



# Sheriff Courts (Scotland) Act 1971

## 1971 CHAPTER 58

An Act to amend the law with respect to sheriff courts in Scotland, and for purposes connected therewith. [27th July 1971]

### Extent Information

**E1** Act: (except s. 4) extends to Scotland only, see [s. 47\(3\)](#)

### Commencement Information

**II** Act not in force at Royal Assent, see [s. 47\(2\)](#); Act wholly in force at 1.9.1976, see [S.I.s 1971/1582](#), [1973/276](#) and [1976/236](#)

## PART I

### CONSTITUTION, ORGANISATION AND ADMINISTRATION

#### *General duty of the Secretary of State*

#### **1 Secretary of State to be responsible for organisation and administration of sheriff courts.**

Subject to the provisions of this Act, the Secretary of State shall be under a duty to secure the efficient organisation and administration of the sheriff courts, and for the purpose of carrying out that duty shall have, in addition to any functions conferred on him by or under any other enactment, the functions conferred on him by the following provisions of this Act.

**Status:** Point in time view as at 01/04/2005. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Sheriff Courts (Scotland) Act 1971 is up to date with all changes known to be in force on or before 19 April 2024. 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)

## *Sheriffdoms*

### **2 Power of Secretary of State to alter sheriffdoms.**

- (1) The Secretary of State may by order alter the boundaries of sheriffdoms, form new sheriffdoms, or provide for the abolition of sheriffdoms existing at the time of the making of the order.
- (2) An order under subsection (1) above may contain all such provisions as appear to the Secretary of State to be necessary or expedient for rendering the order of full effect and any incidental, supplemental or consequential provisions which appear to him to be necessary or expedient for the purposes of the order, including, but without prejudice to the generality of the foregoing words—
  - (a) provision for the abolition of any office,
  - (b) provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this Act, and including any enactment contained in or made under this Act).
- (3) Where an order under subsection (1) above includes, by virtue of subsection (2)(a) above, provision for the abolition of any office, then—
  - (a) that provision shall have effect notwithstanding the provisions of any enactment (including any enactment contained in this Act), or of any instrument in terms of which any person holds that office;
  - (b) the Secretary of State may, with the concurrence of the Minister for the Civil Service, pay to or in respect of any person who suffers loss of employment, or loss or diminution of emoluments, which is attributable to the said provision such amount by way of compensation as may appear to the Secretary of State to be reasonable in all the circumstances [<sup>F1</sup>but no payment shall be made under this provision to or in respect of any person who is mentioned in section 51(2) of the Scotland Act 1998].
- (4) The power to make orders under subsection (1) above shall be exercisable by statutory instrument, but no order shall be made under that subsection unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

#### **Textual Amendments**

**F1** Words in s. 2(3)(b) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. 1 para. 50(2)

### *Sheriff court districts and places where sheriff courts are to be held*

### **3 Sheriff court districts and places where sheriff courts are to be held.**

- (1) Subject to any alterations made by an order under section 2(1) of this Act or under subsection (2) below—
  - (a) the sheriff court districts existing immediately before the commencement of this Act shall continue to exist after such commencement, and
  - (b) sheriff courts shall, after such commencement, continue to be held at the places at which they were in use to be held immediately before such commencement.

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- (2) The Secretary of State may by order—
  - (a) alter the boundaries of sheriff court districts, form new districts, or provide for the abolition of districts existing at the time of the making of the order;
  - (b) provide that sheriff courts shall be held, or shall cease to be held, at any place.
- (3) An order under subsection (2) above may contain all such provisions as appear to the Secretary of State to be necessary or expedient for rendering the order of full effect and any incidental, supplemental or consequential provisions which appear to him to be necessary or expedient for the purposes of the order, including, but without prejudice to the generality of the foregoing words, provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this Act, and including any enactment contained in or made under this Act).
- (4) The Secretary of State may, with the concurrence of the Minister for the Civil Service, pay to or in respect of any person who suffers loss of employment, or loss or diminution of emoluments, which is attributable to an order under subsection (2) above such amount by way of compensation as may appear to the Secretary of State to be reasonable in all the circumstances [<sup>F2</sup>but no payment shall be made under this provision to or in respect of any person who is mentioned in section 51(2) of the Scotland Act 1998].
- (5) The power to make orders under subsection (2) above shall be exercisable by statutory instrument.
- (6) Without prejudice to subsection (1) above, any enactment or other instrument in force immediately before the commencement of this Act shall, to the extent that it fixes sheriff court districts or the places at which sheriff courts are to be held, cease to have effect.

**Textual Amendments**

**F2** Words in s. 3(4) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. 1 para. 50(2)**

*Sheriffs principal and sheriffs*

**4 Offices of sheriff principal and sheriff.**

- (1) The office of sheriff (that is to say, the office known formerly as the office of sheriff depute, but known immediately before the commencement of this Act as the office of sheriff) shall be known as the office of sheriff principal, the office of sheriff substitute shall be known as the office of sheriff, and the office of honorary sheriff substitute shall be known as the office of honorary sheriff.
- (2) Accordingly, any enactment or other document in force or having effect at the commencement of this Act which refers whether expressly or by implication, or which falls to be construed as referring, or as including a reference, to the office of sheriff (as defined in subsection (1) above), or to the office of sheriff substitute, or to the office of honorary sheriff substitute, or to the holder of any of the said offices, shall be construed in accordance with subsection (1) above.
- (3) Section 28 of the <sup>M1</sup>Interpretation Act 1889 . . . <sup>F3</sup> shall not apply for the interpretation of this Act.

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**Textual Amendments**  
F3 Words repealed by Interpretation Act 1978 (c. 30 SIF 115:1), s. 25, Sch. 3

**Marginal Citations**  
M1 1889 c. 63.

**5 Qualification for offices of sheriff principal and sheriff.**

(1) A person shall not be appointed to the office of sheriff principal or sheriff unless he is, and has been for at least ten years, legally qualified.

For the purposes of this subsection, a person shall be legally qualified if he is an advocate or a solicitor.

(2) Without prejudice to [section 11(3) and 11A]of this Act, in this section “sheriff principal” does not include a temporary sheriff principal and “sheriff” does not include a [part-time]sheriff or an honorary sheriff.

**Modifications etc. (not altering text)**  
C1 Words in s. 5 substituted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(1)(a)(b)

**[5A] <sup>F4</sup>Retiring age for sheriff principal and sheriff.**

(1) A sheriff principal or sheriff shall vacate his office on the day on which he attains the age of 70.

(2) Subsection (1) above is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).

[ Without prejudice to sections 11(4A) and (4B) and 11B(3) of this Act, in this section, <sup>F5</sup>(3) “sheriff principal” does not include a temporary sheriff principal and “sheriff” does not include a part-time sheriff.]]

**Textual Amendments**  
F4 S. 5A inserted (31.3.1995) by 1993 c. 8, s. 26, Sch. 6 para. 10; S.I. 1995/631, art. 2  
F5 S. 5A(3) inserted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(2)

**6 Disqualification of sheriffs principal and sheriffs.**

(1) A sheriff principal to whom this subsection applies, or a sheriff, shall not, so long as he holds office as such—

(a) engage, whether directly or indirectly, in any private practice or business, or be in partnership with or employed by, or act as agent for, any person so engaged; . . . <sup>F6</sup>

(b) . . . . . <sup>F7</sup>

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- (2) Subsection (1) above shall apply to any person holding the office of sheriff principal who is appointed to that office after the commencement of this Act and on whose appointment the Secretary of State directs that that subsection shall apply to him.
- (3) The sheriff principal of any sheriffdom, not being either a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or a sheriff principal to whom subsection (1) above applies, shall not, so long as he holds office as such, advise, or act as an advocate in any court, in any cause civil or criminal arising within or coming from that sheriffdom.
- (4) Any reference in any enactment passed before the commencement of this Act to a sheriff principal who is restricted by the terms of his appointment from engaging in private practice shall be construed as including a reference to a sheriff principal to whom subsection (1) above applies.
- (5) Without prejudice to the giving of any direction under section 11(5) of this Act, in this section “sheriff principal” does not include a temporary sheriff principal and “sheriff” does not include a [<sup>F8</sup>part-time] sheriff or an honorary sheriff.

#### Textual Amendments

- F6** Word repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), ss. 20, 59, [Sch. 4](#)
- F7** [S. 6\(1\)\(b\)](#) repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), ss. 20, 59, [Sch. 4](#)
- F8** Words in [s. 6\(5\)](#) substituted (9.8.2000) by [2000 asp 9, s. 12, Sch. para. 1\(3\)](#)

## 7 Jurisdiction of sheriff.

[<sup>F9</sup>(1)] For removal of doubt it is hereby declared that a sheriff, by virtue of his appointment as such, has and is entitled to exercise the jurisdiction and powers attaching to the office of sheriff in all parts of the sheriffdom for which he is appointed.

[<sup>F10</sup>(2) Without prejudice to section 11A(4) of this Act, in this section, “sheriff” does not include a part-time sheriff.]

#### Textual Amendments

- F9** [S. 7](#) renumbered (9.8.2000) as [s. 7\(1\)](#) by [2000 asp 9, s. 12, Sch. para. 1\(4\)](#)
- F10** [S. 7\(2\)](#) inserted (9.8.2000) by [2000 asp 9, s. 12, Sch. para. 1\(4\)](#)

## 8 Sheriff may be appointed to assist Secretary of State.

Notwithstanding anything in section 6 of this Act, a person holding the office of sheriff principal or sheriff may, without relinquishing that office, be appointed by the Secretary of State to assist him to discharge the functions vested in him in relation to the organisation and administration of the sheriff courts, but a person so appointed shall not perform his duties as the holder of the office of sheriff principal or sheriff, as the case may be, while he retains that appointment.

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*Functions of the Secretary of State in relation to sheriffs principal, sheriffs, etc.*

## 9 Power of Secretary of State to give administrative directions.

[<sup>F11</sup>(1)] For the purpose of securing the efficient organisation and administration of the sheriff courts and, in particular, the speedy and efficient disposal of business in those courts, the Secretary of State may give such directions of an administrative nature as appear to him to be necessary or expedient, and any sheriff principal or sheriff, and any officer or servant engaged in the administration of the sheriff courts, to whom a direction is given under this section shall, subject to the provisions of this Act, give effect to that direction.

[<sup>F12</sup>(2) In this section, “sheriff” does not include a part-time sheriff.]

### Textual Amendments

**F11** S. 9 renumbered as subsection s. 9 “(1)” (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(5)

**F12** S. 9(2) inserted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(5)

## 10 Secretary of State may authorise sheriff principal or direct sheriff to act in another sheriffdom.

[<sup>F13</sup>(1) Where a vacancy occurs in the office of sheriff principal of any sheriffdom the [<sup>F14</sup>Scottish Ministers] may, if it appears to [<sup>F14</sup>them] expedient so to do in order to avoid delay in the administration of justice in that sheriffdom, authorise the sheriff principal of any other sheriffdom to perform the duties of sheriff principal in the first-mentioned sheriffdom (in addition to his own duties) until the [<sup>F14</sup>Scottish Ministers] otherwise [<sup>F15</sup>decide].

(1A) Where the sheriff principal of any sheriffdom is unable to perform, or rules that he is precluded from performing, all of, or some part of, his duties as sheriff principal the [<sup>F16</sup>Scottish Ministers] may authorise the sheriff principal of any other sheriffdom to perform the duties of sheriff principal, or as the case may be that part of those duties, in the first-mentioned sheriffdom (in addition to his own duties) until the [<sup>F16</sup>Scottish Ministers] otherwise [<sup>F15</sup>decide].]

(2) Where as regards any sheriffdom—

- (a) a sheriff is by reason of illness or otherwise unable to perform his duties as sheriff, or
- (b) a vacancy occurs in the office of sheriff, or
- (c) for any other reason it appears to the [<sup>F17</sup>Scottish Ministers] expedient so to do in order to avoid delay in the administration of justice in that sheriffdom,

the [<sup>F17</sup>Scottish Ministers] may direct a sheriff appointed for any other sheriffdom to perform, in accordance with the terms of the direction, the duties of sheriff in the first-mentioned sheriffdom (in addition to or in place of his own duties) until otherwise directed by the [<sup>F17</sup>Scottish Ministers], and any sheriff to whom a direction is given under this subsection shall give effect to that direction.

(3) A sheriff principal authorised, or a sheriff directed, under this section to perform duties in any sheriffdom shall for that purpose, without the necessity of his receiving a commission in that behalf, have and be entitled to exercise the jurisdiction and

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powers attaching to the office of sheriff principal or, as the case may be, sheriff in that sheriffdom.

(4) [<sup>F18</sup>The Scottish Ministers may], pay to a sheriff principal or a sheriff, in respect of any duties performed by that sheriff principal or sheriff (in addition to his own duties) in pursuance of an authority or direction under this section, such remuneration and allowances as may appear to the Secretary of State [<sup>F19</sup>, with the consent of the Treasury,] to be reasonable in all the circumstances.

(5) In this section “sheriff” does not include an honorary [<sup>F20</sup> or a part-time] sheriff.

#### Textual Amendments

- F13** S. 10(1)(1A) substituted for subsection (1) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 10(a)
- F14** Words in s. 10(1) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. 1 para. 50(3)(a)(b)
- F15** Word in s. 10(1)(1A) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. 1 para. 50(3)(c)
- F16** Words in s. 10(1A) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. 1 para. 50(3)(a)
- F17** Words in s. 10(2) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. 1 para. 50(3)(a)
- F18** Words in s. 10(4) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. 1 para. 50(3)(d)(i)
- F19** Words in s. 10(4) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. 1 para. 50(3)(d)(ii)
- F20** Words in s. 10(5) inserted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(6)

## 11 Secretary of State may appoint temporary sheriffs principal and sheriffs.

[<sup>F21</sup>(1) Where a vacancy occurs in the office of sheriff principal of any sheriffdom the Secretary of State may, if it appears to him expedient so to do in order to avoid delay in the administration of justice in that sheriffdom, appoint a person to act as sheriff principal of the sheriffdom.

(1A) Where the sheriff principal of any sheriffdom is unable to perform, or rules that he is precluded from performing, all of, or some part of, his duties as sheriff principal the Secretary of State may appoint a person to act as sheriff principal of the sheriffdom, or as the case may be to perform that part of the duties of the sheriff principal.

(1B) A person appointed under subsection (1) or (1A) above shall be known as a temporary sheriff principal.]

<sup>F22</sup>(2) .....

(3) A person shall not be appointed to be a temporary sheriff principal <sup>F23</sup>. . . unless he is legally qualified, and has been so qualified—

(a) <sup>F24</sup> . . . for at least ten years;

<sup>F25</sup>(b) .....

For the purposes of this subsection, a person shall be legally qualified if he is an advocate or a solicitor.

(4) The appointment of a temporary sheriff principal <sup>F26</sup>. . . shall subsist until recalled by the Secretary of State.

[<sup>F27</sup>(4A) No appointment under this section of a person to be a temporary sheriff principal <sup>F28</sup>. . . shall extend beyond the day on which the person reaches the age of 70.

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- (4B) Subsection (4A) above is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).]
- (5) If the Secretary of State, on appointing any person to be a temporary sheriff principal<sup>F29</sup> . . . , so directs, the provisions of section 6(1) of this Act shall apply in relation to that person as they apply in relation to a person holding the office of sheriff.
- (6) A person appointed to be temporary sheriff principal of,<sup>F30</sup> . . . any sheriffdom shall for the purposes of his appointment, without the necessity of his receiving a commission in that behalf, have and be entitled to exercise the jurisdiction and powers attaching to the office of sheriff principal<sup>F30</sup> . . . in that sheriffdom.
- (7) The appointment of any person holding the office of sheriff to be a temporary sheriff principal shall not affect the commission held by that person as sheriff, but he shall not, while his appointment as a temporary sheriff principal subsists, perform any duties by virtue of the said commission.
- (8) The Secretary of State may pay to any person appointed to be a temporary sheriff principal<sup>F31</sup> . . . such remuneration and allowances as the Treasury, on the recommendation of the Secretary of State, may determine.

#### Textual Amendments

- F21** S. 11(1)(1A)(1B) substituted for subsection (1) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 10(b)
- F22** S. 11(2) repealed (9.8.2000) by 2000 asp 9, s. 6(1) (with s. 6(2))
- F23** Words in s. 11(3) repealed (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(7)(i)
- F24** Words in s. 11(3)(a) repealed (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(7)(a)(ii)
- F25** S. 11(3)(b) repealed (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(7)(a)(iii)
- F26** Words in s. 11(4) repealed (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(7)(b)
- F27** S. 11(4A)(4B) inserted (31.3.1995) by 1993 c. 8, s. 26, Sch. 6 para. 11; S.I. 1995/631, art. 2
- F28** Words in s. 11(4A) repealed (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(7)(c)
- F29** Words in s. 11(5) repealed (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(7)(d)
- F30** Words in s. 11(6) repealed (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(7)(e)
- F31** Words in s. 11(8) repealed (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(7)(f)

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

- C2** S. 11(1) modified (9.11.1998) by 1998 c. 42, ss. 18(5), 22(2) (with ss. 7(8), 22(5))  
S. 11(1) modified (27.9.1999) by 1999 c. 22, s. 68(4) (with Sch. 14 para. 7(2))

### [<sup>F32</sup>11A Appointment of part-time sheriffs

- (1) The Scottish Ministers may, under this section, appoint persons to act as sheriffs, and persons so appointed shall be known as “part-time sheriffs”.
- (2) In making those appointments, the Scottish Ministers shall comply with such requirements as to procedure and consultation as may be prescribed by regulations made by them.
- (3) A person shall not be appointed a part-time sheriff unless qualified under section 5(1) of this Act to be appointed to the office of sheriff.



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- (4) A part-time sheriff shall, without the necessity of receiving a commission in that behalf, be entitled to exercise in every sheriffdom the jurisdiction and powers attaching to the office of sheriff.
- (5) The number of persons holding appointments as part-time sheriffs shall not, at any one time, exceed 60 or such other number as may be fixed in substitution by order made by the Scottish Ministers.
- (6) A part-time sheriff shall be subject to such instructions, arrangements and other provisions as fall to be made under this Act by the sheriff principal of the sheriffdom in which the part-time sheriff is sitting.
- (7) In the performance of their functions under this Act, sheriffs principal shall 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; and
  - (b) does not sit for more than 100 days,in each successive period of 12 months beginning with the day of the part-time sheriff's appointment as such.
- (8) The Scottish Ministers shall pay to part-time sheriffs such remuneration and allowances as they determine.]

#### Textual Amendments

**F32** Ss. 11A-11D inserted (9.8.2000) by 2000 asp 9, s. 7

### <sup>F33</sup> 11B Limitation, termination etc. of appointment of part-time sheriffs

- (1) An appointment as a part-time sheriff shall, subject to subsections (2) to (4) below, last for 5 years.
- (2) A part-time sheriff may resign at any time by giving notice to that effect to the Scottish Ministers.
- (3) An appointment of a person as a part-time sheriff shall not extend beyond the day when the person reaches the age of 70.
- (4) A part-time sheriff's appointment shall come to an end upon the part-time sheriff's being removed from office under section 11C of this Act.
- (5) A part-time sheriff whose appointment comes to an end by operation of subsection (1) above may be reappointed and, except in the circumstances set out in subsection (6) below, shall be reappointed.
- (6) The circumstances mentioned in subsection (5) above are that—
  - (a) the part-time sheriff has declined that reappointment;
  - (b) the part-time sheriff is aged 69 or over;
  - (c) a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment;
  - (d) the part-time sheriff has not sat for a total of 50 or more days in the preceding five year period; or

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- (e) the Scottish Ministers have, since the part-time sheriff was last appointed, made an order under section 11A(5) of this Act reducing the number of persons who may hold appointment as part-time sheriffs.
- (7) A part-time sheriff whose appointment comes to an end by resignation under subsection (2) above may be reappointed.
- (8) The provisions of section 11A and this section of this Act apply to a reappointment under subsections (5) and (7) above as they apply to an appointment.
- (9) A part-time sheriff who is a solicitor in practice shall not carry out any function as a part-time sheriff in a sheriff court district in which his or her main place of business as such solicitor is situated.

#### Textual Amendments

**F33** Ss. 11A-11D inserted (9.8.2000) by 2000 asp 9, s. 7

### <sup>F34</sup> 11C Removal of part-time sheriffs from office

- (1) A part-time sheriff may be removed from office by and only by order of the tribunal constituted by and under subsection (3) below (“the tribunal”).
- (2) The tribunal may order the removal from office of a part-time sheriff only if, after investigation carried out at the request of the Scottish Ministers, it finds that the part-time sheriff is unfit for office by reason of inability, neglect of duty or misbehaviour.
- (3) The tribunal shall consist of the following three members, who shall be appointed by the Lord President of the Court of Session—
  - (a) either a Senator of the College of Justice or a sheriff principal (who shall preside);
  - (b) a person who is, and has been for at least ten years, legally qualified within the meaning of section 5(1) of this Act; and
  - (c) one other person.
- (4) Regulations, made by the Scottish Ministers—
  - (a) may make provision enabling the tribunal, at any time during an investigation, to suspend a part-time sheriff from office and providing as to the effect and duration of such suspension; and
  - (b) shall make such further provision as respects the tribunal as the Scottish Ministers consider necessary or expedient, including provision for the procedure to be followed by and before it.

#### Textual Amendments

**F34** Ss. 11A-11D inserted (9.8.2000) by 2000 asp 9, s. 7

### <sup>F35</sup> 11D Regulations and orders under sections 11A and 11C

- (1) Regulations under section 11A or section 11C and orders under section 11A of this Act shall be made by statutory instrument.

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- (2) No such regulations or order shall be made unless laid in draft before, and approved by a resolution of, the Scottish Parliament.

#### **Textual Amendments**

**F35** Ss. 11A-11D inserted (9.8.2000) by 2000 asp 9, s. 7

### **13 Functions of Secretary of State with respect to residence and leave of absence of sheriffs principal.**

- (1) The Secretary of State may require any sheriff principal (being a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or to whom section 6(1) of this Act applies) to reside ordinarily at such place as the Secretary of State may specify.
- (2) The Secretary of State may approve such leave of absence for any sheriff principal (being a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or to whom section 6(1) of this Act applies) as appears to the Secretary of State to be proper, but the amount of leave so approved (other than leave granted on account of ill-health) shall not, unless the Secretary of State for special reasons otherwise permits, exceed seven weeks in any year.

### **14 Functions of Secretary of State with respect to number, residence and place of duties of sheriffs.**

- (1) The Secretary of State may, with the approval of the Treasury, by order prescribe the number of sheriffs to be appointed for each sheriffdom.
- (2) The Secretary of State may require any sheriff to reside ordinarily at such place as the Secretary of State may specify.
- (3) The Secretary of State—
- (a) shall, on the appointment of a person to hold the office of sheriff for any sheriffdom,
  - (b) may, at any subsequent time while the said person holds that office,
- give to that person a direction designating the sheriff court district or districts in which he is to perform his duties as sheriff:

Provided that a direction given to a sheriff under this subsection shall be subject to any instruction given to that sheriff under section 15 of this Act by the sheriff principal of the sheriffdom, being an instruction given for the purpose of giving effect to any special provision made by the sheriff principal under section 16(1)(b) of this Act.

- (4) If for the purpose of securing the efficient organisation and administration of the sheriff courts, and after consultation with the Lord President of the Court of Session, the Secretary of State by order so directs, a person holding the office of sheriff for any sheriffdom shall, on such date as may be specified in the order, cease to hold that office and shall, on and after that date, without the necessity of his receiving a commission in that behalf, hold instead the office of sheriff for such other sheriffdom as may be so specified; and on making an order under this subsection with respect to any person the Secretary of State shall give to that person a direction under subsection (3) above

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designating the sheriff court district or districts in which he is to perform his duties as sheriff.

(5) In this section “sheriff” does not include an honorary sheriff <sup>F36</sup> or a part-time sheriff.

#### Textual Amendments

**F36** Words in s. 14(5) substituted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(9)

## 12 Removal from office, and suspension, of sheriff principal or sheriff.

- (1) The Lord President of the Court of Session and the Lord Justice Clerk may of their own accord and shall, if they are requested so to do by the Secretary of State, undertake jointly an investigation into the fitness for office of any sheriff principal or sheriff and, as soon as practicable after completing that investigation, shall report in writing to the Secretary of State either—
  - (a) that the sheriff principal or sheriff is fit for office, or
  - (b) that the sheriff principal or sheriff is unfit for office by reason of inability, neglect of duty or misbehaviour,
 and shall in either case include in their report a statement of their reasons for so reporting.
- (2) The Secretary of State may, if a report is made to him under subsection (1) above to the effect that any sheriff principal or sheriff is unfit for office by reason of inability, neglect of duty or misbehaviour, make an order removing that sheriff principal or sheriff from office.
- (3) An order under subsection (2) above—
  - (a) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament,
  - (b) shall not be made so as to come into operation before the expiry, in relation to the order, of the period of forty days mentioned in section 5(1) of the <sup>M2</sup>Statutory Instruments Act 1946.
- (4) The Lord President of the Court of Session and the Lord Justice Clerk may, on undertaking an investigation under subsection (1) above or at any time during the course of such an investigation, if they think it proper so to do, recommend in writing to the Secretary of State that the sheriff principal or sheriff who is the subject of the investigation be suspended from office, and the Secretary of State may, on receiving such a recommendation as aforesaid, suspend that sheriff principal or sheriff from office.
- (5) A sheriff principal or a sheriff suspended from office under subsection (4) above shall remain so suspended until the Secretary of State otherwise directs.
- (6) The suspension from office of a sheriff principal or a sheriff under subsection (4) above shall not affect the payment to him of his salary in respect of the period of his suspension.
- (7) In this section “sheriff principal” does not include a temporary sheriff principal and “sheriff” does not include a <sup>F37</sup>part-time] sheriff or an honorary sheriff.

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#### Textual Amendments

F37 Words in s. 12(7) substituted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(8)

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

C3 S. 12 extended by District Courts (Scotland) Act 1975 (c. 20), s. 5(8)

#### Marginal Citations

M2 1946 c. 36.

### 13 Functions of Secretary of State with respect to residence and leave of absence of sheriffs principal.

- (1) The Secretary of State may require any sheriff principal (being a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or to whom section 6(1) of this Act applies) to reside ordinarily at such place as the Secretary of State may specify.
- (2) The Secretary of State may approve such leave of absence for any sheriff principal (being a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or to whom section 6(1) of this Act applies) as appears to the Secretary of State to be proper, but the amount of leave so approved (other than leave granted on account of ill-health) shall not, unless the Secretary of State for special reasons otherwise permits, exceed seven weeks in any year.

### 14 Functions of Secretary of State with respect to number, residence and place of duties of sheriffs.

- (1) The Secretary of State may, with the approval of the Treasury, by order prescribe the number of sheriffs to be appointed for each sheriffdom.
- (2) The Secretary of State may require any sheriff to reside ordinarily at such place as the Secretary of State may specify.
- (3) The Secretary of State—
  - (a) shall, on the appointment of a person to hold the office of sheriff for any sheriffdom,
  - (b) may, at any subsequent time while the said person holds that office,give to that person a direction designating the sheriff court district or districts in which he is to perform his duties as sheriff.

Provided that a direction given to a sheriff under this subsection shall be subject to any instruction given to that sheriff under section 15 of this Act by the sheriff principal of the sheriffdom, being an instruction given for the purpose of giving effect to any special provision made by the sheriff principal under section 16(1)(b) of this Act.

- (4) If for the purpose of securing the efficient organisation and administration of the sheriff courts, and after consultation with the Lord President of the Court of Session, the Secretary of State by order so directs, a person holding the office of sheriff for any sheriffdom shall, on such date as may be specified in the order, cease to hold that office and shall, on and after that date, without the necessity of his receiving a commission in that behalf, hold instead the office of sheriff for such other sheriffdom as may be

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so specified; and on making an order under this subsection with respect to any person the Secretary of State shall give to that person a direction under subsection (3) above designating the sheriff court district or districts in which he is to perform his duties as sheriff.

(5) In this section “sheriff” does not include an honorary sheriff or a part-time]sheriff.

#### Textual Amendments

**F36** Words in s. 14(5) substituted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(9)

VALID FROM 01/06/2009

#### 14A Re-employment of retired sheriffs principal and sheriffs

- (1) A sheriff principal may, if it appears to him to be expedient as a temporary measure in order to facilitate the disposal of business in the sheriff courts of the sheriffdom, appoint a qualifying former sheriff principal or sheriff to act as a sheriff of that sheriffdom during such period or on such occasions as the sheriff principal thinks fit.
- (2) A qualifying former sheriff principal is someone who—
  - (a) ceased to hold that office other than by virtue of an order under section 12E of this Act, and
  - (b) has not reached the age of 75 years.
- (3) A qualifying former sheriff is someone who—
  - (a) ceased to hold that office other than by virtue of an order under section 12E of this Act or by being appointed as a sheriff principal, and
  - (b) has not reached the age of 75 years.
- (4) A person appointed under subsection (1) above is not to be treated as a sheriff for the purposes of any statutory provision or rule of law relating to—
  - (a) the appointment, retirement, removal or disqualification of sheriffs,
  - (b) the tenure of office and oaths to be taken by sheriffs, or
  - (c) the remuneration, allowances or pensions of sheriffs.
- (5) But, otherwise, such a person is to be treated for all purposes as a sheriff of the sheriffdom for which the person is appointed (and so may perform any of the functions of a sheriff of that sheriffdom).
- (6) The Scottish Court Service may pay to, or in respect of, a person appointed under subsection (1) above such remuneration or allowances as the Scottish Ministers may determine.
- (7) Despite subsection (1), the period during which or an occasion on which a person appointed under that subsection may act under that appointment does not extend beyond, or (as the case may be) is not to be after, the date on which the person reaches the age of 75 years.
- (8) Despite the expiry (whether by virtue of subsection (7) above or otherwise) of any period for which a person is appointed under subsection (1) above—

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- (a) the person may attend at a sheriff court for the purpose of continuing to deal with, giving judgment in, or dealing with any matter relating to, any case begun before the person while acting under that appointment, and
  - (b) for that purpose, and for the purpose of any proceedings arising out of any such case or matter, the person is to be treated as acting or, as the case may be, having acted under that appointment.
- (9) In this section—
- “sheriff principal”, where it first occurs in subsection (1), includes temporary sheriff principal, and
  - “sheriff” does not include part-time sheriff or honorary sheriff.

VALID FROM 20/02/2010

*<sup>F38</sup>Consideration of fitness for, and removal from, shrieval office*

**Textual Amendments**

**F38** Ss. 12A-12F and cross-heading substituted (20.2.2010 for the insertion of s. 12C(5) and 1.4.2010 otherwise) for s. 12 by [Judiciary and Courts \(Scotland\) Act 2008 \(asp 6\)](#), **ss. 40, 76**; [S.S.I. 2010/39](#), **art. 2**, Sch. (with [art. 3](#))

VALID FROM 01/04/2010

**12A Tribunal to consider fitness for shrieval office**

- (1) The First Minister—
- (a) must, when requested to do so by the Lord President of the Court of Session, and
  - (b) may, in such other circumstances as the First Minister thinks fit, constitute a tribunal to investigate and report on whether a person holding a shrieval office to which this section applies is unfit to hold the office by reason of inability, neglect of duty or misbehaviour.
- (2) The shrieval offices to which this section applies are—
- (a) the office of sheriff principal,
  - (b) the office of sheriff, and
  - (c) the office of part-time sheriff.
- (3) The First Minister may constitute a tribunal under subsection (1)(b) above only if the Lord President has been consulted.
- (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 shrieval office,
  - (c) one individual who is, and has been for at least 10 years, an advocate or a solicitor, and

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- (d) one individual who is not (and never has been) a qualifying member of the Judicial Committee of the Privy Council, who does not hold (and never has held) a shrieval office to which this section applies and who is not (and never has been) an advocate or solicitor.
- (5) A qualifying member of the Judicial Committee of the Privy Council is someone who is a member of that Committee by virtue of section 1(2)(a) of the Judicial Committee Act 1833 (c. 41) (that is, someone who is a member of the Privy Council who holds, or has held, high judicial office).
- (6) The relevant shrieval office is—
  - (a) where the investigation is to be of a person's fitness to hold the office of sheriff principal, that office,
  - (b) where the investigation is to be of a person's fitness to hold the office of sheriff or part-time sheriff, the office of sheriff.
- (7) The selection of persons to be members of a tribunal under this section is to be made by the First Minister, with the agreement of the Lord President of the Court of Session.
- (8) The person mentioned in subsection (4)(a) is to chair the tribunal and has a casting vote.

VALID FROM 01/04/2010

### **12B Suspension during investigation**

- (1) Where the Lord President of the Court of Session has requested that the First Minister constitute a tribunal under section 12A, the Lord President may, at any time before the tribunal reports to the First Minister, suspend the person who is to be, or is, the subject of the investigation, from office.
- (2) Such a suspension lasts until the Lord President orders otherwise.
- (3) A tribunal constituted under section 12A may, at any time before the tribunal reports to the First Minister, recommend to the First Minister that the person who is the subject of the tribunal's investigation be suspended from office.
- (4) Such a recommendation must be in writing.
- (5) The First Minister, on receiving such a recommendation, may suspend the person from office.
- (6) Such a suspension lasts until the First Minister orders otherwise.
- (7) Suspension under this section from the office of sheriff principal or sheriff does not affect remuneration payable to, or in respect of, the office in respect of the period of suspension.

### **12C Further provision about tribunals**

- (1) A tribunal constituted under section 12A may require any person—
  - (a) to attend its proceedings for the purpose of giving evidence,



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- (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 to answer any question or produce any document which the person would be entitled to refuse to answer or produce in a court in Scotland.
- (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, while attending the tribunal proceedings to give evidence, to answer any question, or
  - (c) deliberately alters, conceals or destroys any document which the person is required to produce.
- (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 tribunals constituted under section 12A.
- (6) The Scottish Ministers may pay such remuneration to, and expenses of, members of tribunals constituted under section 12A as they think fit.
- (7) The Scottish Ministers must pay such expenses as they consider are reasonably required to be incurred to enable a tribunal constituted under section 12A to carry out its functions.

VALID FROM 01/04/2010

#### **12D Report of tribunal**

- (1) The report of a tribunal constituted under section 12A 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 01/04/2010

#### **12E Removal from office**

- (1) Where subsection (2) applies, the First Minister may remove a person from the office of sheriff principal, sheriff or part-time sheriff.
- (2) This subsection applies if—
  - (a) a tribunal constituted under section 12A has reported to the First Minister that the person is unfit to hold that office by reason of inability, neglect of duty or misbehaviour, and
  - (b) the First Minister has laid the report before the Scottish Parliament.

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- (3) The First Minister may remove a sheriff principal or sheriff under subsection (1) only by order made by statutory instrument.
- (4) Such a statutory instrument—
  - (a) is to be subject to annulment in pursuance of a resolution of the Scottish Parliament,
  - (b) is not to be made so as to come into effect before the expiry, in relation to the instrument, of the period of 40 days mentioned in article 11 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096).
- (5) Article 10 of that Order applies to such an instrument subject to the following modifications—
  - (a) the reference to the period of 21 days in paragraph (2) is to be read as a reference to 40 days, and
  - (b) paragraph (3) does not apply.

VALID FROM 01/04/2010

#### **12F Interpretation of sections 12A to 12E**

- (1) In sections 12A to 12E “office of part-time sheriff” means an appointment (or reappointment) as a part-time sheriff; and references to removal or suspension from that office are to be construed accordingly.
- (2) In those sections—
  - (a) a reference to the office of sheriff principal does not include a reference to an appointment as a temporary sheriff principal,
  - (b) a reference to the office of sheriff does not include a reference to the office of honorary sheriff.

*Functions of the sheriff principal in relation to sheriffs, etc.*

#### **15 General functions of sheriff principal.**

- (1) Subject generally to the provisions of this Act, and in particular to the provisions of this or any other Act conferring functions on the Secretary of State or anything done under any such provision, the sheriff principal of each sheriffdom shall be under a duty to secure the speedy and efficient disposal of business in the sheriff courts of that sheriffdom, and for the purpose of carrying out that duty shall have, in addition to any functions conferred on him by or under any other enactment, the functions conferred on him by the following provisions of this Act.
- (2) For the purpose of securing the effective discharge of any of the said functions the sheriff principal of any sheriffdom may give such instructions of an administrative nature as appear to him to be necessary or expedient, and any sheriff appointed for that sheriffdom, [<sup>F39</sup>any part-time sheriff] and any officer or servant engaged in the administration of the sheriff courts in the sheriffdom, to whom an instruction is given

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under this section shall, subject to the provisions of this Act, give effect to that instruction.

#### Textual Amendments

**F39** Words in s. 15(2) inserted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(10)

## 16 Functions of sheriff principal with respect to duties and leave of absence of sheriffs.

- (1) The sheriff principal of each sheriffdom shall make such arrangements as appear to him necessary or expedient for the purpose of securing the speedy and efficient disposal of business in the sheriff courts of that sheriffdom, and in particular, but without prejudice to the generality of the foregoing words, may—
- (a) subject to any direction given by the Secretary of State under section 9 of this Act, provide for the division of such business as aforesaid between the sheriff principal<sup>F40</sup> . . . the sheriffs appointed for the sheriffdom [<sup>F41</sup>, and any part-time sheriffs], and for the distribution of the business (so far as allocated to the sheriffs) amongst those sheriffs;
  - (b) where any of those sheriffs is by reason of illness or otherwise unable to perform his duties as sheriff, or a vacancy occurs in the office of sheriff in the sheriffdom, or for any other reason it appears to the sheriff principal expedient so to do in order to avoid delay in the administration of justice in the sheriffdom, make special provision of a temporary nature for the disposal of any part of the said business either by the sheriff principal or by any of the sheriffs appointed for the sheriffdom [<sup>F42</sup> or by any part-time sheriffs], in addition to or in place of the sheriff [<sup>F43</sup> or part-time sheriff] principal's or, as the case may be, that sheriff's own duties;
- so, however, that nothing done under this subsection shall enable a sheriff to dispose of business which he does not otherwise have power to dispose of.
- (2) The sheriff principal of any sheriffdom may approve such leave of absence for any sheriff appointed for that sheriffdom as appears to the sheriff principal to be proper, but the amount of leave so approved (other than leave granted on account of ill-health) shall not, unless the Secretary of State for special reasons otherwise permits, exceed seven weeks in any year.
- (3) In subsection (2) above “sheriff” shall not include [<sup>F44</sup> a part-time or] an honorary sheriff.

#### Textual Amendments

**F40** Word in s. 16(1)(a) repealed (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(11)(a)(i)

**F41** Words in s. 16 (1)(a) inserted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(11)(a)(i)

**F42** Words in s. 16(1)(b) inserted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(11)(a)(ii)

**F43** Words in s. 16(1)(b) inserted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(11)(a)(iii)

**F44** Words in s. 16(3) inserted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(11)(b)

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## **17 Sheriff principal may fix sittings and business of sheriff courts in sheriffdom, and sessions for civil business.**

- (1) The sheriff principal of each sheriffdom may by order prescribe—
  - (a) the number of sheriff courts to be held at each of the places within that sheriffdom at which a court is required under or by virtue of this Act to be held,
  - (b) subject to section 25(2) of this Act, the days on which and the times at which those courts are to be held,
  - (c) the descriptions of business to be disposed of at those courts.
- (2) The sheriff principal of each sheriffdom shall by order prescribe the dates of the sessions to be held in the sheriff courts of that sheriffdom for the disposal of civil business, and may prescribe different dates in relation to different courts, so however that—
  - (a) there shall be held in the courts of each sheriffdom three sessions in each year for the disposal of civil business, that is to say, a winter session, a spring session and a summer session;
  - (b) the dates of the sessions prescribed under this subsection shall not be such as to allow, in any court, a vacation of longer than two weeks at Christmas time, four weeks in the spring and eight weeks in the summer.
- (3) The sheriff principal of each sheriffdom shall, before the end of the spring session in each year, fix in respect of each sheriff court in that sheriffdom at least one day during the vacation immediately following that session for the disposal of civil business in that court, and shall, before the end of the summer session in each year, fix in respect of each court at least two days during the vacation immediately following that session for the said purpose; but civil proceedings in the sheriff courts may proceed during vacation as during session, and interlocutors may competently be pronounced during vacation in any such proceedings.
- (4) A sheriff principal shall give notice of any matter prescribed or fixed by him under the foregoing provisions of this section in such manner as he may think sufficient for bringing that matter to the attention of all persons having an interest therein.
- (5) Subject to anything done under subsection (1) above, or by an order under section 2(1) or section 3(2) of this Act, after the commencement of this Act—
  - (a) there shall be held at each of the places at which a sheriff court was in use to be held immediately before such commencement the same number of courts as was in use to be held there immediately before such commencement;
  - (b) the court days and times in use to be observed in any sheriff court immediately before such commencement (whether in pursuance of any enactment or other instrument or otherwise) shall continue to be observed in that court;
  - (c) the descriptions of business in use to be dealt with on court days in any sheriff court immediately before such commencement shall continue to be dealt with on those days.
- (6) Without prejudice to subsection (5) above, any enactment or other instrument in force immediately before the commencement of this Act shall, to the extent that it contains provisions with respect to any matter which the sheriff principal has power to prescribe under subsection (1) above, cease to have effect.

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

C4 S. 17(1)(b) amended by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), s. 10(2)

VALID FROM 01/04/2010

#### [<sup>F45</sup>17A] Lord President's power to exercise functions in sections 15 to 17

- (1) Subsection (2) applies where in any case the Lord President considers that the exercise by the sheriff principal of a sheriffdom of a function conferred by any of sections 15 to 17 of this Act—
- (a) is prejudicial to the efficient disposal of business in the sheriff courts of that sheriffdom,
  - (b) is prejudicial to the efficient organisation or administration of those sheriff courts, or
  - (c) is otherwise against the interests 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) Subsection (2)(b) applies where in any case the Lord President considers that the failure of the sheriff principal of a sheriffdom to exercise a function conferred by any of sections 15 to 17 of this Act—
- (a) is prejudicial to the efficient disposal of business in the sheriff courts of that sheriffdom,
  - (b) is prejudicial to the efficient organisation or administration of those sheriff courts, or
  - (c) is otherwise against the interests of the public.
- (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.]

#### Textual Amendments

- F38** Ss. 12A-12F and cross-heading substituted (20.2.2010 for the insertion of s. 12C(5) and 1.4.2010 otherwise) for s. 12 by [Judiciary and Courts \(Scotland\) Act 2008 \(asp 6\)](#), **ss. 40, 76**; S.S.I. 2010/39, **art. 2, Sch.** (with **art. 3**)
- F45** S. 17A inserted (1.4.2010) by [Judiciary and Courts \(Scotland\) Act 2008 \(asp 6\)](#), **ss. 49(2), 76**; S.S.I. 2010/39, **art. 2(b), Sch.**

#### 18 Secretary of State may exercise certain functions of sheriff principal in certain circumstances.

If in any case the Secretary of State considers—

- (a) that the exercise by the sheriff principal of any sheriffdom of any of the functions conferred on him by sections 15 to 17 of this Act, or

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(b) that the failure of the sheriff principal of any sheriffdom to exercise any of the said functions,

is prejudicial to the speedy and efficient disposal of business in the sheriff courts of that sheriffdom or to the efficient organisation or administration of the sheriff courts generally, or is otherwise against the interests of the public, the Secretary of State may—

- (i) (in the circumstances mentioned in paragraph (a) above) rescind that exercise of that function by the sheriff principal and, if he thinks fit, himself exercise that function in that case;
- (ii) (in the circumstances mentioned in paragraph (b) above) himself exercise that function in that case,

and the exercise of any function of a sheriff principal by the Secretary of State under this section shall have effect as if it were an exercise of that function by the sheriff principal.

*Miscellaneous*

**19 Travelling allowances for sheriffs principal.**

The Secretary of State may pay to any sheriff principal, in addition to the salary of that sheriff principal, such allowances as the Secretary of State, with the concurrence of the Treasury, may determine in respect of the travelling expenses incurred by the sheriff principal in the performance of the duties of his office.

**20 Extension of purposes for which Lord Advocate may give instructions to procurators fiscal.**

The purposes for which the Lord Advocate may issue instructions to procurators fiscal under section 8(1) of the <sup>M3</sup>Sheriff Courts and Legal Officers (Scotland) Act 1927 shall include, in addition to the purpose mentioned in the said section 8(1), the speedy and efficient disposal of business in the sheriff courts.

**Marginal Citations**

M3 1927 c. 35.

<sup>F46</sup>**21** .....

**Textual Amendments**

**F46** S. 21 repealed by House of Commons Disqualification Act 1975 (c. 24), Sch. 3 and Northern Ireland Assembly Disqualification Act 1975 (c. 25), Sch. 3 Pt. I

**22 Saving for existing functions.**

Nothing in the foregoing provisions of this Act shall affect the discharge by any person of any function lawfully held by him immediately before the commencement of this

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Act, except in so far as the discharge of that function is or would be inconsistent with any of those provisions or anything done thereunder.]

## PART II

### COURT HOUSES, BUILDINGS AND OFFICES

#### **23 Transfer of court houses to Secretary of State.**

- (1) Subject to the provisions of this section, there shall on the transfer date be transferred to and vest in the Secretary of State by virtue of this subsection all interests held by—
  - (a) a county council, being interests in or attaching to property used immediately before the transfer date by them for the purposes of their functions under the Sheriff Court Houses (Scotland) Acts 1860 to 1884 (which provide for the provision and maintenance of sheriff court houses);
  - (b) Court House Commissioners or other bodies charged with the like functions (such Commissioners and other bodies being hereafter in this Part of this Act referred to as Commissioners), being interests in or attaching to property used immediately before the transfer date by them for the purposes of functions conferred on them by any local enactment, being functions relating to the provision or maintenance of a sheriff court house.
- (2) Subject to the provisions of this section, all rights, liabilities and obligations to which a county council or Commissioners were entitled or subject immediately before the transfer date, being rights, liabilities and obligations acquired or incurred for the purposes of any such functions as are mentioned in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above, shall on the transfer date be transferred to and vest in the Secretary of State by virtue of this subsection.
- (3) Subject to the provisions of this section, where before the transfer date a local authority have paid to Commissioners any sum levied on that authority by those Commissioners under any local enactment, being a sum so levied for the purpose of enabling or assisting the Commissioners to discharge any such functions as are mentioned in paragraph (b) of subsection (1) above, then any liabilities or obligations to which the authority were subject immediately before the transfer date shall, to the extent that they were incurred for the purpose of enabling or assisting the authority to pay the said sum, be transferred to and vest in the Secretary of State by virtue of this subsection on the transfer date.
- (4) There shall be apportioned between the Secretary of State and the other persons concerned—
  - (a) interests in or attaching to property used partly for the purposes of the functions mentioned in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above and partly for other purposes;
  - (b) periodical sums payable in respect of such interests;
  - (c) rights, liabilities and obligations acquired or incurred partly for the purposes of any such functions as are mentioned in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above and partly for other purposes.
- (5) The Secretary of State may make regulations providing—
  - (a) for the completion of the title of the Secretary of State to heritable property vesting in him by virtue of this section;

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- (b) for the granting of the deeds required to transfer to and vest in the Secretary of State and the other persons concerned, with effect from the transfer date, the appropriate shares of such interests, sums, rights, liabilities or obligations as are specified in subsection (4) of this section;
- (c) for any other matters for which provision appears to the Secretary of State to be necessary or expedient for the purpose of securing the effective transfer of any assets vesting in the Secretary of State by virtue of this section;
- (d) for securing that anything done by or in relation to a county council or, as the case may be, Commissioners before the transfer date in connection with the exercise of any such functions as are mentioned in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above is deemed on and after that date to have been done by or in relation to the Secretary of State and, without prejudice to the foregoing provisions of this paragraph, that anything begun before that date by a county council or, as the case may be, Commissioners in the exercise of their said functions may be carried on and completed on and after that date by the Secretary of State;

and any such regulations may contain such incidental, supplemental or consequential provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the regulations.

- (6) The power to make regulations under subsection (5) above shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section references to the Secretary of State are references to the Secretary of State for the Environment.

## **24 Provision and maintenance of court houses by Secretary of State.**

- (1) The Secretary of State may, with the approval of the Treasury, provide such court houses, offices, buildings and other accommodation as may be necessary or desirable for carrying on the business of the sheriff courts.
- (2) The Secretary of State shall cause all court houses, offices, buildings and other accommodation used for the purpose of carrying on the business of the sheriff courts to be maintained in a proper state of repair and adequately furnished, equipped, cleaned, lighted and heated.
- (3) It is hereby declared that the references to land necessary for the public service in—
  - (a) section 2 of the <sup>M4</sup>Commissioners of Works Act 1852 (acquisition by agreement of land necessary for the public service), and
  - (b) section 30(1) of the <sup>M5</sup>Town and Country Planning (Scotland) Act 1969 (compulsory acquisition of land necessary for the public service),
 include references to any land which is required by the Secretary of State for the purpose of the discharge of his functions under this section.
- (4) For the purpose of the acquisition by agreement of land required by the Secretary of State for the purpose of the discharge of his functions under this section, the Lands Clauses Acts (except so much thereof as relates to the acquisition of land otherwise than by agreement and the provisions relating to access to the special Act and except sections 120 to 125 of the <sup>M6</sup>Lands Clauses Consolidation (Scotland) Act 1845), and section 6 and sections 70 to 78 of the <sup>M7</sup>Railways Clauses Consolidation (Scotland) Act 1845 (as originally enacted and not as amended by section 15 of the <sup>M8</sup>Mines



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(Working Facilities and Support) Act 1923) are hereby incorporated with this Act, and in construing those Acts for the purposes of this Act, this Act shall be deemed to be the special Act and the Secretary of State shall be deemed to be the promoter of the undertaking.

- (5) Subsections (1), (2) and (3) of section 35 of the <sup>M9</sup>Local Government (Scotland) Act 1966 (which, among other things, enable a local authority to enter into an agreement with the Secretary of State for the placing at his disposal, for the purposes of any function of his, of staff, etc., of the authority) shall apply also for the purpose of enabling Commissioners to enter into an agreement with the Secretary of State, being an agreement in relation to the discharge of his functions under this section of such a nature as is described in the said subsection (1); and for the purpose of such application the first and last references to a local authority in each of the said subsections (1) and (2) shall include a reference to Commissioners.

#### Marginal Citations

<b>M4</b>	1852 c. 28.
<b>M5</b>	1969 c. 30.
<b>M6</b>	1845 c. 19.
<b>M7</b>	1845 c. 33.
<b>M8</b>	1923 c. 20.
<b>M9</b>	1966 c. 51.

## 25 Use of public buildings for holding of courts.

- (1) Where in any place in which a sheriff court is to be held there is a building, being a court house or other building belonging to a local or other public authority, then, if it appears to the Secretary of State expedient for the purpose of avoiding delay in the administration of justice, that building shall, with all necessary rooms, furniture and fittings therein, be used for the purpose of holding the court, without payment for such use except the reasonable and necessary charges for cleaning, lighting and heating the building when used for the said purpose.
- (2) Where any such building is used for the purpose of holding a sheriff court, the sittings of the court shall be so arranged as not to interfere with the business of the local or other public authority usually transacted in the building or with any purpose for which the building may be used by virtue of any local enactment.

## 26 Use of court houses by third parties.

The Secretary of State may enter into agreements with any person for and with respect to the use by that person, on such terms and conditions as may be determined by the Secretary of State, of court houses, offices, buildings or other accommodation used for the purpose of carrying on the business of the sheriff courts, so however that any use so agreed shall be at such times as the said court houses, offices, buildings or other accommodation are not required for the said purpose.

## 27 Compensation for officers and servants.

- (1) The Secretary of State may, with the concurrence of the Minister for the Civil Service, make regulations providing for the payment by the Secretary of State, subject to such

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exceptions or conditions as may be prescribed in the regulations, of compensation to or in respect of persons who suffer loss of employment, or loss or diminution of emoluments, which is attributable to the provisions of this Part of this Act or of any regulations made thereunder.

- (2) Regulations under this section may—
- (a) include provision for the determination of questions arising under the regulations,
  - (b) be framed so as to have effect from a date earlier than the making of the regulations,

but so that regulations having effect from a date earlier than their making shall not place any individual in a worse position than he would have been in if the regulations had been so framed as to have effect only from the date of their making.

- (3) Regulations under this section may contain such incidental, supplemental or consequential provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the regulations.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **28 Repeal and amendment of local enactments.**

- (1) If it appears to the Secretary of State that any local enactment passed or made before the transfer date is inconsistent with any of the provisions of this Part of this Act or of any regulations made thereunder, or requires to be amended having regard to any of the provisions of that Part or of any such regulations, he may by order repeal or amend that enactment to such extent, or in such manner, as he considers appropriate.
- (2) An order under this section may contain such incidental, supplemental or consequential provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the order.
- (3) The power to make orders under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **29 Determination of disputes.**

Any dispute arising from the operation of the provisions of this Part of this Act or of regulations made thereunder (other than regulations made under section 27 thereof) shall, in default of agreement, be determined by an arbiter agreed upon by the parties or, failing such agreement, appointed by the Lord President of the Court of Session on the application of any of the parties to the dispute.

## **30 Interpretation of Part II.**

In this Part of this Act—

“local enactment” includes a provision in any local Act of Parliament;

“the transfer date” means such date as the Secretary of State may by order made by statutory instrument appoint for the purposes of this Part of this Act.

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## PART III

### CIVIL JURISDICTION, PROCEDURE AND APPEALS

#### <sup>X1</sup>31 Upper limit to privative jurisdiction of sheriff court to be £250.

Section 7 of the <sup>M10</sup>Sheriff Courts (Scotland) Act 1907 (which provides that all causes not exceeding fifty pounds in value which are competent in the sheriff court are to be brought in that court only, and are not to be subject to review by the Court of Session) shall have effect as if for the words “fifty pounds” there were substituted the words “[<sup>F47</sup>one thousand five hundred pounds]”.

#### Editorial Information

- X1** The text of ss. 31, 46, Sch. 1 paras. 2, 3 and Sch. 2 is in the form in which it was originally enacted; it was not reproduced in Statutes in Force and does not reflect any repeals or amendments which may have been made prior to 1.2.1991

#### Textual Amendments

- F47** Words in s. 31 substituted (30.11.1988) by [The Sheriff Courts \(Scotland\) Act 1971 \(Privative Jurisdiction and Summary Cause\) Order 1988 \(S.I. 1988/1993\)](#), [art. 3](#) (with art. 4)

#### Marginal Citations

- M10** 1907 c. 51.

### *Regulation of procedure in civil proceedings*

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

- (1) Subject to the provisions of this section, the Court of Session may by act of sederunt regulate and prescribe the procedure and practice to be followed in any civil proceedings in the sheriff court (including any matters incidental or relating to any such procedure or practice), and, without prejudice to the generality of the foregoing words, the power conferred on the Court of Session by this section shall extend to—
- (a) regulating the procedure to be followed in connection with execution or diligence following on any civil proceedings;
  - (b) prescribing the manner in which, the time within which, and the conditions on which, an appeal may be taken to the sheriff principal from an interlocutor of a sheriff, or to the Court of Session from an interlocutor of a sheriff principal or a sheriff (including an interlocutor applying the verdict of a jury), or any application may be made to the sheriff court, or anything required or authorised to be done in relation to any civil proceedings shall or may be done;
  - (c) prescribing the form of any document to be used in, or for the purposes of, any civil proceedings or any execution or diligence following thereon, and the person by whom, and the manner in which, any such document as aforesaid is to be authenticated;
  - (d) regulating the procedure to be followed in connection with the production and recovery of documents;
  - [<sup>F48</sup>(e) providing in respect of any category of civil proceedings for written statements (including affidavits) and reports, admissible under section 2(1)(b)

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- of the Civil Evidence (Scotland) Act 1988, to be received in evidence, on such conditions as may be prescribed, without being spoken to by a witness;]
- [<sup>F49</sup>(ea) regulating the procedure to be followed in connection with the making of orders under sections 12(1) and (6) and 13(2) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) (“the 2004 Act”);
  - (eb) regulating, so far as not regulated by the 2004 Act, the use of special measures authorised by virtue of that Act to be used;]
  - (f) making such provision as may appear to the Court of Session to be necessary or expedient with respect to the payment, investment or application of any sum of money awarded to or in respect of a person under legal disability in any action in the sheriff court;
  - (g) regulating the summoning, remuneration and duties of assessors;
  - (h) making such provision as may appear to the Court of Session to be necessary or expedient for carrying out the provisions of this Act or of any enactment conferring powers or imposing duties on sheriffs principal or sheriffs or relating to proceedings in the sheriff courts:
  - [<sup>F50</sup>(i) regulating the expenses which may be awarded by the sheriff to parties in proceedings before him:]
  - [<sup>F51</sup>(j) permitting a person who is not an advocate or solicitor and is not represented by an advocate or solicitor to transmit, whether orally or in writing, the views of a child to the sheriff for the purposes of any enactment which makes provision (however expressed) for the sheriff to have regard to those views.]
  - [<sup>F52</sup>(k) prescribing the procedure to be followed in appointing a person under section 3(4) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) and the functions of such a person.]
  - [<sup>F53</sup>(l) permitting a party to proceedings which relate to an attachment to be represented, in such circumstances as may be specified in the act of sederunt, by a person who is neither an advocate nor a solicitor.]

Provided that nothing contained in an act of sederunt made under this section shall derogate from—

- (i) the provisions of sections 35 to 38 of this Act [<sup>F54</sup>(as amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985)] with respect to summary causes, or
  - (ii) the provisions of subsection (8) of section 20 of the <sup>M11</sup>Race Relations Act 1968 with respect to the remuneration to be paid to assessors appointed under subsection (7) of that section.
- (2) An act of sederunt under this section may contain such incidental, supplemental or consequential provisions as appear to the Court of Session to be necessary or expedient for the purposes of that act, including, but without prejudice to the generality of the foregoing words, provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this Act) relating to matters with respect to which an act of sederunt may be made under this section.
- (3) Before making an act of sederunt under this section with respect to any matter the Court of Session shall (unless that act embodies, with or without modifications, draft rules submitted to them by the Sheriff Court Rules Council under section 34 of this Act) consult the said Council, and shall take into consideration any views expressed by the Council with respect to that matter.

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- (4) Section 34 of the <sup>M12</sup>Administration of Justice (Scotland) Act 1933 (power of Court of Session to regulate civil procedure in sheriff court) shall cease to have effect, but any act of sederunt made under or having effect by virtue of that section shall, if and so far as it is in force immediately before the commencement of this Act, continue in force and shall have effect, and be treated, as if it had been made under this section.

#### Textual Amendments

- F48** S. 32(1)(e) substituted by [Civil Evidence \(Scotland\) Act 1988 \(c. 32, SIF 47\)](#), **ss. 2(2)(4)**, 10(3)
- F49** S. 32(1)(ea)(eb) inserted (1.4.2005, 30.11.2005 and 1.4.2006 for certain purposes, otherwise 1.11.2007) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 14(2)**, 25 (with s. 17(1)); S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2005/590, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)(2)); S.S.I. 2007/447, **art. 3**, Sch. (with art. 4)
- F50** S. 32(1)(i) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. 59, **Sch. 2 para. 12(a)**
- F51** S. 32(1)(j) inserted (1.11.1995) by 1995 c. 36, s. 105(4), **Sch. 4 para. 18(2)** (with s. 103(1)); S.I. 1995/2787, art. 3, **Sch.**
- F52** S. 32(1)(k) inserted (2.4.2001) by 2000 asp 4, s. 88(2), **Sch. 5 para. 13**; S.S.I. 2001/81, art. 2, **Sch. 1**
- F53** S. 32(1)(l) inserted (17.12.2002) by 2002 asp 17, **s. 43** (with s. 63)
- F54** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), ss. 23, 59, **Sch. 2 para. 12(b)**

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

- C5** S. 32 amended by [Social Work \(Scotland\) Act 1968 \(c. 49\)](#), **ss. 18A(2)**, 34A(2) (as inserted by [Children Act 1975 \(c. 72\)](#), **ss. 66**, 78, 108(2)), [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18\)](#), **ss. 19**, 31(3), [Administration of Justice \(Scotland\) Act 1972 \(c. 59\)](#), **s. 1(3)** and [Presumption of Death \(Scotland\) Act 1977 \(c. 27\)](#), **s. 15**
- C6** S. 32 extended by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), ss. 97, 108(2), Sch. 7 paras. 5, **9(1)**
- C7** S. 32 amended (2.4.2001) by 2000 asp 4, **s. 2(4)**; S.S.I. 2001/81, art. 2, **Sch. 1**
- C8** S. 32 extended (17.6.1992) by [Child Support Act 1991 \(c.48\)](#), **ss. 39(2)**, 49; S.I. 1992/1431, art. 2, **Sch.**

#### Marginal Citations

- M11** 1968 c. 71.  
**M12** 1933 c. 41.

### 33 Sheriff Court Rules Council.

[<sup>F55</sup>(1) There shall be established a body (to be known as the Sheriff Court Rules Council, and hereafter in this section and section 34 called "the Council") which shall have the functions conferred on it by section 34, and which shall consist of—

- (a) two sheriffs principal, three sheriffs, one advocate, five solicitors and two whole-time sheriff clerks, all appointed by the Lord President of the Court of Session, after consultation with such persons as appear to him to be appropriate;
- (b) two persons appointed by the Lord President after consultation with the Secretary of State, being persons appearing to the Lord President to have—
  - (i) a knowledge of the working procedures and practices of the civil courts;
  - (ii) a knowledge of consumer affairs; and
  - (iii) an awareness of the interests of litigants in the civil courts; and

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- (c) one person appointed by the Secretary of State, being a person appearing to the Secretary of State to be qualified for such appointment.]
- (2) The members of the Council shall, so long as they retain the respective qualifications mentioned in subsection (1) above, hold office for three years and be eligible for re-appointment.
- (3) Any vacancy in the membership of the Council occurring by reason of death, resignation or other cause before the expiry of the period for which the member whose place is so vacated was appointed shall be filled—
- (a) if the member was appointed by the Lord President of the Court of Session, by the appointment by the Lord President, after [<sup>F56</sup>such consultation as is mentioned in paragraph (a) or, as the case may be, (b) of subsection (1) above], of a person having the same qualifications as that member,
- (b) if the member was appointed by the Secretary of State, by the appointment by the Secretary of State of another person appearing to the Secretary of State to have qualifications suitable for such appointment,
- and a person so appointed to fill a vacancy shall hold office only until the expiry of the said period.
- (4) The Lord President of the Court of Session shall appoint one of the two sheriffs principal who are members of the Council as chairman thereof, and the Secretary of State shall appoint a . . . <sup>F57</sup> secretary to the Council.
- (5) The Council shall have power to regulate the summoning of meetings of the Council and the procedure at such meetings, so however that—
- (a) the Council shall meet within one month of its being established and thereafter at intervals of not more than six months, and shall meet at any time on a requisition in that behalf made by the chairman of the Council or any three members thereof, and
- (b) at any meeting of the Council six members shall be a quorum.
- (6) The Rules Council for the sheriff court established under section 35 of the <sup>M13</sup>Administration of Justice (Scotland) Act 1933 is hereby dissolved, and the said section 35 shall cease to have effect.

#### Textual Amendments

**F55** S. 33(1) substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 36:1), s. 74(1), **Sch. 8 para. 26(1)**

**F56** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 36:1), s. 74(1), **Sch. 8 para. 26(2)**

**F57** Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 59, Sch. 2 para. 13, **Sch. 4**

#### Marginal Citations

**M13** 1933 c. 41.

### 34 Functions of Sheriff Court Rules Council.

- (1) As soon as practicable after it has been established the Council shall review generally the procedure and practice followed in civil proceedings in the sheriff court (including

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any matters incidental or relating to that procedure or practice) and, in the light of that review and of the provisions of this Act, shall prepare and submit to the Court of Session draft rules, being rules which—

- (a) are designed to regulate and prescribe that procedure and practice (including any such matters as aforesaid), and
- (b) are such as the Court of Session have power to make by act of sederunt under section 32 of this Act,

and the Court of Session shall make an act of sederunt under the said section 32 embodying those rules with such modifications, if any, as they think expedient.

- (2) After submitting draft rules to the Court of Session under subsection (1) above the Council shall keep under review the procedure and practice followed in civil proceedings in the sheriff court (including any matters incidental or relating to that procedure or practice), and the Council may prepare and submit to the Court of Session draft rules designed to deal with any of the matters relating to the sheriff court which the Court of Session have power under section 32 of this Act to regulate or prescribe by act of sederunt, and the Court of Session shall consider any draft rules so submitted and shall, if they approve the rules, make an act of sederunt under the said section 32 embodying those rules with such modifications if any, as they think expedient.
- (3) For the purpose of assisting it in the discharge of its functions under the foregoing provisions of this section the Council may invite representations on any aspect of the procedure or practice in civil proceedings in the sheriff court (including any matters incidental or relating to that procedure or practice), and shall consider any such representations received by it, whether in response to such an invitation as aforesaid or otherwise.

#### *Summary causes*

### **35 Summary causes.**

- (1) The definition of “summary cause” contained in paragraph (i) of section 3 of the <sup>M14</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>F58</sup>one thousand five hundred pounds] in amount (exclusive of interest and expenses);
  - (b) actions of multiplepoinding, actions of furthcoming and actions of sequestration for rent, where the value of the fund *in medio*, or the value of the arrested fund or subject, or the rent in respect of which sequestration is asked, as the case may be, does not exceed [<sup>F58</sup>one thousand five hundred pounds] (exclusive of interest and expenses);
  - (c) actions *sad 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 *sad factum praestandum* or for such recovery, as the case may be, a decree for payment of money exceeding [<sup>F58</sup>one thousand five hundred pounds] 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

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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>F59</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>F60</sup>(2) There shall be a form of summary cause process, to be known as a “small claim”, which shall be used for the purposes of such descriptions of summary cause proceedings as are prescribed by the Lord Advocate by order.

(3) No enactment or rule of law relating to admissibility or corroboration of evidence before a court of law shall be binding in a small claim.

(4) An order under subsection (2) above shall be by statutory instrument but shall not be made unless a draft of it has been approved by a resolution of each House of Parliament.]

#### Textual Amendments

**F58** Words substituted by virtue of S.I. 1988/1993, **art. 3**

**F59** S. 35(1A) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. 59, **Sch. 2 para. 14**

**F60** S. 35(2)–(4) substituted for s. 35(2) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), **s. 18(1)**

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

**C9** S. 35: power to transfer functions conferred (19.5.1999) by S.I. 1999/678, **art. 2(1)**, **Sch.**

**C10** S. 35(1)(c) excluded by [Land Tenure Reform \(Scotland\) Act 1974 \(c. 38\)](#), **s. 9(6)**

#### Marginal Citations

**M14** 1907 c. 51.

### 36 Procedure in summary causes.

(1) In relation to summary causes the power conferred on the Court of Session by section 32 of this Act shall extend to the making of rules permitting a party to such a cause, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.

(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.

(4) . . . . . <sup>F61</sup>



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#### Textual Amendments

**F61** S. 36(4) repealed by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108, Sch. 7 paras. 5, 9(1), **Sch. 8**

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

**C11** S. 36(3) excluded by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18\)](#), s. 4(4)(b)

### [<sup>F62</sup>36A Further provisions as to small claims.

Where the pursuer in a small claim is not—

- (a) a partnership or a body corporate; or
- (b) acting in a representative capacity,

he may require the sheriff clerk to effect service of the summons on his behalf.]

#### Textual Amendments

**F62** Ss. 36A, 36B inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. 18(2)

### [<sup>F63</sup>36B Expenses in small claims.

- (1) No award of expenses shall be made in a small claim in which the value of the claim does not exceed such sum as the Lord Advocate shall prescribe by order.
- (2) Any expenses which the sheriff may award in any other small claim shall not exceed such sum as the Lord Advocate shall prescribe by order.
- (3) Subsections (1) and (2) above do not apply to a party to a small claim—
  - (a) who being a defender—
    - (i) has not stated a defence; or
    - (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) on whose part there has been unreasonable conduct in relation to the proceedings or the claim;nor do they apply in relation to an appeal to the sheriff principal.
- (4) An order under this section shall be by statutory instrument but shall not be made unless a draft of it has been approved by a resolution of each House of Parliament.]

#### Textual Amendments

**F63** Ss. 36A, 36B inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. 18(2)

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

**C12** s. 36B: power to transfer functions conferred (19.5.1999) by [S.I. 1999/678](#), art. 2(1), **Sch.**

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### 37 Remits.

- (1) In the case of any ordinary cause brought in the sheriff court the sheriff <sup>[F64]</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>[F65]</sup>;
  - (b) may, subject to section 7 of the Sheriff Courts (Scotland) Act 1907, 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 make it appropriate to do so, remit the cause to the Court of Session.]

- (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>[F66]</sup>(2A) In the case of any action in the sheriff court <sup>[F67]</sup>, being an action for divorce or an action] in relation to <sup>[F68]</sup>parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) in relation to a child or the<sup>[F69]</sup> guardianship] or adoption of a child the sheriff may, of his own accord, at any stage remit the action to the Court of Session.]

<sup>[F70]</sup>(2B) In the case of any small claim the sheriff at any stage—

- (a) may, if he is of the opinion that a difficult question of law or a question of fact of exceptional complexity is involved, of his own accord or on the motion of any party to the small claim;
- (b) shall, on the joint motion of the parties to the small claim, direct that the small claim be treated as a summary cause (not being a small claim) or ordinary cause, and in that case the small claim shall be treated for all purposes (including appeal) as a summary cause (not being a small claim) or ordinary cause as the case may be.

(2C) In the case of any cause which is not a small claim by reason only of any monetary limit applicable to a small claim or to summary causes, the sheriff at any stage shall, on the joint motion of the parties to the cause, direct that the cause be treated as a small claim and in that case the cause shall be treated for all purposes (including appeal) as a small claim and shall proceed accordingly.]

<sup>[F71]</sup>(2D) In the case of any action in the sheriff court where the matter to which the action relates could competently be determined by the Land Court by virtue of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings (Scotland) Act 2003 (asp 11), the sheriff may (of his own accord or on the motion of any of the parties) at any stage remit the case to the Land Court if he is of the opinion that it is appropriate to do so.]

<sup>[F72]</sup>(3) A decision—

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- (a) to remit, or not to remit, under subsection (2A) [<sup>F73</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.

#### Textual Amendments

- F64** “—(a)” inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 16(a)(i)(ii)
- F65** S. 37(1)(b) added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 16(a)(i)(ii)
- F66** S. 37(2A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 16(b)
- F67** Words inserted by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 36:3), s. 6(1), **Sch. 1 para. 12**
- F68** Words in s. 37(2A) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 18(3)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F69** Word in S.37(2A) substituted (25.9.1991) by virtue of Age of Legal Capacity (Scotland) Act 1991 (c.50 SIF 49:1), s. 10(1), Sch. 1 para 35.
- F70** S. 37(2B)(2C) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 18(3)(a)
- F71** S. 37(2D) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 86(1), 95(3) (with s. 95(2)); S.S.I. 2003/548, art. 2(g) (with art. 3, Sch.)
- F72** S. 37(3) substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 16(c)
- F73** 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>F74</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 other than a small claim 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

- F74** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 18(4)

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

- C13** S. 38 excluded by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), ss. 103(1), 108(2), Sch. 7 paras. 5, 9(1)

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*Miscellaneous and supplemental*

**F75** **39** .....

**Textual Amendments**  
**F75** S. 39 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 72:2), s. 28(2), Sch. 3

**F76** **40** .....

**Textual Amendments**  
**F76** S. 40 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3, 72:2), ss. 11(2), 28(2), Sch. 3

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

- (1) If it appears to Her Majesty in Council that the sum of two hundred and fifty pounds specified in any of the provisions of this Act mentioned in subsection (2) below (or such other sum as may be specified in that provision by virtue of an Order in Council under this section) should be varied, Her Majesty may by Order in Council, specifying the provision and the sum in question, direct that the provision shall be amended so as to substitute for that sum such other sum as may be specified in the Order.
- (2) The provisions referred to in subsection (1) above are—
  - section 31,
  - paragraphs (a), (b) and (c) of section 35,
  - F77** .....
  - F77** .....
- (3) An Order in Council under this section may contain such incidental, supplemental or consequential provisions as appear to Her Majesty in Council to be necessary or expedient for the purposes of the Order.
- (4) Any Order in Council made under this section may be revoked by a subsequent Order in Council under this section which substitutes another sum for the sum specified in the Order which is thereby revoked.
- (5) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

**Textual Amendments**  
**F77** Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3, 72:2), ss. 11(2), 28(2), Sch. 3

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

The following provisions of this Act, namely—

section 31,

sections 35 to 40,

section 46(2) so far as relating to the enactments mentioned in Part II of Schedule 2,

Schedule 1 (except paragraph 1),

shall not apply in relation to any proceedings commenced before the commencement of this Act.

## **PART IV**

### **MISCELLANEOUS AND GENERAL**

## **43 Orders, etc.**

- (1) Any power conferred by this Act to make an order shall include a power exercisable in the like manner and subject to the like conditions (if any) to vary or revoke the order by a subsequent order.
- (2) It is hereby declared that any power conferred by this Act to include incidental, consequential or supplemental provisions in any instrument made under this Act includes a power to include transitional provisions in that instrument.

## **44 Expenses.**

- (1) There shall be paid out of moneys provided by Parliament any sums payable by the Secretary of State in consequence of the provisions of this Act.
- (2) Any sums payable under or by virtue of this Act to the Secretary of State shall be paid into the Consolidated Fund.
- (3) In the application of section 4(1) of the <sup>M15</sup>Local Government (Scotland) Act 1966 (variation of rate support grant orders) to a rate support grant order made before the transfer date appointed under section 30 of this Act for a grant period ending after that date, the Secretary of State shall take into account any relief obtained, or likely to be obtained, by local authorities—
  - (a) which is attributable to the coming into operation of Part II of this Act, and
  - (b) which was not taken into account in making the rate support grant order the variation of which is in question.

The provisions of this subsection are without prejudice to section 4(4) of the said Act of 1966 (under which an order under that section may vary the matters prescribed by a rate support grant order).

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### **Marginal Citations**

**M15** 1966 c. 51.

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## 45 Interpretation.

- (1) In this Act, unless the contrary intention appears—
- (a) references to a sheriff principal include references to a temporary sheriff principal, and references to the office of sheriff principal include references to an appointment as a temporary sheriff principal;
  - (b) references to a sheriff include references to a [<sup>F78</sup>part-time] sheriff and an honorary sheriff, and references to the office of sheriff include references to an appointment as a [<sup>F78</sup>part-time]sheriff and to the office of honorary sheriff;
  - (c) references to an honorary sheriff are references to a person holding the office of honorary sheriff in his capacity as such.
- (2) In this Act—
- (a) “enactment” includes an order, regulation, rule or other instrument having effect by virtue of an Act;
  - (b) any reference to any enactment shall, unless the contrary intention appears, be construed as a reference to that enactment as amended or extended, and as including a reference thereto as applied, by or under any other enactment (including this Act).
- (3) Subject to the foregoing provisions of this section and to any other express provision of this Act, expressions used in this Act and in the <sup>M16</sup>Sheriff Courts (Scotland) Act 1907 shall have the same meanings in this Act as in that Act.

### Textual Amendments

**F78** Words in s. 45(1)(b) substituted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(12)

### Marginal Citations

**M16** 1907 c. 51.

## <sup>X2</sup>46 Amendment and repeal of enactments.

- (1) Schedule 1 to this Act (which contains certain minor and consequential amendments of enactments) shall have effect.
- (2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in relation thereto in column 3 of that Schedule.

### Editorial Information

**X2** The text of ss. 31, 46, Sch. 1 paras. 2, 3 and Sch. 2 is in the form in which it was originally enacted; it was not reproduced in Statutes in Force and does not reflect any repeals or amendments which may have been made prior to 1.2.1991

## 47 Short title, commencement and extent.

- (1) This Act may be cited as the Sheriff Courts (Scotland) Act 1971.
- (2) This Act shall come into operation on such date as the Secretary of State may appoint by order made by statutory instrument, and different dates may be appointed for different provisions of this Act, or for different purposes.

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Any reference in any provision of this Act to the commencement of this Act shall, unless otherwise provided by any such order, be construed as a reference to the date on which that provision comes into operation.

- (3) This Act, except section 4 (offices of sheriff principal and sheriff) . . . <sup>F79</sup>, shall extend to Scotland only.

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**Textual Amendments**

**F79** Words repealed by [House of Commons Disqualification Act 1975 \(c. 24\)](#), [Sch. 3](#) and [Northern Ireland Assembly Disqualification Act 1975 \(c. 25\)](#), [Sch. 3 Pt. I](#)

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

**C14** Power conferred by s. 47(2) fully exercised

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## SCHEDULES

### SCHEDULE 1

Section 46(1).

#### MINOR AND CONSEQUENTIAL AMENDMENT OF ENACTMENTS

##### *General*

- 1 In any enactment passed or made before the commencement of this Act, for any reference to a county, where it appears in relation to a sheriff or a sheriff substitute or in any similar context, there shall, unless the contrary intention appears, be substituted a reference to a sheriffdom.

##### *The<sup>M17</sup>Execution of Diligence (Scotland) Act 1926*

#### **Marginal Citations**

**M17** 1926 c. 16.

- <sup>x32</sup> (1) In paragraph (a) of subsection (1) of section 2 (execution of arrestment or charge by registered letter), for the words “of the small debt court” there shall be substituted the words “of the sheriff in a summary cause”.
- (2) In paragraph (b) of the said subsection (1), for the words “in the small debt court” there shall be substituted the words “by the sheriff in a summary cause”.
- (3) In section 5 (interpretation), the words ““small debt court” shall mean the sheriff’s small debt court” shall cease to have effect.

#### **Editorial Information**

**X3** The text of ss. 31, 46, Sch. 1 paras. 2, 3 and Sch. 2 is in the form in which it was originally enacted; it was not reproduced in Statutes in Force and does not reflect any repeals or amendments which may have been made prior to 1.2.1991

##### *The<sup>M18</sup>Tenancy of Shops (Scotland) Act 1949*

#### **Marginal Citations**

**M18** 1949 c. 25.

- <sup>x43</sup> For subsection (7) of section 1 (renewal of tenancies of shops), there shall be substituted the following subsection:—
- “(7) An application under this section shall be made by way of a summary cause within the meaning of the Sheriff Courts (Scotland) Act 1971 .”



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#### Editorial Information

- X4** The text of ss. 31, 46, Sch. 1 paras. 2, 3 and Sch. 2 is in the form in which it was originally enacted; it was not reproduced in Statutes in Force and does not reflect any repeals or amendments which may have been made prior to 1.2.1991

**F80** 4

#### Textual Amendments

- F80** Sch. 1 para. 4 repealed by Rent (Scotland) Act 1984 (c. 58, SIF 75:4), s. 117(3), **Sch. 10**

## <sup>X5</sup>SCHEDULE 2

Section 46(2).

### REPEAL OF ENACTMENTS

#### Editorial Information

- X5** The text of ss. 31, 46, Sch. 1 paras. 2, 3 and Sch. 2 is in the form in which it was originally enacted; it was not reproduced in Statutes in Force and does not reflect any repeals or amendments which may have been made prior to 1.2.1991

## PART I

### GENERAL REPEALS

Session and Chapter	Short Title	Extent of Repeal
3 Geo. 4. c. 49.	The Sheriffs of Edinburgh and Lanark Act 1822.	The whole Act.
23 & 24 Vict. c. 79.	The Sheriff Court Houses Act 1860.	The whole Act.
29 & 30 Vict. c. 53.	The Sheriff Court Houses (Scotland) Act 1866.	The whole Act.
47 & 48 Vict. c. 42.	The Sheriff Court Houses (Scotland) Amendment Act 1884.	The whole Act.
52 & 53 Vict. c. 50.	The Local Government (Scotland) Act 1889.	Section 37(2).
7 Edw. 7. c. 51.	The Sheriff Courts (Scotland) Act 1907.	Sections 12 and 13. Sections 15 and 16. Sections 18 and 19.

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		Section 21.
		Sections 25 and 26.
17 & 18 Geo. 5. c. 35.	The Sheriff Courts and Legal Officers (Scotland) Act 1927.	Section 14.
23 & 24 Geo. 5. c. 41.	The Administration of Justice (Scotland) Act 1933.	In section 31, subsections (2) to (5). Section 32. Sections 34 and 35.
2 & 3 Geo. 6. c. 98.	The Sheriff Courts (Scotland) Act 1939.	The whole Act.
12, 13 & 14 Geo. 6. c. 10.	The Administration of Justice (Scotland) Act 1948.	Section 4.

## PART II

### REPEALS CONSEQUENT ON SECTIONS 35 TO 38 OF THIS ACT

Session and Chapter	Short Title	Extent of Repeal
7 Will. 4. & 1 Vict. c. 41.	The Small Debt (Scotland) Act 1837.	The whole Act.
52 & 53 Vict. c. 26.	The Small Debt Amendment (Scotland) Act 1889.	The whole Act.
7 Edw. 7. c. 51.	The Sheriff Courts (Scotland) Act 1907.	In section 3, paragraph (i).  In section 7, the words “and of the Small Debt Acts”. Section 8. In section 28, in subsection (1), the proviso. Sections 42 to 48. In Schedule 1, Rule 40.
14 & 15 Geo. 5. c. 16.	The Small Debt (Scotland) Act 1924.	In section 1, the words “the sheriff and”, the word “respectively”, the words “section eighteen of the Small Debt (Scotland) Act 1837 and”, the words “the sheriff or”, in both places where they occur, and the words “he or”.
16 & 17 Geo. 5. c. 16.	The Execution of Diligence (Scotland) Act 1926.	In section 5, the words “small debt court” shall

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		mean the sheriff’s small debt court”.
22 & 23 Geo. 5. c. 38.	The Hire Purchase and Small Debt (Scotland) Act 1932.	The whole Act.
3 & 4 Geo. 6. c. 42.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.	Section 1(4).
1963 c. 22.	The Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963.	Sections 1 and 2.
1965 c. 67.	The Hire-Purchase (Scotland) Act 1965.	In section 48, subsections (2) and (3).

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**Status:**

Point in time view as at 01/04/2005. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Sheriff Courts (Scotland) Act 1971 is up to date with all changes known to be in force on or before 19 April 2024. 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.