

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Part 1 - Sheriff Courts

Chapter 4 - Competence and jurisdiction

67. This chapter of Part 1 of the Act restates and updates the existing provisions of the Sheriff Courts (Scotland) Acts 1907 and 1971 concerning those actions and other applications that can competently be brought in the sheriff court and the competence and jurisdiction of that court. It makes certain additions to the range of actions that can competently be raised in the sheriff court in line with recommendations made by the Scottish Civil Courts Review and also makes fresh provision regarding the exclusive competence of the sheriff court. It specifies the competence and jurisdiction of the summary sheriff. The territorial jurisdiction of sheriffs is re-stated and extended to summary sheriffs.

Sheriffs: civil competence and jurisdiction

Section 38 – Jurisdiction and competence of sheriffs

68. Subsection (1) is a statement of the civil competence of sheriffs. The approach taken in the Act is to frame this in terms of the competence of a sheriff, rather than the sheriff court. The generality provided for in subsection (1) that sheriffs will retain all the competence and jurisdiction which they had before this Act is enacted is not restricted by the specific kinds of actions listed in subsection (2). This list reflects extensions to competence and jurisdiction after the Sheriff Courts (Scotland) Act 1907.
69. Actions for proving the tenor of documents and reduction are added to the list as recommended by the Scottish Civil Courts Review.

Section 39 – Exclusive competence

70. [Section 39](#) sets out which cases fall within the exclusive competence of the sheriff court. It provides that in civil proceedings about which the sheriff has competence, and, in which an order of value of £100,000 or less is sought (or where more than one order is sought, the aggregate total of such orders is £100,000 or less), the proceedings must be brought in the sheriff court.
71. Subsection (3) exempts family proceedings (defined in section 135), from the operation of this section, unless the only order sought is an order for payment of aliment. Subsection (4) provides that this section is subject to the operation of section 92(7) of the Act which permits remit of cases to the Court of Session in exceptional circumstances. Subsection (5) provides that the Scottish Ministers may by order (subject to the affirmative procedure) substitute for the sum of £100,000 another sum. Subsection (6) defines what is meant by an “order of value”. Subsections (7) and (8) provide that further detail on how the value of an order or the aggregate total value of orders is to be

determined may be provided in an act of sederunt made by the Court of Session which may make different provision for different purposes.

Section 40 – Territorial jurisdiction

72. **Section 40** re-enacts section 4 of the Sheriff Courts (Scotland) Act 1907 so far as it applies to civil proceedings and provides for the territorial jurisdiction of the sheriff. Given the operation of section 134 which governs reference to “sheriff” throughout the Act, the reference to sheriff in this provision includes reference to any other member of the judiciary of the sheriffdom. The general provisions of the section are without prejudice to any other enactment or rule of law which has effect for the purposes of determining the territorial jurisdiction of a sheriff (subsection (4)), and are subject to an order under section 41(1) (subsection (5)).

Section 41 – Power to confer all-Scotland jurisdiction for specified cases

73. **Section 41** provides that the Scottish Ministers may by order (subject to negative procedure) set out that the jurisdiction of a sheriff of a specified sheriffdom sitting at a specified sheriff court will extend throughout Scotland for specified kinds of civil proceedings, for example, personal injury proceedings (subsection (1)). An order may be made by the Scottish Ministers only with the consent of the Lord President (subsection (2)). Such an order does not affect the jurisdiction of any other sheriff court which may still deal with the specified type of proceedings, nor does it restrict the specified court to only deal with the specified types of proceedings (subsection (4)). The section does not apply in relation to proceedings under the Children’s Hearings (Scotland) Act 2011 (subsection (5)). See also Chapter 1 of Part 3 of the Act which provides for civil jury trials in an all-Scotland sheriff court.

Section 42 – All-Scotland jurisdiction: further provision

74. This section preserves the option of a sheriff court designated as one with an all-Scotland jurisdiction (for example, the proposed Sheriff Personal Injury Court) being used as a “local court” in relation to the specified types of action (subsections (2) to (4)). Cases that happen to fall within that court’s local jurisdiction can either be raised under normal sheriff court procedure paying standard court fees, or be raised under specialised rules in the specialist court paying the fees specified in a fees order for that court. Subsection (5) has the effect that, where a case before an all-Scotland sheriff court would have fallen within the jurisdiction of that court anyway (even without an order specifying that it has all Scotland jurisdiction), it is up to the litigant to decide whether their case will be heard by the court sitting in exercise of its usual local jurisdiction or its specialist all-Scotland jurisdiction. (It is likely that the court fees in the specialist court will be higher to reflect its specialist nature.) Subsection (6) preserves the sheriff’s power to decline to hear the case on the basis that it would be better dealt with by the specialist all-Scotland court, or the “local” court, as the case may be.

Section 43 – Jurisdiction over persons etc

75. **Section 43** makes provision in relation to the civil jurisdiction in the sheriff court. It is a re-enactment of section 6 of the Sheriff Courts (Scotland) Act 1907. Section 6 is a source of jurisdiction in relation to certain civil matters where no other legislation has impliedly or explicitly displaced its operation and accordingly, its re-enactment is required in this section. In recognition, however, that section 6 has been largely but not completely displaced, subsection (3) provides that its re-enactment in section 43 is subject to those other rules of jurisdiction.

Summary sheriffs: civil and criminal competence and jurisdiction

Section 44 – Summary sheriff: civil competence and jurisdiction

76. **Section 44** provides that a summary sheriff may exercise all of the jurisdiction and powers of the sheriff in relation to civil proceedings, but only with regard to the proceedings and matters listed in schedule 1 (subsection (1)). Subsection (2) provides that a sheriff still has jurisdiction and competence over the matters in schedule 1. Subsection (3) permits the Scottish Ministers by order (subject to the affirmative procedure) to amend schedule 1.

Section 45 – Summary sheriff: criminal competence and jurisdiction

77. **Section 45** provides that a summary sheriff may exercise all of the jurisdiction and powers of the sheriff in criminal investigations and proceedings (subsection (1)) including the powers of a sheriff under the 1995 Act (subsection (2)). This is subject to subsection (3), which exempts most aspects of solemn criminal proceedings from the powers and jurisdiction of the summary sheriff. Therefore a summary sheriff will deal with summary criminal proceedings and certain preliminary procedural steps in solemn criminal proceedings (and in none of these proceedings will sit with a jury). The provisions of this section are without prejudice to the jurisdiction and competence of a sheriff in relation to summary or solemn criminal investigations and proceedings (subsection (4)).