



# Courts Reform (Scotland) Act 2014

## 2014 asp 18

### PART 3

#### CIVIL PROCEDURE

#### CHAPTER 1

#### SHERIFF COURT

##### *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)—

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- (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.
- (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.

## **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—

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- (a) an application is made under subsection (1) on the ground that the verdict is contrary to the evidence, and
- (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.
- (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.

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

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

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

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

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

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

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

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

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

## **76 Service of documents**

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

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

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

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

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

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

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

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

## **80 Transfer of cases from simple procedure**

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

## **81 Expenses in simple procedure cases**

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



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

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

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

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

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

*Interdicts and other orders: effect outside sheriffdom*

## **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”.

**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.
- (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
  - (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—

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- (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.