



Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

1985 CHAPTER 73

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 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.”

2 Power of sheriff to grant renewals of certain long leases

—After section 22 of the 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 ill 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.
- (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.”.

3 Creation of real conditions in assignments of certain long leases

—Section 3 of the 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
 - (c) under a heritable security.
- (4) A provision in an assignation 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 assignation 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.
- (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."

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 there for 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 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.

5 Irritancy clauses etc. not relating to monetary breaches of lease

- (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,

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 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.

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 section 1 of the Agricultural Holdings (Scotland) Act 1949 ;
 - "cottar" has the same meaning as in section 28(4) of the 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.

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—
- (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.

9 Provisions supplementary to section 8: protection of other interests

- (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
 - (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.

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 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.”.

12 Limitation of defamation and other actions

- (1) The 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—
 - (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 (A)(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;”.

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

- (1) The 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 affirmations 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;

(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 properly 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"—
 - (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).

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 proceedings 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 Of the sheriff court
- (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 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 admissible in evidence against him:
- Provided that this subsection shall not render any such statement or admission inadmissible against him in proceedings for perjury or contempt of court.
- (5) In this section—
- " intellectual property " means any patent, trade mark, copyright, registered design, technical or commercial information or other intellectual property ;
 - " related offence ", in relation to any proceedings to which subsection (1) above applies, 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 infringement 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 applies, means—
 - (a) in the case of proceedings within subsection (2)(a) or (6), 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.

16 Power of sheriff to interdict removal of child

In section 13 of the Matrimonial Proceedings (Children) Act 1958 (which makes provision as to prohibiting the removal of a child from Scotland or from the person having control of him)—

- (a) in subsection (1) for the words " Court of Session " and " Court" there shall be substituted the words " appropriate court " and " court" respectively ; and
- (b) after subsection (1) there shall be inserted the following subsection—

“(1A) In subsection (1) above, "appropriate court" means—

- (a) the Court of Session (where the action in connection with which the court would have jurisdiction to make orders with respect to the custody, maintenance and education of a child is an action before the Court of Session);
- (b) the Court of Session or the sheriff (where the action in connection with which the court would have that jurisdiction is an action before the sheriff).”.

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

After section 5 of the 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.”.

18 Small claims

- (1) For subsection (2) of section 35 of the 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.”.
- (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”.

19 Disclosure of names in certain proceedings

In section 1 of the 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.”.

Other provisions relating to courts

20 Removal of prohibition of sheriffs' principal and sheriffs'1 accepting appointment to certain offices

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

21 Additional court holidays

In section 10 of the 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.”.

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—
- has held office as a judge of the Court of Session ; or
 - 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—
- 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);
 - the tenure of office and oaths to be taken by such judges;
 - 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—
- 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
 - 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 Juries (Scotland) 1826 and sections 88 to 91 and 98 of the Criminal Procedure (Scotland) Act 1975 shall have 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.

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 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”.

25 Amendment of provisions about detention of children

- (1) In section 42(3) of the 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
 - (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.”

26 Amendment of power to detain children in secure accommodation

In the 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 detain 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. "

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 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) 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. "

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 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 Adoption (Scotland) Act 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). "

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 to crofting tenure and the valuation of sheep stocks

30 Interest on awards of compensation by Scottish Land Court

(1) In section 12 of the Crofters (Scotland) Act 1955, after subsection (1) (which provides, amongst other things, for compensation of a crofter whose croft, or part thereof, has been resumed by the landlord) there shall be inserted the following subsection—

“(1A) A sum awarded as compensation under subsection (1) above shall, if the Land Court so determine, carry interest as from the date when such sum is payable at the same rate as would apply (in the absence of any such statement as is provided for in Rule 66 of the Act of Sederunt (Rules of Court, consolidation and amendment) 1965) in the case of decree or extract in an action commenced on that date in the Court of Session if interest were included in or exigible under that decree or extract;

Provided that this subsection shall not affect any case in which the hearing has begun before the coming into force of section 30 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.”.

(2) In section 9 of the Crofting (Reform) (Scotland) Act 1976 (which entitles a crofter whose croft, or part thereof, has been resumed by the landlord to a share in the value of the land so resumed) after subsection (5) there shall be inserted the following subsection—

“(5A) A sum awarded under this section shall, if the Land Court so determine, carry interest as from the date when such sum is payable at the same rate as would

apply (in the absence of any such statement as is provided for in Rule 66 of the Act of Sederunt (Rules of Court, consolidation and amendment) 1965) in the case of a decree or extract in an action commenced on that date in the Court of Session if interest were included in or exigible under that decree or extract :

Provided that this subsection shall not affect any case in which the hearing has begun before the coming into force of section 30 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.”.

31 Restriction of duty to record notice of cesser of conditions relating to croft

In section 22(4) (e) of the Crofters (Scotland) Act 1955 (by virtue of which the Secretary of State must, when appropriate, record in the Register of Sasines, a notice of cesser of the conditions which applied to a croft in respect of which financial assistance had been given) after the word " apply ", where thirdly occurring, there shall be inserted the words " by virtue of such a payment to the Secretary of State as is referred to in paragraph (c) above. ".

32 Rules as to valuation of sheep stocks

In section 28 of the Hill Farming Act 1946 (which makes provision as to the valuation of sheep stocks in Scotland) after subsection (1) there shall be inserted the following subsections—

“(1A) The Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, vary the provisions of the said Schedule.

(1B) A variation made under subsection (1A) above shall not apply for the purposes of a valuation made in respect of a lease entered into before the variation was made.”.

Criminal courts, procedure, evidence and justice

33 Establishment and disestablishment of district courts

After section 1 of the 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.”.

34 Power of Secretary of State to remove justices etc.

In the 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”

35 Provisions as to persons arrested in respect of terrorism

After section 3 of the 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 intimation 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.

- (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 him.

- (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(3) 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.

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 sections 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 sections 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 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.”.

36 Evidence in trials of certain sexual offences

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

“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;
 - (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 is to say
 - (a) rape;
 - (b) sodomy;
 - (c) assault with intent to rape;
 - (d) indecent assault;
 - (e) indecent behaviour (including any lewd, in decent 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 141 A, 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—

- (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 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 jury, the complainer, any person cited as a 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, in decent 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 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
 - (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.

- (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)(a) 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 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 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 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”.

37 Evidence in replication

In each of sections 149A and 350A of the Criminal Procedure (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 ".

38 Corroboration not required in relation to vehicle licensing offences

In the Road Traffic Regulation Act 1984, in section 120 (which relaxes the requirement of corroboration in relation to certain road traffic and vehicle licensing offences), after subsection (2)(e) there shall be added—

“or,

- (f) by its being used or kept on a public road within the meaning of the Vehicles (Excise) Act 1971 without there being in force a licence under that Act for the vehicle within the meaning of section 8 of that Act”.

39 Fines in respect of drug offences

After section 193A of the Criminal Procedure (Scotland) Act 1975 there shall be inserted the following section—

“193B Offences relating to controlled drugs.

- (1) Without prejudice to section 395(1) of this Act (as applied to solemn proceedings by section 194), where a person is—
- (a) convicted on indictment of an offence to which this section relates, and
 - (b) sentenced in respect of that offence to a period of imprisonment or detention,
- the Court shall, unless it is satisfied that for any reason it would be inappropriate to do so, also impose a fine.
- (2) In determining the amount of a fine imposed pursuant to subsection (1), the Court shall have regard to any profits likely to have been made by the offender from the crime in respect of which he has been convicted.
- (3) This section relates to any of the offences mentioned in paragraphs (a) to (c) of subsection (4) or any offence mentioned in paragraphs (d) to (g) of that subsection where such latter offence involves a controlled drug as defined in section 2(1)(a) of the Misuse of Drugs Act 1971 ("the 1971 Act").
- (4) The offences are those created by—
- (a) section 4(2) of the 1971 Act (production, or being concerned in the production of, a controlled drug);
 - (b) section 4(3) of the 1971 Act (supply, or offer to supply, or being concerned in the supply, of a controlled drug);
 - (c) section 5(3) of the 1971 Act (possession of a controlled drug with intent to supply);
 - (d) section 50(2) and (3) of the Customs and Excise Management Act 1979 ("the 1979 Act") (importation etc. of prohibited goods);
 - (e) section 68(2) of the 1979 Act (exportation etc. of prohibited goods);
 - (f) section 170(1) of the 1979 Act (possessing or dealing with prohibited goods); and
 - (g) section 170(2) of the 1979 Act (being concerned in evasion or attempt at evasion of a prohibition).
- (5) Where a fine has been imposed pursuant to subsection (1) in respect of an offence to which this section relates, and the offender is sentenced to a period of imprisonment or detention because he has not paid that fine, that period of imprisonment or detention shall be served consecutively upon—
- (a) the period of imprisonment or detention in respect of the offence, and
 - (b) any period of imprisonment or detention imposed in respect of any other offence dealt with in the same proceedings,
- unless either of the latter periods is one of life imprisonment or detention for life.”.

40 Further provision as to fines

In the 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.”.

41 Penalties under food and drugs legislation

In the 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 (&)(i) the words " or imprisonment for a term not exceeding 6 months or both " shall cease to have effect.

42 Amendments of Prisons (Scotland) Act 1952

In the Prisons (Scotland) Act 1952—

- (a) section 7(2) (which relates to the appointment of women to visiting committees) shall cease to have effect;
- (b) for subsections (1) and (1A) of section 16 (which relates to the discharge of prisoners) there shall be substituted—
 - “(1) Where a prisoner would, but for this subsection, be discharged on a Saturday or Sunday, he shall be discharged on the preceding Friday”;
- (c) for subsection (2) of section 17 (which relates to allowances to prisoners on discharge) there shall be substituted—
 - “(2) The Secretary of State may make such payments to or in respect of persons released or about to be released from prisons as he may, with the consent of the Treasury, determine.”;
- (d) in section 34 (which relates to the temporary detention of young offenders) after the word " institution " there shall be inserted the words " , remand centre, "; and
- (e) section 35(5)(b) (which relates to special treatment for persons convicted of sedition) shall cease to have effect.

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 Functions of Parole Board for Scotland and local review committees in relation to children detained on conviction on indictment

- (1) Section 59 of the Criminal Justice Act 1967 shall be amended in accordance with this section.
- (2) In subsection (3) of that section (duty of Parole Board for Scotland to advise Secretary of State on release from imprisonment and recall of certain persons)—
 - (a) in paragraph (a)—
 - (i) after the word " 61 " there shall be inserted the words " of this Act or section 206 of the Criminal Procedure (Scotland) Act 1975 (detention and release of children convicted on indictment) "; and
 - (ii) after the word " Act" there shall be inserted the words " section 12 of the Criminal Justice (Scotland) Act 1963 or section 206 or 206A of the Criminal Procedure (Scotland) Act 1975 ";
 - (b) in paragraph (c) for the word " applies " there shall be substituted the words " or the said section 206 applies or the recall of persons to whom the said section 12 or the said section 206A applies ".
- (3) In subsection (5) of that section (Board to be given any written representations made by person whose release or recall is under consideration)—
 - (a) in paragraph (a) after the word "Act" there shall be inserted the words " or section 206 of the Criminal Procedure (Scotland) Act 1975 "; and
 - (b) in paragraph (b) after the word "Act" there shall be inserted the words " section 12 of the Criminal Justice (Scotland) Act 1963 or section 206 or 206A of the Criminal Procedure (Scotland) Act 1975 ".
- (4) In subsection (6) of that section (establishment and functions of local review committees), in paragraph (a), after the words " of this Act" there shall be inserted the words " or section 206 of the Criminal Procedure (Scotland) Act 1975 ".

45 Supervision of children released after detention

- (1) After section 206 of the Criminal Procedure (Scotland) Act 1975 there shall be inserted the following section—

“206A Supervision of children after release.

- (1) A child released after detention under section 206 who has not been released on licence during the period of detention may be required, by notice given by the Secretary of State on his release, to be under the supervision of such officer as may be specified in the notice, and to comply, while the notice is in force, with such conditions as may be specified.

- (2) Subject to subsection (5) below, the supervision requirement shall not continue after the expiry of the period of 12 months from the date of release.
 - (3) The Secretary of State may, on giving notice to the person concerned, at any time vary or cancel a requirement or condition specified under subsection (1) above.
 - (4) A period of supervision required under subsection (1) above shall not extend beyond the date on which the person under supervision attains the age of 23 years.
 - (5) Where, before a supervision requirement expires, the Secretary of State is satisfied that the person to whom it relates has failed to comply with its terms and either—
 - (a) the Parole Board for Scotland so recommends ; or
 - (b) it appears to him to be in the public interest to do so before consultation with the Board is practicable, he may recall the person to detention for a period not exceeding 3 months ; and a person at large after such recall shall be deemed to be unlawfully at large.
 - (6) The Secretary of State shall inform a person recalled under subsection (5) above of the reasons for his recall, so that the person may make representations in writing with respect to his recall to the Parole Board for Scotland; and the Board may, on receipt of such representations, require the Secretary of State to release him forthwith.
 - (7) The Secretary of State may at any time release a person detained by virtue of subsection (5) above.
 - (8) The powers conferred by subsection (5) above may be exercised as often as it appears to the Secretary of State that the person concerned has failed to comply with the supervision requirement; but no person may be recalled to detention for periods totalling more than 3 months by virtue of that subsection.
 - (9) A recall under subsection (5) above may continue beyond the date of expiry of the supervision requirement unless the person to whom it relates is not in custody at that date.”.
- (2) In section 12 of the Criminal Justice (Scotland) Act 1963 (supervision of persons released from young offenders' institution)—
- (a) in subsection (7) after the word " above " , where first occurring, there shall be inserted
 - “and either—
 - (a) the Parole Board for Scotland so recommends; or
 - (b) it appears to him to be in the public interest to do so before consultation with the Board is practicable,”;
 - (b) after that subsection there shall be inserted the following subsection.
 - “(7A) The Secretary of State shall inform a person recalled under subsection (7) above of the reasons for his recall, so that the person may make representations in writing with respect to his recall to the Parole Board for Scotland; and the Board may, on receipt of

such representations, require the Secretary of State to release him forthwith.”; and

- (c) in subsection (9)—
- (i) for the words "that person" there shall be substituted the words " a person released under subsection (7A) above or this subsection "; and
 - (ii) after the word " under ", where secondly occurring, there shall be inserted the words " subsection (7A) above or ".

46 Post-release supervision of service offenders

- (1) In section 71AA of the Army Act 1955 and the Air Force Act 1955 respectively and section 43AA of the Naval Discipline Act 1957 (custodial orders), after subsection (6A) in each case there shall be inserted 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 Army Act 1955 and to the Air Force Act 1955 respectively and Schedule 4A to the Naval Discipline Act 1957 (custodial orders), after sub-paragraph (6A) in each case there shall be inserted the following subparagraph—

“(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.”.

Miscellaneous and general

47 Transfer of sheriff clerks and procurators fiscal

In section 1 of the 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.”.

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 Criminal Justice (Scotland) Act 1949).

49 Arrestment of National Savings Bank deposits

In section 46 of the 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 precedes that paragraph shall cease to have effect.

50 Registration of divorces and declarators of nullity of marriage

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

“PART IIIA

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 Registrar 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 Registrar 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.

Status: This is the original version (as it was originally enacted).

- (6) The Registrar 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—
 - “(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.

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

- (1) The 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 ".

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

In section 133(4) of the 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 ".

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—
 - “(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 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 subparagraph (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 Investments Act 1961.”.

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

- (1) in section 23 of the 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.”.
- (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.”;

- (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 ".

56 Amendment of enactments relating to solicitors

The enactments specified in Schedule 1 to this Act (Part I 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 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.”.

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.
- (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 60(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 60(1) as relates to these paragraphs, on such day as the Lord Advocate may by 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.