicial Factors Rules) 1992 (S.I. 1992/272) applies,
  - (f) aliment (including affiliation and aliment),
  - (g) financial provision after a divorce or annulment in an overseas country within the meaning of Part 4 of the Matrimonial and Family Proceedings Act 1984 (financial provision in Scotland after overseas divorce, etc.),
  - (h) an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981,
  - (i) variation or recall of an order mentioned in section 8(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (variation and recall by the sheriff of certain orders made by the Court of Session),
  - (j) declarator of marriage,
  - (k) declarator of nullity of marriage,
  - (l) declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of section 7(9) of the Domicile and Matrimonial Proceedings Act 1973,
  - (m) an order under section 28(2) (financial provision where cohabitation ends otherwise than by death) or section 29(2) (application by survivor cohabitant for provision on intestacy) of the Family Law (Scotland) Act 2006,
  - (n) dissolution of civil partnership,
  - (o) separation of civil partners,
  - (p) declarator of nullity of civil partnership,

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- (q) an order under Chapter 3 (occupancy rights and tenancies) or Chapter 4 (interdicts) of Part 3 of the Civil Partnership Act 2004,
  - (r) a declarator or other order under section 127 of that Act (attachment),
  - (s) financial provision after overseas proceedings as provided for in Schedule 11 to that Act (financial provision in Scotland after overseas proceedings).
- (2) The Scottish Ministers may by order modify subsection (1).

### 136 Interpretation

- (1) In this Act, unless the context requires otherwise—
- “advocate” means a member of the Faculty of Advocates,
  - “all-Scotland sheriff court” is to be construed in accordance with section 42(7),
  - “civil proceedings” includes—
    - (a) proceedings under the Children's Hearings (Scotland) Act 2011, and
    - (b) proceedings for contempt of court where the contempt—
      - (i) arises in, or in connection with, civil proceedings, or
      - (ii) relates to an order made in civil proceedings,
  - “decision”, in relation to a sheriff, judge or court, includes interlocutor, order or judgment,
  - “final judgment” means a decision which, by itself, or taken along with previous decisions, disposes of the subject matter of proceedings, even though judgment may not have been pronounced on every question raised or expenses found due may not have been modified, taxed or decerned for,
  - “sheriff clerk” includes sheriff clerk depute,
  - “solicitor” means a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980.
- (2) In this Act, references to the judiciary of a sheriffdom are, in relation to a sheriffdom, references to the following—
- (a) the sheriff principal of the sheriffdom,
  - (b) any other sheriff principal so far as authorised under section 30 to perform the functions of the sheriff principal of the sheriffdom,
  - (c) any temporary sheriff principal appointed for the sheriffdom,
  - (d) the sheriffs and summary sheriffs of the sheriffdom,
  - (e) any other sheriffs or summary sheriffs so far as directed under section 31 to perform the functions of sheriff or summary sheriff in the sheriffdom,
  - (f) any part-time sheriffs and part-time summary sheriffs for the time being sitting in the sheriffdom,
  - (g) any person appointed under section 12(1) to act as a sheriff or summary sheriff of the sheriffdom,
- and references to a “member” of the judiciary of a sheriffdom are to be construed accordingly.
- (3) In this Act, references to proceedings in the sheriff court are references to proceedings before any member of the judiciary of a sheriffdom.

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**Changes to legislation:** Courts Reform (Scotland) Act 2014 is up to date with all changes known to be in force on or before 20 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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### **137 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under this section may modify any enactment (including this Act), instrument or document.

### **138 Commencement**

- (1) This Part, other than sections 132 and 134(2), comes into force on the day after Royal Assent.
- (2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

### **139 Short title**

The short title of this Act is the Courts Reform (Scotland) Act 2014.



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VALID FROM 02/02/2015

VALID FROM 22/09/2015

SCHEDULE 1

(introduced by section 44(1))

CIVIL PROCEEDINGS, ETC. IN RELATION TO WHICH SUMMARY SHERIFF HAS COMPETENCE

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VALID FROM 01/04/2015

SCHEDULE 2

(introduced by section 53)

APPEAL SHERIFFS: TEMPORARY PROVISION

.....

VALID FROM 22/09/2015

SCHEDULE 3

(introduced by section 118(3))

TRANSFER OF SUMMARY CRIMINAL APPEAL JURISDICTION TO THE SHERIFF APPEAL COURT

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SCHEDULE 4

(introduced by section 130(3))

THE SCOTTISH COURTS AND TRIBUNALS SERVICE

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VALID FROM 01/04/2015

SCHEDULE 5

(introduced by section 132)

MODIFICATIONS OF ENACTMENTS

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**Changes to legislation:**

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