



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

## 1985 CHAPTER 73

An Act to amend the law of Scotland in respect of certain leases, other contracts and obligations; certain courts and their powers; evidence and procedure; certain criminal penalties; the care of children; the functions of the Commissioner for Local Administration; solicitors; and certain procedures relating to crofting and the valuation of sheep stocks; and to make, as respects Scotland, certain other miscellaneous reforms of the law. [30th October 1985]

<sup>X1</sup>Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Editorial Information

**X1** The text of ss. 8–11, 59(1), 60, Sch. 2 paras. 21, 22 was taken from S.I.F. Group 30 (Contract); ss. 12, 14, 17–23, 33, 34, 47, 58–60, Sch. 2 paras. 1–15, Sch. 4 from S.I.F. Group 36:1 (Courts, Scotland: Court of Session); ss. 35–46, 49, 51–54, 59(1), 60, Sch. 2 paras. 16–20, 23–27, 32, Sch. 3 from S.I.F. Group 39:1 (Criminal Law: General); ss. 15, 60 from S.I.F. Group 47 (Evidence); ss. 13, 16, 24–29, 59(1), 60, Sch. 2 para. 31 from S.I.F. Group 49:6 (Family Law: Family Property, Scotland); ss. 48, 55, 58, 60 from S.I.F. Group 57 (Government Departments and Public Offices); 1–7, 30–32, 59(1), 60, Sch. 2 paras. 28–30 from S.I.F. Group 75:2 (Landlord and Tenant: General, Scotland); ss. 56, 60, Sch. 1 from S.I.F. Group 76:2 (Lawyers and Notaries: Scotland); ss. 57, 58, 60 from S.I.F. Group 89 (Parliament); ss. 50, 60 from S.I.F. Group 105 (Registration of Births, Deaths and Marriages).

### Commencement Information

**II** Act partly in force at Royal Assent see s.60(3); Act wholly in force at 8.12.1986 see S.I. 1986/1945.

*Status: Point in time view as at 05/01/1994.*

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### *Provisions relating to leases*

#### **1 Limitation on use of property held on long lease not to apply to property held on certain renewable leases.**

In subsection (4) of section 8 of the <sup>M1</sup>Land Tenure Reform (Scotland) Act 1974 (property on long lease not to be used as private dwelling house) in the definition of “long lease” there shall be inserted at the end the following—

“but, in relation to a lease granted before 1st September 1974, does not include its renewal (whether before or after the commencement of section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985) in implement of an obligation in or under it.”

#### **Marginal Citations**

**M1** 1974 c. 38.

#### **2 Power of sheriff to grant renewals of certain long leases.**

After section 22 of the <sup>M2</sup>Land Registration (Scotland) Act 1979 there shall be inserted the following section—

##### **“22A Power of sheriff to grant renewals of certain long leases.**

- (1) Where a landlord has failed to renew a long lease in implement of an obligation in or under it, the sheriff may, on summary application by the tenant, make an order directing the sheriff clerk to execute a renewal of the lease instead of the landlord.
- (2) On making an order under subsection (1) above, the sheriff may require the tenant to consign in court such amount (whether by way of rent or expenses or otherwise) in respect of the lease and its renewal as appears to the sheriff to be lawfully due and payable or appears to him would have been so due and payable had the landlord duly renewed the lease.
- (3) A renewal executed under this section shall have the like force and effect as if it were executed by the landlord.
- (4) Without prejudice to subsection (7)(a) below, a landlord shall be regarded, for the purposes of subsection (1) above, as having failed to renew a lease in implement of an obligation in or under it if, having been given written notice in accordance with subsection (5) below by the tenant that he requires the landlord, in implement of the obligation, to renew the lease, the landlord has failed to do so when he was obliged to and continues so to fail.
- (5) Notice is in accordance with this subsection if it is given not less than 3 months before the lodging of the summary application.
- (6) Subsection (4) above is subject to subsection (7)(b) below and to any provision in or under the lease for earlier, or a longer period of, notice requiring renewal of the lease than that mentioned in subsection (5) above.

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- (7) If the sheriff is satisfied that a landlord is unknown or cannot be found, he may—
- (a) in a case where the tenant is thereby prevented from bringing the landlord, in accordance with the lease, under an obligation to renew it, order that the landlord shall be regarded, for the purposes of subsection (1) above, as having failed to renew the lease in implement of an obligation under it; and
  - (b) in any other case, dispense with notice under subsection (4) above.
- (8) The sheriff may, on the application of any party, order the investment, payment or distribution of any sums consigned in court under subsection (2) above, and in so doing the sheriff shall have regard to the respective interests of any parties appearing to have a claim on such sums.
- (9) The sheriff's power under subsection (8) above extends to ordering that any award of expenses of the application under this section be paid out of any sums consigned in court under subsection (2) above.”.

#### Marginal Citations

M2 1979 c. 33.

### 3 Creation of real conditions in assignments of certain long leases.

Section 3 of the <sup>M3</sup>Registration of Leases (Scotland) Act 1857 (assignments of recorded leases) shall be renumbered as subsection (1) of that section and after that subsection there shall be inserted the following subsections—

- “(2) Notwithstanding—
- (a) any restriction imposed by subsection (1) above on the power under that subsection to assign such a lease; or
  - (b) any rule of law to the contrary,
- it shall be, and shall be deemed always to have been, competent in an assignment under this section to impose conditions and make stipulations which, upon the recording of such assignment or the registration under the Land Registration (Scotland) Act 1979 of the assignee's interest, shall be as effectual against any singular successor of the assignee in the subjects assigned as if such assignee had been a grantee of the lease and it had been duly recorded or, as the case may be, the grantee's interest had been so registered.
- (3) Nothing in subsection (2) above makes effectual against any successor of the assignee any obligation of periodical payment other than a payment—
- (a) of rent or of an apportionment of rent;
  - (b) in defrayal of a contribution towards some continuing cost related to the lands and heritages subject to the lease assigned; or
- (4) A provision in an assignment which purports to make effectual against any successor of the assignee any obligation of periodic payment other than one specified in paragraphs (a) to (c) of subsection (3) above shall not render the deed void or unenforceable, but the assignment shall have, and shall be deemed always to have had, effect only to the extent (if any) that it would have had effect if it had not imposed such obligation.

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- (5) Section 32 of the Conveyancing (Scotland) Act 1874 (which enables reservations, conditions, covenants etc. affecting lands to be effectually imported into one deed by reference to another) and section 17 of the Land Registration (Scotland) Act 1979 (which provides that certain obligations in deeds of conditions shall become real obligations upon the recording of the deed or registration of the obligation) shall, with the necessary modifications, respectively apply for the purposes of enabling conditions and stipulations to be effectually imported into any assignation under this section and enabling land obligations in a deed of conditions relating to the land subject to the assignation to become real obligations affecting the land.

In this subsection “land obligation” has the meaning assigned to it by section 1(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970.”

#### Marginal Citations

M3 1857 c. 26.

#### 4 Irritancy clauses etc. relating to monetary breaches of lease.

- (1) A landlord shall not, for the purpose of treating a lease as terminated or terminating it, be entitled to rely—
- (a) on a provision in the lease which purports to terminate it, or to enable him to terminate it, in the event of a failure of the tenant to pay rent, or to make any other payment, on or before the due date therefor or such later date or within such period as may be provided for in the lease; or
  - (b) on the fact that such a failure is, or is deemed by a provision of the lease to be, a material breach of contract,
- unless subsection (2) or (5) below applies.
- (2) This subsection applies if—
- (a) the landlord has, at any time after the payment of rent or other payment mentioned in subsection (1) above has become due, served a notice on the tenant—
    - (i) requiring the tenant to make payment of the sum which he has failed to pay together with any interest thereon in terms of the lease within the period specified in the notice; and
    - (ii) stating that, if the tenant does not comply with the requirement mentioned in sub-paragraph (i) above, the lease may be terminated; and
  - (b) the tenant has not complied with that requirement.
- (3) The period to be specified in any such notice shall be not less than—
- (a) a period of 14 days immediately following the service of the notice; or
  - (b) if any period remaining between the service of the notice and the expiry of any time provided for in the lease or otherwise for the late payment of the sum which the tenant has failed to pay is greater than 14 days, that greater period.
- (4) Any notice served under subsection (2) above shall be sent by recorded delivery and shall be sufficiently served if it is sent to the tenant’s last business or residential address

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in the United Kingdom known to the landlord or to the last address in the United Kingdom provided to the landlord by the tenant for the purpose of such service.

- (5) This subsection applies if the tenant does not have an address in the United Kingdom known to the landlord and has not provided an address in the United Kingdom to the landlord for the purpose of service.

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

- C1** S. 4 excluded (3.2.1995) by 1994 c. 33, s. 106(3)(a); S.I. 1995/127, art. 2(1), Sch.1  
S. 4 excluded (1.8.2000) by 1999 c. 33, s. 149(3)(e); S.I. 2000/1985, art. 2, Sch.

**5 Irritancy clauses etc. not relating to monetary breaches of leases.**

- (1) Subject to subsection (2) below, a landlord shall not, for the purpose of treating a lease as terminated or terminating it, be entitled to rely—
- (a) on a provision in the lease which purports to terminate it, or to enable the landlord to terminate it, in the event of an act or omission by the tenant (other than such a failure as is mentioned in section 4(1)(a) of this Act) or of a change in the tenant's circumstances; or
  - (b) on the fact that such act or omission or change is, or is deemed by a provision of the lease to be, a material breach of contract,
- if in all the circumstances of the case a fair and reasonable landlord would not seek so to rely.
- (2) No provision of a lease shall of itself, irrespective of the particular circumstances of the case, be held to be unenforceable by virtue of subsection (1) above.
- (3) In the consideration, for the purposes of subsection (1)(a) or (b) above, of the circumstances of a case where—
- (a) an act, omission or change is alleged to constitute a breach of a provision of the lease or a breach of contract; and
  - (b) the breach is capable of being remedied in reasonable time,
- regard shall be had to whether a reasonable opportunity has been afforded to the tenant to enable the breach to be remedied.

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

- C2** S. 5 excluded (3.2.1995) by 1994 c. 33, s. 106(3)(a); S.I. 1995/127, art. 2(1), Sch.1  
S. 5 excluded (1.8.2000) by 1999 c. 33, s. 149(3)(e); S.I. 2000/1985, art. 2, Sch.

**6 Supplementary and transitional provisions relating to sections 4 and 5.**

- (1) The parties to a lease shall not be entitled to disapply any provision of section 4 or 5 of this Act from it.
- (2) Where circumstances have occurred before the commencement of sections 4 and 5 of this Act which would have entitled a landlord to terminate a lease in reliance on a provision in the lease or on the ground that the circumstances constituted a material breach of contract, but the landlord has not before such commencement given written notice to the tenant of his intention to terminate the lease in respect of those

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circumstances, he shall, after such commencement, be entitled to terminate the lease in respect of those circumstances only in accordance with the provisions of section 4 or 5 (as the case may be) of this Act.

- (3) Nothing in section 4 or 5 of this Act shall apply in relation to any payment which has to be made, or any other condition which has to be fulfilled, before a tenant is entitled to entry under a lease.

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

- C3** S. 6 excluded (3.2.1995) by [1994 c. 33, s. 106\(3\)\(a\)](#); S.I. 1995/127, art. 2(1), [Sch. 1](#)  
S. 6 excluded (1.8.2000) by [1999 c. 33, s. 149\(3\)\(e\)](#); S.I. 2000/1985, art. 2, [Sch.](#)

**7 Interpretation of sections 4 to 6.**

- (1) In sections 4 to 6 of this Act “lease” means a lease of land, whether entered into before or after the commencement of those sections, but does not include a lease of land—
- (a) used wholly or mainly for residential purposes; or
  - (b) comprising an agricultural holding, a croft, the subject of a cottar or the holding of a landholder or a statutory small tenant.

- (2) In subsection (1) above—

“agricultural holding” has the same meaning as in [<sup>F1</sup>the Agricultural Holdings (Scotland) Act 1991];

“cottar” has the same meaning as in section 28(4) of the <sup>M4</sup>Crofters (Scotland) Act 1955;

“croft” has the same meaning as in section 3 of the Crofters (Scotland) Act 1955; and

“holding” (in relation to a landholder or statutory small tenant), “landholder” and “statutory small tenant” have the same meanings as in the Small Landholders (Scotland) Acts 1886 to 1931.

**Textual Amendments**

- F1** Words in [s. 7\(2\)](#) substituted by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), s. 88(1), Sch.11 para.42 (with s. 45(3), Sch. 12 para. 3).

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

- C4** S. 7 excluded (3.2.1995) by [1994 c. 33, s. 106\(3\)\(a\)](#); S.I. 1995/127, art. 2(1), [Sch. 1](#)  
S. 7 excluded (1.8.2000) by [1999 c. 33, s. 149\(3\)\(e\)](#); S.I. 2000/1985, art. 2, [Sch.](#)

**Marginal Citations**

- M4** [1955 c. 21.](#)

*Provisions relating to other contracts and obligations*

**8 Rectification of defectively expressed documents.**

- (1) Subject to section 9 of this Act, where the court is satisfied, on an application made to it, that—

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- (a) a document intended to express or to give effect to an agreement fails to express accurately the common intention of the parties to the agreement at the date when it was made; or
  - (b) a document intended to create, transfer, vary or renounce a right, not being a document falling within paragraph (a) above, fails to express accurately the intention of the grantor of the document at the date when it was executed,it may order the document to be rectified in any manner that it may specify in order to give effect to that intention.
- (2) For the purposes of subsection (1) above, the court shall be entitled to have regard to all relevant evidence, whether written or oral.
- (3) Subject to section 9 of this Act, in ordering the rectification of a document under subsection (1) above (in this subsection referred to as “the original document”), the court may, at its own instance or on an application made to it, order the rectification of any other document intended for any of the purposes mentioned in paragraph (a) or (b) of subsection (1) above which is defectively expressed by reason of the defect in the original document.
- (4) Subject to section 9(4) of this Act, a document ordered to be rectified under this section shall have effect as if it had always been so rectified.
- (5) Subject to section 9(5) of this Act, where a document recorded in the Register of Sasines is ordered to be rectified under this section and the order is likewise recorded, the document shall be treated as having been always so recorded as rectified.
- (6) Nothing in this section shall apply to a document of a testamentary nature.
- (7) It shall be competent to register in the Register of Inhibitions and Adjudications, a notice of an application under this section for the rectification of a deed relating to land, being an application in respect of which authority for service or citation has been granted; and the land to which the application relates shall be rendered litigious as from the date of registration of such a notice.
- (8) A notice under subsection (7) above shall specify the names and designations of the parties to the application and the date when authority for service or citation was granted and contain a description of the land to which the application relates.
- (9) In this section and section 9 of this Act “the court” means the Court of Session or the sheriff.

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

- C5** S. 8 restricted (1.9.1992) by [Further and Higher Education \(Scotland\) Act 1992 \(c. 37\), s. 16, Sch. 3 paras. 3\(2\), 4\(5\); S.I. 1992/817, art. 3\(2\), Sch. 3](#)
- C6** S. 8 restricted (1.4.1993) by [Further and Higher Education \(Scotland\) Act 1992 \(c. 37\), s. 17\(7\); S.I. 1992/817, art. 3\(2\), Sch. 4](#)

**9 Provisions supplementary to section 8: protection of other interest.**

- (1) The court shall order a document to be rectified under section 8 of this Act only where it is satisfied—
  - (a) that the interests of a person to whom this section applies would not be adversely affected to a material extent by the rectification; or

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- (b) that that person has consented to the proposed rectification.
- (2) Subject to subsection (3) below, this section applies to a person (other than a party to the agreement or the grantor of the document) who has acted or refrained from acting in reliance on the terms of the document or on the title sheet of an interest in land registered in the Land Register of Scotland being an interest to which the document relates, with the result that his position has been affected to a material extent.
- (3) This section does not apply to a person—
- (a) who, at the time when he acted or refrained from acting as mentioned in subsection (2) above, knew, or ought in the circumstances known to him at that time to have been aware, that the document or (as the case may be) the title sheet failed accurately to express the common intention of the parties to the agreement or, as the case may be, the intention of the grantor of the document; or
  - (b) whose reliance on the terms of the document or on the title sheet was otherwise unreasonable.
- (4) Notwithstanding subsection (4) of section 8 of this Act and without prejudice to subsection (5) below, the court may, for the purpose of protecting the interests of a person to whom this section applies, order that the rectification of a document shall have effect as at such date as it may specify, being a date later than that as at which it would have effect by virtue of the said subsection (4).
- (5) Notwithstanding subsection (5) of section 8 of this Act and without prejudice to subsection (4) above, the court may, for the purpose of protecting the interests of a person to whom this section applies, order that a document as rectified shall be treated as having been recorded as mentioned in the said subsection (5) at such date as it may specify, being a date later than that as at which it would be treated by virtue of that subsection as having been so recorded.
- (6) For the purposes of subsection (1) above, the court may require the Keeper of the Registers of Scotland to produce such information as he has in his possession relating to any persons who have asked him to supply details with regard to a title sheet mentioned in subsection (2) above; and any expense incurred by the Keeper under this subsection shall be borne by the applicant for the order.
- (7) Where a person to whom this section applies was unaware, before a document was ordered to be rectified under section 8 of this Act, that an application had been made under that section for the rectification of the document, the Court of Session, on an application made by that person within the time specified in subsection (8) below, may—
- (a) reduce the rectifying order; or
  - (b) order the applicant for the rectifying order to pay such compensation to that person as it thinks fit in respect of his reliance on the terms of the document or on the title sheet.
- (8) The time referred to in subsection (7) above is whichever is the earlier of the following—
- (a) the expiry of 5 years after the making of the rectifying order;
  - (b) the expiry of 2 years after the making of that order first came to the notice of the person referred to in that subsection.



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## 10 Negligent misrepresentation.

- (1) A party to a contract who has been induced to enter into it by negligent misrepresentation made by or on behalf of another party to the contract shall not be disentitled, by reason only that the misrepresentation is not fraudulent, from recovering damages from the other party in respect of any loss or damage he has suffered as a result of the misrepresentation; and any rule of law that such damages cannot be recovered unless fraud is proved shall cease to have effect.
- (2) Subsection (1) applies to any proceedings commenced on or after the date on which it comes into force, whether or not the negligent misrepresentation was made before or after that date, but does not apply to any proceedings commenced before that date.

## 11 Amendment of Bills of Exchange Act 1882 as respects countermanded cheques.

In the <sup>M5</sup>Bills of Exchange Act 1882—

- (a) at the beginning of section 53(2) (which provides as to the effect of presentment of a bill of exchange) there shall be inserted the words “ Subject to section 75A of this Act, ”; and
- (b) after section 75 there shall be inserted the following section—

- (1) On the countermand of payment of a cheque, the banker shall be treated as having no funds available for the payment of the cheque.
- (2) This section applies to Scotland only.”.

### Marginal Citations

M5 1882 c. 61.

## 12 Limitation of defamation and other actions.

- (1) The <sup>M6</sup>Prescription and Limitation (Scotland) Act 1973 shall be amended in accordance with the following provisions of this section.
- (2) After section 18 of that Act there shall be inserted the following section—

### “18A Limitation of defamation and other actions.

- (1) Subject to subsections (2) and (3) below and section 19A of this Act, no action for defamation shall be brought unless it is commenced within a period of 3 years after the date when the right of action accrued.
- (2) In the computation of the period specified in subsection (1) above there shall be disregarded any time during which the person alleged to have been defamed was under legal disability by reason of nonage or unsoundness of mind.
- (3) Nothing in this section shall affect any right of action which accrued before the commencement of this section.
- (4) In this section—

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- (a) “defamation” includes *convicium* and malicious falsehood, and “defamed” shall be construed accordingly; and
  - (b) references to the date when a right of action accrued shall be construed as references to the date when the publication or communication in respect of which the action for defamation is to be brought first came to the notice of the pursuer.”
- (3) In section 19A(1) of that Act (power of court to override time limits) after “18” there shall be inserted the words “ and 18A ”.
- (4) In section 22(2) of that Act (assigned rights of action) for the words “or 18” there shall be substituted the words “ , 18 or 18A ” and for the words “, as the case may be, 18” there shall be substituted the words “ of the said section 18 or, as the case may be, subsection (4)(b) of the said section 18A ”.
- (5) In Schedule 1 to that Act, in paragraph 2 (obligations to which the five year prescription does not apply) after subparagraph (g) there shall be inserted the following—
- “(gg) to any obligation to make reparation or otherwise make good in respect of defamation within the meaning of section 18A of this Act;”.

#### Marginal Citations

M6 1973 c. 52.

### 13 Amendments of Matrimonial Homes (Family Protection) (Scotland) Act 1981.

- (1) The <sup>M7</sup>Matrimonial Homes (Family Protection) (Scotland) Act 1981 shall be amended in accordance with the following provisions of this section.
- (2) In section 1(1)(a) of that Act (right of occupying spouse not to be excluded from matrimonial home), for the words from “not” to the end there shall be substituted the words “ to continue to occupy the matrimonial home; ”.
- (3) After section 1 of that Act there shall be inserted the following subsection—
- “(1A) The rights conferred by subsection (1) above to continue to occupy or, as the case may be, to enter and occupy the matrimonial home include, without prejudice to their generality, the right to do so together with any child of the family.”.
- (4) In section 1(6) of that Act (renunciation of occupancy rights to be sworn or affirmed before notary public) at the end there shall be added the following—
- “In this subsection, “notary public” includes any person duly authorised by the law of the country (other than Scotland) in which the swearing or affirmation takes place to administer oaths or receive affirmation in that other country.”.
- (5) In section 4(1) of that Act after the words “either spouse” there shall be inserted the words “ whether or not that spouse is in occupation at the time of the application. ”.
- (6) In section 6 of that Act (continued exercise of occupancy rights after dealings with the matrimonial home)—
- (a) the word “or” occurring immediately after subsection (3)(d) shall be omitted;

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- (b) in subsection (3)(e)—
- (i) for the words “the purchase of a matrimonial home by” there shall be substituted the words “ a sale to ”;
  - (ii) after the word “at” there shall be inserted the words “ or before ”;
  - (iii) for the words from “entitled spouse”, where first occurring, to the word “spouse”, where thirdly occurring, there shall be substituted the words—  
“seller—
    - (i) an affidavit sworn or affirmed by the seller declaring that the subjects of sale are not a matrimonial home in relation to which a spouse of the seller has occupancy rights;”and
    - (iv) at the end there shall be added the words—  
“For the purposes of this paragraph, the time of the dealing, in the case of the sale of an interest in heritable property, is the date of delivery to the purchaser of the deed transferring title to that interest.”;
- (c) after subsection (3)(e) there shall be added—
- “; or
  - (f) the entitled spouse has permanently ceased to be entitled to occupy the matrimonial home, and at any time thereafter a continuous period of 5 years has elapsed during which the non-entitled spouse has not occupied the matrimonial home.”.
- (7) In section 8(2) of that Act (protection of interests of heritable creditors) after the word “apply” there shall be inserted the words “ to secured loans in respect of which the security was granted prior to the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 ”.
- (8) After section 8(2) of that Act there shall be inserted the following subsections—
- “(2A) This section shall not apply to secured loans in respect of which the security was granted after the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 unless the third party in granting the secured loan acted in good faith and at or before the granting of the security there was produced to the third party by the grantor—
- (a) an affidavit sworn or affirmed by the grantor declaring that the security subjects are not a matrimonial home in relation to which a spouse of the grantor has occupancy rights; or
  - (b) a renunciation of occupancy rights or consent to the granting of the security which bears to have been property made or given by the non-entitled spouse.
- (2B) for the purposes of subsections (2) and (2A) above, the time of granting a security, in the case of a heritable security, is the date of delivery of the deed creating the security.”.
- (9) In section 18 of that Act (occupancy rights of cohabiting couples)—
- (a) in subsection (1) for the word “3” there shall be inserted the word “ 6 ”; and
  - (b) in subsection (6), in the definition of “occupancy rights”—

*Status: Point in time view as at 05/01/1994.*

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- (i) in paragraph (a) for the words from “not” to the end there shall be substituted the words “ to continue to occupy the house; ” and
- (ii) at the end there shall be inserted the words — “ and, without prejudice to the generality of these rights, includes the right to continue to occupy or, as the case may be, to enter and occupy the house together with any child residing with the cohabiting couple ”.

(10) In section 22 of that Act in the definition of “matrimonial home” there shall be added at the end the following—

“but does not include a residence provided or made available by one spouse for that spouse to reside in, whether with any child of the family or not, separately from the other spouse.”.

(11) Any—

- (a) affidavit lawfully sworn or affirmed before the commencement of this section in pursuance of paragraph (e) of subsection (3) of section 6 or subsection (2) of section 8 of that Act;
- (b) consent lawfully given before such commencement in pursuance of the said subsection (2),

shall have effect for the purposes of the said subsection (3) as amended by this section or, as the case may be, section 8(2A) of that Act as if it had been duly sworn, affirmed or, as the case may be, given in pursuance of the said paragraph (e) as so amended or, as the case may be, the said section 8(2A).

#### Marginal Citations

M7 1981 c. 59.

### *Provisions relating to civil jurisdiction and procedure*

#### **14 Remit from Court of Session to sheriff.**

The Court of Session may in relation to an action before it which could competently have been brought before a sheriff remit the action (at its own instance or on the application of any of the parties to the action) to the sheriff within whose jurisdiction the action could have been brought, where, in the opinion of the Court, the nature of the action makes it appropriate to do so.

#### **15 Withdrawal of privilege against self–incrimination in certain proceedings relating to intellectual property.**

- (1) In any proceeding to which this subsection applies a person shall not be excused, by reason that to do so would tend to expose him to proceedings for a related offence or for the recovery of a related penalty—
  - (a) from answering any questions put to him in the first mentioned proceedings ;  
or
  - (b) from complying with any order made in those proceedings.
- (2) Subsection (1) above applies to civil proceedings in the Court of Session or the sheriff court—

*Status: Point in time view as at 05/01/1994.*

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- (a) for infringement of rights pertaining to any intellectual property or for passing off ;
  - (b) brought to obtain disclosure of information relating to any infringement of such rights or to any passing off ; and
  - (c) brought to prevent any apprehended infringement of such rights or any apprehended passing off.
- (3) The proceedings referred to in subsection (2) above include—
- (a) proceedings on appeal arising out of these proceedings ;
  - (b) proceedings under section 1(1) of the <sup>M8</sup>Administration of Justice (Scotland) Act 1972 (provision in relation to the power of the court to order inspection of documents and other property etc.) which relate to civil proceedings falling within subsection (2) above which are likely to be brought.
- (4) No statement or admission made by a person—
- (a) in answering a question put to him in any proceedings to which subsection (1) above applies ; or
  - (b) in complying with any order made in such proceedings,
- shall in proceedings for any related offence, or for the recovery of any related penalty, be admissable in evidence against him :

Provided that this subsection shall not render ant such statement or admission inadmissable against him in proceedings for perjury or contempt of court.

- (5) In this section—

“intellectual property” means any patent, trade mark, copyright [<sup>F2</sup>or design right], registered design, technical or commercial information or other intellectual property ;

“related offence”, in relation to any proceedings to which subsection (1) above relates, means—

- (a) in the case of proceedings within subsection (2)(a) or (b)—
  - (i) any offence committed by or in the course of the infringement or passing off to which those proceedings relate ; or
  - (ii) any offence not within sub-paragraph (i) committed in connection with that ing fringement or passing off, being an offence involving fraud or dishonesty ;
- (b) in the case of proceedings within subsection (2)(c), any offence revealed by the facts on which the pursuer relies in those proceedings.

“related penalty”, in relation to any proceedings to which subsection (1) above relates, means—

- (a) in the case of proceedings within subsection (2)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement or passing off to which those proceedings relate ;
- (b) in the case of proceedings within subsection (2)(c), any penalty incurred in respect of any act or omission revealed by the facts on which the pursuer relies in those proceedings.

*Status: Point in time view as at 05/01/1994.*

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### Textual Amendments

**F2** Words inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), ss. 303(1), **Sch. 7 para. 32**

### Modifications etc. (not altering text)

**C7** S. 15 extended by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), ss. 296(6)(b), 298(4)

**C8** S. 15 extended (with modifications) by S.I. 1987/1497

**C9** S. 15(5) extended by [Patents, Designs and Marks Act 1986 \(c. 39, SIF 67A\)](#), s. 2, **Sch. 2 Pt. I para. 1(2)(h)**

S. 15(5) amended (31.10.1994) by 1994 c. 26, s. 106(1), **Sch. 4 para. 1(2)**; S.I. 1994/2550, **art.2**

### Marginal Citations

**M8** 1972 c. 59.

16 ..... <sup>F3</sup>

### Textual Amendments

**F3** S. 16 repealed by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), ss. 68(2), 69(5)(6)(7), **Sch. 2**

## 17 Power of sheriff to order sheriff clerk to execute deeds relating to heritage.

After section 5 of the <sup>M9</sup>Sheriff Courts (Scotland) Act 1907 there shall be inserted the following section—

### “5A Power of sheriff to order sheriff clerk to execute deeds relating to heritage.

- (1) This section applies where—
  - (a) an action relating to heritable property is before the sheriff; or
  - (b) it appears to the sheriff that an order under this section is necessary to implement a decree of a, sheriff relating to heritable property.
- (2) Where the grantor of any deed relating to the heritable property cannot be found or refuses or is unable or otherwise fails to execute the deed, the sheriff may—
  - (a) where subsection (1)(a) above applies, on application;
  - (b) where subsection (1)(b) above applies, on summary application,
 by the grantee, make an order dispensing with the execution of the deed by the grantor and directing the sheriff clerk to execute the deed.
- (3) Where in pursuance of an order under this section a deed is executed by the sheriff clerk, it shall have the like force and effect as (if it had been executed by the grantor.
- (4) In this section—
 

“grantor” means a person who is under an obligation to execute the deed; and

“grantee” means the person to whom that obligation is owed.”.

*Status: Point in time view as at 05/01/1994.*

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#### Marginal Citations

M9 1907 c. 51.

### 18 Small claims.

(1) For subsection (2) of section 35 of the<sup>M10</sup> Sheriff Courts (Scotland) Act 1971 (summary causes) there shall be substituted the following subsections—

“(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.”.

(2) After section 36 of that Act (procedure in summary causes) there shall be inserted the following sections—

#### “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.

#### 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.”.

*Status: Point in time view as at 05/01/1994.*

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(3) In section 37 of that Act (remits)—

(a) after subsection (2A) there shall be inserted the following subsections—

“(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.”; and

(b) in subsection (3)(a) after “(2A)” there shall be inserted the words “ (2B) or (2C) ”.

(4) In section 38 of that Act (appeal in summary causes) for the words from “any summary cause” to “(b)” there shall be substituted the words—

“(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”.

#### Marginal Citations

M10 1971 c. 58.

## 19 Disclosure of names in certain proceedings.

In section 1 of the <sup>M11</sup>Administration of Justice (Scotland) Act 1972 (which makes provision in relation to the powers of the court to order inspection of documents and other property), after subsection (1) there shall be inserted the following subsection—

“(1A) Without prejudice to the existing powers of the Court of Session and of the sheriff court, those courts shall have power, subject to subsection (4) of this section, to order any person to disclose such information as he has as to the identity of any persons who appear to the court to be persons who—

(a) might be witnesses in any existing civil proceedings before that court or in civil proceedings which are likely to be brought; or

(b) might be defenders in any civil proceedings which appear to the court to be likely to be brought.”.



*Status: Point in time view as at 05/01/1994.*

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**Marginal Citations**

M11 1972 c. 59.

*Other provisions relating to courts*

**20 Removal of prohibition of sheriffs' principal and sheriffs' accepting appointment to certain offices.**

Section 6(1)(b) of the <sup>M12</sup>Sheriff Courts (Scotland) Act 1971 (prohibition of sheriffs' principal and sheriffs' accepting appointments to certain offices) shall cease to have effect.

**Marginal Citations**

M12 1971 c. 58

**21 Additional court holidays.**

In section 10 of the <sup>M13</sup>Bail etc. (Scotland) Act 1980 (which, amongst other things, empowers the sheriff principal to prescribe up to 10 days as court holidays)—

(a) in subsection (2) at the end there shall be added—

“; and may in the like manner prescribe as an additional court holiday any day which has been proclaimed, under section 1(3) of the Banking and Financial Dealings Act 1971, to be a bank holiday either throughout the United Kingdom or in a place or locality in the United Kingdom within his jurisdiction.”; and

(b) in subsection (3) at the end there shall be added—

“; and he may, after such consultation, prescribe as an additional court holiday any day which has been proclaimed, under section 1(3) of the said Banking and Financial Dealings Act 1971, to be a bank holiday either throughout the United Kingdom or in a place or locality in the United Kingdom within his jurisdiction.”.

**Marginal Citations**

M13 1980 c. 4.

**22 Re-employment of retired judges**

(1) If it appears to the Lord President of the Court of Session that it is expedient as a temporary measure to make an appointment under this section in order to facilitate the disposal of business in the Court of Session or the High Court of Justiciary he may, with the consent of the Secretary of State, appoint a person who—

(a) has held office as a judge of the Court of Session; or

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- (b) has held office as a Lord of Appeal in Ordinary and who, at the time of his appointment as a Lord of Appeal in Ordinary, was eligible for appointment as a judge in the Court of Session,
- and, in either case, has not reached the age of 75 years, to act as a judge of the Court of Session and High Court of Justiciary during such period or on such occasions as the Lord President thinks fit but, subject to subsection (4) below, a period during which or occasion on which a person may so act, shall not extend beyond or be after he reaches the age of 75 years.
- (2) A person while acting under this section shall, subject to subsection (3) below, be treated for all purposes as, and accordingly may perform any of the functions of, a judge of the Court in which he is acting.
- (3) A person shall not, by virtue of subsection (2) above, be treated as a judge of the Court of Session or the High Court of Justiciary for the purposes of any statutory provision or rule of law relating to—
- (a) the appointment, retirement, removal or disqualification of judges of that Court (including, without prejudice to the foregoing generality, any statutory provision or rule of law relating to the number of judges who may be appointed);
  - (b) the tenure of office and oaths to be taken by such judges;
  - (c) the remuneration, allowances or pensions of such judges.
- (4) Notwithstanding the expiry of any period for which a person is appointed by virtue of subsection (1) above to act as a judge of the Court of Session and High Court of Justiciary—
- (a) he may attend at the Court for the purpose of continuing to deal with, giving judgment in, or dealing with any matter relating to, any case begun before him while acting as a judge of that Court; and
  - (b) for that purpose, and for the purpose of any proceedings arising out of any such case or matter, he shall be treated as being or, as the case may be, having been, a judge of that Court.
- (5) The Secretary of State may pay to, or in respect of, a person appointed under subsection (1) above such remuneration or allowances as he may, with the consent of the Treasury, determine.

## **23 Replacement of general jury book by lists of men and women eligible for jury service.**

- (1) In section 3 of the Jurors (Scotland) Act 1825 (sheriff principal to maintain the general jury book), for the words from “a book” to “that book” there shall be substituted the words, “in such form as may be approved by the Lord Justice-General, two lists (to be known as the “lists of potential jurors”) containing the names, designations and dates of birth of such number as the sheriff principal considers appropriate of—
- (a) in the first list, men; and
  - (b) in the second list, women
- within the district who appear to him to be qualified and liable to serve as jurors; and those lists”.
- (2) Section 10 of the said Act of 1825, section 4 of the <sup>M14</sup>Juries (Scotland) 1826 and sections 88 to 91 and 98 of the <sup>M15</sup>Criminal Procedure (Scotland) Act 1975 shall have

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effect subject to the amendments to these enactments specified in Schedule 2 to this Act; and for any other reference, however expressed, in any enactment passed before this Act to the general jury book maintained under section 3 of the Jurors (Scotland) Act 1825 there shall be substituted a reference to the lists of potential jurors.

**Marginal Citations**

M14 1826 c. 8.

M15 1975 c. 21.

*Provisions relating to the care of children*

**24 Power to increase size of Children’s Panel Advisory Committees.**

After paragraph 3 of Schedule 3 to the <sup>M16</sup>Social Work (Scotland) Act 1968 there shall be inserted the following paragraph—

“3A The Secretary of State may, at the request of the local authority provide for an increase in the membership of the Children’s Panel Advisory Committee for the area of the authority by such number, not exceeding 5, of additional members as the authority specify in relation to their request, the additional members to be nominated as follows—

- (a) the first, second and fourth additional members, by the Secretary of State;
- (b) the third and fifth additional members, by the local authority”.

**Marginal Citations**

M16 1968 c. 49.

**25 Amendment of provisions about detention of children.**

(1) In section 42(3) of the <sup>M17</sup>Social Work (Scotland) Act 1968 (which, amongst other things, limits to 7 days the period of detention, pending disposal of the case, of a child who has failed to attend before the sheriff in an application to him in respect of the grounds of referral of the child to a children’s hearing) for the words from “for”, where last occurring, to the end there shall be substituted the words “after whichever is the earlier of the following—

- (a) the expiry of 14 days beginning with the day on which he was first detained;
- (b) the disposal of the application by the sheriff.”.

(2) In section 42(6) of the Social Work (Scotland) Act 1968 (remission of case from sheriff to reporter where the sheriff is satisfied that grounds of referral have been established)

- (a) after the word “established” there shall be inserted “ (a) ”; and
- (b) after the word “case”, where secondly occurring, there shall be inserted “; and

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- (b) if he is satisfied that detention of the child is necessary in his own interest or has reason to believe that the child will run away before the children’s hearing sit to consider the case, he may issue a warrant requiring the detention of the child until the children’s hearing sit to consider the case, but a child shall not be detained under this subsection after whichever is the earlier of the following—
- (i) the expiry of 3 days beginning with the day on which he was first detained;
  - (ii) the consideration of his case by the children’s hearing.”

#### Marginal Citations

M17 1968 c. 49.

## 26 Amendment of power to detain children in secure accommodation.

In the <sup>M18</sup>Social Work (Scotland) Act 1968—

- (a) in section 58B(3) (power to detain child in secure accommodation) for the words from “authorise” to the end there shall be substituted the words “ order that, pending the determination of his case in accordance with section 42(5) or (6) of this Act, the child shall be liable to be placed and kept in secure accommodation in a named residential establishment at such times as the person in charge of that establishment with the agreement of the director of social work of the local authority for the area of the children’s hearing, considers necessary. ”.
- (b) in Section 58E(1) (warrant to detail child in secure accommodation) for the words from “authorise” to the end there shall be substituted the words “ order that the child shall be liable to be placed and kept in secure accommodation in a named residential establishment at such times as the person in charge of that establishment, with the agreement of the director of social work of the local authority, considers necessary. The local authority referred to in this subsection is, in the case of a warrant issued or renewed by the sheriff, the local authority for the area of the children’s hearing which was dealing with the child in respect of whom the warrant was issued and, in the case of a warrant issued or renewed by a children’s hearing, the local authority for the area of that children’s hearing. ”

#### Marginal Citations

M18 1968 c. 49.

## 27 Requirement of children’s hearing for pre-adoptive supervision not to constitute making arrangements for adoption for purposes of Adoption (Scotland) Act 1978.

In section 65(3) of the <sup>M19</sup>Adoption (Scotland) Act 1978 (which deems certain actings to constitute the making of arrangements for the adoption of a child, the making of such arrangements being, in certain circumstances, an offence under section 11 of that Act)

*Status: Point in time view as at 05/01/1994.*

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there shall be inserted at the end the following— “ but the making, under section 44 of the Social Work (Scotland) Act 1968, by a children’s hearing of a supervision requirement which, in respect that it provides as to where he is to reside, facilitates his being placed for adoption by an adoption agency, shall not constitute the making of such arrangements. ”.

**Marginal Citations**

M19 1978 c. 28.

**28 Child subject to supervision requirement to be regarded as in the care of the local authority for the purposes of his being freed for adoption under section 18 of the Adoption (Scotland) Act 1978.**

In section 44(5) of the <sup>M20</sup>Social Work (Scotland) Act 1968 (which, amongst other things, provides that, for the purposes of the enactments set out there, a child subject to a supervision requirement shall be in the care of the local authority) after the word “Act”, where first occurring, there shall be inserted the words “ and section 18 of the <sup>M21</sup>Adoption (Scotland) 1978 (which, amongst other things, provides that an application by an adoption agency to dispense with parental agreement to the freeing of a child for adoption is competent only where the child is in the care of the agency). ”.

**Marginal Citations**

M20 1968 c. 49.

M21 1978 c. 28.

**29 Reporter’s power to arrange review by children’s hearing of supervision requirement.**

In section 48 of the Social Work (Scotland) Act 1968 (review by children’s hearing of supervision requirements) after subsection (4) there shall be inserted the following subsection—

“(4A) If a supervision requirement has not been reviewed under this section during the period of nine months following the date when it was made or last reviewed (whichever is the later), the reporter may arrange for it to be reviewed.”.

*Procedures relating tocrofting tenure and the valuation of sheep stocks*

F<sup>4</sup>30 .....

**Textual Amendments**

F4 S. 30 repealed (5.1.1994) by 1993 c. 44, ss. 63(2), 64(2), Sch. 7 Pt. II (with 30(5), Sch. 6 para. 4).

F<sup>5</sup>31 .....

*Status: Point in time view as at 05/01/1994.*

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#### Textual Amendments

**F5** S. 31 repealed (5.1.1994) by 1993 c. 44, s. 63(2), 64(2), **Sch. 7 Pt. II** (with s. 30(5), Sch. 6 para. 4)

**F6**<sup>32</sup> .....

#### Textual Amendments

**F6** S. 32 repealed by **Agricultural Holdings (Scotland) Act 1991** (c. 55, SIF 2:3), s. 88(2), **Sch. 13 Pt. 1** (with Sch. 12 paras. 1,3).

### *Criminal courts, procedure, evidence and justice*

#### **33 Establishment and disestablishment of district courts.**

After section 1 of the <sup>M22</sup>District Courts (Scotland) Act 1975 there shall be inserted the following section—

**“1A Further provision as to establishment and disestablishment of district courts.**

- (1) Where it appears to the Secretary of State that—
  - (a) there is insufficient business for the district court in a particular commission area; and
  - (b) such insufficiency of business is likely to continue,
 he may by order provide that the district court for that area cease to exist on a specified date.
- (2) Where it appears to the Secretary of State that, in a commission area in which there is no district court, there is likely to be sufficient business to justify the establishment of such a court, he may by order provide for the establishment of such a court in that area on a specified date.
- (3) An order under subsection (1) or (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 enactment).
- (4) Before making an order under subsection (1) or (2) above, the Secretary of State shall consult the district or islands council for the area concerned, and such other persons as appear to him to have an interest in the proposed order.
- (5) Orders under subsection (1) or (2) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

*Status: Point in time view as at 05/01/1994.*

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#### Marginal Citations

M22 1975 c. 20.

### 34 Power of Secretary of State to remove justices etc.

In the <sup>M23</sup>District Courts (Scotland) Act 1975—

- (a) at the end of subsection (7) of section 11 (which relates to ex officio justices) there shall be inserted the words “ and, notwithstanding that he remains a duly nominated member of the authority, may be removed from office in like manner as a justice appointed under that section. ”;
- (b) in subsection (2) of section 15 (which relates to the supplemental list of justices), at the end of paragraph (a) there shall be inserted—
  - “(aa) that by reason of the justice’s conduct it is expedient that he should cease to exercise judicial functions as a justice for the area; or”

#### Marginal Citations

M23 1975 c. 20.

### 35 Provisions as to persons arrested in respect of terrorism.

After section 3 of the <sup>M24</sup>Criminal Justice (Scotland) Act 1980 there shall be inserted the following sections—

#### “3A Rights of persons arrested or detained in connection with terrorism.

- (1) A person who has been arrested or detained under the terrorism provisions and who is in detention in a police station or other premises shall be entitled to have imitation of his detention and of the place where he is being detained sent without delay to a solicitor and to another person reasonably named by him :  
  
Provided that a police officer not below the rank of superintendent may authorise a delay (not extending longer than the period of 48 hours from the start of the detention) where, in his view, such delay is necessary on one of the grounds mentioned in section 3C(3) of this Act.
- (2) Where a person arrested or detained under the terrorism provisions requests that the intimation be made, there shall be recorded the time when such request is—
  - (a) made; and
  - (b) complied with.
- (3) A person arrested or detained under the terrorism provisions shall be entitled to consult a solicitor at any time, without delay :  
  
Provided that a police officer not below the rank of superintendent may authorise a delay (not extending longer than the period of 48 hours from the start of the detention) where, in his view, such delay is necessary on one of the grounds mentioned in section 3C(3) of this Act.

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*Status: Point in time view as at 05/01/1994.*

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- (4) Subject to section 3C of this Act the consultation provided for in subsection (3) above shall be private.

### **3B Provisions as to children detained in connection with terrorism.**

- (1) Subject to the provisions of this section the provisions of section 3A of this Act apply to children as they apply to adults.
- (2) Without prejudice to—
- (a) subsection (3) of this section ; or
  - (b) his entitlement, in terms of section 3A(1), to have intimation of his detention and of the place where he is being detained sent to a solicitor—
- a person arrested or detained under the terrorism prevention provisions who appears to a constable to be a child shall not be entitled to have such intimation sent to any other person named by them.
- (3) Where it appears to a constable that a person arrested or detained under the terrorism provisions is a child, he shall, subject to subsection (4), without delay—
- (a) send intimation of the arrest or detention and of the place where the child is being held to his parent (if known) ; and
  - (b) allow such parent access to the child.
- (4) A police officer not below the rank of superintendent may authorise—
- (a) a delay in compliance with the duty mentioned in subsection (3)(a) above ;
  - (b) non-compliance with the duty mentioned in subsection (3)(b) above, where such delay or, as the case may be, non-compliance is, in his view, necessary on one of the grounds mentioned in section 3C of this Act :
- Provided that any such delay in compliance with the duty mentioned in subsection (3)(a) shall not extend longer than the period of 48 hours from the start of the detention.
- (5) There shall be recorded the time at which the intimation mentioned in subsection (3)(a) is made.
- (6) Subject to section 3C of this Act the access mentioned in subsection (3)(b) above shall be private.
- (7) Where a child is, by virtue of any enactment, in the care either of a local authority or of a voluntary organisation, the intimation shall be either to the authority or organisation or to the parent, and the right of access shall be exercisable both by an officer of the authority or organisation and by the parent ; and subsections (4) and (6) above and section 3C of this Act shall apply in relation to intimation and access under this subsection as they apply to intimation and access under subsection (3) above.



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### **3C Provisions relating to consultations and access in connection with terrorism.**

- (1) An officer not below the rank of Assistant Chief Constable may direct that the consultation or access mentioned in sections 3A(3) and 3B(3) of this Act respectively be in the presence of a uniformed officer not below the rank of inspector if it appears to the officer giving the direction to be necessary on one of the grounds mentioned in subsection (3) below.
- (2) A uniformed officer directed to be present during a consultation or, as the case may be, access shall be an officer who, in the opinion of the officer giving the direction, has no connection with the case.
- (3) The grounds mentioned in section 3A(1), 3A(3) and 3B(4) of this Act and in subsection (1) above are that it is in the interests of the investigation or prevention of crime, or of the apprehension, prosecution or conviction of offenders.
- (4) Where delay or non-compliance is authorised in the exercising of any of the rights or, as the case may be, the carrying out of any of the duties, mentioned in sections 3A(1), 3A(3) and 3B(3) of this Act, there shall be recorded the reason for such delay or non-compliance.

### **3D Interpretation and effect of sections 3A to 3D.**

- (1) In section 3A to 3C and this section of this Act—
  - (a) “terrorism provisions” means—
    - (i) section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984 ; or
    - (ii) any provisions conferring a power of arrest or detention and contained in an order under section 13 of that Act ; and
  - (b) “child” and “parent” have the same meanings as they have in section 3 of this Act.
- (2) The provisions of sections 3A to 3C and this section of this Act shall have effect, in relation to persons arrested or detained under the terrorism provisions, in place of any enactment or rule of law under or by virtue of which a person arrested or detained may be entitled to communicate or consult with any other person.”.

#### **Marginal Citations**

**M24** 1980 c. 62.

### **36 Evidence in trials of certain sexual offences.**

- (1) After section 141 of the <sup>M25</sup>Criminal Procedure (Scotland) Act 1975 there shall be inserted the following sections—

*Status: Point in time view as at 05/01/1994.*

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#### **“141A Evidence in relation to sexual offences.**

- (1) In any trial of a person on any charge to which this section applies, subject to section 141B, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—
  - (a) is not of good character in relation to sexual matters ; or
  - (b) is a prostitute or an associate of prostitutes ; or
  - (c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.
- (2) This section applies to a charge of committing or attempting to commit any of the following offences, that it to say—
  - (a) rape ;
  - (b) sodomy ;
  - (c) assault with intent to rape ;
  - (d) indecent assault ;
  - (e) indecent behaviour (including lewd, indecent or libidinous practice or behaviour) ;
  - (f) an offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (unlawful sexual intercourse with mentally handicapped female or with patient) ;
  - (g) an offence under any of the following provisions of the Sexual Offences (Scotland) Act 1976—
    - (i) section 2 (procuring by threats etc.) ;
    - (ii) section 3 (unlawful sexual intercourse with girl under 13) ;
    - (iii) section 4 (unlawful sexual intercourse with girl under 16) ;
    - (iv) section 5 (indecent behaviour towards girl between 12 and 16) ;
    - (v) section 8 (abduction of girl under 18) ;
    - (vi) section 9 (unlawful detention of female) ; or
  - (h) an offence under section 80(7) of the Criminal Justice (Scotland) Act 1980 (homosexual offences).
- (3) In this section “complainer” means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.
- (4) This section does not apply to questioning, or evidence being adduced, by the Crown.

#### **141B Exceptions to prohibition.**

- (1) Notwithstanding the terms of section 141A, in any trial of a person on any charge to which that section applies, where the court is satisfied on an application by that person—
  - (a) that the questioning or evidence referred to in section 141A(1) above is designed to explain or rebut evidence adduced, or to be adduced, otherwise than by or on behalf of that person,
  - (b) that the questioning or evidence referred to in section 141A(1)(c) above—

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- (i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject-matter of the charge, or
  - (ii) is relevant to the defence of incrimination, or
  - (c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in section 141A(1) above, the court shall allow such questioning or, as the case may be, admit such evidence.
- (2) Where questioning or evidence is or has been admitted under section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.
- (3) Any application under this section shall be made in the course of the trial but in the absence of the jury, the complainer, any person cited as witness and the public.”
- (2) After section 346 of the said Act there shall be inserted the following sections—

**“346A Evidence in relation to sexual offences.**

- (1) In any trial of a person on any charge to which this section applies, subject to section 346B, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—
- (a) is not of good character in relation to sexual matters ;
  - (b) is a prostitute or an associate of prostitutes ; or
  - (c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.
- (2) This section applies to a charge of committing or, in the case of paragraphs (b) to (g), attempting to commit any of the following offences, that is to say—
- (a) attempted rape ;
  - (b) sodomy ;
  - (c) assault with intent to rape ;
  - (d) indecent assault ;
  - (e) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour) ;
  - (f) an offence under any of the following provisions of the Sexual Offences (Scotland) Act 1976—
    - (i) section 2 (procuring by threats, etc.)
    - (ii) section 3(2) (unlawful intercourse with girl under 13) ;
    - (iii) section 4 (unlawful sexual intercourse with girl under 16) ;
    - (iv) section 5 (indecent behaviour towards girl between 12 and 16) ;
    - (v) section 8 (abduction of girl under 18) ;
    - (vi) section 9 (unlawful detention of female) ; or
  - (g) an offence under section 80(7) of the Criminal Justice (Scotland) Act 1980 (homosexual offences).
- (3) In this section “complainer” means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.

*Status: Point in time view as at 05/01/1994.*

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- (4) This section does not apply to questioning, or evidence being adduced, by the Crown.

**346B Exceptions to prohibition.**

- (1) Notwithstanding the terms of section 346A above, in any trial of a person on any charge to which that section applies, where the court is satisfied on an application by that person—
  - (a) that the questioning or evidence referred to in section 346A(1) above is designed to explain or rebut evidence adduced, or to be adduced, otherwise than by or behalf of that person,
  - (b) that the questioning or evidence referred to in section 346A(1)(c) above—
    - (i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject-matter of the charge, or
    - (ii) is relevant to the defence of the incrimination, or
  - (c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in section 346A(1) above, the court shall allow such questioning or, as the case may be, admit such evidence.
- (2) Where the questioning or evidence is or has been allowed or admitted under this section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.
- (3) Any application under this section shall be made in the course of the trial but in the absence of the complainer, any person cited as a witness and the public.”.

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**Marginal Citations**  
M25 1975 c. 21.

**37 Evidence in replication.**

In each of sections 149A and 350A of the <sup>M26</sup>Criminal Justice (Scotland) Act 1975 (evidence in replication), in subsection (1)(a), for the words “led by the defence” there shall be substituted the words “ given by any defence witness ”.

.....

**Marginal Citations**  
M26 1975 c. 21.

*Status: Point in time view as at 05/01/1994.*

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**Textual Amendments**

**F7** S. 38 repealed by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 107:1\)](#), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, 2

**39** ..... **F8**

**Textual Amendments**

**F8** S. 39 repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), **Sch. 2**

**40 Further provisions as to fines.**

In the <sup>M27</sup>Criminal Procedure (Scotland) Act 1975, in section 407(1A) (periods of imprisonment for non-payment of fines)—

- (a) after “£10,000” there shall be inserted “ but not exceeding £20,000 ” ;
- (b) after “12 months” there shall be added—

“Exceeding £20,000 but not exceeding £50,000	18 months
Exceeding £50,000	2 years.”.

**Marginal Citations**

**M27** 1975 c. 21.

**41 Penalties under food and drugs legislation.**

In the <sup>M28</sup>Food and Drugs (Scotland) Act 1956—

- (a) in subsection (1)(a) of section 40 (which relates to penalties) the words from “or to imprisonment” to “offence is continued” shall cease to have effect ;
- (b) in subsection (1)(b) the words from “and”, where it occurs for the second time, to the end shall cease to have effect ;
- (c) in subsection (8A) of section 56 (which specifies certain maximum penalties)

- (i) in paragraph (a) the words “or imprisonment for a term not exceeding 6 months or both” shall cease to have effect ; and
- (ii) in paragraph (b)(i) the words “or imprisonment for a term not exceeding 6 months or both” shall cease to have effect.

**Marginal Citations**

**M28** 1956 c. 30.

*Status: Point in time view as at 05/01/1994.*

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42 ..... F9

**Textual Amendments**

**F9** Ss. 42, 44, 45 repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), Sch. 3

**43 Detention of young offenders.**

In each of sections 207 and 415 of the Criminal Procedure (Scotland) Act 1975 (detention of young offenders)—

- (a) in subsection (5)(a), after the word “shall” there shall be inserted the words “, subject to subsection (5A) below, ”; and
- (b) after the said subsection (5) there shall be inserted—

“(5A) Where detention in a detention centre would be required by subsection (5) above but the accused has already served such a sentence, the court shall order that the detention be in a young offenders institution, unless it appears to the court that, in the particular circumstances of the case, and having regard to the character of the offender, it would be more appropriate for the detention to be served in a detention centre.”.

44, 45. .... F10

**Textual Amendments**

**F10** Ss. 42, 44, 45 repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), Sch. 3

**46 Post-release supervision of service offenders.**

- (1) In section 71AA of the <sup>M29</sup>Army Act 1955 and the <sup>M30</sup>Air Force Act 1955 respectively and section 43AA of the <sup>M31</sup>Naval Discipline Act 1957 (custodial orders), after subsection (6A) in each case there shall be substituted the following subsection—

“(6B) Section 12 of the Criminal Justice (Scotland) Act 1963 (supervision of young offenders following release) shall apply to persons released from a term of detention under a custodial order as it applies to those released from a term of detention imposed under section 207 or section 415 of the Criminal Procedure (Scotland) Act 1975.”.

- (2) In paragraph 10 of Schedule 5A to the <sup>M32</sup>Army Act 1955 and to the <sup>M33</sup>Air Force Act 1955 respectively and Schedule 4A to the <sup>M34</sup>Naval Discipline Act 1957 (custodial orders), after sub-paragraph (6A) in each case there shall be inserted the following sub-paragraph—

“(6B) Section 12 of the Criminal Justice (Scotland) Act 1963 (supervision of young offenders following release) shall apply to persons released from a term of detention under a custodial order as it applies to those released from a term of detention imposed under section 207 or section 415 of the Criminal Procedure (Scotland) Act 1975.”

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**Marginal Citations**

- M29 1955 c. 18.
- M30 1955 c. 19.
- M31 1957 c. 53.
- M32 1955 c. 18.
- M33 1955 c. 19.
- M34 1957 c. 53.

*Miscellaneous and general*

**47 Transfer of sheriff clerks and procurators fiscal.**

In section 1 of the <sup>M35</sup>Sheriff Clerks and Legal Officers (Scotland) Act 1927 (appointment of sheriff clerk and procurator fiscal)—

- (a) in subsection (3), after the words “foregoing subsections” there shall be inserted the words “ but subject to subsections (4) and (5) below ”; and
- (b) after subsection (3) there shall be added the following subsections—

“(4) The right vested—

- (a) in the Secretary of State under subsection (1) above shall include the right to transfer the sheriff clerk of one sheriff court district to an office, whether of sheriff clerk or (however styled) of sheriff clerk depute, in another sheriff court district;
- (b) in the Lord Advocate under subsection (2) above shall include the right to transfer the procurator fiscal of one district to an office, whether of procurator fiscal or (however styled) of procurator fiscal depute, in another district,

where in the opinion of the Secretary of State or, as the case may be, of the Lord Advocate the transfer is for the purpose of securing efficient organisation and administration.

- (5) It is hereby declared that, for the purposes of subsection (3) above, a transfer under subsection (4) above is not a removal from office.”.

**Marginal Citations**

- M35 1927 c. 35

**48 Power of Lord Advocate and Secretary of State in relation to research into law.**

The Lord Advocate or the Secretary of State may assist (whether financially or otherwise) other persons in conducting research into any matter connected with the law (other than research into any matter referred to in section 75(1) of the <sup>M36</sup>Criminal Justice (Scotland) Act 1949).

**Marginal Citations**

- M36 1949 c. 94.

*Status: Point in time view as at 05/01/1994.*

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#### 49 Arrestment of National Savings Bank deposits.

In section 46 of the <sup>M37</sup>Crown Proceedings Act 1947 (which makes provision as to arrestment in the hands of the Crown)—

- (a) after paragraph (a) of the proviso there shall be inserted the word “ or ” ;
- (b) paragraph (c) of the proviso (which precludes arrestment of money payable on account of a deposit in the National Savings Bank) and the word “or” which precludes that paragraph shall cease to have effect.

#### Marginal Citations

M37 1947 c. 44.

#### 50 Registration of divorces and declarators of nullity of marriage.

- (1) After section 28 of the <sup>M38</sup>Registration of Births, Deaths and Marriages (Scotland) Act 1965 there shall be inserted the following section—

##### “28A Registration of divorces and declarators of nullity of marriage.

- (1) The Registrar General shall maintain at the General Register Office a register of decrees of divorce and of declarator of nullity of marriage (which register shall be known as the “Register of Divorces”).
  - (2) The Register General shall cause to be made and kept at the General Register Office an alphabetical index of the entries in the Register of Divorces (in this section referred to as “the index”).
  - (3) The Register of Divorces shall be in such form as may be prescribed.
  - (4) On payment to him of such fee or fees as may be prescribed, the Register General shall, at any time when the General Register Office is open for that purpose—
    - (a) cause a search of the index to be made on behalf of any person or permit that person to search the index himself ;
    - (b) issue to any person an extract of any entry in the Register of Divorces which that person may require.
  - (5) An extract of an entry in the Register of Divorces shall be sufficient evidence of the decree of divorce or, as the case may be, of declarator of nullity of marriage to which it relates.
  - (6) The Register General may delete or amend any entry in the Register of Divorces or substitute another for it.
  - (7) In this section, references to decrees of divorce are references to decrees thereof of the Court of Session or the sheriff and references to decrees of declarator of nullity of marriage are references to decrees thereof of the Court of Session.”.
- (2) In section 48 of the said Act of 1965 (decrees altering status to be notified to Registrar General) after the words “be made”, where secondly occurring, there shall be inserted—



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- “(a) where the decree is of divorce or of declarator of nullity of marriage, in the Register of Divorces ; and
  - (b) in any other case.”.
- (3) Any entry made in the Register of Corrections Etc. between 1st May 1984 and the date of the coming into force of this section which could have been made after the latter date in the Register of Divorces shall be treated as an entry in the Register of Divorces.

**Marginal Citations**

M38 1965 c. 49.

**51 Amendments to Mental Health (Scotland) Act 1984 as respects hospital orders.**

- (1) The <sup>M39</sup>Mental Health (Scotland) Act 1984 shall be amended in accordance with the following provisions of this section.
- (2) In each of sections 21 (approval of applications by the sheriff : hospital) and 40 (approval of applications by the sheriff : guardianship)—
- (a) the words “for his approval” shall be omitted from subsection (1) ;
  - (b) in subsection (2), after the word “considering” there shall be inserted the words “ whether to approve ”.

**Marginal Citations**

M39 1984 c. 36.

**52 Application of certain liquor licensing appeal to provisions to certain appeals under Lotteries and Amusements Act 1976.**

In section 133(4) of the <sup>M40</sup>Licensing (Scotland) Act 1976 (application of certain provisions relating to appeals in respect of liquor licensing to certain appeals in respect of certain betting and gaming permits and licences)—

- (a) after the word “1968”, where first occurring, there shall be inserted the words “ and paragraph 12 of Schedule 3 to the Lotteries and Amusements Act 1976 ” ; and
- (b) for the words “and 1968”, there shall be substituted the words “ 1968 and 1976 ”.

**Marginal Citations**

M40 1976 c. 66.

**53 Amendment of definition of “alcoholic liquor”.**

In section 139(1) of the Licensing (Scotland) Act 1976, in the definition of “alcoholic liquor”—

- (a) after the word “include” there shall be inserted “ (a) ” ; and
- (b) at the end there shall be inserted—

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- “(b) perfumes ;
- (c) flavouring essences recognised by the Commissioners as not being intended for consumption as or with dutiable alcoholic liquor ;
- (d) spirits, wine or made-wine so medicated as to be, in the opinion of the Commissioners, intended for use as a medicine and not as a beverage.”.

#### **54 Clarification of investment powers of Scottish Hospital Trust and Scottish Hospital Endowments Research Trust.**

(1) In sub-paragraph (b) of paragraph 4 of Schedule 6 to the <sup>M41</sup>National Health Service (Scotland) Act 1978 and in paragraph 4 of Schedule 7 to that Act (which provisions respectively enable the Scottish Hospital Trust and the Scottish Hospital Endowments Research Trust to invest as therein provided) after “1921” there shall be inserted the words “ and the Trustee Investments Acts 1961 ”.

(2) In the said paragraph 4 of the said Schedule 6 there shall be inserted at the end—

“It is hereby declared, for the avoidance of doubt, that the Trust has at all times had the power referred to in sub-paragraph (b) above to invest in any security in which trustees are authorised to invest under or in pursuance of the Trustee Investments Act 1961.”.

(3) In the said paragraph 4 of the said Schedule 7 there shall be inserted at the end—

“It is hereby declared, for the avoidance of doubt, that the Research Trust has at all times had the power referred to in this paragraph to invest in any security in which trustees are authorised to invest under or in pursuance of the Trustee Investment Act 1961.”.

#### **Marginal Citations**

**M41** 1978 c. 29.

#### **55 Power of Commissioner for Local Administration to investigate Scottish Special Housing Association and new town development corporations.**

(1) In section 23 of the <sup>M42</sup>Local Government (Scotland) Act 1975 (authorities subject to investigation)—

(a) in subsection (1) there shall be added at the end the words—

“(g) the Scottish Special Housing Association;

(h) subject to subsection (2A) below, any development corporation established under an order made, or having effect as if made under the New Towns (Scotland) Act 1968 (in this section and section 24 of this Act referred to as a “new town development corporation”);”;

(b) after subsection (2) there shall be added the following subsection—

“(2A) The application of this Part of this Act to any new town development corporation by virtue of subsection (1)(h) above extends only to the Corporation’s functions in relation to housing.”.

*Status: Point in time view as at 05/01/1994.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 25 April 2023. 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)*

- (2) In section 24 of that Act (matters subject to investigation)—
- (a) after subsection (3) there shall be inserted the following subsection—
- “(3A) Subsections (2) and (3) above do not apply in relation to the Scottish Special Housing Association or a new town development corporation.”; and
- (b) in subsection (4) after the word “concerned” there shall be inserted the words “or, in the case of the Scottish Special Housing Association or a new town development corporation, to the Commissioner”.

**Marginal Citations**

M42 1975 c. 30.

**56 Amendment of enactments relating to solicitors.**

The enactments specified in Schedule 1 to this Act (Part 1 of which Schedule contains amendments relating to the incorporation of solicitors’ practices and Part II amendments relating to other matters relating to solicitors) shall have effect subject to the amendments to these enactments there set out.

**57 Power to pay extra-parliamentary Commissioners for service on inquiries under the Private Legislation Procedure (Scotland) Act 1936.**

In section 5 of the <sup>M43</sup>Private Legislation Procedure (Scotland) Act 1936 (which provides, amongst other things, as to the appointment of Commissioners for inquiries under the Act) there shall be added at the end the following subsection—

- “(9) The Secretary of State may pay Commissioners taken from the extra-parliamentary panel such fees or other amounts in respect of the performance of their duties under this Act as he may, with the approval of the Treasury, determine.”.

**Marginal Citations**

M43 1936 c. 52.

**58 Finance.**

There shall be paid out of money provided by Parliament—

- (a) any expenses incurred by the Secretary of State under section 22(5) of this Act or section 5(9) of the Private Legislation Procedure (Scotland) Act 1936 or by the Secretary of State or the Lord Advocate under section 48 of this Act; and
- (b) any increase attributable to this Act in the sums which, under any other Act, are payable out of money so provided.

**59 Amendment and repeal of enactments.**

- (1) the enactments specified in Schedule 2 to this Act shall have effect subject to the amendments to these enactments there set out.

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- (2) The enactments specified in Schedule 4 to this Act are hereby repealed to the extent there set out.

**60 Citation, transitional provisions, commencement and extent.**

- (1) This Act may be cited as the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.
- (2) Schedule 3 to this Act shall have effect for the purpose of making transitional provision.
- (3) This Act shall come into force as follows—
- (a) sections 26 to 29, 54, this section, paragraphs 28 to 30 and 32 of Schedule 2 and so much of section 59(1) as relates to these paragraphs, when it is passed;
  - (b) sections 14, 15, 18, 19 and 36 and paragraphs 8, 12, 13 and 24 of Schedule 2 and so much of section 59(1) as relates to these paragraphs, on such day as the Lord Advocate may be order appoint;
  - (c) sections 35 and 50, on such day as the Secretary of State may by order appoint; and
  - (d) the remaining provisions, at the end of the period of two months beginning with the day on which it is passed.
- (4) Different days may be appointed under subsection (3)(b) and (c) above for the different provisions specified therein.
- (5) An order under this section shall be made by statutory instrument.
- (6) This act applies to Scotland only.

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

- C10** Power of appointment conferred by s. 60(3)(b) fully exercised: [S.I. 1985/2055](#), 1986/1945, 1988/1819
- C11** Power of appointment conferred by s. 60(3)(c) fully exercised by [S.I. 1985/1908](#) (1.2.1986 appointed day for s. 50 under [S.I. 1985/1908](#))

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## SCHEDULES

### SCHEDULE 1

#### PART I

#### INCORPORATION OF SOLICITORS' PRACTICES

##### *Solicitors (Scotland) Act 1980 c. 46*

- 1 In section 16(1) (appeal to Court of Session against decisions of Council in relation to practising certificates)—
- (a) after the word “where” there shall be inserted “ (a) ”; and
  - (b) after the word “applicant” there shall be inserted “;”,
    - (b) the Council refuse to recognise a body corporate as being suitable in terms of section 34(1A)(b), the body corporate”.
- 2 In section 18 (suspension of practising certificates)—
- (a) after subsection (1) there shall be inserted the following subsection—

“(1A) If—

    - (a) an administration or winding up order, or an appointment of a provisional liquidator, liquidator, receiver or judicial factor has been made in relation to the incorporated practice; or
    - (b) a resolution has been passed for the voluntary winding-up of an incorporated practice (other than a resolution passed solely for the purposes of reconstruction or amalgamation of the incorporated practice with another incorporated practice),

the recognition under section 34(1A) of the incorporated practice shall be thereby revoked.”;
  - (b) after subsection (3) there shall be inserted the following subsection—

“(3A) On the occurrence of the circumstances mentioned in—

    - (a) paragraph (a) of subsection (1A), the administrator, provisional liquidator, liquidator, receiver or, as the case may be, judicial factor appointed in relation to the incorporated practice;
    - (b) paragraph (b) of subsection (1A), the incorporated practice shall immediately intimate that fact to the Council.”.
- 3 In section 21(3) (definition of “consultant” in relation to requirement upon consultants to hold practising certificates)—
- (a) after the word “who” there shall be inserted “ (a) ”;

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- (b) after the word “name”, where thirdly occurring, there shall be inserted—  
 “(b) not being a director of an incorporated practice, causes or permits his name to be associated with that incorporated practice.”

- [<sup>F11</sup>4 In section 26 (offence for solicitors to act as agents for unqualified persons)—  
 (a) in subsection (1)—  
 (i) after the word “who” there shall be inserted the words “ or incorporated practice which ”;  
 (ii) in each of paragraphs (b) and (d) after the word “his” there shall be inserted “ or, as the case may be, its ”;  
 (b) in subsection (3) there shall be inserted at the end the words “ but “unqualified person” does not include an incorporated practice ”.]

#### Textual Amendments

**F11** Sch. 1 Pt. 1 para. 4 repealed (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 9**

<sup>F12</sup>5

#### Textual Amendments

**F12** Sch. 1 Pt. 1 para. 5 repealed (17.3.1993) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), s. 74, **Sch. 9**; SI 1993/641, art. 3, Sch.

- 6 In section 28 (disqualified solicitors not to seek employment without informing employer)—  
 (a) after the word “practice” where thirdly occurring, there shall be inserted the words “ or by an incorporated practice ”;  
 (b) after the word “him” there shall be inserted the words “ or, as the case may be, it ”.
- 7 In section 30 (liability for fees of another solicitor)—  
 (a) after the word “solicitor”, where first occurring, there shall be inserted the words “ or an incorporated practice ”;  
 (b) after that word, where secondly and thirdly occurring, there shall be inserted the words “ or incorporated practice ”;  
 (c) after the word “he” in each place where it occurs, there shall be inserted the words “ or, as the case may be, it ”;  
 (d) after the word “solicitor’s” there shall be inserted the words “ or incorporated practice’s ”.
- 8 Section 31 (offence for unqualified persons to pretend to be solicitors or notaries public) shall be renumbered as subsection (1) of that section and—  
 (a) in that subsection (as so renumbered) there shall be inserted at the end of the following—  
 “In this section, “unqualified person” does not include an incorporated practice”;  
 (b) after that subsection there shall be inserted the following subsections—

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“(2) Any person (including a body corporate) who either by himself or together with others, wilfully and falsely—

- (a) pretends to be an incorporated practice;
- (b) takes or uses any name, title, addition or description implying that he is an incorporated practice,

shall be guilty of an offence.

(3) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of the director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”.

9 In section 32(2) (persons to whom offence of preparing certain documents does not apply) there shall be inserted at the end the following—

“; or

(e) an incorporated practice.”.

10 In section 33 (unqualified persons not entitled to fees etc.) there shall be inserted at the end—

“This section does not apply to an incorporated practice.”.

11 After section 33 there shall be inserted the following section—

**“33A Privilege of incorporated practices from disclosure etc.**

(1) Any communication made to or by an incorporated practice in the course of its acting as such for a client shall in any legal proceedings be privileged from disclosure in like manner as if the body had at all material times been a solicitor acting for the client.

(2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to professional privilege could be maintained, shall, with any necessary modifications, have effect in relation to an incorporated practice as it has effect in relation to a solicitor.”.

12 In section 34 (rules as to professional practice, conduct and discipline)—

(a) in subsection (1) at the end there shall be inserted the words “ and incorporated practices ”;

(b) after subsection (1) there shall be inserted the following subsection—

“(1A) Rules made under this section may—

(a) provide as to the management and control by—

(i) solicitors holding practising certificates or their executors;

(ii) other incorporated practices

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- of bodies corporate carrying on businesses consisting of the provision of professional services such as are provided by individuals and firms practising as solicitors being bodies the membership of which is restricted to such solicitors, executors and other incorporated practices;
- (b) prescribe the circumstances in which such bodies may be recognised by the Council as being suitable to undertake the provision of any such services;
- (c) prescribe the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies corporate so recognised if they are to remain so recognised (which bodies, when and for so long as so recognised, are in this Act referred to as “incorporated practices”;
- (d) regulate the conduct of the affairs of incorporated practices; and
- (e) provide—
- (i) for the manner and form in which applications for recognition under this section are to be made, and for the payment of fees in connection with such applications;
  - (ii) for regulating the names that may be used by incorporated practices;
  - (iii) as to the period for which any recognition granted under this section shall (subject to the provisions of this Act) remain in force;
  - (iv) for the revocation of any such recognition on the grounds that it was granted as a result of any error or fraud;
  - (v) for the keeping by the Society of a list containing the names and places of business of all incorporated practices and for the information contained in any such list to be available for inspection;
  - (vi) for rules made under any provision of this Act to have effect in relation to incorporated practices with such additions, omissions or other modifications as appear to the Council to be necessary or expedient;
  - (vii) for empowering the Council to take such steps as they consider necessary or expedient to ascertain whether or not any rules applicable to incorporated practices by virtue of this section are being complied with.
- (c) after subsection (4) there shall be inserted the following subsections—
- (4A) A certificate purporting to be signed by an officer of the Society and stating that any body corporate is or is not an incorporated practice shall, unless the contrary is proved, be sufficient evidence of that fact.



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- (4B) Subject to the provisions of this Act, the Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, provide for any enactment or instrument passed or made before the commencement of section (1A) above and having effect in relation to solicitors to have effect in relation to incorporated practices with such additions, omissions, or other modifications as appear to him to be necessary or expedient.”.
- 13 In section 35(1) (accounts rules) after the word “solicitors”, in each place where it occurs, there shall be inserted the words “ and incorporated practices ”.
- 14 In section 36 (interest on client’s money)—
- (a) in subsection (1)—
    - (i) after the word “solicitor”, where first occurring, there shall be inserted the words “ or an incorporated practice ”;
    - (ii) after the word “his” there shall be inserted the words “ or, as the case may be, by the incorporated practice in its ”;
    - (iii) after the word “solicitor’s” there shall be inserted the words “ or, as the case may be, the incorporated practice’s ”;
  - (b) in subsection (2) after the word “solicitor” there shall be inserted the words “ or incorporated practice ”;
  - (c) in subsection (3)—
    - (i) after the word “solicitor”, where first occurring, there shall be inserted the words “ or incorporated practice ”;
    - (ii) after the word “solicitor”, where lastly occurring, there shall be inserted the words “ or, as the case may be, the incorporated practice ”;
    - (iii) after the word “his” there shall be inserted the words “ or, as the case may be, its ”;
  - (d) in subsection (4) after the word “client” there shall be inserted the words “ or an incorporated practice and its client ”.
- 15 In section 37 (accountant’s certificates)—
- (a) in subsection (2) after the word “solicitor” there shall be inserted the words “ and incorporated practice ”;
  - (b) in subsection (3) after the word “firm” there shall be inserted the words “ or of an incorporated practice ”;
  - (c) in subsection (5)—
    - (i) in paragraph (a) after the word “who” there shall be inserted the words “ or incorporated practice which ”, after the word “firm” there shall be substituted the words “ or, as the case may be, of the incorporated practice ” and after the word “them” there shall be inserted the words “ or, as the case may be, it ”;
    - (ii) in paragraph (b), after the word “solicitor” there shall be inserted the words “ or incorporated practice ” and after the word “practice” there shall be inserted the words “ or, as the case may be, it has not ”;
  - (d) in subsection (6)—
    - (i) in paragraph (a)(iii) after the word “solicitors” there shall be inserted the words “ or incorporated practices ”;

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- (ii) after the word “he” there shall be inserted the words “ or, as the case may be, an incorporated practice which satisfies the Council that it ”;
  - (e) in subsection (7)—
    - (i) after the word “solicitor” there shall be inserted the words “ or incorporated practice ”;
    - (ii) after the word “him” there shall be inserted the words “ or, as the case may be, it ”.
- 16 In section 38 (powers of Council where dishonesty alleged)—
  - (a) in subsection (1)—
    - (i) after the word “his”, where first occurring, there shall be inserted the words “ or an incorporated practice or any employee thereof ”;
    - (ii) after the word “firm” there shall be inserted the words “ or, as the case may be, such incorporated practice ”;
  - (b) in subsection (2)—
    - (i) in paragraph (a), there shall be inserted at the end the words “ or, as the case may be, such incorporated practice ”;
    - (ii) in paragraph (b), there shall be inserted at the end the words “ or, as the case may be, of which the incorporated practice or one of its employees is a sole trustee or it is a co-trustee only with one or more of its employees. ”.
- 17 In section 39 (Council’s powers where delay alleged)—
  - (a) in subsection (1)—
    - (i) after the word “solicitor” there shall be inserted the words “ or an incorporated practice ”;
    - (ii) after the word “firm” there shall be inserted the words “ or, as the case may be, it ”;
    - (iii) after the word “employees” there shall be inserted the words “ or, as the case may be, the incorporated practice or one of its employees was the sole trustee or it was a co-trustee only with one or more of its employees ”;
    - (iv) after the word “solicitor” where secondly occurring, there shall be inserted the words “ or, as the case may be, incorporated practice ”;
  - (b) in subsection (2)—
    - (i) after the word “solicitor”, where first and lastly occurring there shall be inserted the words “ or, as the case may be, incorporated practice ”;
    - (ii) after the word “he” there shall be inserted the words “ or, as the case may be, it ”;
    - (iii) after the word “firm” there shall be inserted the words “ or, as the case may be, to that incorporated practice. ”.
- 18 In section 40 (Council’s powers where failure to comply with accounts rules etc.)—
  - (a) in subsection (1)—
    - (i) after the word “solicitor”, where first occurring, there shall be inserted the words “ or incorporated practice ”;
    - (ii) after the word “solicitor”, where secondly and thirdly occurring, there shall be inserted the words “ or, as the case may be, incorporated practice ”;

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- (iii) after the word “his” there shall be inserted the words “ or, as the case may be, its ”;
  - (iv) after the word “section”, where lastly occurring, there shall be inserted “ (a) ”;
  - (v) for the words “and the certificate” there shall be substituted the following “; or, as the case may be—
    - (b) withdraw the practising certificate or certificates of any or all of the solicitors who are directors of the incorporated practice,
      - and a certificate so withdrawn ”;
  - (b) in subsection (2)—
    - (i) after the word “he” there shall be inserted the words “ or as the case may be, by the incorporated practice that it ”;
    - (ii) after the word “solicitor” where secondly occurring, there shall be inserted the words “ or, as the case may be, the incorporated practice ”;
    - (iii) for the words from “and” onward there shall be substituted the words “ or solicitors concerned and shall restore to him or them any practising certificate or certificates held by him or them for the practice year then current. ”;
  - (c) in subsection (3) for the word “the”, where secondly occurring, there shall be substituted the word “ a ”.
- 19 In section 41 (appointment of judicial factor)—
- (a) after the word “solicitor”, where first occurring, there shall be inserted the words “ or an incorporated practice ”;
  - (b) after the word “solicitor” where secondly occurring, there shall be inserted the words “ or, as the case may be, the incorporated practice ”;
  - (c) for the words “in connection with his practice as a solicitor” there shall be substituted the words “ , in the case of a solicitor, in connection with his practice as such ”;
  - (d) after the word “arise” there shall be inserted the following “; or
    - (c) that, in the case of an incorporated practice, either—
      - (i) its liabilities exceed its assets, or
      - (ii) its books, accounts and other documents are in such a condition that it is not reasonably practicable to ascertain definitely whether its liabilities exceed its assets, or
      - (iii) there is reasonable ground for apprehending that a claim on the guarantee fund may arise”;
  - (e) after the word “solicitor”, where fourthly occurring, there shall be inserted the words “ or, as the case may be, of the incorporated practice ”;
  - (f) after the word “solicitor”, where fifthly occurring, there shall be inserted the words “ or, as the case may be, the incorporated practice ”;
  - (g) for the words “the solicitor’s” there shall be substituted the word “ such ”.
- 20 In section 42 (distribution of sums in client bank account)—
- (a) in subsection (1)—
    - (i) after the word “(2)” there shall be inserted the words “ or (2A) ”;

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- (ii) after the word “solicitor”, where first occurring, there shall be inserted the words “ or an incorporated practice ”;
  - (iii) after the word “him”, where first and thirdly occurring, there shall be inserted the words “ or, as the case may be, by it ”;
  - (iv) after the word “clients”, where firstly occurring, there shall be inserted the words “ or, as the case may be, by it on behalf of its clients ”;
  - (v) after the word “solicitor”, where secondly occurring, there shall be inserted the words “ or, as the case may be, the incorporated practice ”;
  - (vi) after the word “behalf”, where secondly occurring, there shall be inserted the words “ or, as the case may be, by it on their behalf ”;
  - (vii) after the word “him”, where lastly occurring, there shall be inserted the words “ or, as the case may be, by it ”;
  - (b) after subsection (2) there shall be inserted the following subsection—
    - “(2A) The events to which subsection (1) applies are in relation to any incorporated practice—
      - (a) the making of an administration or winding up order or the appointment of a provisionsl liquidator, liquidator, receiver or judicial factor; or
      - (b) the passing of a resolution for voluntary winding-up (other than one passed solely for the purposes of reconstruction or amalgamation with another incorporated practice)”;
  - (c) in subsection (3)—
    - (i) after the word “solicitor”, where first occurring, there shall be inserted the words “ or an incorporated practice ”;
    - (ii) after the word “his”, where first occurring, there shall be inserted the words “ or, as the case may be, its ”;
    - (iii) after the word “client”, where secondly occurring, there shall be inserted the words “ or, as the case may be, by the incorporated practice on that behalf ”;
    - (iv) after the word “him” there shall be inserted the words “ or, as the case may be, by it ”;
    - (v) after the word “name” there shall be inserted the words “ or, as the case may be, by the incorporated practice in its own name ”.
- 21 In section 42 (Guarantee Fund)—
- (a) in subsection (2) after the words “part of” there shall be inserted “ (a) ” and at the end there shall be inserted “; or
    - (b) any incorporated practice or any director, manager, secretary or other employee of an incorporated practice, notwithstanding that subsequent to the commission of that act it may have ceased to be recognised under section 34(1A) or have been wound up”;
  - (b) in subsection (3), after paragraph (c), there shall be added the following—
    - “(cc) to an incorporated practice or any director or member thereof in respect of a loss suffered by it or him by reason of dishonesty on the part of any director, manager,

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- secretary or other employee of the incorporated practice in connection with the practice”;
- (c) in subsection (7)(c) there shall be inserted at the end the following “ or in the employment of an incorporated practice ”.
- 22 In section 44 (professional indemnity)—
- (a) in subsection (1)—
- (i) after the word “solicitors”, where secondly occurring, there shall be inserted the words “ and incorporated practices ”;
- (ii) in paragraph (c) after the word “solicitors”, where secondly occurring, there shall be inserted the words “ and incorporated practices or any specified class thereof ”;
- (b) in subsection (3)—
- (i) in each of paragraphs (b) and (c) after the word “solicitors”, where secondly occurring, there shall be inserted the words “ and incorporated practices or any class of incorporated practices ”;
- (ii) in paragraph (f) after the word “solicitor” there shall be inserted the words “ or incorporated practice ” and after each of the words “he” and “him” there shall be inserted the words “ or, as the case may be, it ”;
- (iii) in paragraph (g) after the word “solicitors” there shall be inserted the words “ and incorporated practices ”;
- (c) in subsection (5) there shall be inserted at the end the words “ and, as respects incorporated practices, means any liability incurred by it which if it had been incurred by a solicitor would constitute such civil liability ”.
- 23 In section 45 (safeguarding interests of clients of solicitors struck off or suspended)
- 
- (a) in subsection (1) at the end there shall be inserted the words “ and, in relation to any incorporated practice, the recognition under section 34(1A) of which is revoked ”;
- (b) in subsection (2)—
- (i) at the beginning there shall be inserted the words “ In the case of a solicitor, ”;
- (ii) after the words “solicitors” there shall be inserted the words “ or incorporated practice ”;
- (c) after subsection (2) there shall be inserted the following subsection—
- “(2A) In the case of an incorporated practice, it shall within 21 days of the material date satisfy the Council that it has made suitable arrangements for making available to its clients or to some other solicitor or solicitors or incorporated practice instructed by its clients or itself—
- (a) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents in its possession or control which are held on behalf of its clients or which relate to any trust of which it is sole trustee or co-trustee only with one or more of its employees; and
- (b) all sums of money due from it or held by it on behalf of its clients or subject to any trust as aforesaid.”;
- (d) in subsection (3)—

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- (i) after the word “solicitor” in both places where it occurs, there shall be inserted the words “ or, as the case may be, incorporated practice ”;
- (ii) after the word “he” there shall be inserted the words “ or, as the case may be, any director, manager, secretary or other employee of the incorporated practice ”;
- (e) in subsection (5), after the word “practice” there shall be inserted the words “ or, as the case may be, the recognition under section 34(1A) is revoked. ”.
- 24 In section 47 (restriction on employing solicitor struck off or suspended)—
- (a) in subsection (1)—
- (i) after the word “solicitor”, where secondly occurring, there shall be inserted the words “ and, unless it has such permission, an incorporated practice shall not ”;
- (ii) after the word “his”, where first occurring, there shall be inserted the words “ or, as the case may be, its ”;
- (b) in subsection (3) after the word “solicitor” there shall be inserted the words “ or, as the case may be, incorporated practice ”;
- (c) in subsection (4) at the end there shall be inserted the words “ and if any incorporated practice so acts its recognition under section 34(1A) shall be revoked. ”.
- 25 In section 49 (investigation by lay observer of Society’s treatment of complaints), in subsection (1) after the word “solicitor”, where secondly occurring, there shall be inserted the words “ or about an incorporated practice or an employee thereof ”.
- 26 In section 51(2) (complaints to Discipline Tribunal) after the words “client” there shall be inserted the words “ or an incorporated practice may have failed to comply with any provision of this Act or of rules made under this Act applicable to it ”.
- 27 In section 52(1) (procedure and powers of Discipline Tribunal) there shall be inserted at the end the words “ or an incorporated practice ”.
- 28 In section 53 (powers of Discipline Tribunal)—
- (a) in subsection (1) there shall be inserted at the end—
- “; or
- (c) an incorporated practice has been convicted by any court of an offence, which conviction the Tribunal is satisfied renders it unsuitable to continue to be recognised under section 34(1A); or
- (d) after holding an inquiry into a complaint, the Tribunal is satisfied that an incorporated practice has failed to comply with any provision of this Act or of rules made under this Act applicable to it.”.
- (b) in subsection (2) (powers of Discipline Tribunal)—
- (i) in paragraphs (c) and (d) after the word “solicitor” there shall be inserted the words “ or, as the case may be, the incorporated practice ”.
- (ii) in paragraph (e) after the word “him” there shall be inserted the words “ or, as the case may be, it ”.
- (iii) after paragraph (e) there shall be added the following—

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“or

(f) order that the recognition under section 34(1A) of the incorporated practice be revoked”.

(c) after subsection (6) (effective date of striking off or suspension of solicitor) there shall be inserted the following subsection—

“(6A) Where the Tribunal order that the recognition under section 34(1A) of an incorporated practice be revoked, the Tribunal shall direct that the order shall take effect on such date as the Tribunal specifies, being a date not earlier than 60 days after its order is intimated to the incorporated practice, and such an order shall take effect accordingly.”.

(d) in subsection (7) after the word “(6)” there shall be inserted the words “or (6A)” and for the words “that subsection” there shall be substituted the words “subsection (6) or, as the case may be, subsection (6A)”.

29 In section 54 (appeals by solicitors from decisions of the Discipline Tribunal)—

(a) in subsection (1) for the word “him” there shall be substituted the words “that person”;

(b) in subsection (2)—

(i) after the word “Where” there shall be inserted “(a)”;

(ii) after the word “effect”, where secondly occurring, there shall be inserted—

“;

(b) the Tribunal has ordered the revocation of the recognition under section 34(1A) of an incorporated practice, the incorporated practice may within 21 days of the date when the order is intimated to it apply to the court for an order varying (subject to the limit of 60 days referred to in subsection (6A) of section 53) the direction under that subsection;”

30 In section 60 (offence for notaries public to act for unqualified persons) in subsection (2) there shall be inserted at the end the words “but “unqualified person” does not include an incorporated practice”.

31 In section 61 (protection of banks)—

(a) in each of subsections (1) and (2) after the word “solicitor” there shall be inserted the words “or an incorporated practice”;

(b) in subsection (3) after the word “solicitor”, where first occurring, there shall be inserted the words “or an incorporated practice” and after that word, where secondly occurring, there shall be inserted the words “or, as the case may be, the incorporated practice”.

32 In section 64 (service of notices) there shall be inserted at the end the words “or, in the case of an incorporated practice, if it is left at, or delivered or sent by post to, its registered office”.

33 In section 65(1) (interpretation) after the definition of “functions” there shall be inserted the following—

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- ““incorporated practice” has the meaning given by section 34(1A)(c);”
- 34 In Schedule 3 (The Scottish Solicitors’ Guarantee Fund)—
- (a) in paragraph 1—
- (i) after sub-paragraph (2) there shall be inserted the following sub-paragraphs—
- “(2A) Sub-paragraphs (1) and (2) do not apply to solicitors who are directors of incorporated practices.
- (2B) Subject to the provisions of this Act, there shall be paid to the Society on behalf of the Guarantee Fund by every incorporated practice in respect of each year during which, or part of which, it is recognised under section 34(1A) a contribution (hereafter referred to as an “annual corporate contribution”) in accordance with the scale of such contributions referred to in sub-paragraph (3).”
- (ii) in sub-paragraph (3) there shall be inserted at the end the words “ and the scale of the annual corporate contributions to be so paid, which scale shall be fixed by reference to factors which shall include the number of solicitors who are directors or employees of each of the incorporated practices to which the scale relates. ”;
- (iii) in sub-paragraph (4) after the word “solicitor” there shall be inserted the words “ and no annual corporate contribution by an incorporated practice ”;
- (iv) in sub-paragraph (5) for the words “a special”, where secondly occurring, there shall be substituted the words “ upon every incorporated practice a contribution (hereafter referred to as a “special corporate contribution”) in accordance with a scale of such contributions fixed by the Council as under sub-paragraph (3), and a special or special corporate ”;
- (v) in paragraph 1(8) after the word “solicitors” there shall be inserted the words “ or of an incorporated practice ”;
- (b) in paragraph 3(2), after the word “solicitors”, where first occurring, there shall be inserted the words “ and incorporated practices ” and after that word, where secondly occurring, there shall be inserted the words “ or incorporated practice or practices ”;
- (c) in paragraph 4(2) after the word “employee” there shall be inserted the words “ or the incorporated practice in question or its employee ”.
- (d) in paragraph 5(2) after the word “solicitor” there shall be inserted the words “ or incorporated practice ”.
- 35 In Schedule 4 (constitution, procedure and powers of Tribunal)—
- (a) in paragraph 9—
- (i) after the word “solicitor”, where first and secondly occurring, there shall be inserted respectively, the words “ or an incorporated practice ” and “ or the incorporated practice ”; and
- (ii) after the word “him” there shall be inserted the words “ or, as the case may be, it ”;
- (iii) after the word “solicitor” where thirdly and lastly occurring there shall be inserted, in each case, the words “ or, of failure on the part



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- of the incorporated practice to comply with any provision of this Act or of rules made under this Act ”;
- (b) in paragraph 10 (duty of Discipline Tribunal to give respondent solicitor notice of complaint)—
    - (i) after the word “solicitor” there shall be inserted the words “ or incorporated practice ”;
    - (ii) after the words “him” and “his” there shall be inserted respectively the words “ or, as the case may be, it ” and “ or, as the case may be, its ”.
  - (c) in paragraph 16—
    - (i) in each of paragraphs (c) and (d) after the word “solicitor” there shall be inserted the words “ or an incorporated practice ”;
    - (ii) after paragraph (d) there shall be added—
      - “or
      - (e) order that the recognition under section 34(1A) of an incorporated practice be revoked”;
    - (iii) for “(d)” where secondly occurring, there shall be substituted “ (e) ”;
    - (iv) after the word “court”, where secondly occurring, there shall be inserted the words “ or under section 53(6A) which has not been varied by the court ”;
    - (v) after the word “roll”, where secondly occurring, there shall be inserted the words “ or as to revoking the recognition under section 34(1A) of an incorporated practice ”.

*Building Societies Act 1962 (c. 37)*

- 36 In section 34(4) (restriction on commissions for introduction of business) after the word “solicitor” there shall be inserted the words “ (including that of an incorporated practice within the meaning of the Solicitors (Scotland) Act 1980) ”.

*Legal Aid (Scotland) Act 1967 (c. 43)*

- 37 In section 6(3)(a) (exclusion of certain solicitors from giving legal aid) the word “or” immediately preceding sub-paragraph (iii) shall be omitted and after that sub-paragraph there shall be inserted the following—

“or—

- (iv) in the case of a director of an incorporated practice, such conduct on the part of any person who is for the time being a director of the incorporated practice.”.

38 ..... F13

**Textual Amendments**

**F13** Sch. 1 Pt. I para. 38 repealed by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, Sch. 30 para. 6(1), [Sch. 31](#)

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*Legal Advice and Assistance Act 1972 (c. 50)*

- 39 In section 5(2) (definition of “the solicitor” for purposes of rules relating to payment of certain charges or fees), after the word “solicitors”, where first occurring, there shall be inserted the words “ or by an incorporated practice (within the meaning of the Solicitors (Scotland) Act 1980 ”) and after that word, where secondly occurring, there shall be inserted the words “ , incorporated practice ”.

*Estate Agents Act 1979 (c. 38)*

- 40 In section 1(2)(a) (disapplication of Act to practising solicitors and their employees) after the word “him” there shall be inserted the words “ or by an incorporated practice (within the meaning of the Solicitors (Scotland) Act 1980) or a person employed by it ”.

*[<sup>F14</sup>Income and Corporation Taxes 1988]*

**Textual Amendments**

**F14** Heading substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 29 para. 31](#)

- 41 In section [<sup>F15</sup>745(3) and 778(3) of, and paragraph 14(5) of Schedule 15 to, the Income and Corporation Taxes Act 1988] (saving for solicitors in relation to requirement to furnish certain information to Inland Revenue) any reference to a solicitor shall include a reference to an incorporated practice and any reference to a solicitor’s client shall, in relation to a solicitor who is a director, manager, secretary or employee of an incorporated practice within the meaning of the Solicitors (Scotland) Act 1980, be construed as a reference to a client of that practice.

**Textual Amendments**

**F15** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 29 para. 31](#)

**PART II**

AMENDMENTS OF LEGAL AID AND SOLICITORS (SCOTLAND)  
ACT 1949 AND SOLICITORS (SCOTLAND) ACT 1980

*Legal Aid and Solicitors (Scotland) Act 1949 (c. 63)*

- 1 Section 25 (provisions as to taking apprentices) is hereby repealed.

*Solicitors (Scotland) Act 1980 (c. 46)*

- 2 In section 6 (admission as solicitor)—
- (a) in subsection (1)(b) the words “by affidavit or otherwise” are hereby repealed.
  - (b) after subsection (3) there shall be inserted the following subsections—

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“(3A) The Council may petition the court for the admission as a solicitor of an applicant who has complied with the requirements of subsection (1) above; and, where it does so it shall lodge the petition not later than one month after the applicant has first so complied.

(3B) The Court shall, on a petition being made to it under subsection (3A) above, make an order admitting the applicant as a solicitor.”.

3 Section 15(2)(a) (Council to have discretion as to issue of practising certificates where applicant still has to serve post-qualifying year of practical training) is hereby repealed.

4 In section 35(1) (power to make accounts rules)—

- (a) the word “and” immediately preceding paragraph (d) shall be omitted;
- (b) after that paragraph there shall be added the following—

“; and

- (e) as to the recovery from solicitors of fees and other costs incurred by the Council in ascertaining whether or not a solicitor who has failed to comply with the accounts rules has remedied that failure and is complying with the rules.”.

5 Section 48 (restriction on number of apprentices) is hereby repealed.

6 After section 62 there shall be inserted the following section—

**“62A Council’s power to recover expenses incurred under section 38, 45 or 46.**

- (1) Without prejudice to the Society’s entitlement under section 46(4) to recover expenses, the Council shall be entitled to recover from a solicitor or incorporated practice in respect of whom it has taken action under section 38, 45 or 46, any expenditure reasonably incurred by it in so doing.
- (2) Expenditure incurred in taking action under section 38 is recoverable under subsection (1) above only where notice has been served under paragraph 5(2) of Schedule 3 in connection with that action and—
  - (a) no application has been made in consequence under paragraph 5(4) of that Schedule; or
  - (b) the Court, on such an application, has made a direction under paragraph 5(5) of that Schedule.”.

7 In Schedule 1 (constitution etc. of the Law Society of Scotland)—

- (a) for paragraph 6 (subscriptions) there shall be substituted the following paragraphs—

“6 Subject to paragraph 7, every member of the Society shall, for each year, pay to the Society such subscription as may be fixed from time to time by the Society in general meeting.

6A The subscription payable under paragraph 6 by a practising member (or the proportion of it so payable, calculated by reference to the number of months remaining in the practice year) shall be

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- paid at the time of submission of his application for a practising certificate.”;
- (b) in paragraph 7 (subscription in first three years of enrolment)—
- (i) the word “annual”, in both places where it occurs, is hereby repealed;
  - (ii) after the word “year” there shall be inserted the words “ or part thereof”; and
  - (iii) there shall be added at the end the words “ (reduced, in the case of a solicitor first included in the roll for only part of a year, in that year proportionately) ”; and
- (c) after the said paragraph 7 there shall be inserted the following paragraphs—
- “7A The Society shall have power, subject to paragraphs 7B to 7D, to impose in respect of any year a special subscription on all members of the Society of such amount and payable at such time and for such specified purpose as it may determine.
- 7B The Society may determine that an imposition under paragraph 7A shall not be payable by any category of member or shall be abated as respects any category of member.
- 7C An imposition under paragraph 7A or a determination under that paragraph or paragraph 7B may be made only in general meeting.
- 7D No imposition may be made under paragraph 7A above unless a majority of those members entitled to attend and vote at the general meeting at which it is proposed has, whether by proxy or otherwise, voted in favour of its being made.”.
- 8 In Schedule 3 (the Scottish Solicitors Guarantee Fund)—
- (a) in paragraph 1(1) (annual contributions to Guarantee Fund) the words “not exceeding the sum of £25” are hereby repealed.
  - (b) in paragraph 1(3) (Council to fix amount of contributions for each year by previous 31 July) for the words “31 July” there shall be substituted the words “ 30 September ”; and
  - (c) paragraph 1(7) (limit to special contributions to Guarantee Fund) is hereby repealed.

## SCHEDULE 2

Sections 23 and 59.

### AMENDMENT OF ENACTMENTS

#### *The Jurors (Scotland) Act 1825 (c.22)*

- 1 In section 10 (order in which names of jurors are to be taken for civil proceedings) for the words “in the said jury books” and “general jury book” there shall be substituted respectively the words “ of potential jurors ” and “ lists ”.

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*The Juries (Scotland) Act 1826 (c.8)*

- 2 In section 4 (names of dead and disqualified jurors not to be included in returns of jurors) for the words “said general jury book”, in both places where these occur, there shall be substituted the words “list of potential jurors”.

*Lyon King of Arms Act 1867 (c.17)*

- 3 In section 10 the words from “Provided also” to the end of the section shall cease to have effect.

*Titles to Land Consolidation (Scotland) Act 1868 (c.101)*

- 4 In section 159 (litigiosity not to begin before date of registration in Register of Inhibitions and Adjudications of notice of summons) after the word “summons”, where thirdly occurring, there shall be inserted the words “and contain a description of the lands to which the summons relates”.
- 5 In Schedule RR (form of notice of summons) after the word “signeting]” there shall be inserted the words “The summons relates to [*Einsert description of lands*].”.

*Conveyancing (Scotland) Act 1924 (c.27)*

- 6 In section 44 (limitation of effect of entries in Register of Inhibitions)—
- (a) in subsection (2)(a)—
    - (i) after the words “unless and until” there shall be inserted “—  
(i)”;  
and
    - (ii) at the end there shall be inserted—  
“; or  
(ii) a notice of an application under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 has been registered in the said register.”.
  - (b) in subsection (3)(a) for the words “and notices of litigiosity” there shall be substituted the words “, notices of litigiosity and notices of applications under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985”.

- 7 Section 46 shall be renumbered as subsection (1) thereof and after that subsection there shall be inserted the following subsection—

“(2) This section shall apply to the rectification of a document by an order under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 as it applies to the reduction of a deed but with the substitution of any reference to the decree of reduction of the deed with a reference to the order rectifying the document.”.

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### Textual Amendments

**F16** Sch. 2 para. 8 repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), Sch. 2 Pt. I (and re-enacted as referred to in Sch. 2 Pt. II of that Act)

#### *The Social Work (Scotland) Act 1968 (c.49)*

- 9 In section 21(2) (mode of provision of accommodation and maintenance of child in care of local authority) for the words “the last foregoing section” there shall be substituted the words “ section 20 of this Act ”.
- 10 In section 58B(3) for the word “child’s” there shall be substituted the word “ children’s ”.

#### *The Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)*

- 11 In section 41 (restriction on effect of reduction of certain discharges of securities) at the end there shall be inserted the following subsection—
- “(5) This section shall apply to an order under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 rectifying a discharge as it applies to a decree of reduction of a discharge.”

#### *Sheriff Courts (Scotland) Act 1971 (c.58)*

- 12 In section 32(1) (power of Court of Session to regulate civil procedure in sheriff court)—
- (a) after paragraph (h) there shall be inserted the following paragraph—
- “(i) regulating the expenses which may be awarded by the sheriff to parties in proceedings before him.”;
- and
- (b) in paragraph (i) of the proviso after the word “Act” there shall be inserted the words “ (as amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985) ”.
- 13 In section 33(4) (appointment of secretary of Sheriff Court Rules Council) the words “whole-time sheriff clerk as” shall cease to have effect.
- 14 In section 35 (summary causes) after subsection (1) there shall be inserted the following subsection—
- “(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.]”.

#### *Administration of Justice (Scotland) Act 1972 (c.59)*

- 15 In subsection (2) of section 1 (extended power of court to order inspection of documents and other property etc.) after the words “subsection (1)” there shall be inserted the words “ or (1A) ”.

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*The Criminal Procedure (Scotland) Act 1975 (c. 21)*

- 16 In sections 88 to 91 (jurors in criminal proceedings) for each of the expressions “general jury roll”, “jury book” where first occurring, “lists in the said jury books” and “said general jury roll book”, in each place where it occurs, there shall be substituted the words “ lists of potential jurors ”.
- 17 In section 98 (citation of jurors) for the words “roll of” there shall be substituted the words “ lists of potential ”.
- 18 In subsection (1) of section 108 (which relates to the competency of certain objections) for the word “sheriff” there shall be substituted the word “ court ”.
- 19 In section 271 (forms, relating to appeals), for the words “shall cause any such notice” to the end there shall be substituted the words “ , if any prisoner in his custody so requests, shall cause any such intimation, note or notice given by that prisoner to be forwarded on the prisoner’s behalf to the Clerk of the Judiciary ”.
- 20 In subsection (1)(a) of section 447 (which relates to the preparation of draft stated cases) for the words from “the justice” to “may be required” there shall be substituted the words “ the clerk of the court ”.

*The Land Registration (Scotland) Act 1979 (c.33)*

- 21 In section 9 (rectification of the register)—
- (a) at the end of subsection (3)(b) there shall be added the words—
- “or the rectification is consequential on the making of an order under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.”.
- (b) after subsection (3) there shall be inserted the following subsection—
- “(3A) Where a rectification of an entry in the register is consequential on the making of an order under section 8 of the said Act of 1985, the entry shall have effect as rectified as from the date when the entry was made:
- Provided that the court, for the purpose of protecting the interests of a person to whom section 9 of that Act applies, may order that the rectification shall have effect as from such later date as it may specify.”.
- 22 At the end of section 12(3) (exclusion of indemnity) there shall be added the following paragraph—
- “(p) the loss arises from a rectification of the register consequential on the making of an order under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.”.

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*The Criminal Justice (Scotland) Act 1980 (c. 62)*

- 23 In section 3(5) (which defines the terms “parent” and “child”) after the word “guardian” there shall be inserted the words “ and any person who has the actual custody of the child ”.

*Civil Jurisdiction and Judgements Act 1982 (c. 27)*

- 24 In section 28 (application of section 1 of the Administration of Justice (Scotland) Act 1972) after “1972” there shall be inserted the words “ as amended by the Law Reform (Miscellaneous Provisions) Act 1985 ”.

*The Cinematograph (Amendment) Act 1982 (c. 33)*

- 25 The entry in Schedule 2 relating to paragraph 4 of Schedule 7D to the Criminal Procedure (Scotland) Act 1975 shall be treated as never having been enacted.

- 26, 27. .... F17

**Textual Amendments**

- F17** Sch. 3 para. 2 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, 2

*The Rent (Scotland) Act 1984 (c.58)*

- 28 In section 56(2) (registration of housing association and Housing Corporation rents), after the word “Sections”, where first occurring, there shall be inserted the words “ 22 to 27, ”.

- 29 In subsection (5) of section 106 (compulsory entry to carry out works on substandard houses), for the words from “has” where first occurring, to the end there shall be substituted the words “ and ’tolerable standard’ have the meaning respectively assigned to them by section 49(3) of the said Act of 1974 ”.

- 30 In Schedule 9 (savings and transitional provisions), at the end, there shall be inserted the following paragraph—

“7 The amendments to this Act made by Schedule 2 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 shall be deemed to have had effect from the commencement of this Act.”.

*The Family Law (Scotland) Act 1985 (c. 37)*

- 31 In section 27(1) (interpretation) in the definition of “matrimonial home” there shall be added at the end the words “ as amended by section 13(10) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 ”.

*The Representation of the People Act 1985 (c. 50)*

- 32 In Schedule 4, in paragraph 61(b) (amendments of the Representation of the People Act 1983 relating to time limit for prosecutions) after the word “without” there shall be inserted the word “ undue ”.



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## SCHEDULE 3

Section 60.

### TRANSITIONAL PROVISIONS

#### Section 36

- 1 Sections 141A, 141B, 346A and 346B of the Criminal Procedure (Scotland) Act 1975 do not apply in relation to a trial which has commenced before the coming into force of those sections ; and, for the purposes of this paragraph, a trial shall be taken to commence—
- (a) in the case of solemn proceedings, when the oath is administered to the jury ;
  - (b) in the case of summary proceedings, when the first witness is sworn.

2 ..... <sup>F18</sup>

#### Textual Amendments

**F18** Sch. 3 para. 2 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, 2

#### Section 39

- 3 Section 193B of the Criminal Procedure (Scotland) Act 1975 shall not affect the punishment for an offence committed before the coming into force of section 39 of this Act.

#### Section 40

- 4 The amendments to section 407(1A) of the Criminal Procedure (Scotland) Act 1975 effected by section 40 of this Act have no effect in relation to fines imposed in respect of the offences committed before the coming into force of section 40 of this Act.

## SCHEDULE 4

Section 59.

### REPEALS

Chapter	Short title	Extent of repeal
1825 c.22	The Jurors (Scotland) Act 1825.	Sections 11 and 14.
1830 c. 37.	The Criminal Law (Scotland) Act 1830.	Section 11.

*Status: Point in time view as at 05/01/1994.*

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1867 c. 17.	The Lyon King of Arms Act 1867.	In section 10, the words from “Provided also” to the end of the section.
1920 c. 53.	The Jurors (Enrolment of Women) (Scotland) Act 1920.	The whole Act.
1947 c. 44.	The Crown Proceedings Act 1947.	In section 46, paragraph (c) of the proviso and the word “or” which precedes it.
1949 c. 63.	The Legal Aid and Solicitors (Scotland) Act 1949.	Section 25.
1952 c. 61.	The Prisons (Scotland) Act 1952.	Section 7(2).  Section 18(4) and (5). Section 35(5)(b).
1965 c. 22.	The Law Commissions Act 1965.	Section 2(5).
1971 c. 10	The Vehicles (Excise) Act 1971.	In subsection 9(5) (as it applies to Scotland) the words “convicted on indictment of, or is”, the words “Part I or” and the words from “the conviction on” to “as the case may be,”.
1971 c. 58.	The Sheriff Courts (Scotland) Act 1971.	In section 6, in subsection (1) paragraph (b) and the word “or” which precedes it.  In section 33(4), the words “whole-time sheriff clerk as”.
1975 c. 20	The District Courts (Scotland) Act 1975.	Section 19.
1975 c. 21.	The Criminal Procedure (Scotland) Act 1975.	In section 448(2C)(b), the words “to the draft case”.
1976 c. 32.	The Lotteries and Amusements Act 1976.	In Schedule 3, paragraph 14.
1980 c. 45.	The Water (Scotland) Act 1980.	Section 96.
1980 c. 46.	The Solicitors (Scotland) Act 1980.	In section 6(1)(b), the words “by affidavit or otherwise”.  Section 15(2)(a).  In section 35(1), the word “and” immediately preceding paragraph (d).

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**Status:** Point in time view as at 05/01/1994.

**Changes to legislation:** Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 25 April 2023. 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)

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In Schedule 1, in paragraph 7 the word “annual” in both places where it occurs.

In Schedule 3, in paragraph 1(1), the words “not exceeding the sum of £25” and paragraph 1(7).

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**Status:**

Point in time view as at 05/01/1994.

**Changes to legislation:**

Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 25 April 2023. 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.