



# Sheriff Courts (Scotland) Act 1971

## 1971 CHAPTER 58

### PART III

#### CIVIL JURISDICTION, PROCEDURE AND APPEALS

**<sup>F1</sup>31 Upper limit to privative jurisdiction of sheriff court to be £250.**

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#### **Textual Amendments**

**F1** Act (except for ss. 2(3), 3(4)) repealed (S.) (1.4.2015 except for the repeal of ss. 31, 35, 36(2)(3), 36A, 36B, 37, 38, 45, 22.9.2015 for the repeal of ss. 31, 37(1)(b)(2A)(2D), 28.11.2016 for the repeal of ss. 35(2)-(4), 36A, 36B, 37(2B)(2C) and the repeal of specified words in s. 38(b)) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 5 para. 6\(2\)](#); [S.S.I. 2015/77](#), art. 2(2)(3), [sch. \(with art. 7\)](#); [S.S.I. 2015/247](#), art. 2, [sch. \(with art. 9\)](#); [S.S.I. 2016/291](#), art. 2, [sch. \(with art. 3\(1\)\(2\)\)](#)

*<sup>F1</sup> Regulation of procedure in civil proceedings*

**32 Power of Court of Session to regulate civil procedure in sheriff court.**

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**32A Rules for lay representation**

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**33 Sheriff Court Rules Council.**

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*Changes to legislation: There are currently no known outstanding effects for the Sheriff Courts (Scotland) Act 1971, Part III. (See end of Document for details)*

**34 Functions of Sheriff Court Rules Council.**

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*Summary causes*

**35 Summary causes.**

(1) The definition of “summary cause” contained in paragraph (i) of section 3 of the <sup>F1</sup>Sheriff Courts (Scotland) Act 1907 shall cease to have effect, and for the purposes of the procedure and practice in civil proceedings in the sheriff court there shall be a form of process, to be known as a “summary cause”, which shall be used for the purposes of all civil proceedings brought in that court, being proceedings of one or other of the following descriptions, namely—

- (a) actions for payment of money not exceeding [<sup>F2</sup>£5000] in amount (exclusive of interest and expenses);
- (b) actions of multiplepoinding, actions of furthcoming <sup>F3</sup>. . . , where the value of the fund *in medio*, or the value of the arrested fund or subject, <sup>F3</sup>. . . as the case may be, does not exceed [<sup>F4</sup>£5000] (exclusive of interest and expenses);
- (c) actions *ad factum praestandum* and actions for the recovery of possession of heritable or moveable property, other than actions in which there is claimed in addition, or as an alternative, to a decree *ad factum praestandum* or for such recovery, as the case may be, a decree for payment of money exceeding [<sup>F5</sup>£5000] in amount (exclusive of interest and expenses);
- (d) proceedings which, according to the law and practice existing immediately before the commencement of this Act, might competently be brought in the sheriff’s small debt court or were required to be conducted and disposed of in the summary manner in which proceedings were conducted and disposed of under the Small Debt Acts;

and any reference in the following provisions of this Act, or in any other enactment (whether passed or made before or after the commencement of this Act) relating to civil procedure in the sheriff court, to a summary cause shall be construed as a reference to a summary cause within the meaning of this subsection.

[<sup>F6</sup>(1A) For the avoidance of doubt it is hereby declared that nothing in subsection (1) above shall prevent the Court of Session from making different rules of procedure and practice in relation to different descriptions of summary cause proceedings.]

- <sup>F7</sup>(2) .....
- <sup>F7</sup>(3) .....
- <sup>F7</sup>(4) .....

**Textual Amendments**

**F2** Words in s. 35(1)(a) substituted (14.1.2008) by [The Sheriff Courts \(Scotland\) Act 1971 \(Privative Jurisdiction and Summary Cause\) Order 2007 \(S.S.I. 2007/507\)](#), **art. 3** (with art. 4)

**F3** Words in s. 35(1)(b) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227, **Sch. 6** (with s. 223); S.S.I. 2008/115, **art. 3(1)(h)(2)(3)**, Sch. 2 (with arts. 4-6, 10)

**F4** Words in s. 35(1)(b) substituted (14.1.2008) by [The Sheriff Courts \(Scotland\) Act 1971 \(Privative Jurisdiction and Summary Cause\) Order 2007 \(S.S.I. 2007/507\)](#), **art. 3** (with art. 4)

*Changes to legislation:* There are currently no known outstanding effects for the Sheriff Courts (Scotland) Act 1971, Part III. (See end of Document for details)

- F5** Words in s. 35(1)(c) substituted (14.1.2008) by [The Sheriff Courts \(Scotland\) Act 1971 \(Privative Jurisdiction and Summary Cause\) Order 2007 \(S.S.I. 2007/507\)](#), **art. 3** (with art. 4)
- F6** S. 35(1A) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. 59, **Sch. 2 para. 14**
- F7** Act (except for ss. 2(3), 3(4)) repealed (S.) (1.4.2015 except for the repeal of ss. 31, 35, 36(2)(3), 36A, 36B, 37, 38, 45, 22.9.2015 for the repeal of ss. 31, 37(1)(b)(2A)(2D), 28.11.2016 for the repeal of ss. 35(2)-(4), 36A, 36B, 37(2B)(2C) and the repeal of specified words in s. 38(b)) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), **sch. 5 para. 6(2)**; S.S.I. 2015/77, art. 2(2)(3), **sch.** (with art. 7); S.S.I. 2015/247, art. 2, **sch.** (with art. 9); S.S.I. 2016/291, art. 2, **sch.** (with art. 3(1)(2))

**Modifications etc. (not altering text)**

- C1** S. 35: power to transfer functions conferred (19.5.1999) by [S.I. 1999/678](#), art. 2(1), **Sch.**
- C2** S. 35(1) excluded (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Commencement No. 3, Transitional and Saving Provisions\) Order 2015 \(S.S.I. 2015/247\)](#), arts. 1(1), **9(1)** (with art. 9(2))
- C3** S. 35(1)(c) excluded by [Land Tenure Reform \(Scotland\) Act 1974 \(c. 38\)](#), s. **9(6)**

**Marginal Citations**

- M1** 1907 c. 51.

**36 Procedure in summary causes.**

<sup>F1</sup>(1) . . . . .

(2) A summary cause shall be commenced by a summons in, or as nearly as is practicable in, such form as may be prescribed by rules under the said section 32.

(3) The evidence, if any, given in a summary cause shall not be recorded.

<sup>F1</sup>(4) . . . . .

**Textual Amendments**

- F1** Act (except for ss. 2(3), 3(4)) repealed (S.) (1.4.2015 except for the repeal of ss. 31, 35, 36(2)(3), 36A, 36B, 37, 38, 45, 22.9.2015 for the repeal of ss. 31, 37(1)(b)(2A)(2D), 28.11.2016 for the repeal of ss. 35(2)-(4), 36A, 36B, 37(2B)(2C) and the repeal of specified words in s. 38(b)) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), **sch. 5 para. 6(2)**; S.S.I. 2015/77, art. 2(2)(3), **sch.** (with art. 7); S.S.I. 2015/247, art. 2, **sch.** (with art. 9); S.S.I. 2016/291, art. 2, **sch.** (with art. 3(1)(2))

**Modifications etc. (not altering text)**

- C4** S. 36(3) excluded by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18\)](#), s. **4(4)(b)**

<sup>F8</sup>**36A Further provisions as to small claims.**

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**Textual Amendments**

- F8** Act (except for ss. 2(3), 3(4)) repealed (S.) (1.4.2015 except for the repeal of ss. 31, 35, 36(2)(3), 36A, 36B, 37, 38, 45, 22.9.2015 for the repeal of ss. 31, 37(1)(b)(2A)(2D), 28.11.2016 for the repeal of ss. 35(2)-(4), 36A, 36B, 37(2B)(2C) and the repeal of specified words in s. 38(b)) by [Courts Reform](#)

*Changes to legislation: There are currently no known outstanding effects for the Sheriff Courts (Scotland) Act 1971, Part III. (See end of Document for details)*

(Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 6(2)**; S.S.I. 2015/77, art. 2(2)(3), **sch.** (with art. 7); S.S.I. 2015/247, art. 2, **sch.** (with art. 9); S.S.I. 2016/291, art. 2, **sch.** (with art. 3(1)(2))

**F<sup>9</sup>36B Expenses in small claims.**

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**Textual Amendments**

**F<sup>9</sup>** Act (except for ss. 2(3), 3(4)) repealed (S.) (1.4.2015 except for the repeal of ss. 31, 35, 36(2)(3), 36A, 36B, 37, 38, 45, 22.9.2015 for the repeal of ss. 31, 37(1)(b)(2A)(2D), 28.11.2016 for the repeal of ss. 35(2)-(4), 36A, 36B, 37(2B)(2C) and the repeal of specified words in s. 38(b)) by **Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), sch. 5 para. 6(2)**; S.S.I. 2015/77, art. 2(2)(3), **sch.** (with art. 7); S.S.I. 2015/247, art. 2, **sch.** (with art. 9); S.S.I. 2016/291, art. 2, **sch.** (with art. 3(1)(2))

**37 Remits.**

- (1) In the case of any ordinary cause brought in the sheriff court the sheriff [<sup>F10</sup>—
  - (a) shall at any stage, on the joint motion of the parties to the cause, direct that the cause be treated as a summary cause, and in that case the cause shall be treated for all purposes (including appeal) as a summary cause and shall proceed accordingly
  - <sup>F1</sup>(b) .....

- (2) In the case of any summary cause, the sheriff at any stage—
  - (a) shall, on the joint motion of the parties to the cause, and
  - (b) may, on the motion of any of the parties to the cause, if he is of the opinion that the importance or difficulty of the cause makes it appropriate to do so, direct that the cause be treated as an ordinary cause, and in that case the cause shall be treated for all purposes (including appeal) as an ordinary cause and shall proceed accordingly:

Provided that a direction under this subsection may, in the case of an action for the recovery of possession of heritable or moveable property, be given by the sheriff of his own accord.

- <sup>F1</sup>(2A) .....
- <sup>F1</sup>(2B) .....
- <sup>F1</sup>(2C) .....
- <sup>F1</sup>(2D) .....

- [<sup>F11</sup>(3) A decision—
  - (a) to remit, or not to remit, under subsection (2A) [<sup>F12</sup> (2B) or (2C)] above; or
  - (b) to make, or not to make, a direction by virtue of paragraph ( b ) of, or the proviso to, subsection (2) above,
 shall not be subject to review; but from a decision to remit, or not to remit, under subsection (1)( b ) above an appeal shall lie to the Court of Session.]

- (4) In this section “sheriff” includes a sheriff principal.

*Changes to legislation:* There are currently no known outstanding effects for the Sheriff Courts (Scotland) Act 1971, Part III. (See end of Document for details)

**Textual Amendments**

- F1** Act (except for ss. 2(3), 3(4)) repealed (S.) (1.4.2015 except for the repeal of ss. 31, 35, 36(2)(3), 36A, 36B, 37, 38, 45, 22.9.2015 for the repeal of ss. 31, 37(1)(b)(2A)(2D), 28.11.2016 for the repeal of ss. 35(2)-(4), 36A, 36B, 37(2B)(2C) and the repeal of specified words in s. 38(b)) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), **sch. 5 para. 6(2)**; S.S.I. 2015/77, art. 2(2)(3), **sch.** (with art. 7); S.S.I. 2015/247, art. 2, **sch.** (with art. 9); S.S.I. 2016/291, art. 2, **sch.** (with art. 3(1)(2))
- F10** “—(a)” inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), s. 16(a)(i)(ii)
- F11** S. 37(3) substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), s. 16(c)
- F12** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. 18(3)(b)

**38 Appeal in summary causes.**

In the case of <sup>F13</sup>—

- (a) any summary cause an appeal shall lie to the sheriff principal on any point of law from the final judgment of the sheriff; and
- (b) any summary cause <sup>F14</sup>... an appeal shall lie] to the Court of Session on any point of law from the final judgment of the sheriff principal, if the sheriff principal certifies the cause as suitable for such an appeal,

but save as aforesaid an interlocutor of the sheriff or the sheriff principal in any such cause shall not be subject to review.

**Textual Amendments**

- F13** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. 18(4)
- F14** Act (except for ss. 2(3), 3(4)) repealed (S.) (1.4.2015 except for the repeal of ss. 31, 35, 36(2)(3), 36A, 36B, 37, 38, 45, 22.9.2015 for the repeal of ss. 31, 37(1)(b)(2A)(2D), 28.11.2016 for the repeal of ss. 35(2)-(4), 36A, 36B, 37(2B)(2C) and the repeal of specified words in s. 38(b)) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), **sch. 5 para. 6(2)**; S.S.I. 2015/77, art. 2(2)(3), **sch.** (with art. 7); S.S.I. 2015/247, art. 2, **sch.** (with art. 9); S.S.I. 2016/291, art. 2, **sch.** (with art. 3(1)(2))

**Modifications etc. (not altering text)**

- C5** S. 38 excluded by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), ss. 103(1), 108(2), Sch. 7 paras. 5, 9(1)
- C6** S. 38 applied (with modifications) (1.1.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Commencement No. 5, Transitional and Saving Provisions\) Order 2015 \(S.S.I. 2015/378\)](#), arts. 1(1), 4

<sup>F1</sup> *Miscellaneous and supplemental*

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*Changes to legislation: There are currently no known outstanding effects for the Sheriff Courts (Scotland) Act 1971, Part III. (See end of Document for details)*

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**41 Power of Her Majesty to vary limit to privative jurisdiction of sheriff court, etc.**

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**42 Application of provisions regarding jurisdiction and summary causes.**

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**Changes to legislation:**

There are currently no known outstanding effects for the Sheriff Courts (Scotland) Act 1971, Part III.