

This draft Order supersedes the draft Order of the same title which was laid before the Scottish Parliament on 16th September 2016 and published on 19th September 2016 (ISBN 978-0-11-103311-1). It is being issued free of charge to all known recipients of that draft Order.

Draft Order laid before the Scottish Parliament under section 133(2) of the Courts Reform (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

COURT OF SESSION

SCOTTISH LAND COURT

SHERIFF APPEAL COURT

SHERIFF COURT

JUSTICE OF THE PEACE COURT

**The Courts Reform (Scotland) Act 2014 (Relevant Officer and
Consequential Provisions) Order 2016**

Made - - - - *2016*

Coming into force - - *28th November 2016*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 107(4) and 137 of the Courts Reform (Scotland) Act 2014(a) and all other powers enabling them to do so.

In accordance with section 133(2) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 and comes into force on 28th November 2016.

(a) 2014 asp 18. There are amendments to the Courts Reform (Scotland) Act 2014 not relevant to this Order.

Relevant officer for the purposes of section 107 of the Courts Reform (Scotland) Act 2014

2. In section 107(3) of the Courts Reform (Scotland) Act 2014 (power to provide for fees for SCTS, court clerks and other officers), after paragraph (c) in the definition of “relevant officer”, insert—

“(ca) the auditor of the Sheriff Appeal Court.”.

Modification of enactments

3. Schedules 1 to 4 have effect.

Transitional provisions

4.—(1) The modifications in schedule 1, other than paragraph 8, do not apply to a small claim within the meaning of section 35(2) of the Sheriff Courts (Scotland) Act 1971(a).

(2) The modifications in schedule 3 do not apply to appeals heard—

- (a) by the High Court of Justiciary, by virtue of article 6 or 7 of the Courts Reform (Scotland) Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2015(b) (transitional provisions relating to certain criminal appeals); or
- (b) by a sheriff principal or by the Court of Session, by virtue of article 3 or 4 of the Courts Reform (Scotland) Act 2014 (Commencement No. 5, Transitional and Saving Provisions) Order 2015(c) (transitional provisions relating to civil appeals).

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,

Edinburgh

Date

(a) 1971 c.58. Section 35 has been amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 18(1) and schedule 2, paragraph 14; the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), schedule 6, paragraph 1; and S.S.I. 2007/507 article 4. The Sheriff Courts (Scotland) Act 1971 is to be repealed by paragraph 6(2) of schedule 5 of the Courts Reform (Scotland) Act 2014 and article 2(3) and paragraph 6 of the schedule of S.I. 2015/700.

(b) S.S.I. 2015/247 as amended by S.S.I. 2015/378.

(c) S.S.I. 2015/378.

SCHEDULE 1

Article 3

Introduction of simple procedure etc.

PART 1

Modification of primary legislation

Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

1. The following provisions of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985^(a) are repealed—

- (a) section 17 (power of sheriff to order sheriff clerk to execute deeds relating to heritage);
- (b) section 18 (small claims);
- (c) section 20 (removal of prohibition of sheriffs principal and sheriffs accepting appointment to certain offices);
- (d) in schedule 2 (amendment of enactments), paragraph 12; and
- (e) in schedule 4 (repeals), the entry relating to section 6(1)(b) of the Sheriff Courts (Scotland) Act 1971.

Debtors (Scotland) Act 1987

2.—(1) The Debtors (Scotland) Act 1987^(b) is amended as follows.

(2) In section 15A(3)(c) (diligence on the dependence of action), for paragraph (b) substitute—

“(b) a simple procedure case (within the meaning of section 72(9) of the Courts Reform (Scotland) Act 2014); and”.

(3) In section 103(1) (appeals), after “and section 38 of the Sheriff Courts (Scotland) Act 1971 (appeal in summary causes)” insert, “and section 82 of the Courts Reform (Scotland) Act 2014 (appeals from simple procedure cases)”.

Debt Arrangement and Attachment (Scotland) Act 2002

3.—(1) The Debt Arrangement and Attachment (Scotland) Act 2002^(d) is amended as follows.

(2) In section 9A(4)(e) (interim attachment), in the definition of “action”, for paragraph (b) substitute—

“(b) a simple procedure case (within the meaning of section 72(9) of the Courts Reform (Scotland) Act 2014); and”.

(3) Section 43 (power to provide for lay representation) is repealed.

(a) 1985 c.73.

(b) 1987 c.18.

(c) Section 15A was inserted by section 169 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(d) 2002 asp 17.

(e) Section 9A was inserted by section 173 of the Bankruptcy and Diligence etc. (Scotland) Act 2007.

PART 2

Modification of secondary legislation

The Small Claims (Scotland) Order 1988

4. The Small Claims (Scotland) Order 1988(a) is revoked.

The Legal Aid (Scotland) Act 1986 Amendment Regulations 1988

5. The Legal Aid (Scotland) Act 1986 Amendment Regulations 1988(b) are revoked.

The Transfer of Functions (Lord Advocate and Secretary of State) Order 1999

6. In the schedule of the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (functions transferred from the Lord Advocate to the Secretary of State)(c), omit the entry relating to the Sheriff Courts (Scotland) Act 1971.

The Small Claims (Scotland) Amendment Order 2007

7. The Small Claims (Scotland) Amendment Order 2007(d) is revoked.

Consequential amendment of transitory provisions

8.—(1) In article 6 of the All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015 (transitory provision: summary cause proceedings)(e)—

- (a) omit paragraph (1); and
- (b) in each of paragraphs (2) and (3), for “were” in each place where it occurs substitute “includes”.

(2) In the Courts Reform (Scotland) Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2015—

- (a) in article 10 (proceedings in an all-Scotland sheriff court: transfer to summary cause procedure)—
 - (i) omit paragraph (1);
 - (ii) in paragraph (2), for “were” substitute “include”; and
 - (iii) in paragraph (3), for “were” substitute “includes”;
- (b) in article 11 (remit of cases other than summary causes to the Court of Session)—
 - (i) omit paragraph (1); and
 - (ii) in paragraph (2), for “were” substitute “include”; and
- (c) in article 12 (summary sheriff to have competence in relation to summary causes)—
 - (i) omit paragraph (1); and
 - (ii) in paragraph (2), for “were” substitute “includes”.

(a) S.I. 1988/1999 as amended by S.S.I. 2007/496.

(b) S.I. 1988/2289.

(c) S.I. 1999/678. There are amendments to S.I. 1999/678 not relevant to this Order.

(d) S.S.I. 2007/496.

(e) S.S.I. 2015/213.

SCHEDULE 2

Article 3

Repeal of the Vexatious Actions (Scotland) Act 1898

PART 1

Modification of primary legislation

Law Reform (Miscellaneous Provisions) (Scotland) Act 1980

1. Section 19 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980(a) (vexatious litigants) is repealed.

Trade Union and Labour Relations (Consolidation) Act 1992

2. In section 256A(4)(c) of the Trade Union and Labour Relations (Consolidation) Act 1992(b) (vexatious litigants), at the end, insert “or a vexatious litigation order made under section 100 of the Courts Reform (Scotland) Act 2014”.

PART 2

Modification of secondary legislation

The Employment Tribunals Rules of Procedure 2013

3. In rule 102 of the Employment Tribunals Rules of Procedure 2013(c) (vexatious litigants), after “Vexatious Actions (Scotland) Act 1898” insert “, section 100 of the Courts Reform (Scotland) Act 2014”.

(a) 1980 c.55.

(b) 1992 c.52. Section 256A was inserted by the Employment Relations Act 1999 (c.26). There are amendments to section 256A not relevant to this Order.

(c) The Employment Tribunals Rules of Procedure 2013 are set out in schedule 1 of S.I. 2013/1237.

Sheriff Appeal Court: General amendments

PART 1

Modification of primary legislation

Legal Aid (Scotland) Act 1986

1.—(1) The Legal Aid (Scotland) Act 1986 is amended as follows.

(2) In section 28D (availability of children’s legal aid: child)(a)—

- (a) in subsection (1), for “sheriff principal” substitute “Sheriff Appeal Court”; and
- (b) in subsection (4), for “sheriff principal” substitute “Sheriff Appeal Court”.

(3) In section 28E (availability of children’s legal aid: relevant person)(b)—

- (a) in subsection (1)(b), for “sheriff principal” substitute “Sheriff Appeal Court”; and
- (b) in subsection (4), for “sheriff principal” substitute “Sheriff Appeal Court”.

(4) In section 28F(1) (availability of children’s legal aid: appeals relating to deemed relevant person)(c)—

- (a) in paragraph (d), for “sheriff principal” substitute “Sheriff Appeal Court”; and
- (b) in paragraph (e)—
 - (i) for “sheriff principal” substitute “Sheriff Appeal Court”; and
 - (ii) for “sheriff principal’s” substitute “Sheriff Appeal Court’s”.

(5) In section 28LA (power of Scottish Ministers to provide for children’s legal aid to be available to other persons in relation to court proceedings)(d)—

- (a) in subsection (3)(d), for “sheriff principal” substitute “Sheriff Appeal Court”; and
- (b) in subsection (5)(c), for “sheriff principal” substitute “Sheriff Appeal Court”.

Proceeds of Crime (Scotland) Act 1995

2. In section 30(5)(c) of the Proceeds of Crime (Scotland) Act 1995(e) (restraint orders in relation to forfeitable property), after “, as the case may be,” insert “the Sheriff Appeal Court or”.

Proceeds of Crime Act 2002

3. In section 92(13) of the Proceeds of Crime Act 2002(f) (making of confiscation order), after “High Court of Justiciary” insert “, the Sheriff Appeal Court”.

(a) Section 28D was inserted by section 191 of the Children’s Hearings (Scotland) Act 2011 (asp 1; “the 2011 Act”).
 (b) Section 28E was inserted by section 191 of the 2011 Act.
 (c) Section 28F was inserted by section 191 of the 2011 Act and amended by paragraph 3(2) of schedule 5 of the Children and Young People (Scotland) Act 2014 (asp 8).
 (d) Section 28LA was inserted by section 92 of the Children and Young People (Scotland) Act 2014.
 (e) 1995 c.43.
 (f) 2002 c.29. Section 92 was amended by the Serious Crime Act 2015 (c.9), schedule 4, paragraph 35.

Antisocial Behaviour etc. (Scotland) Act 2004

4. In section 72(6) of the Antisocial Behaviour etc. (Scotland) Act 2004^(a) (appeals against orders under section 71), for “sheriff principal” substitute “Sheriff Appeal Court”.

Tobacco and Primary Medical Services (Scotland) Act 2010

5. In section 18(2) of the Tobacco and Primary Medical Services (Scotland) Act 2010^(b) (tobacco retailing banning orders etc.: notification to Scottish Ministers), for “sheriff principal” substitute “Clerk of the Sheriff Appeal Court”.

Public Records (Scotland) Act 2011

6. In the schedule of the Public Records (Scotland) Act 2011^(c) (authorities to which Part 1 applies), under the heading “Others”, after the entry relating to the Sheriff courts insert—

“Sheriff Appeal Court”.

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011

7.—(1) The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011^(d) is amended as follows.

(2) In section 4 (power to make forced marriage protection orders without application, etc.)—

(a) in subsection (2)—

(i) in paragraph (a), after “sheriff” insert “, the Sheriff Appeal Court”; and

(ii) in paragraph (b), after “sheriff” insert “, the Sheriff Appeal Court”; and

(b) in subsection (3), after “sheriff” insert “, the Sheriff Appeal Court”.

(3) In section 14 (interpretation of Part), in the definition of “court”, at the end insert “and in sections 1, 2, 4 and 5 includes the Sheriff Appeal Court”.

PART 2

Modification of secondary legislation

The Antisocial Behaviour Notice (Appeals against Order as to Rent Payable) (Scotland) Regulations 2005

8. In regulation 2(b) of the Antisocial Behaviour Notice (Appeals against Order as to Rent Payable) (Scotland) Regulations 2005^(e), for “sheriff principal” substitute “Sheriff Appeal Court”.

Children’s Legal Assistance (Scotland) Regulations 2013

9.—(1) The Children’s Legal Assistance (Scotland) Regulations 2013^(f) are amended as follows.

(2) In regulation 5(1) (children’s legal aid: individual), after “, sheriff principal or in” insert “the Sheriff Appeal Court or”.

(a) 2004 asp 8.

(b) 2010 asp 3.

(c) 2011 asp 12. There are amendments to the schedule not relevant to this Order.

(d) 2011 asp 15.

(e) S.S.I. 2005/560.

(f) S.S.I. 2013/200.

(3) In regulation 6(2) (distinct proceedings)—

- (a) in sub-paragraph (j) for “sheriff principal” substitute “Sheriff Appeal Court”;
- (b) in sub-paragraph (k) for “sheriff principal” substitute “Sheriff Appeal Court”;
- (c) in sub-paragraph (l) for “sheriff principal” substitute “Sheriff Appeal Court”;
- (d) in sub-paragraph (m) for “sheriff principal” substitute “Sheriff Appeal Court”;
- (e) in sub-paragraph (n) for “sheriff principal” substitute “Sheriff Appeal Court”;
- (f) in sub-paragraph (o) for “sheriff principal” substitute “Sheriff Appeal Court”; and
- (g) in sub-paragraph (q) for “sheriff principal” substitute “Sheriff Appeal Court”.

SCHEDULE 4

Article 3

Sheriffs, summary sheriffs and stipendiary magistrates

PART 1

Modification of primary legislation

Scottish Land Court Act 1993

1. In section 1(4) of the Scottish Land Court Act 1993(a) (the Land Court), the words “appointed under section 11” and “appointed under section 11A (appointment of part-time sheriffs) of the Sheriff Courts (Scotland) Act 1971” are repealed.

Local Government etc. (Scotland) Act 1994

2. Section 50 of the Local Government etc. (Scotland) Act 1994(b) (stipendiary magistrates) is repealed.

Police and Fire Reform (Scotland) Act 2012

3. In section 20(1)(e) of the Police and Fire Reform (Scotland) Act 2012(c) (constables: general duties), for “sheriff, justice of the peace or stipendiary magistrate” substitute “sheriff, summary sheriff or justice of the peace”.

PART 2

Modification of secondary legislation

Justices of the Peace (Scotland) Order 2007

4.—(1) The Justices of the Peace (Scotland) Order 2007(d) is amended as follows.

(2) In article 5(3) (appointments to JPAC), after “sheriff” in the second and third places where it occurs insert “or summary sheriff”.

(3) In article 7 (appointments to JPAC – procedure)—

- (a) in paragraph (1)(a), after “sheriff” insert “or summary sheriff”; and
- (b) in paragraph (2), after “sheriff” insert “or summary sheriff”.

(a) 1993 c.45. Section 1(4) was amended by the Bail, Judicial Appointments etc. (Scotland) Act 2000 (asp 9), schedule 1, paragraph 6.

(b) 1994 c.39. There are amendments to the Local Government etc. (Scotland) Act 1994 not relevant to this Order.

(c) 2012 asp 8. There are amendments to section 20 not relevant to this Order.

(d) S.S.I. 2007/210.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the coming into force of certain provisions of the Courts Reform (Scotland) Act 2014 (“the 2014 Act”). This Order comes into force on 28th November 2016 which is the date that certain provisions of the 2014 Act come into force.

Article 2 adds the auditor of the Sheriff Appeal Court to the list of “relevant officers” in section 107(3) of the 2014 Act. This means that fees orders under section 107(1) may provide for the charging of fees by the auditor of the Sheriff Appeal Court.

Article 3 and the schedules of the Order make provision modifying primary and secondary legislation. Schedule 1 principally concerns the introduction of simple procedure under Chapter 1 of Part 3 of the 2014 Act. Article 4(1) provides that the modifications in schedule 1 do not apply to small claims.

Schedule 2 concerns the repeal of the Vexatious Actions (Scotland) Act 1898 (“the 1898 Act”) and the modifications reflect that orders under the 1898 Act will continue to apply.

Schedule 3 concerns the Sheriff Appeal Court in terms of both its criminal and civil jurisdiction and competence. Article 4(2) provides that the modifications in schedule 3 do not apply to appeals heard in forums other than the Sheriff Appeal Court by virtue of transitional provisions.

Schedule 4 concerns sheriffs, summary sheriffs and stipendiary magistrates (the office of stipendiary magistrate was abolished by virtue of section 128 of the 2014 Act on 1st April 2016).

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