

# Draft Courts Reform (Scotland) Bill

[CONSULTATION DRAFT - FEBRUARY 2013]

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# Draft Courts Reform (Scotland) Bill

[CONSULTATION DRAFT - FEBRUARY 2013]

An Act of the Scottish Parliament to make provision about the sheriff courts; to establish a Sheriff Appeal Court; to make provision about civil court procedure; to make provision about appeals in civil proceedings; to make provision about justice of the peace courts; and for connected purposes.

## PART 1

### SHERIFF COURTS

#### CHAPTER 1

##### SHERIFFDOMS, SHERIFF COURT DISTRICTS AND SHERIFF COURTS

#### **1 Sheriffdoms, sheriff court districts and sheriff courts**

- (1) For the purposes of the administration of justice, Scotland is to be divided into areas, each to be known as a “sheriffdom”.
- (2) A sheriffdom is to comprise one or more areas, each to be known as a “sheriff court district”.
- (3) Within each sheriff court district a place is to be designated at which the judiciary of the sheriffdom are to sit and hold court for the purpose of exercising their judicial functions; and such sittings are to be known as a “sheriff court”.
- (4) The sheriffdoms and sheriff court districts existing immediately before the date of commencement of this section are to continue to exist on and after that date, and are accordingly the first sheriffdoms and sheriff courts districts for the purposes of subsections (1) and (2).
- (5) On and after the date of commencement of this section, sheriff courts are to continue to be held at the places at which they were held immediately before that date, and accordingly those places are the first places designated for the holding of sheriff courts for the purposes of subsection (3).
- (6) Subsections (4) and (5) are subject to an order under section 2.

#### **2 Power to alter sheriffdoms, sheriff court districts and sheriff courts**

- (1) The Scottish Ministers may by order do any of the following—
  - (a) alter the boundaries of sheriffdoms or sheriff court districts,
  - (b) abolish sheriffdoms or sheriff court districts,
  - (c) form new sheriffdoms or sheriff court districts,
  - (d) provide that sheriff courts are to be held, or to cease being held, at any place specified in the order.

- (2) An order under subsection (1) may—
  - (a) abolish any office in consequence of any provision made under subsection (1),
  - (b) modify any enactment.
- (3) The Scottish Court Service may, with the agreement of the Minister for the Civil Service, pay such compensation as the Secretary of State may determine to any person (other than one mentioned in section 51(2) of the Scotland Act 1998 (non-ministerial office holders in, and staff of, the Scottish Administration)) who suffers loss of employment, or loss or diminution of emoluments, as a consequence of an order under subsection (1).
- (4) An order under subsection (1) may be made only with the consent of—
  - (a) the Lord President of the Court of Session, and
  - (b) the Scottish Court Service.
- (5) Before consenting to the making of an order under subsection (1), the Scottish Court Service must consult such persons as it considers appropriate.

## CHAPTER 2

### JUDICIARY OF THE SHERIFFDOMS

#### *Permanent and full-time judiciary*

### 3 Sheriff principal

- (1) For each sheriffdom, there is to continue to be a judicial officer to be known as the “sheriff principal” of the sheriffdom.
- (2) It is for Her Majesty to appoint an individual to the office of sheriff principal.
- (3) Her Majesty may appoint an individual only if—
  - (a) the individual is qualified for appointment (see section 15), and
  - (b) the individual has been recommended for appointment by the Scottish Ministers.
- (4) In addition to the jurisdiction and powers that attach specifically to the office of sheriff principal, the sheriff principal of a sheriffdom, by virtue of appointment as such, may also exercise in the sheriffdom the jurisdiction and powers that attach to the office of sheriff.
- (5) Subsection (4) is subject to any provision, express or implied, to the contrary in any other enactment.

### 4 Sheriffs

- (1) For each sheriffdom, there are to continue to be judicial officers each to be known as a “sheriff” of the sheriffdom.
- (2) It is for Her Majesty to appoint an individual to the office of sheriff.
- (3) Her Majesty may appoint an individual only if—
  - (a) the individual is qualified for appointment (see section 15), and
  - (b) the individual has been recommended for appointment by the Scottish Ministers.



**5 Summary sheriffs**

- (1) For each sheriffdom, there are to be judicial officers each to be known as a “summary sheriff” of the sheriffdom.
- (2) It is for Her Majesty to appoint an individual to the office of summary sheriff.
- (3) Her Majesty may appoint an individual only if—
  - (a) the individual is qualified for appointment (see section 15), and
  - (b) the individual has been recommended for appointment by the Scottish Ministers.

*Temporary and part-time judiciary***6 Temporary sheriff principal**

- (1) Subsection (2) applies where, in relation to a sheriffdom—
  - (a) a vacancy occurs in the office of sheriff principal,
  - (b) the Lord President of the Court of Session believes that the sheriff principal is unable to perform all or some of the functions of the office, or
  - (c) the sheriff principal rules that he or she is precluded from performing all or some of those functions.
- (2) If the Lord President so requests, the Scottish Ministers must appoint a sheriff (whether of the same or another sheriffdom) to act as sheriff principal of the sheriffdom.
- (3) The appointment may be made for the purposes of the exercise of—
  - (a) all of the sheriff principal’s functions, or
  - (b) only those functions that the sheriff principal is unable to perform or is precluded from performing.
- (4) A sheriff appointed under subsection (2) is to be known as a “temporary sheriff principal”.
- (5) The Lord President may request the appointment of a temporary sheriff principal for a sheriffdom in the circumstances specified in subsection (1)(a) only if the Lord President considers such an appointment to be necessary or expedient in order to avoid a delay in the administration of justice in the sheriffdom.

**7 Temporary sheriff principal: further provision**

- (1) Subject to subsection (3), a sheriff’s appointment as a temporary sheriff principal lasts until recalled under subsection (2).
- (2) The Scottish Ministers must, if requested to do so by the Lord President of the Court of Session, recall the appointment of a temporary sheriff principal.
- (3) A sheriff’s appointment as a temporary sheriff principal ceases if the sheriff—
  - (a) ceases to hold office as sheriff, or
  - (b) is suspended from office as sheriff.
- (4) Subject to section 6(3)(b), a temporary sheriff principal of a sheriffdom may exercise the jurisdiction and powers that attach to the office of sheriff principal of the sheriffdom, and does not need a commission for that purpose.

- (5) The appointment of a sheriff as a temporary sheriff principal does not affect the sheriff's appointment as sheriff.
- (6) Where a sheriff of one sheriffdom ("sheriffdom A") is appointed as temporary sheriff principal of another sheriffdom ("sheriffdom B")—
  - (a) the sheriff must not, while remaining temporary sheriff principal of sheriffdom B, act in the capacity of sheriff of sheriffdom A, but
  - (b) in addition to the jurisdiction and powers that attach specifically to the office of sheriff principal, the sheriff, by virtue of the appointment as temporary sheriff principal of sheriffdom B, may also exercise in that sheriffdom the jurisdiction and powers that attach to the office of sheriff of that sheriffdom.

## **8 Part-time sheriffs**

- (1) The Scottish Ministers may appoint individuals to act as sheriffs; and individuals so appointed are to be known as "part-time sheriffs".
- (2) The Scottish Ministers may appoint an individual only if—
  - (a) the individual is qualified for appointment (see section 15), and
  - (b) the Scottish Ministers have consulted the Lord President of the Court of Session before making the appointment.
- (3) Subject to section 20, an appointment as a part-time sheriff lasts for 5 years.
- (4) A part-time sheriff, by virtue of appointment as such, may exercise the jurisdiction and powers that attach to the office of sheriff in every sheriffdom, and does not need a commission for that purpose.
- (5) It is for the Lord President to allocate a part-time sheriff to a particular sheriffdom for such period as the Lord President thinks fit.
- (6) A part-time sheriff is subject to such instructions, arrangements and other provisions as may be made under this Act by the sheriff principal of the sheriffdom to which the part-time sheriff is for the time being allocated.
- (7) In carrying out their functions under this Act, sheriffs principal must together have regard to the desirability of securing that every part-time sheriff—
  - (a) is given the opportunity of sitting on not fewer than 20 days in each successive period of 12 months beginning with the day of the part-time sheriff's appointment, and
  - (b) does not sit for more than 100 days in each such successive period.

## **9 Reappointment of part-time sheriffs**

- (1) A part-time sheriff whose appointment comes to an end by virtue of the expiry of the 5 year period mentioned in section 8(3) is to be reappointed unless—
  - (a) the part-time sheriff declines reappointment,
  - (b) the part-time sheriff is aged 69 or over,
  - (c) a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment, or
  - (d) the part-time sheriff has sat for fewer than 50 days in total in that 5 year period.

- (2) A part-time sheriff whose appointment comes to an end by resignation under section 20 may be reappointed.
- (3) Section 8 applies to a reappointment under subsection (1) or (2) as it applies to an appointment.

## **10 Part-time summary sheriffs**

- (1) The Scottish Ministers may appoint individuals to act as summary sheriffs; and individuals so appointed are to be known as “part-time summary sheriffs”.
- (2) The Scottish Ministers may appoint an individual only if—
  - (a) the individual is qualified for appointment (see section 15), and
  - (b) the Scottish Ministers have consulted the Lord President of the Court of Session before making the appointment.
- (3) Subject to section 20, an appointment as a part-time summary sheriff lasts for 5 years.
- (4) A part-time summary sheriff, by virtue of appointment as such, may exercise the jurisdiction and powers that attach to the office of summary sheriff in every sheriffdom, and does not need a commission for that purpose.
- (5) It is for the Lord President to allocate a part-time summary sheriff to a particular sheriffdom for such period as the Lord President thinks fit.
- (6) A part-time summary sheriff is subject to such instructions, arrangements and other provisions as may be made under this Act by the sheriff principal of the sheriffdom to which the part-time summary sheriff is for the time being allocated.
- (7) In carrying out their functions under this Act, sheriffs principal must together have regard to the desirability of securing that every part-time summary sheriff—
  - (a) is given the opportunity of sitting on not fewer than 20 days in each successive period of 12 months beginning with the day of the part-time summary sheriff’s appointment, and
  - (b) does not sit for more than 100 days in each such successive period.

## **11 Reappointment of part-time summary sheriffs**

- (1) A part-time summary sheriff whose appointment comes to an end by virtue of the expiry of the 5 year period mentioned in section 10(3) is to be reappointed unless—
  - (a) the part-time summary sheriff declines reappointment,
  - (b) the part-time summary sheriff is aged 69 or over,
  - (c) a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment, or
  - (d) the part-time summary sheriff has sat for fewer than 50 days in total in that 5 year period.
- (2) A part-time summary sheriff whose appointment comes to an end by resignation under section 20 may be reappointed.
- (3) Section 10 applies to a reappointment under subsection (1) or (2) as it applies to an appointment.

*Re-employment of retired holders of certain judicial offices***12 Re-employment of retired sheriffs principal, etc.**

- (1) A sheriff principal of a sheriffdom may appoint—
  - (a) a qualifying former sheriff principal to act as a sheriff of the sheriffdom,
  - (b) a qualifying former sheriff to act as such a sheriff,
  - (c) a qualifying former summary sheriff to act as a summary sheriff of the sheriffdom.
- (2) An individual appointed to act as mentioned in any of paragraphs (a) to (c) of subsection (1) may so act only during such periods or on such occasions as the sheriff principal may determine.
- (3) A sheriff principal may make an appointment under subsection (1) only if it appears to the sheriff principal to be expedient as a temporary measure in order to facilitate the efficient disposal of business in the sheriff courts of the sheriffdom.
- (4) A “qualifying former sheriff principal” is an individual who—
  - (a) ceased to hold that office other than by virtue of an order under section 25, and
  - (b) has not reached the age of 75.
- (5) A “qualifying former sheriff” is an individual who—
  - (a) ceased to hold that office other than—
    - (i) by virtue of an order under section 25, or
    - (ii) by being appointed as a sheriff principal, and
  - (b) has not reached the age of 75.
- (6) A “qualifying former summary sheriff” is an individual who—
  - (a) ceased to hold that office other than—
    - (i) by virtue of an order under section 25, or
    - (ii) by being appointed as a sheriff, and
  - (b) has not reached the age of 75.

**13 Re-employment of retired sheriffs principal, etc.: further provision**

- (1) Subject to subsection (2), an individual’s appointment under section 12(1) lasts until—
  - (a) the sheriff principal by whom the individual was appointed recalls the individual’s appointment, or
  - (b) where that sheriff principal has died, resigned or been removed, a succeeding sheriff principal recalls the appointment.
- (2) An individual appointed under section 12(1) may not act under that appointment during any period, or on any occasion, after the individual reaches age of 75.
- (3) Despite the expiry (whether by virtue of subsection (2) or otherwise) of any period for which an individual is appointed under section 12(1)—
  - (a) the individual may continue to deal with, give judgment in or deal with an ancillary matter relating to, a case begun before the individual while acting under that appointment,

- (b) so far as necessary for that purpose, and for the purpose of any subsequent proceedings arising out of the case or matter, the individual is to be treated as acting or, as the case may be, having acted under that appointment.

#### *Honorary sheriffs*

### **14 Honorary sheriffs**

- (1) A sheriff principal of a sheriffdom may appoint individuals to the office of honorary sheriff of the sheriffdom.
- (2) An honorary sheriff holds office as such until—
  - (a) the sheriff principal by whom the honorary sheriff was appointed recalls the honorary sheriff's appointment, or
  - (b) where that sheriff principal has died, resigned or been removed, a succeeding sheriff principal recalls the appointment.

#### *Qualification and disqualification*

### **15 Qualification for appointment**

- (1) An individual is qualified for appointment to a judicial office mentioned in subsection (2) if the individual—
  - (a) immediately before the appointment, held any other judicial office specified in that subsection, or
  - (b) at the time of appointment—
    - (i) is legally qualified, and
    - (ii) has been so qualified throughout the period of ten years immediately preceding the appointment.
- (2) The judicial offices are—
  - (a) sheriff principal,
  - (b) sheriff,
  - (c) summary sheriff,
  - (d) part-time sheriff,
  - (e) part-time summary sheriff.
- (3) For the purposes of subsection (1), an individual is legally qualified if the individual is a solicitor or an advocate.

### **16 Disqualification from practice, etc.**

- (1) An individual holding a judicial office mentioned in subsection (2) must not, for so long as the individual holds the office—
  - (a) engage, whether directly or indirectly, in practice as a solicitor or advocate or in any other business,
  - (b) be in partnership with, or employed by, a person so engaged, or
  - (c) act as agent for a person so engaged.

- (2) The judicial offices are—
  - (a) sheriff principal,
  - (b) sheriff,
  - (c) summary sheriff.
- (3) A part-time sheriff, or a part-time summary sheriff, who is a solicitor in practice must not carry out any function as a part-time sheriff or, as the case may be, a part-time summary sheriff in a sheriff court district in which his or her place of business as such solicitor is situated.

*Remuneration and expenses*

**17 Remuneration**

- (1) Each sheriff principal and sheriff is to be paid such salary as the Treasury may determine.
- (2) Such salary is to be paid quarterly or otherwise in every year, as the Treasury may determine.
- (3) Each summary sheriff is to be paid such remuneration as the Scottish Ministers may determine.
- (4) The Scottish Ministers may determine different amounts of remuneration for—
  - (a) different summary sheriffs, or
  - (b) different descriptions of summary sheriff.
- (5) Each judicial officer mentioned in subsection (7) is to be paid such remuneration as the Scottish Ministers may determine.
- (6) The Scottish Ministers may determine different amounts of remuneration for—
  - (a) different judicial officers mentioned in subsection (7), or
  - (b) different descriptions of such judicial officers.
- (7) The judicial officers are—
  - (a) a part-time sheriff,
  - (b) a part-time summary sheriff,
  - (c) an individual appointed to act as a sheriff or summary sheriff under section 12(1).
- (8) Subsection (9) applies in relation to—
  - (a) a sheriff principal of a sheriffdom authorised under section 29 to perform the functions of a sheriff principal in another sheriffdom, and
  - (b) a sheriff of a sheriffdom (“sheriffdom A”) directed under section 31 to perform the functions of sheriff in another sheriffdom in addition to sheriffdom A.
- (9) The sheriff principal or sheriff is to be paid, in respect of the additional functions, such remuneration as appears to the Secretary of State, with the consent of the Treasury, to be reasonable in all the circumstances.
- (10) Subsection (11) applies in relation to a summary sheriff of a sheriffdom (“sheriffdom B”) directed under section 31 to perform the functions of a summary sheriff in another sheriffdom in addition to sheriffdom B.

- (11) The summary sheriff is to be paid, in respect of the additional functions, such remuneration as appears to the Scottish Ministers to be reasonable in all the circumstances.
- (12) Salaries and remuneration under subsections (1) to (11) are to be paid by the Scottish Court Service.
- (13) Sums required by the Scottish Court Service for the payment of a salary under subsection (1) or remuneration under subsection (3) are charged on the Scottish Consolidated Fund.

## **18 Expenses**

- (1) The Scottish Court Service may pay any expenses reasonably incurred by a judicial officer mentioned in subsection (2) in the performance of the officer's duties.
- (2) The judicial officers are—
  - (a) a sheriff principal,
  - (b) a sheriff,
  - (c) a summary sheriff,
  - (d) a temporary sheriff principal,
  - (e) a part-time sheriff,
  - (f) a part-time summary sheriff,
  - (g) individuals appointed to act as a sheriff or summary sheriff under section 12(1).

### *Residence*

## **19 Place of residence**

- (1) The Lord President of the Court of Session may require a judicial officer mentioned in subsection (2) to reside ordinarily at such place as the Lord President may specify.
- (2) The judicial officers are—
  - (a) a sheriff principal,
  - (b) a temporary sheriff principal,
  - (c) a sheriff,
  - (d) a summary sheriff.

### *Cessation of appointment*

## **20 Cessation of appointment of judicial officers**

- (1) A judicial officer mentioned in subsection (3) may resign at any time by giving notice to that effect to the Scottish Ministers.
- (2) An individual's appointment as such a judicial officer ends—
  - (a) when the individual resigns in accordance with subsection (1),
  - (b) when the individual retires from office,
  - (c) if the individual is removed from office as such under section 25, or

- (d) if the individual is appointed as another such judicial officer.
- (3) The judicial officers are—
  - (a) a sheriff principal,
  - (b) a sheriff,
  - (c) a summary sheriff,
  - (d) a part-time sheriff,
  - (e) a part-time summary sheriff.

*Fitness for office*

**21 Tribunal to consider fitness for office**

- (1) The First Minister must, if requested to do so by the Lord President of the Court of Session, constitute a tribunal to investigate and report on whether an individual holding a judicial office mentioned in subsection (3) is unfit to hold the office by reason of inability, neglect of duty or misbehaviour.
- (2) Subject to subsection (1), the First Minister may, in such circumstances as the First Minister thinks fit and after consulting the Lord President, constitute such a tribunal.
- (3) The judicial offices are—
  - (a) sheriff principal,
  - (b) sheriff,
  - (c) part-time sheriff,
  - (d) summary sheriff, and
  - (e) part-time summary sheriff.
- (4) A tribunal constituted under this section is to consist of—
  - (a) one individual who is a qualifying member of the Judicial Committee of the Privy Council,
  - (b) one individual who holds the relevant judicial office,
  - (c) one individual who is, and has been for at least 10 years—
    - (i) an advocate, or
    - (ii) a solicitor, and
  - (d) one individual who—
    - (i) is not and never has been a qualifying member of the Judicial Committee of the Privy Council,
    - (ii) does not hold and never has held a judicial office mentioned in subsection (3), and
    - (iii) is not and never has been an advocate or solicitor.
- (5) In subsection (4)—



“a qualifying member of the Judicial Committee of the Privy Council” means someone who is a member of that Committee by virtue of section 1(2)(a) of the Judicial Committee Act 1833 (that is, someone who holds or has held high judicial office),

“the relevant judicial office” means—

- (a) in respect of an investigation into whether an individual is fit to hold the office of sheriff principal, that office,
  - (b) in respect of an investigation into whether an individual is fit to hold the office of sheriff or part-time sheriff, the office of sheriff,
  - (c) in respect of an investigation into whether an individual is fit to hold the office of summary sheriff or part-time summary sheriff, the office of summary sheriff.
- (6) It is for the First Minister, with the agreement of the Lord President, to select persons to be members of a tribunal constituted under this section.
- (7) The person who is an individual mentioned in subsection (4)(a) is to chair the tribunal and has a casting vote.

## **22 Tribunal investigations: suspension from office**

- (1) Subsection (2) applies where the Lord President of the Court of Session has requested that the First Minister constitute a tribunal under section 21.
- (2) The Lord President may, at any time before the tribunal reports to the First Minister, suspend from office the individual who is, or is to be, the subject of the tribunal’s investigation.
- (3) Such a suspension lasts until the Lord President orders otherwise.
- (4) A tribunal constituted under section 21 may, at any time before the tribunal reports to the First Minister, recommend in writing to the First Minister that the individual who is the subject of the tribunal’s investigation be suspended from office.
- (5) On receiving such a recommendation, the First Minister may suspend the individual from office.
- (6) Such a suspension lasts until the First Minister orders otherwise.
- (7) Suspension of an individual from the office of sheriff principal, sheriff or summary sheriff under this section does not affect any remuneration payable to, or in respect of, the individual in respect of the period of suspension.

## **23 Further provision about tribunals**

- (1) A tribunal constituted under section 21 may require any person—
  - (a) to attend its proceedings for the purpose of giving evidence,
  - (b) to produce documents in the person’s custody or under the person’s control.
- (2) A person on whom such a requirement is imposed is not obliged—
  - (a) to answer any question which the person would be entitled to refuse to answer in a court in Scotland,
  - (b) to produce any document which the person would be entitled to refuse to produce in such a court.

- (3) Subsection (4) applies where a person on whom a requirement has been imposed under subsection (1)—
  - (a) refuses or fails, without reasonable excuse, to comply with the requirement,
  - (b) refuses or fails, without reasonable excuse, to answer any question while attending the tribunal proceedings to give evidence,
  - (c) deliberately alters, conceals or destroys any document that the person is required to produce.
- (4) The Court of Session may, on an application made to it by the tribunal—
  - (a) make such order for enforcing compliance as it sees fit, or
  - (b) deal with the matter as if it were a contempt of the Court.
- (5) The Court of Session may by act of sederunt make provision as to the procedure to be followed by and before a tribunal constituted under section 21.
- (6) The Scottish Ministers—
  - (a) must pay such expenses as they consider are reasonably required to be incurred to enable a tribunal constituted under section 21 to carry out its functions, and
  - (b) may pay such remuneration to, and such expenses of, the members of such a tribunal as they think fit.

## **24 Tribunal report**

- (1) The report of a tribunal constituted under section 21 must—
  - (a) be in writing,
  - (b) contain reasons for its conclusion, and
  - (c) be submitted to the First Minister.
- (2) The First Minister must lay the report before the Scottish Parliament.

## **25 Removal from office**

- (1) The First Minister may remove an individual from the office of sheriff principal, sheriff, part-time sheriff, summary sheriff or part-time summary sheriff—
  - (a) if a tribunal constituted under section 21 reports to the First Minister that the individual is unfit to hold that office by reason of inability, neglect of duty or misbehaviour, and
  - (b) only after the First Minister has laid the report before the Scottish Parliament under section 24(2).
- (2) The First Minister may remove a sheriff principal, sheriff or summary sheriff under subsection (1) only by order.
- (3) Such an order is subject to the negative procedure.

**CHAPTER 3**

## ORGANISATION OF BUSINESS

*Sheriff principal's general responsibilities***26 Sheriff principal's responsibility for efficient disposal of business in sheriff courts**

- (1) The sheriff principal of a sheriffdom is responsible for ensuring the efficient disposal of business in the sheriff courts of the sheriffdom.
- (2) The sheriff principal must make such arrangements as appear necessary or expedient for the purpose of carrying out the responsibility imposed by subsection (1).
- (3) In particular, the sheriff principal may—
  - (a) provide for the allocation of business among the judiciary of the sheriffdom,
  - (b) make special provision of a temporary nature for the disposal of any business by any member of the judiciary of the sheriffdom in addition to or in place of that member's own duties.
- (4) If, in carrying out the responsibility imposed by subsection (1), the sheriff principal gives a direction of an administrative character to a person mentioned in subsection (5), the person must comply with the direction.
- (5) Those persons are—
  - (a) any other member of the judiciary of the sheriffdom,
  - (b) a member of the staff of the Scottish Court Service.
- (6) Nothing in subsections (1) to (4) enables a member of the judiciary of the sheriffdom to dispose of any business which that member could not otherwise competently dispose of in the exercise of the jurisdiction and powers that attach to the member's office.
- (7) Subsections (1) to (4) are subject to sections 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (the Head of the Scottish Judiciary's responsibility for efficient disposal of business in the Scottish Courts).

**27 Sheriff principal's power to fix sittings of sheriff courts**

- (1) The sheriff principal of a sheriffdom may by order prescribe—
  - (a) the number of sittings of sheriff courts to be held at each place designated for the holding of sheriff courts in the sheriffdom,
  - (b) the days on which, and the times at which, those sittings are to be held, and
  - (c) the descriptions of business to be disposed of at those sittings.
- (2) The sheriff principal must publish notice of the matters prescribed by an order under subsection (1) in such manner as the sheriff principal thinks appropriate in order to bring those matters to the attention of persons having an interest in them.
- (3) Subsection (1) is subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008.

**28 Lord President's power to exercise functions under sections 26 and 27**

- (1) Subsection (2) applies where in any case the Lord President of the Court of Session considers that the exercise by the sheriff principal of a sheriffdom of a function under section 26 or 27—
  - (a) is prejudicial to the efficient disposal of business in the sheriff courts of the sheriffdom,
  - (b) is prejudicial to the efficient organisation or administration of those courts, or
  - (c) is otherwise against the interest of the public.
- (2) The Lord President may in that case—
  - (a) rescind the sheriff principal's exercise of the function, and
  - (b) exercise the function.
- (3) Subsections (1) and (2) apply in relation to a failure to exercise a function mentioned in subsection (1) as they apply to the exercise of such a function, but as if paragraph (a) of subsection (2) were omitted.
- (4) The exercise of a function by the Lord President by virtue of subsection (2)(b) is to be treated as if it were the exercise of the function by the sheriff principal.

*Deployment of judiciary***29 Power to authorise a sheriff principal to act in another sheriffdom**

- (1) Subsection (2) applies where, in relation to a sheriffdom ("sheriffdom A")—
  - (a) a vacancy occurs in the office of sheriff principal,
  - (b) the Lord President of the Court of Session believes that the sheriff principal is unable to perform all or some of the functions of the office, or
  - (c) the sheriff principal rules that he or she is precluded from performing all or some of those functions.
- (2) The Lord President may authorise the sheriff principal of another sheriffdom ("sheriffdom B") to perform the functions of sheriff principal in sheriffdom A (in addition to sheriffdom B) until the Lord President decides otherwise.
- (3) The authorisation may be made for the purpose of the performance of—
  - (a) all of the functions of the sheriff principal of sheriffdom A, or
  - (b) only those functions that that sheriff principal is unable to perform or is precluded from performing.
- (4) The Lord President may make an authorisation in the circumstances specified in subsection (1)(a) only if the Lord President considers such an authorisation to be necessary or expedient in order to avoid a delay in the administration of justice in sheriffdom A.
- (5) A sheriff principal authorised under this section to perform the functions of sheriff principal in another sheriffdom may exercise the jurisdiction and powers that attach to the office of sheriff principal in the other sheriffdom and does not need a commission for that purpose.
- (6) References in this section to the sheriff principal of a sheriffdom include references to any temporary sheriff principal of the sheriffdom.

**30 Power to re-allocate sheriffs and summary sheriffs between sheriffdoms**

- (1) The Lord President of the Court of Session may direct that a sheriff or summary sheriff of a sheriffdom is to cease to be a sheriff or, as the case may be, summary sheriff of that sheriffdom and is instead to be a sheriff or, as the case may be, summary sheriff of such other sheriffdom as is specified in the direction.
- (2) A direction under subsection (1) takes effect on such date as is specified in the direction.
- (3) The reference in subsection (1) to a sheriff or summary sheriff of a sheriffdom is to one—
  - (a) appointed for the sheriffdom, or
  - (b) who is a sheriff or, as the case may be, summary sheriff of the sheriffdom by virtue of a previous direction under subsection (1).
- (4) A sheriff or summary sheriff directed under subsection (1) to be a sheriff or summary sheriff of another sheriffdom may exercise the jurisdiction and powers that attach to the office of sheriff or, as the case may be, summary sheriff in the other sheriffdom and does not need a commission for that purpose.

**31 Power to direct a sheriff or summary sheriff to act in another sheriffdom**

- (1) The Lord President of the Court of Session may direct a sheriff or summary sheriff of a sheriffdom (“sheriffdom A”) to perform the functions of sheriff or, as the case may be, summary sheriff in another sheriffdom (“sheriffdom B”) until the Lord President decides otherwise.
- (2) The direction may require the sheriff or summary sheriff to perform the functions in sheriffdom B either in addition to or instead of performing the functions in sheriffdom A.
- (3) The Lord President may at any time give a further direction to the sheriff or summary sheriff directing the sheriff or, as the case may be, summary sheriff to perform the functions of sheriff or, as the case may be, summary sheriff in another sheriffdom until the Lord President decides otherwise.
- (4) Where a further direction is given under subsection (3) requiring functions to be carried out in another sheriffdom, the direction may require the sheriff or summary sheriff to perform the functions in that other sheriffdom in addition to or instead of performing the functions—
  - (a) in sheriffdom A, or
  - (b) in any other sheriffdom by virtue of—
    - (i) a direction under subsection (1), or
    - (ii) a further direction under subsection (3).
- (5) A sheriff or summary sheriff directed under this section to perform the functions of sheriff or summary sheriff in another sheriffdom may exercise the jurisdiction and powers that attach to the office of sheriff or, as the case may be, summary sheriff in the other sheriffdom and does not need a commission for that purpose.

**32 Allocation of sheriffs and summary sheriffs to sheriff court districts**

- (1) On the appointment of a sheriff or a summary sheriff of a sheriffdom that is divided into sheriff court districts, the Lord President of the Court of Session must give the sheriff or summary sheriff a direction designating the sheriff court district or districts in which the sheriff or summary sheriff is to sit and perform the functions of sheriff or, as the case may be, summary sheriff.
- (2) The Lord President may at any time give a further direction to the sheriff or summary sheriff designating a different sheriff court district in which the sheriff or summary sheriff is to sit and perform the functions of sheriff or, as the case may be, summary sheriff.
- (3) A direction given to a sheriff or summary sheriff of a sheriffdom under this section is subject to any direction given under section 26 to the sheriff or summary sheriff by the sheriff principal of the sheriffdom for the purpose of giving effect to special provision made under subsection (3)(b) of that section.
- (4) Subsection (1) applies in the case where a direction under section 30(1) is made in relation to a sheriff or summary sheriff as it applies in the case where a sheriff or, as the case may be, summary sheriff is appointed.

*Judicial specialisation***33 Determination of categories of case for purposes of judicial specialisation**

- (1) The Lord President of the Court of Session may, by direction, determine categories of sheriff court case that the Lord President considers to be suited to being dealt with by judicial officers that specialise in the category of case.
- (2) The Lord President may determine categories of case under subsection (1) by reference to subject matter, value or such other criteria as the Lord President considers appropriate.
- (3) The Lord President may issue different directions under subsection (1) in relation to different types of judicial officer.
- (4) The Lord President may vary or revoke any direction made under subsection (1).
- (5) In this section—

“judicial officer” means—

- (a) a sheriff,
- (b) a summary sheriff,
- (c) a part-time sheriff,
- (d) a part-time summary sheriff,

“sheriff court case” means any type of proceedings (whether civil or criminal) that may competently be brought in the sheriff court.

**34 Designation of specialist judiciary**

- (1) This section applies where the Lord President of the Court of Session has made a direction under section 33.
- (2) The sheriff principal of a sheriffdom may—

- (a) in relation to any category of case determined in the direction that may competently be dealt with by a sheriff, designate one or more sheriffs of the sheriffdom as specialists in that category of case,
  - (b) in relation to any category of case determined in the direction that may competently be dealt with by a summary sheriff, designate one or more summary sheriffs of the sheriffdom as specialists in that category of case.
- (3) The sheriff principal may designate the same sheriff or summary sheriff in relation to more than one category of case determined in the direction.
- (4) The sheriff principal of a sheriffdom may at any time withdraw a designation made (whether by that sheriff principal or another) under subsection (2) in relation to any sheriff, or summary sheriff, of the sheriffdom.
- (5) The Lord President may—
  - (a) in relation to any category of case determined in the direction that may competently be dealt with by a part-time sheriff, designate one or more part-time sheriffs as specialists in that category,
  - (b) in relation to any category of case determined in the direction that may competently be dealt with by a part-time summary sheriff, designate one or more part-time summary sheriffs as specialists in that category.
- (6) The Lord President may at any time withdraw a designation made under subsection (5).
- (7) The designation of a sheriff, summary sheriff, part-time sheriff or part-time summary sheriff (a “designated judicial officer”) under this section does not affect—
  - (a) the designated judicial officer’s competence to deal with any category of case other than the one in relation to which the designation is made, or
  - (b) the competence of any other sheriff, summary sheriff, part-time sheriff or part-time summary sheriff to deal with the category of case in relation to which the designation is made.

### **35 Allocation of business to specialist judiciary**

- (1) Subsection (2) applies where the Lord President of the Court of Session or the sheriff principal of a sheriffdom is exercising any function relating to the allocation of business among the judiciary of a sheriffdom.
- (2) The Lord President or, as the case may be, the sheriff principal must have regard to the desirability of ensuring that cases falling within a category determined under section 33 are dealt with by sheriffs, summary sheriffs, part-time sheriffs or, as the case may be, part-time summary sheriffs designated under section 34 as specialists in that category of case.

### **36 Saving for existing powers to provide for judicial specialisation**

Sections 33 to 35 do not affect any power that the Lord President of the Court of Session has apart from those sections to provide for judicial specialisation in the sheriff courts.

**CHAPTER 4**

## COMPETENCE AND JURISDICTION

*Sheriffs: civil competence and jurisdiction***37 Jurisdiction and competence of sheriffs**

- (1) A sheriff continues to have all the jurisdiction and competence that attached to the office of sheriff in relation to civil proceedings immediately before the commencement of this section.
- (2) Without limiting that generality, a sheriff has competence as respects proceedings for or in relation to—
  - (a) declarator,
  - (b) aliment or separation,
  - (c) recovery of maintenance arising out of an application under section 31(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972,
  - (d) divorce,
  - (e) division of commony and division, or division and sale, of common property,
  - (f) questions of heritable right or title, including declarator of irritancy and removing,
  - (g) reduction, other than for reduction of a decree of any court,
  - (h) proving the tenor,
  - (i) suspension of charges or threatened charges upon decrees of court granted by a sheriff or upon decrees of registration proceeding upon bonds, bills, contracts or other obligations registered in the books of a sheriff court or the books of council and session,
  - (j) all civil maritime proceedings formerly competent in the High Court of Admiralty in Scotland.
- (3) For the purpose of subsection (2)(e), the Division of Commonities Act 1695 has effect as if it conferred the same competence on a sheriff as it confers on the Court of Session.

**38 Exclusive competence**

- (1) Subsection (2) applies to any civil proceedings—
  - (a) which a sheriff has competence to deal with, and
  - (b) in which—
    - (i) an order of value is sought, and
    - (ii) the value of the order, exclusive of interest and expenses, does not exceed £150,000.
- (2) The proceedings may be brought only in the sheriff court and may not be brought in any other court.
- (3) Subsection (2) is subject to—
  - (a) subsection (4), and
  - (b) section 81(8).



- (4) Subsection (2) does not apply to proceedings listed in paragraph 1 of schedule 1 unless the only order sought in the proceedings is an order for payment of aliment.
- (5) The Scottish Ministers may by order substitute another sum for the sum for the time being specified in subsection (1)(b).
- (6) For the purposes of this section, an order is an order of value if it is—
  - (a) an order for payment of money, or
  - (b) an order determining rights in relation to property.
- (7) The value of an order is to be determined in accordance with rules of court under section 86.

### **39 Territorial jurisdiction**

- (1) This section applies for the purpose of determining the territorial extent of the jurisdiction of a sheriff of a sheriffdom in relation to matters other than criminal matters.
- (2) The sheriff's jurisdiction extends throughout the sheriffdom and includes all of the following so far as located in or adjoining the sheriffdom—
  - (a) navigable rivers,
  - (b) ports,
  - (c) harbours,
  - (d) creeks,
  - (e) shores,
  - (f) anchoring grounds.
- (3) Where two sheriffdoms are separated by a river, firth or estuary, the sheriffs of each sheriffdom on either side have concurrent jurisdiction over the intervening space occupied by the water.
- (4) This section does not affect any other enactment or rule of law that has effect for the purpose of determining the territorial extent of the jurisdiction of a sheriff of a sheriffdom, whether generally or in relation to a particular case or description of case.
- (5) This section is subject to an order under section 40(1).

### **40 Power to confer all-Scotland jurisdiction for specified cases**

- (1) The Scottish Ministers may by order provide that the jurisdiction of a sheriff of a specified sheriffdom sitting at a specified sheriff court extends territorially throughout Scotland for the purposes of dealing with specified types of civil proceedings.
- (2) In subsection (1), "specified" means specified in an order under that subsection.
- (3) An order under subsection (1) may be made only with the consent of the Lord President of the Court of Session.
- (4) An order under subsection (1) does not affect—
  - (a) in relation to the sheriffdom specified in the order, the jurisdiction or competence of a sheriff of any other sheriffdom to deal with proceedings of the type specified in the order, or

- (b) in relation to the sheriff court specified in the order, the jurisdiction or competence of a sheriff sitting at any other sheriff court to deal with such proceedings.

#### **41 Jurisdiction over persons, etc.**

- (1) Subsection (2) applies for the purpose of determining the jurisdiction of a sheriff in relation to any civil proceedings that may competently be dealt with by a sheriff.
- (2) The proceedings may be brought before the sheriff of a particular sheriffdom if—
  - (a) the defender (or, where there is more than one defender, one of them) resides in the sheriffdom,
  - (b) the defender (or, where there is more than one defender, one of them) formerly resided in the sheriffdom for at least 40 days and the defender—
    - (i) has ceased to reside there for less than 40 days, and
    - (ii) has no known residence in Scotland,
  - (c) the defender—
    - (i) carries on business in the sheriffdom,
    - (ii) has a place of business in the sheriffdom, and
    - (iii) is cited in the sheriffdom, either personally or at the place of business,
  - (d) where the defender is not otherwise subject to the jurisdiction of any court in Scotland, there has been arrested in the sheriffdom—
    - (i) a ship or vessel of which the defender is an owner or part-owner, demise charterer or master, or
    - (ii) goods, debts, money or other moveable property belonging to the defender,
  - (e) any property of which the defender is (either individually or as trustee) the owner, part-owner, tenant or joint tenant is located in the sheriffdom and the proceedings relate to such property or to the defender's interest in it,
  - (f) in proceedings for interdict, the alleged wrong is being committed or threatened to be committed in the sheriffdom,
  - (g) in proceedings relating to a contract—
    - (i) the place of execution or performance of the contract is located in the sheriffdom, and
    - (ii) the defender is personally cited in the sheriffdom,
  - (h) in actions of furthcoming or multiplepoinding—
    - (i) the fund or property that is the subject of the proceedings is located in the sheriffdom, or
    - (ii) the sheriff otherwise has jurisdiction over the arrestee or holder of the fund or property that is the subject of the proceedings,
  - (i) the party sued is the pursuer in any proceedings before a member of the judiciary of the sheriffdom pending against the party suing,
  - (j) where the proceedings are founded in delict, the delict was committed in the sheriffdom,

- (k) the defender has prorogated the jurisdiction of the sheriff or courts of the sheriffdom.
- (3) Subsection (2) is subject to—
- (a) section 8 of the Domicile and Matrimonial Proceedings Act 1973,
  - (b) the Civil Jurisdiction and Judgments Act 1982,
  - (c) Chapter 3 of Part 1 of the Family Law Act 1986, and
  - (d) any other enactment or rule of law that applies for the purpose of determining the jurisdiction of a sheriff in relation to persons or subject-matter.

*Summary sheriffs: civil and criminal competence and jurisdiction*

**42 Summary sheriff: civil competence and jurisdiction**

- (1) A summary sheriff may, in relation to civil proceedings in the sheriff court, exercise all the jurisdiction and powers that attach to the office of sheriff, but only in relation to the proceedings and other matters listed in schedule 1.
- (2) This section does not affect the competence of a sheriff in relation to the proceedings and other matters listed in schedule 1.

**43 Summary sheriff: criminal competence and jurisdiction**

- (1) A summary sheriff may, in relation to summary criminal proceedings in the sheriff court, exercise all the jurisdiction and powers that attach to the office of sheriff.
- (2) Without limiting that generality, the jurisdiction and powers referred to in subsection (1) include the jurisdiction and powers under section 5 of the Criminal Procedure (Scotland) Act 1995.

*Honorary sheriffs: civil competence and jurisdiction*

**44 Honorary sheriff: civil competence and jurisdiction**

- (1) An honorary sheriff may, in relation to civil proceedings in the sheriff court, exercise all the jurisdiction and powers that attach to the office of sheriff, but only in relation to the proceedings and other matters listed in schedule 2.
- (2) This section does not affect the competence of a sheriff in relation to the proceedings and other matters listed in schedule 2.

**PART 2**

THE SHERIFF APPEAL COURT

**CHAPTER 1**

ESTABLISHMENT AND ROLE

**45 The Sheriff Appeal Court**

- (1) There is established a court of law to be known as the Sheriff Appeal Court.
- (2) The Court consists of judges each to be known as an Appeal Sheriff.

**46 Jurisdiction and competence**

- (1) The Sheriff Appeal Court has jurisdiction and competence to hear and determine appeals from or against the decisions of sheriffs to such extent as is provided by or under—
  - (a) this Act, or
  - (b) any other enactment.
- (2) The Court's jurisdiction and competence is exercisable by the Appeal Sheriffs at sittings of the Court.
- (3) The Court has all such powers as are, under the law of Scotland, inherently possessed by a court of law for the purposes of the discharge of its jurisdiction and competence and giving full effect to its decisions.
- (4) In particular, in determining an appeal, the Court has power to—
  - (a) grant such disposal as the Court sees fit, including by (in whole or in part)—
    - (i) adhering to the decision that is subject to the appeal,
    - (ii) recalling the decision,
    - (iii) varying the decision,
    - (iv) remitting the case back to the sheriff,
    - (v) dismissing the appeal,
  - (b) make such incidental or interim orders as may be necessary, and
  - (c) determine any incidental or other issue that needs to be determined for the purpose of doing justice in the appeal.
- (5) Subsections (3) and (4) are subject to any other provision of this Act or any other enactment that restricts or excludes any power of the Court in determining or disposing of an appeal.

**47 Status of decisions of the Sheriff Appeal Court in precedent**

- (1) A decision of the Sheriff Appeal Court on the interpretation or application of the law is binding—
  - (a) in proceedings before a sheriff anywhere in Scotland,
  - (b) in proceedings before a justice of the peace court anywhere in Scotland,
  - (c) in proceedings before the Sheriff Appeal Court, except in a case where the Court hearing the proceedings is constituted by a greater number of Appeal Sheriffs than those constituting the Court which made the decision.
- (2) In subsection (1)(a), the reference to proceedings before a sheriff includes, in the case of criminal proceedings, a reference to solemn proceedings before a sheriff and jury.

**CHAPTER 2**

## APPEAL SHERIFFS

**48 Sheriffs principal to be Appeal Sheriffs**

- (1) Each person who holds office as a sheriff principal also holds office as an Appeal Sheriff by virtue of this subsection.

- (2) A person holding office as a sheriff principal ceases to hold office as an Appeal Sheriff if the person ceases to hold office as a sheriff principal.
- (3) If a person holding office as a sheriff principal is suspended from that office for any period, the person is also suspended from office as an Appeal Sheriff for the same period.
- (4) A sheriff principal is not entitled to any additional remuneration in respect of the office of Appeal Sheriff.

#### **49 Appointment of sheriffs as Appeal Sheriffs**

- (1) The Lord President of the Court of Session may appoint persons holding the office of sheriff to hold office also as Appeal Sheriffs.
- (2) The Lord President may appoint as many Appeal Sheriffs under subsection (1) as the Lord President considers necessary for the purposes of the Sheriff Appeal Court.
- (3) A person may be appointed under subsection (1) only if the individual has held office as a sheriff for at least 5 years.
- (4) The appointment of a sheriff as an Appeal Sheriff does not affect the sheriff's appointment as a sheriff and the sheriff may accordingly continue to act in that capacity.
- (5) A person holding office as an Appeal Sheriff under this section ceases to hold that office if the person ceases to hold office as a sheriff.
- (6) If a person holding office as an Appeal Sheriff under this section is suspended from the office of sheriff for any period, the person is also suspended from office as an Appeal Sheriff for the same period.
- (7) A sheriff holding office as an Appeal Sheriff is not entitled to any additional remuneration in respect of the office of Appeal Sheriff.
- (8) The Lord President may, with the consent of a majority of the sheriffs principal, remove a sheriff from office as an Appeal Sheriff.
- (9) Removal of a sheriff from the office of Appeal Sheriff under subsection (8) does not affect the sheriff's appointment as a sheriff.

#### **50 Re-employment of retired Appeal Sheriffs**

- (1) The Lord President of the Court of Session may appoint a qualifying former Appeal Sheriff to act as an Appeal Sheriff during such periods or on such occasions as the Lord President may determine.
- (2) The Lord President may make such an appointment only if the appointment appears to the Lord President to be expedient as a temporary measure in order to facilitate the disposal of business in the Sheriff Appeal Court.
- (3) A qualifying former Appeal Sheriff is an individual who—
  - (a) ceased to hold that office other than by virtue of—
    - (i) an order under section 25 (as read with sections 48(2) and 49(5)), or
    - (ii) removal from office under section 49(8), and
  - (b) has not reached the age of 75.
- (4) Such an individual is to be treated for all purposes as an Appeal Sheriff and so may exercise the jurisdiction and powers that attach to the office of Appeal Sheriff.

- (5) An individual appointed under subsection (1) may not act under that appointment during any period, or on any occasion, after the individual reaches the age of 75.
- (6) Despite the expiry (whether by virtue of subsection (5) or otherwise) of any period for which an individual is appointed under subsection (1)—
  - (a) the individual may continue to deal with, give judgment in or deal with an ancillary matter relating to, a case begun before the individual while acting under that appointment,
  - (b) so far as necessary for that purpose, and for the purpose of any subsequent proceedings arising out of the case or matter, the individual is to be treated as acting or, as the case may be, having acted under that appointment.

## **51 Expenses**

- (1) The Scottish Court Service may pay any expenses reasonably incurred by an Appeal Sheriff in the performance of the Appeal Sheriff's duties as such.
- (2) The reference in subsection (1) to an Appeal Sheriff includes a reference to an individual appointed under section 50(1) to act as an Appeal Sheriff.

## **CHAPTER 3**

### ORGANISATION OF BUSINESS

#### *President and Vice President*

## **52 President and Vice President of the Sheriff Appeal Court**

- (1) The Lord President of the Court of Session is to appoint, in accordance with this section—
  - (a) one of the sheriffs principal to be the President of the Sheriff Appeal Court, and
  - (b) another sheriff principal to be the Vice President of the Court.
- (2) A sheriff principal holds office as President or Vice President for such period as the Lord President may determine.
- (3) The President or Vice President may at any time resign office by giving notice in writing to the Lord President.
- (4) The Lord President may at any time remove a sheriff principal from office as President or Vice President.
- (5) If a person holding office as President or Vice President is suspended from office as a sheriff principal for any period, the person is also suspended from office as President or, as the case may be, Vice President for the same period.

## **53 President and Vice President: incapacity and suspension**

- (1) Subsection (2) applies during any period when the President of the Sheriff Appeal Court—
  - (a) is unable (for any reason) to carry out the functions of the office, or
  - (b) is suspended from office.
- (2) During such a period—

- (a) the functions of the President are to be carried out instead by the Vice President, and
  - (b) anything that falls to be done in relation to the President falls to be done instead in relation to the Vice President.
- (3) Subsection (4) applies during any period when—
- (a) subsection (2) would, but for subsection (4), apply, and
  - (b) the Vice President of the Sheriff Appeal Court—
    - (i) is unable to carry out the functions of the President, or
    - (ii) is suspended from office.
- (4) During such a period, subsection (2) does not apply and, instead—
- (a) the functions of the President are to be carried out instead by the sheriff principal who is next in seniority after the Vice President, and
  - (b) anything that falls to be done in relation to the President falls to be done instead in relation to that sheriff principal.
- (5) Subsection (6) applies where—
- (a) under subsection (4), any function is exercisable by, or anything falls to be done in relation to, the sheriff principal who is next in seniority after the Vice President, and
  - (b) that sheriff principal is unavailable.
- (6) The function is exercisable by, or the thing falls to be done in relation to, the sheriff principal highest in seniority who is available.
- (7) For the purposes of this section, the seniority of the sheriffs principal relative to one another is determined by the length of time that each has held office as sheriff principal, the one having held that office for longer being the more senior.

*Disposal of business*

**54 President's responsibility for efficient disposal of business**

- (1) The President of the Sheriff Appeal Court is responsible for ensuring the efficient disposal of business in the Sheriff Appeal Court.
- (2) The President must make such arrangements as appear necessary or expedient for the purpose of carrying out the responsibility imposed by subsection (1).
- (3) In particular, the President may provide for the allocation of business among the Appeal Sheriffs.
- (4) If, in carrying out the responsibility imposed by subsection (1), the President gives a direction of an administrative character to a person specified in subsection (5), the person must comply with the direction.
- (5) Those persons are—
  - (a) an Appeal Sheriff,
  - (b) an individual appointed under section 50(1) to act as an Appeal Sheriff,
  - (c) a member of the staff of the Scottish Court Service.

- (6) This section is subject to section 2(2)(a) and (2A) of the Judiciary and Courts (Scotland) Act 2008 (the Head of the Scottish Judiciary's responsibility for efficient disposal of business in the Scottish Courts).

### *Sittings*

#### **55 Sittings of the Sheriff Appeal Court**

- (1) Sittings of the Sheriff Appeal Court may be held at any place in Scotland designated by virtue of this Act for the holding of sheriff courts.
- (2) More than one sitting of the Court may take place at the same time, and at different places.
- (3) The President of the Sheriff Appeal Court may by order prescribe—
- (a) the number of sittings of the Court that are to be held at each place at which they may be held,
  - (b) the days on which, and the times at which, those sittings are to be held, and
  - (c) the descriptions of business to be disposed of at those sittings.
- (4) The President must publish notice of the matters prescribed by an order under subsection (3) in such manner as the President thinks appropriate in order to bring those matters to the attention of persons having an interest in them.
- (5) Subsection (3) is subject to section 2(2)(a) and (2A) of the Judiciary and Courts (Scotland) Act 2008.

#### **56 Rehearing of pending case by a larger Court**

- (1) Subsection (2) applies where, in relation to any appeal pending before the Sheriff Appeal Court, the Appeal Sheriffs constituting the Court—
- (a) consider the appeal to be one of particular difficulty or importance, or
  - (b) are equally divided on any matter, whether of fact or law.
- (2) The Appeals Sheriffs may appoint the appeal to be reheard at another sitting of the Court constituted by such larger number of Appeal Sheriffs as may be necessary for the proper disposal of the appeal.

## **CHAPTER 4**

### ADMINISTRATION

#### *Clerks*

#### **57 Clerk of the Sheriff Appeal Court**

- (1) The Scottish Court Service must appoint an individual to be the Clerk of the Sheriff Appeal Court.
- (2) The Scottish Court Service may remove the Clerk of the Sheriff Appeal Court from office only if the Lord President of the Court of Session and Lord Justice Clerk submit a report to the Scottish Court Service recommending removal.
- (3) Subsection (2) does not apply in relation to the retirement of the Clerk of the Sheriff Appeal Court.



**58 Deputy Clerks of the Sheriff Appeal Court**

- (1) The Scottish Court Service may appoint individuals to be Deputy Clerks of the Sheriff Appeal Court.
- (2) The number of Deputy Clerks is for the Scottish Court Service to determine.

**59 Clerk and Deputy Clerks: further provision**

- (1) The Clerk and Deputy Clerks of the Sheriff Appeal Court are also members of staff of the Scottish Court Service and, accordingly, references in any enactment to the staff of the Scottish Court Service include, except where the context requires otherwise, a reference to the Clerk and Deputy Clerks of the Sheriff Appeal Court.
- (2) A member of staff of the Scottish Court Service may hold office as the Clerk or a Deputy Clerk of the Sheriff Appeal Court at the same time as holding office as clerk, or deputy or assistant clerk, of another court.
- (3) The Clerk of the Sheriff Appeal Court may, with the consent of the Scottish Court Service, delegate the carrying out of any of the Clerk's functions to—
  - (a) a Deputy Clerk of the Sheriff Appeal Court, or
  - (b) any other member of staff of the Scottish Court Service.
- (4) Subsection (5) applies in relation to any period during which—
  - (a) the office of Clerk of the Sheriff Appeal Court is vacant, or
  - (b) the holder of that office is for any reason unable to carry out the functions of the office.
- (5) The Scottish Court Service may make arrangements for the functions of the Clerk of the Sheriff Appeal Court to be carried out during the period referred to in subsection (4) by—
  - (a) a Deputy Clerk of the Sheriff Appeal Court, or
  - (b) any other member of staff of the Scottish Court Service.
- (6) The Scottish Court Service may give such instructions to the Clerk of the Sheriff Appeal Court, or a person carrying out the Clerk's function under subsection (5), as it considers necessary for the purposes of this Act; and the Clerk or, as the case may be, such person must comply with any such instructions.

*Records***60 Records of the Sheriff Appeal Court**

- (1) A record of the Sheriff Appeal Court is authenticated by being signed by—
  - (a) an Appeal Sheriff, or
  - (b) the Clerk of the Court.
- (2) A record authenticated in accordance with subsection (1), or a certified copy of such a record or of an extract of such a record, is sufficient evidence of the facts recorded in the record.
- (3) In this section—

“certified copy” means a copy certified by the Clerk of the Sheriff Appeal Court as a true copy,

“record” means any interlocutor, decree, minute or other document by which the proceedings and decisions of the Sheriff Appeal Court are recorded.

### PART 3

#### CIVIL PROCEDURE

#### CHAPTER 1

#### SHERIFF COURT

#### *Civil jury trials*

### **61 Civil jury trials in an all-Scotland sheriff court**

- (1) This section applies in relation to relevant proceedings before a sheriff sitting at an all-Scotland sheriff court.
- (2) If the proceedings are remitted to probation, they must be tried by jury unless—
  - (a) the parties agree otherwise, or
  - (b) special cause is shown.
- (3) Facts or circumstances constitute special cause for the purposes of subsection (2)(b) only if they would constitute special cause for the purpose of section 9(b) of the Court of Session Act 1988 (allowing of proof by Lord Ordinary).
- (4) The questions to be put to the jury are to be—
  - (a) approved by the sheriff, and
  - (b) specified by the sheriff in an interlocutor.
- (5) The jury is to consist of 12 jurors.
- (6) The interlocutor of the sheriff under subsection (4) is sufficient authority for the sheriff clerk to summon the jurors.
- (7) Proceedings which are to be tried by jury under this section are referred to in this Chapter as “jury proceedings”.
- (8) In this section—
 

“all-Scotland sheriff court” means a sheriff court specified in an order under section 40(1);

“relevant proceedings” means proceedings—

  - (a) of a type specified in an order under section 40(1), and
  - (b) which would be a jury action within the meaning of section 11 of the Court of Session Act 1998 if the same proceedings were (disregarding section 38)—
    - (i) taken by an action in the Court of Session, and
    - (ii) remitted to probation there.

**62 Selection of the jury**

- (1) The jurors for the trial in jury proceedings are to be selected in open court by ballot.
- (2) Each party to the proceedings may challenge the selection of any juror whose name is drawn in the ballot.
- (3) A party may, under subsection (2), at any time during the selection of jurors—
  - (a) challenge the selection of up to 4 jurors without having to give a reason, and
  - (b) challenge the selection of any other juror, provided a reason for the challenge is stated.

**63 Application to allow the jury to view property**

- (1) A party to jury proceedings may apply to the sheriff to allow the jury to view any heritable or moveable property relevant to the proceedings.
- (2) Where an application is made under subsection (1), the sheriff may grant the application if the sheriff considers it proper and necessary for the jury to view the property.

**64 Illness or death of juror during trial**

- (1) In jury proceedings, the sheriff may, in the course of the trial, discharge a member of the jury from further service on the jury if satisfied that the juror—
  - (a) is, by reason of illness, unable to continue to serve on the jury, or
  - (b) should, for any other reason, be discharged from further service on the jury.
- (2) Subsections (3) and (4) apply where a member of the jury—
  - (a) is discharged under subsection (1), or
  - (b) dies.
- (3) So long as there remain at least 10 members of the jury—
  - (a) the remaining members of the jury are in all respects deemed to constitute the jury for the purpose of the trial, and
  - (b) any verdict returned by the remaining members of the jury, whether unanimous or by majority, is to have the same force and effect as if it were a unanimous or, as the case may be, majority verdict of the whole number of the jury.
- (4) If there remain fewer than 10 members of the jury, the sheriff must—
  - (a) discharge the jury, and
  - (b) order the proceedings to be tried by another jury.

**65 Trial to proceed despite objection to opinion and direction of the sheriff**

In jury proceedings, despite any objection being taken in the course of the trial to the opinion and direction of the sheriff—

- (a) the trial is to proceed, and
- (b) the jury are to return their verdict and, where necessary, assess damages.

**66 Return of verdict**

- (1) In jury proceedings, the sheriff must, at the end of the sheriff's charge to the jury, direct the jury to select one of their members to speak for them when returning their verdict.
- (2) The jury may at any time return a verdict by a simple majority of their members.
- (3) Subsection (4) applies if the jury—
  - (a) have been enclosed for at least 3 hours, and
  - (b) at the end of that time are unable to agree a verdict or to return a verdict by majority.
- (4) The sheriff may—
  - (a) discharge the jury without their having returned a verdict, and
  - (b) order the proceedings to be tried by another jury.
- (5) When the verdict is returned, it is to be—
  - (a) declared orally in open court by the juror selected under subsection (1), and
  - (b) taken down in writing by the sheriff clerk before the jury is discharged.
- (6) In jury proceedings containing a claim for damages, where the jury return a verdict for the pursuer, the jury must also assess the amount of damages.
- (7) The verdict of the jury is final so far as relating to the facts found by the jury.
- (8) Subsection (7) is subject to sections 67 and 69.

**67 Application for new trial**

- (1) After the jury have returned their verdict in jury proceedings, any party to the proceedings may, on any ground specified in subsection (2), apply to the Sheriff Appeal Court for a new trial.
- (2) The grounds are—
  - (a) the sheriff misdirected the jury,
  - (b) undue admission or rejection of evidence,
  - (c) the verdict is contrary to the evidence,
  - (d) damages awarded are excessive or inadequate,
  - (e) new evidence or information has come to light since the trial,
  - (f) any other ground essential to the justice of the case.
- (3) On an application under subsection (1), the Sheriff Appeal Court may grant or refuse a new trial.
- (4) Subsection (3) is subject to section 68.
- (5) Where the Court grants a new trial—
  - (a) the verdict of the jury is set aside, and
  - (b) the proceedings are to be tried by another jury.
- (6) Subsection (7) applies where—
  - (a) an application is made under subsection (1) on the ground that the verdict is contrary to the evidence, and

- (b) after hearing the parties, the Sheriff Appeal Court is unanimously of the opinion that—
  - (i) the ground is established, and
  - (ii) it has before it all the relevant evidence that could reasonably be expected to be obtained in relation to the proceedings.
- (7) The Court may, instead of granting a new trial—
  - (a) set aside the verdict of the jury, and
  - (b) enter judgment for the party unsuccessful at the trial.

## **68 Restrictions on granting a new trial**

- (1) Subsection (2) applies where—
  - (a) an application is made under section 67(1) on the ground of undue admission of evidence, and
  - (b) the Sheriff Appeal Court is of the opinion that exclusion of the evidence in question could not have led to a different verdict from the one actually returned.
- (2) The Court must refuse to grant a new trial.
- (3) Subsection (4) applies where—
  - (a) an application is made under section 67(1) on the ground of undue rejection of documentary evidence, and
  - (b) the Sheriff Appeal Court is of the opinion that the documents in question would not have affected the jury's verdict.
- (4) The Court must refuse to grant a new trial.
- (5) Subsection (6) applies where—
  - (a) an application is made under section 67(1), and
  - (b) the Sheriff Appeal Court is of the opinion that—
    - (i) the only ground for granting a new trial is that damages awarded are excessive or inadequate, and
    - (ii) a new trial is essential to the justice of the case.
- (6) The Court may grant a new trial restricted to the question of the amount of damages only.
- (7) On an application under section 67(1)—
  - (a) the Sheriff Appeal Court may not grant a new trial except in conformity with the opinion of a majority of the Appeal Sheriffs hearing the application, and
  - (b) in the case of equal division, the Court must refuse to grant a new trial.

## **69 Verdict subject to opinion of the Sheriff Appeal Court**

- (1) This section applies in relation to any jury proceedings in which the sheriff has directed the jury on any matter.
- (2) A party against whom the verdict of the jury is returned may apply to the Sheriff Appeal Court for the verdict instead to be entered in the party's favour.

- (3) On an application under subsection (2), the Court may—
  - (a) set aside the verdict and exercise either of the powers in subsection (4) and (6), or
  - (b) refuse the application.
- (4) Where the Court is of the opinion—
  - (a) that the sheriff's direction was erroneous, and
  - (b) that the party making the application was entitled to the verdict in whole or part,
 it may direct the verdict to be entered in that party's favour.
- (5) The Court may direct the verdict to be so entered—
  - (a) either in whole or in part, and
  - (b) either absolutely or on such terms as the Court thinks fit.
- (6) Where the Court is of the opinion that it is necessary to do so, it may order the proceedings to be tried by another jury.

### *Simple procedure*

#### **70 Simple procedure**

- (1) For the purposes of the procedure and practice in civil proceedings in the sheriff court, there is to be a form of procedure to be known as “simple procedure”.
- (2) Subject to the provisions of this Part, further provision about simple procedure is to be made by rules of court under section 86.
- (3) The following types of proceedings may only be brought subject to simple procedure—
  - (a) proceedings for payment of money not exceeding £5,000,
  - (b) actions of multiplepoinding where the value of the fund or property that is the subject of the action does not exceed £5,000,
  - (c) actions of furthcoming where the value of the arrested fund or subject does not exceed £5,000,
  - (d) actions ad factum praestandum, other than actions in which there is claimed in addition, or as an alternative, to a decree ad factum praestandum a decree for payment of money exceeding £5,000,
  - (e) proceedings for the recovery of possession of heritable property or moveable property, other than proceedings in which there is claimed in addition, or as an alternative, to a decree for such recovery a decree for payment of money exceeding £5,000.
- (4) Subsection (3)(a) is subject to section 71.
- (5) The calculation of a sum of money for the time being mentioned in subsection (3) is to be determined in accordance with rules of court under section 86.
- (6) Any reference, however expressed, in a pre-commencement enactment to proceedings being subject to summary cause procedure is, on and after the coming into force of this section, to be construed as a reference to proceedings being subject to simple procedure.
- (7) Accordingly, any reference to proceedings being taken by way of summary cause is to be construed as a reference to proceedings being subject to simple procedure.

- (8) In subsection (6), “pre-commencement enactment” means any enactment passed or made before this section comes into force.
- (9) Proceedings that—
  - (a) are subject to simple procedure under subsection (3) or by virtue of subsection (6), or
  - (b) are brought under simple procedure under section 71,are referred to in this Part as “simple procedure cases”.
- (10) References in subsection (3) to an amount of money is to that amount exclusive of interest and expenses.
- (11) The Scottish Ministers may by order substitute for any sum of money for the time being specified in this section a different sum of money.
- (12) Different provision may be made by rules of court under section 86 in relation to different descriptions of simple procedure cases.

## **71 Proceedings for aliment of small amounts under simple procedure**

- (1) Subsection (2) applies to a claim for aliment only (whether or not expenses are also sought) under section 2 of the Family Law (Scotland) Act 1985 (actions for aliment).
- (2) The claim may be brought under simple procedure if the aliment claimed does not exceed—
  - (a) in respect of a child under the age of 18 years, the sum of £35 per week, and
  - (b) in any other case, the sum of £70 per week.
- (3) A provision such as is mentioned in subsection (4) does not apply in relation to a claim brought under simple procedure under subsection (2).
- (4) The provision referred to in subsection (3) is provision in any enactment—
  - (a) limiting the jurisdiction of a sheriff in a simple procedure case by reference to any amount, or
  - (b) limiting the period for which a decree granted by a sheriff is to have effect.
- (5) The Scottish Ministers may by order vary the amounts for the time being mentioned in subsection (2).

## **72 Rule-making: matters to be taken into consideration**

The power to make rules of court relating to simple procedure under section 86 is to be exercised so far as possible with a view to ensuring that the sheriff before whom a simple procedure case is conducted—

- (a) is able to identify the issues in dispute,
- (b) may negotiate with the parties with a view to securing a settlement,
- (c) may otherwise assist the parties in reaching a settlement,
- (d) can adopt a procedure that is appropriate to and takes account of the particular circumstances of the case.

**73 Rules of court: service of documents**

- (1) Rules of court under section 86 may permit a party to a simple procedure case, in such circumstances as may be specified in the rules, to require the sheriff clerk to effect service of any document relating to the case on behalf of the party.
- (2) In subsection (1)—
  - (a) the reference to a party to a simple procedure case includes a reference to a description of such a party as may be specified in the rules mentioned in that subsection,
  - (b) the reference to any document relating to the case includes a reference to a description of any such document as may be so specified.

**74 Evidence in simple procedure cases**

- (1) Any enactment or rule of law that prevents evidence being led on grounds of admissibility before a court of law does not apply in simple procedure cases.
- (2) The evidence, if any, given in simple procedure cases is not to be recorded.

**75 Transfer of cases to simple procedure**

- (1) This section applies to any civil proceedings in the sheriff court that are being conducted otherwise than as a simple procedure case.
- (2) The parties to the proceedings may, at any stage, make a joint application for the proceedings to continue subject to simple procedure if, at the time of making the application, any order sought either—
  - (a) could competently be sought in a simple procedure case, or
  - (b) could not competently be sought in such a case by reason only of the fact that the order would relate to an amount of money that exceeds the limits specified in section 70(3).
- (3) Where such a joint application is made, the sheriff must direct that the proceedings are to continue subject to simple procedure for all purposes (including appeal).

**76 Transfer of cases from simple procedure**

- (1) The parties to a simple procedure case may, at any stage, make a joint application for the case not to proceed subject to simple procedure.
- (2) Where such a joint application is made, the sheriff must direct that the proceedings are no longer subject to simple procedure.
- (3) A party to a simple procedure case may, at any stage, make an application for the case not to proceed subject to simple procedure.
- (4) Where such an application is made, the sheriff may direct that the proceedings are no longer subject to simple procedure.
- (5) Where a direction is made under subsection (2) or subsection (4), the proceedings are to continue for all purposes (including appeal) subject to such procedure as would have been applicable to them had they not been subject to simple procedure.



**77 Expenses in simple procedure cases**

- (1) The Scottish Ministers may by order provide that—
  - (a) in such category of simple procedure cases as may be prescribed in the order, no award of expenses may be made,
  - (b) in such other category of simple procedure cases as may be so prescribed, any expenses awarded may not exceed such sum as may be so prescribed.
- (2) The categories of simple procedure cases mentioned in subsection (1) are to be prescribed by reference to the value of the claim in the cases.
- (3) An order under subsection (1) does not apply—
  - (a) to simple procedure cases such as those mentioned in subsection (4),
  - (b) in relation to an appeal to the Sheriff Appeal Court from any decision in a simple procedure case, or
  - (c) to a simple procedure case in respect of which a direction under subsection (6) is made.
- (4) The simple procedure cases referred to in subsection (3)(a) are those in which—
  - (a) the defender—
    - (i) has not stated a defence,
    - (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) a party to the case has conducted himself or herself unreasonably in relation to the case.
- (5) Subsection (6) applies where the sheriff in a simple procedure case is of the opinion that a difficult question of law, or a question of fact of exceptional complexity, is involved.
- (6) The sheriff may, at any stage, on the application of any party to the case, direct that an order under subsection (1) is not to apply in relation to the case.

**78 Appeals from simple procedure cases**

- (1) An appeal lies to the Sheriff Appeal Court on a point of law only from the final judgment of the sheriff in a simple procedure case.
- (2) Otherwise, an interlocutor of the sheriff in such a case is not subject to review.

*Execution of deeds relating to heritage***79 Power of sheriff to order sheriff clerk to execute deed relating to heritage**

- (1) This section applies where—
  - (a) an action relating to heritable property is before a sheriff, or
  - (b) it appears to a sheriff that an order under this section is necessary to implement a decree of a sheriff relating to heritable property.
- (2) The sheriff may make an order such as is mentioned in subsection (4)—
  - (a) on an application by the grantee of any deed relating to the heritable property, and

- (b) if satisfied as to the matters mentioned in subsection (3).
- (3) The matters are that the grantor of any deed relating to the heritable property—
  - (a) cannot be found,
  - (b) refuses to execute the deed,
  - (c) is unable, or otherwise fails, to execute the deed.
- (4) The order is one—
  - (a) dispensing with the execution of the deed by the grantor, and
  - (b) directing the sheriff clerk to execute the deed.
- (5) A deed executed by the sheriff clerk in accordance with a direction in an order under this section has the same force and effect as if it had been executed by the grantor.
- (6) In this section—
  - “grantor”, in relation to a deed relating to the heritable property, means a person who is under an obligation to execute the deed,
  - “grantee” means the person to whom that obligation is owed.

### *Interim orders*

#### **80 Interim orders**

A sheriff may, on the application of a party to any civil proceedings before the sheriff, make—

- (a) such interim order as the sheriff thinks fit in relation to—
  - (i) the possession of any heritable or movable property to which the proceedings relate,
  - (ii) the subject matter of the proceedings,
- (b) an interim order ad factum praestandum.

## **CHAPTER 2**

### REMIT OF CASES BETWEEN COURTS

#### **81 Remit of cases to the Court of Session**

- (1) Subsection (2) applies to any civil proceedings before a sheriff that are—
  - (a) proceedings that the Court of Session also has competence and jurisdiction to deal with,
  - (b) not proceedings to which section 38 applies, and
  - (c) not subject to simple procedure.
- (2) On the application of any of the parties to the proceedings, the sheriff may, at any stage, remit the proceedings to the Court of Session if the sheriff considers that the importance or difficulty of the proceedings makes it appropriate to do so.
- (3) Subsection (4) applies to any civil proceedings before a sheriff that are—
  - (a) proceedings to which section 38 applies,

- (b) proceedings that the Court of Session would (but for that section) also have competence and jurisdiction to deal with, and
  - (c) not subject to simple procedure.
- (4) On the application of any of the parties to the proceedings, the sheriff may, at any stage, request the Court of Session to allow the proceedings to be remitted to that Court if the sheriff considers that there are exceptional circumstances justifying such a remit.
  - (5) On receiving a request under subsection (4), the Court of Session may, on special cause shown, allow the proceedings to be remitted to the Court.
  - (6) In considering a request under subsection (4) the Court may take into account the business and other operational needs of the Court.
  - (7) If the Court of Session allows the proceedings to be remitted to that Court, the sheriff is to remit the proceedings to that Court.
  - (8) Where the proceedings are remitted to the Court of Session under subsection (7), the proceedings may be dealt with and disposed of by that Court despite section 38(2).
  - (9) A decision of the sheriff on an application under subsection (2) may be appealed to the Sheriff Appeal Court.
  - (10) A decision of the sheriff on an application under subsection (4) is final and no appeal lies against it.
  - (11) A decision of the Court of Session on a request under subsection (4) is final and no appeal lies against it.
  - (12) But subsections (10) and (11) do not prevent a further application or request under subsection (4) in relation to the same proceedings.

## **82 Remit of cases from the Court of Session**

- (1) Subsection (2) applies to any proceedings in the Court of Session if—
  - (a) they are proceedings that a sheriff also has competence and jurisdiction to deal with,
  - (b) they would be proceedings to which section 38 applies but for the fact that subsection (1)(b)(ii) of that section is not satisfied, and
  - (c) the Court considers, at any stage, that the value of any order granted in the proceedings is likely to be less than the sum specified in that subsection.
- (2) The Court must remit the proceedings to an appropriate sheriff, unless the Court considers that there are special reasons for not doing so.
- (3) In considering the matter in subsection (1)(c), the Court is to assume—
  - (a) that liability for the order sought is established, and
  - (b) that there will, where appropriate, be no deduction for contributory negligence.
- (4) Subsection (5) applies to any proceedings in the Court of Session if—
  - (a) they are proceedings that a sheriff also has competence and jurisdiction to deal with, but
  - (b) are not proceedings to which paragraph (b) or (c) of subsection (1) applies.
- (5) The Court may, at any stage, remit the proceedings to an appropriate sheriff if the Court considers that the nature of the proceedings makes it appropriate to do so.

- (6) The Court may remit proceedings under subsection (2) or (5)—
  - (a) on the application of any party to the proceedings, or
  - (b) of its own initiative.
- (7) In considering whether to remit proceedings under subsection (2) or (5), the Court may take into account the business and other operational needs of the Court.
- (8) In this section, “an appropriate sheriff” means, in relation to proceedings remitted from the Court of Session under this section, a sheriff having competence and jurisdiction to deal with the proceedings sitting at such sheriff court as the Court may, at the time of the remit, specify.
- (9) Section 14 (remit from Court of Session to sheriff) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is repealed.

### **83 Remit of cases to the Scottish Land Court**

- (1) Subsection (2) applies to any proceedings before a sheriff where the matter to which the proceedings relate could competently be determined by the Scottish Land Court under—
  - (a) the Agricultural Holdings (Scotland) Act 1991, or
  - (b) the Agricultural Holdings (Scotland) Act 2003.
- (2) The sheriff may, at any stage, remit the proceedings to the Scottish Land Court if the sheriff considers that it is appropriate to do so.
- (3) The sheriff may remit proceedings under subsection (2)—
  - (a) on the application of any party to the proceedings, or
  - (b) of the sheriff’s own initiative.
- (4) A decision of the sheriff to remit, or not to remit, the proceedings under subsection (2) is final and no appeal lies against it.

## **CHAPTER 3**

### JUDICIAL REVIEW

### **84 Judicial review**

After section 27 of the Court of Session Act 1988, insert—

*“Applications to the supervisory jurisdiction of the Court*

#### **27A Time limits**

- (1) An application to the supervisory jurisdiction of the Court must be made before the end of—
  - (a) the period of 3 months beginning with the date on which the grounds giving rise to the application arose, or
  - (b) such longer period as the Court considers equitable having regard to all the circumstances.
- (2) Any enactment that permits or enables an application to the supervisory jurisdiction of the Court to be made before the end of a period longer than the period of 3 months mentioned in subsection (1) (however that longer period may be expressed) ceases to have effect.

- (3) Subsection (1) does not apply to an application to the supervisory jurisdiction of the Court which, by virtue of any enactment, is to be made before the end of a period shorter than the period of 3 months mentioned in that subsection (however that shorter period may be expressed).

#### **27B Requirement for leave**

- (1) No proceedings may be taken in respect of an application to the supervisory jurisdiction of the Court unless the Court has granted leave for the application to proceed.
- (2) The Court may grant leave under subsection (1) for an application to proceed only if it is satisfied that—
  - (a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and
  - (b) the application has a real prospect of success.
- (3) The Court may grant leave under subsection (1) for an application to proceed—
  - (a) subject to such conditions as the Court thinks fit, or
  - (b) only on such of the grounds specified in the application as the Court thinks fit.
- (4) The Court may decide whether or not to grant leave without an oral hearing having been held.

#### **27C Oral hearings where leave refused, etc.**

- (1) Subsection (2) applies where, in relation to an application to the supervisory jurisdiction of the Court—
  - (a) the Court—
    - (i) refuses leave under subsection 27B(1) for the application to proceed, or
    - (ii) grants leave for the application to proceed subject to conditions or only on particular grounds, and
  - (b) the Court decided to refuse leave, or grant leave as mentioned in paragraph (a)(ii), without an oral hearing having been held.
- (2) The person making the application may, within the period of 7 days beginning with the day on which that decision was made, request a review of the decision at an oral hearing.
- (3) A request under subsection (2) must be considered by a different Lord Ordinary from the one who refused leave or granted leave as mentioned in subsection (1)(a)(ii).
- (4) Where a request under subsection (2) is granted, the oral hearing must be conducted before a different Lord Ordinary from the one who refused or so granted leave.
- (5) At a review following a request under subsection (2), the Court must consider whether to grant leave for the application to proceed; and subsections (2) and (3) of section 27B apply for that purpose.

**27D Appeals following oral hearings**

- (1) Subsection (2) applies where, after an oral hearing to determine whether or not to grant leave for an application to the supervisory jurisdiction of the Court to proceed, the Court—
  - (a) refuses leave under section 27B(1) for the application to proceed, or
  - (b) grants leave for the application to proceed subject to conditions or only on particular grounds.
- (2) The person making the application may appeal under this section to the Inner House (but may not appeal under any other provision of this Act).
- (3) In an appeal under subsection (2), the Inner House must consider whether to grant leave for the application to proceed; and subsections (2) and (3) of section 27B apply for that purpose.
- (4) In subsection (1), the reference to an oral hearing is to an oral hearing whether following a request under section 27C(2) or otherwise.”.

**CHAPTER 4**

## REGULATION OF PROCEDURE AND FEES

**85 Power to regulate procedure etc. in the Court of Session**

- (1) In the Court of Session Act 1988, for sections 5 (power to regulate procedure etc. by act of sederunt) and 5A (rules for lay representation) substitute—

**“5 Power to regulate procedure etc. in the Court of Session**

- (1) The Court may by act of sederunt make provision for or about—
  - (a) the procedure and practice to be followed in proceedings in the Court,
  - (b) any matter incidental or ancillary to such proceedings.
- (2) Without limiting that generality, the power in subsection (1) includes power to make provision—
  - (a) for execution or diligence following on such proceedings,
  - (b) for avoiding the need for, or mitigating the length and complexity of, such proceedings, including—
    - (i) encouraging settlement of disputes and the use of alternative dispute resolution procedures,
    - (ii) action to be taken before such proceedings are brought by persons who will be party to the proceedings,
  - (c) for or about other aspects of the conduct and management of such proceedings, including the use of technology,
  - (d) for simplifying the language used in connection with such proceedings or matters incidental or ancillary to them,
  - (e) for the form of any document to be used in connection with such proceedings, matters incidental or ancillary to them or matters specified in this subsection,
  - (f) about appeals against a decision of the Court,

- (g) about applications that may be made to the Court including, in respect of applications to the supervisory jurisdiction of the Court, about—
    - (i) the grounds on which leave for such applications to proceed may be granted, and
    - (ii) the procedure under which the respondent in such an application may be sisted,
  - (h) for time limits in relation to proceedings mentioned in subsection (1), matters incidental or ancillary to them or matters specified in this subsection,
  - (i) for expenses that may be awarded to parties to such proceedings,
  - (j) for other payments such parties may be required to make in respect of their conduct relating to such proceedings,
  - (k) for the payment, investment or application of any sum of money awarded in such proceedings to or in respect of a person under a legal disability,
  - (l) for the representation of parties to such proceedings, and others, including representation by persons who—
    - (i) are neither solicitors nor advocates, or
    - (ii) do not have the right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
  - (m) for or about the functions and rights of persons appointed by the Court in connection with such proceedings,
  - (n) for or about witnesses and evidence, including modifying the rules of evidence as they apply to such proceedings,
  - (o) for the quorum for a Division of the Inner House considering purely procedural matters and, in the case of an extra Division, as to which judge is to preside and to sign any judgment or interlocutor pronounced by the extra Division,
  - (p) for or about such other matters as the Court thinks necessary or appropriate for the purposes of carrying out or giving effect to the provisions of any enactment (including this Act) relating to such proceedings or matters incidental or ancillary to them.
- (3) An act of sederunt under subsection (1) may—
- (a) contain transitional, transitory, saving, incidental, supplemental or consequential provision, and
  - (b) include provision amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this section) relating to matters with respect to which an act of sederunt may be made,
  - (c) make different provision for different purposes.
- (4) This section is without prejudice to—
- (a) any enactment that enables the Court to make rules (by act of sederunt or otherwise) regulating the practice and procedure to be followed in proceedings to which this section applies, or

(b) the inherent powers of the Court.

(5) In this section, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”.

- (2) Any act of sederunt made under section 5 of the Court of Session Act 1988 as that section had effect before the commencement of this section is, to the extent that the act of sederunt is in force immediately before that commencement, to continue in force and to have effect, and be treated, as if it had been made under section 5 of that Act as substituted by subsection (1) of this section.

## **86 Power to regulate procedure, etc. in sheriff court and Sheriff Appeal Court**

- (1) The Court of Session may by act of sederunt make provision for or about—
- (a) the procedure and practice to be followed in civil proceedings in the sheriff court or in the Sheriff Appeal Court,
  - (b) any matter incidental or ancillary to such proceedings.
- (2) Without limiting that generality, the power in subsection (1) includes power to make provision—
- (a) for execution or diligence following on such proceedings,
  - (b) for avoiding the need for, or mitigating the length and complexity of, such proceedings, including—
    - (i) encouraging settlement of disputes and the use of alternative dispute resolution procedures,
    - (ii) action to be taken before such proceedings are brought by persons who will be party to the proceedings,
  - (c) for or about other aspects of the conduct and management of such proceedings, including the use of technology,
  - (d) for simplifying the language used in connection with such proceedings or matters incidental or ancillary to them,
  - (e) for the form of any document to be used in connection with such proceedings, matters incidental or ancillary to them or matters specified in this subsection,
  - (f) about appeals against a decision of a sheriff or the Sheriff Appeal Court,
  - (g) about applications that may be made to a sheriff or the Sheriff Appeal Court,
  - (h) for time limits in relation to proceedings mentioned in subsection (1), matters incidental or ancillary to them or matters specified in this subsection,
  - (i) for expenses that may be awarded to parties to such proceedings,
  - (j) for other payments such parties may be required to make in respect of their conduct relating to such proceedings,
  - (k) for the payment, investment or application of any sum of money awarded in such proceedings to or in respect of a person under a legal disability,
  - (l) for the representation of parties to such proceedings, and others, including representation by persons who—
    - (i) are neither solicitors nor advocates, or



- (ii) do not have the right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
  - (m) for or about the functions and rights of persons appointed by a sheriff or the Sheriff Appeal Court in connection with such proceedings,
  - (n) for or about witnesses and evidence, including modifying the rules of evidence as they apply to such proceedings,
  - (o) for or about—
    - (i) the quorum for sittings of the Sheriff Appeal Court, and
    - (ii) determining which Appeal Sheriff is to preside at such sittings,
  - (p) for or about such other matters as the Court of Session thinks necessary or appropriate for the purposes of carrying out or giving effect to the provisions of any enactment (including this Act) relating to such proceedings or matters incidental or ancillary to them.
- (3) Nothing in an act of sederunt under subsection (1) is to derogate from the provisions of sections 70 to 78 (simple procedure).
- (4) An act of sederunt under subsection (1) may—
- (a) contain transitional, transitory, saving, incidental, supplemental or consequential provision, and
  - (b) include provision amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this section) relating to matters with respect to which an act of sederunt under subsection (1) may be made,
  - (c) make different provision for different purposes.
- (5) Before making an act of sederunt under subsection (1) with respect to any matter, the Court of Session must—
- (a) consult the Scottish Civil Justice Council, and
  - (b) take into consideration any views expressed by the Council with respect to that matter.
- (6) Subsection (5) does not apply in relation to an act of sederunt that embodies, with or without modifications, draft rules submitted by the Scottish Civil Justice Council to the Court of Session.
- (7) Despite the repeal of section 32 of the Sheriff Courts (Scotland) Act 1971, any act of sederunt made under or having effect by virtue of that section is, to the extent that the act is in force immediately before the commencement of this section, to continue in force and to have effect, and be treated, as if it had been made under this section.
- (8) In subsection (1), “civil proceedings” includes proceedings under the Children’s Hearings (Scotland) Act 2011.
- (9) This section is without prejudice to—
- (a) any enactment that enables the Court of Session to make rules (by act of sederunt or otherwise) regulating the practice and procedure to be followed in proceedings to which this section applies, or
  - (b) the inherent powers of a sheriff or the Sheriff Appeal Court.

**87 Power to regulate fees**

- (1) The Court of Session may, in relation to civil proceedings in the sheriff court or the Sheriff Appeal Court, by act of sederunt make provision for or about the fees of—
  - (a) solicitors and advocates (other than such of the fees as the Scottish Ministers may regulate under or by virtue of section 33 of the Legal Aid (Scotland) Act 1986 (fees and outlays of solicitors and counsel)),
  - (b) officers of court,
  - (c) shorthand writers,
  - (d) others.
- (2) An act of sederunt under subsection (1) is subject to the negative procedure.

**PART 4**

## CIVIL APPEALS

**88 Abolition of appeal from sheriff to the sheriff principal**

- (1) No appeal lies to the sheriff principal from any order or judgment of a sheriff in civil proceedings.
- (2) Subsection (3) applies to any provision of any pre-commencement enactment that—
  - (a) provides for an appeal to the sheriff principal from any order or judgment of a sheriff, or
  - (b) restricts or excludes any such appeal.
- (3) The provision has effect as if for the reference to the sheriff principal there were substituted a reference to the Sheriff Appeal Court.
- (4) In subsection (2), “pre-commencement enactment” means an enactment passed or made before this section comes into force.

**89 Appeal from sheriff to the Sheriff Appeal Court**

- (1) An appeal lies to the Sheriff Appeal Court, without the need for leave, against—
  - (a) a final judgment of a sheriff in civil proceedings, or
  - (b) an interlocutor of a sheriff in civil proceedings—
    - (i) granting or refusing interdict, whether interim or final,
    - (ii) granting interim decree for payment of money other than a decree for expenses,
    - (iii) making an order ad factum praestandum,
    - (iv) sisting an action,
    - (v) allowing, refusing or limiting the mode of proof, or
    - (vi) refusing a reponing note.
- (2) An appeal lies to the Sheriff Appeal Court against any other interlocutor of a sheriff in civil proceedings if the sheriff, on the sheriff’s own initiative or on the application of any party to the proceedings, grants leave to appeal.

- (3) In an appeal to the Sheriff Appeal Court, the Court may allow further proof.
- (4) This section does not affect any other right of appeal to the Sheriff Appeal Court under any other enactment.
- (5) This section does not affect any right of appeal against any judgment or order of a sheriff to the Court of Session under any other enactment.
- (6) This section is subject to any provision of this or any other enactment that restricts or excludes a right of appeal to the Sheriff Appeal Court.

## **90 Remit of appeal from Sheriff Appeal Court to Court of Session**

- (1) This section applies in relation to an appeal to the Sheriff Appeal Court from a judgment or interlocutor of a sheriff in civil proceedings.
- (2) The Sheriff Appeal Court may—
  - (a) on the application of a party to the appeal, and
  - (b) if satisfied that the appeal raises a complex or novel point of law,remit the appeal to the Court of Session.
- (3) Where an appeal is remitted to the Court of Session under subsection (2), the Court of Session may deal with and dispose of the appeal as if it had originally been made direct to that Court.

## **91 Appeal from Sheriff Appeal Court to Court of Session**

- (1) An appeal lies to the Court of Session from a final judgment of the Sheriff Appeal Court in civil proceedings, but only if leave to appeal is granted—
  - (a) by the Sheriff Appeal Court, or
  - (b) if that Court refuses leave to appeal, by the Court of Session.
- (2) The Sheriff Appeal Court or the Court of Session may grant leave to appeal under subsection (1) only if the Court considers that—
  - (a) the appeal would raise an important point of principle or practice, or
  - (b) there is some other compelling reason for the Court of Session to hear the appeal.
- (3) This section does not affect any other right of appeal from the Sheriff Appeal Court to the Court of Session under any other enactment.
- (4) This section is subject to any provision of any other enactment that restricts or excludes a right of appeal from the Sheriff Appeal Court to the Court of Session.

## **92 Appeal from sheriff principal to the Court of Session**

- (1) An appeal lies to the Court of Session from a final judgment of a sheriff principal in relevant civil proceedings.
- (2) This section does not affect any other right of appeal against any judgment or order of a sheriff principal to the Court of Session under any other enactment.
- (3) This section is subject to any provision of any other enactment that restricts or excludes any right of appeal against a judgment or order of a sheriff principal to the Court of Session.

- (4) In subsection (1), “relevant civil proceedings” means civil proceedings (other than an appeal) under an enactment which provides for the proceedings to be brought before a sheriff principal rather than a sheriff.

### **93 Effect of appeal**

- (1) This section applies to—
- (a) an appeal to the Sheriff Appeal Court under section 89 (including such an appeal remitted to the Court of Session under section 90), and
  - (b) an appeal to the Court of Session under section 91 or 92.
- (2) In the appeal, all of the interlocutors pronounced in the original proceedings are subject to review.
- (3) Any party to the original proceedings may insist in the appeal even though the party is not the one who initiated the appeal.
- (4) An appeal to which this section applies does not prevent the immediate execution of any of the following, which may continue to have effect despite the appeal until recalled—
- (a) a warrant to take inventories,
  - (b) a warrant to place effects in custody for the interim,
  - (c) a warrant for interim preservation,
  - (d) an interim interdict.
- (5) In this section, the “original proceedings” means the proceedings in which the judgment or interlocutor that is the subject of the appeal was pronounced.

## **PART 5**

### **JUSTICE OF THE PEACE COURTS**

### **94 Abolition of office of stipendiary magistrate**

- (1) The office of stipendiary magistrate is abolished.
- (2) Subsection (3) applies to a person who, immediately before this section comes into force, holds office as a full-time stipendiary magistrate.
- (3) The person is to be appointed, by virtue of this subsection, as a summary sheriff unless the person declines the appointment.
- (4) Subsection (3) applies regardless of whether the person is qualified for appointment as a summary sheriff.

### **95 Summary sheriffs to sit in justice of the peace courts**

A summary sheriff of a sheriffdom may constitute, and exercise all the jurisdiction and powers of, any justice of the peace court established for any sheriff court district in the sheriffdom.

**PART 6**

## GENERAL

**96 Modifications of enactments**

Schedule 3 makes minor modifications of enactments and modifications consequential on the provisions of this Act.

**97 Subordinate legislation**

- (1) Any power of the Scottish Ministers to make an order under this Act includes power to make—
  - (a) different provision for different purposes or areas,
  - (b) incidental, supplemental, consequential, transitional, transitory or saving provision.
- (2) The following orders are subject to the affirmative procedure—
  - (a) an order under section 38(5), 70(11) or 77(1), or
  - (b) an order under section 99(1) containing provisions which add to, replace or omit any part of the text of an Act.
- (3) All other orders made by the Scottish Ministers under this Act are subject to negative procedure.
- (4) This section does not apply to an order under section 100(2).

**98 Interpretation**

- (1) In this Act, unless the context requires otherwise—
  - “advocate” means a member of the Faculty of Advocates;
  - “sheriff clerk” includes sheriff clerk depute;
  - “final judgment” means an interlocutor which, by itself, or taken along with previous interlocutors, disposes of the subject matter of proceedings, even though judgment may not have been pronounced on every question raised or expenses found due may not have been modified, taxed or decerned for;
  - “solicitor” means a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980).
- (2) In this Act, references to the judiciary of a sheriffdom are, in relation to a sheriffdom, references to the following—
  - (a) the sheriff principal of the sheriffdom,
  - (b) any other sheriff principal so far as authorised under section 29 to perform the functions of the sheriff principal of the sheriffdom,
  - (c) any temporary sheriff principal appointed for the sheriffdom,
  - (d) the sheriffs and summary sheriffs of the sheriffdom,
  - (e) any other sheriffs or summary sheriffs so far as directed under section 31 to perform the functions of sheriff or summary sheriff in the sheriffdom,
  - (f) any part-time sheriffs and part-time summary sheriffs for the time being allocated to the sheriffdom,

- (g) any honorary sheriffs of the sheriffdom,
- (h) any person appointed under section 12(1) to act as a sheriff or summary sheriff of the sheriffdom,

and references to a “member” of the judiciary of a sheriffdom are to be construed accordingly.

- (3) In this Act, references to a sheriff include references to any other member of the judiciary of a sheriffdom, so far as that member has the jurisdiction and competence that attaches to the office of sheriff.
- (4) So far as necessary for the purposes, or in consequence, of the exercise by a member of the judiciary of a sheriffdom other than a sheriff of the jurisdiction and competence of a sheriff, references in any other enactment to a sheriff are to be read as including references to any of the member of the judiciary of a sheriffdom.
- (5) Subsections (3) and (4) do not apply—
  - (a) to Part 1 of this Act,
  - (b) to references to the office of sheriff,
  - (c) to any other enactment relating to—
    - (i) the appointment, retirement, removal or disqualification of sheriffs,
    - (ii) the tenure of office of, and oaths to be taken by, sheriffs,
    - (iii) the remuneration, allowances or pensions of sheriffs,
  - (d) where the context requires otherwise.
- (6) In this Act, references to proceedings in the sheriff court are references to proceedings before any member of the judiciary of a sheriffdom.

## **99 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under this section may modify any enactment (including this Act), instrument or document.

## **100 Commencement**

- (1) This Part, other than sections 96 and 98(4), comes into force on the day after Royal Assent.
- (2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

## **101 Short title**

The short title of this Act is the Courts Reform (Scotland) Act 2014.

SCHEDULE 1  
(introduced by section 42(1))

CIVIL PROCEEDINGS, ETC. IN RELATION TO WHICH SUMMARY SHERIFF HAS COMPETENCE

*Family proceedings*

1 Proceedings for or in relation to—

- (a) divorce,
- (b) separation,
- (c) declarator of parentage,
- (d) declarator of non-parentage,
- (e) an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities, etc.) other than an application for the appointment of a judicial factor mentioned in subsection (2)(g) of that section to which Part 1 of the Act of Sederunt (Judicial Factors Rules) 1992 (S.I. 1992/272) applies,
- (f) aliment (including affiliation and aliment),
- (g) financial provision after a divorce or annulment in an overseas country within the meaning of Part 4 of the Matrimonial and Family Proceedings Act 1984 (financial provision in Scotland after overseas divorce, etc.),
- (h) an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (other than such an order mentioned in paragraph 2),
- (i) variation or recall of an order mentioned in section 8(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (variation and recall by the sheriff of certain orders made by the Court of Session),
- (j) declarator of marriage,
- (k) declarator of nullity of marriage,
- (l) declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of section 7(9) of the Domicile and Matrimonial Proceedings Act 1973,
- (m) an order under section 28(2) (financial provision where cohabitation ends otherwise than by death) or section 29(2) (application by survivor cohabitant for provision on intestacy) of the Family Law (Scotland) Act 2006,
- (n) dissolution of civil partnership,
- (o) separation of civil partners,
- (p) declarator of nullity of civil partnership,
- (q) an order under Chapter 3 (occupancy rights and tenancies) or Chapter 4 (interdicts) of Part 3 of the Civil Partnership Act 2004,
- (r) a declarator or other order under section 127 of that Act (attachment),
- (s) financial provision after overseas proceedings as provided for in Schedule 11 to that Act (financial provision in Scotland after overseas proceedings).

*Domestic abuse proceedings*

- 2 Proceedings for or in relation to—
- (a) an action of harassment under section 8(2) of the Protection from Harassment Act 1997 (harassment),
  - (b) an exclusion order under section 4(2) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981,
  - (c) a matrimonial interdict (within the meaning of section 14 of that Act),
  - (d) a domestic interdict (within the meaning of section 18A of that Act),
  - (e) an exclusion order under section 104 of the Civil Partnership Act 2004,
  - (f) a relevant interdict (within the meaning of section 113 of that Act).

*Children's hearings proceedings*

- 3 Proceedings for or in relation to—
- (a) the appointment of a safeguarder under section 31(3) of the Children's Hearing (Scotland) Act 2011 (sheriff: duty to consider appointing safeguarder),
  - (b) an application under section 93(2)(a) (grounds not accepted: application to sheriff or discharge) or section 94(2)(a) (child or relevant person unable to understand grounds) of that Act on whether a section 67 ground (as defined in section 67 of that Act) is established,
  - (c) the granting of a warrant under section 109(6) of that Act,
  - (d) an application under 110 of that Act (review of grounds of determination).

*Warrants and interim orders*

- 4 The granting of—
- (a) a warrant of citation (including such warrants where the address of the defender is unknown),
  - (b) interim interdicts,
  - (c) an order for the interim preservation of property,
  - (d) an order to recall an interim interdict.

*Diligence proceedings*

- 5 Proceedings for or in relation to—
- (a) a warrant for diligence by arrestment or inhibition on the dependence of an action,
  - (b) a warrant for arrestment to found jurisdiction,
  - (c) an order to loose, restrict, vary or recall an arrestment on the dependence,
  - (d) an order to recall, in whole or in part, or vary, an inhibition on the dependence.

*Simple procedure*

- 6 Proceedings—



- (a) subject to simple procedure, or
- (b) in respect of which a direction under section 75(2) is made that the proceedings are to continue subject to simple procedure.

SCHEDULE 2  
*(introduced by section 44(1))*

CIVIL PROCEEDINGS, ETC. IN RELATION TO WHICH HONORARY SHERIFF HAS COMPETENCE

*Family proceedings*

- 1 Proceedings for or in relation to—
- (a) divorce,
  - (b) separation,
  - (c) declarator of parentage,
  - (d) declarator of non-parentage,
  - (e) an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities, etc.) other than an application for the appointment of a judicial factor mentioned in subsection (2)(g) of that section to which Part 1 of the Act of Sederunt (Judicial Factors Rules) 1992 (S.I. 1992/272) applies,
  - (f) aliment (including affiliation and aliment),
  - (g) financial provision after a divorce or annulment in an overseas country within the meaning of Part 4 of the Matrimonial and Family Proceedings Act 1984 (financial provision in Scotland after overseas divorce, etc.),
  - (h) an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (other than such an order mentioned in paragraph 2),
  - (i) variation or recall of an order mentioned in section 8(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (variation and recall by the sheriff of certain orders made by the Court of Session),
  - (j) declarator of marriage,
  - (k) declarator of nullity of marriage,
  - (l) declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of section 7(9) of the Domicile and Matrimonial Proceedings Act 1973,
  - (m) an order under section 28(2) (financial provision where cohabitation ends otherwise than by death) or section 29(2) (application by survivor cohabitant for provision on intestacy) of the Family Law (Scotland) Act 2006,
  - (n) dissolution of civil partnership,
  - (o) separation of civil partners,
  - (p) declarator of nullity of civil partnership,
  - (q) an order under Chapter 3 (occupancy rights and tenancies) or Chapter 4 (interdicts) of Part 3 of the Civil Partnership Act 2004,
  - (r) a declarator or other order under section 127 of that Act (attachment),

- (s) financial provision after overseas proceedings as provided for in Schedule 11 to that Act (financial provision in Scotland after overseas proceedings).

#### *Domestic abuse proceedings*

#### 2 Proceedings for or in relation to—

- (a) an action of harassment under section 8(2) of the Protection from Harassment Act 1997 (harassment),
- (b) an exclusion order under section 4(2) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981,
- (c) a matrimonial interdict (within the meaning of section 14 of that Act),
- (d) a domestic interdict (within the meaning of section 18A of that Act),
- (e) an exclusion order under section 104 of the Civil Partnership Act 2004,
- (f) a relevant interdict (within the meaning of section 113 of that Act).

#### *Children's hearings proceedings*

#### 3 Proceedings for or in relation to—

- (a) the appointment of a safeguarder under section 31(3) of the Children's Hearing (Scotland) Act 2011 (sheriff: duty to consider appointing safeguarder),
- (b) an application under section 93(2)(a) (grounds not accepted: application to sheriff or discharge) or section 94(2)(a) (child or relevant person unable to understand grounds) of that Act on whether a section 67 ground (as defined in section 67 of that Act) is established,
- (c) the granting of a warrant under section 109(6) of that Act,
- (d) an application under 110 of that Act (review of grounds of determination).

#### *Warrants and interim orders*

#### 4 The granting of—

- (a) a warrant of citation (including such warrants where the address of the defender is unknown),
- (b) a warrant for diligence by arrestment or inhibition on the dependence of an action,
- (c) a warrant for arrestment to found jurisdiction,
- (d) interim interdicts,
- (e) an order for the interim preservation of property,
- (f) an order to recall an interim interdict,
- (g) an order to loose, restrict, vary or recall an arrestment on the dependence,
- (h) an order to recall, in whole or in part, or vary, an inhibition on the dependence.

SCHEDULE 3  
(introduced by section 96)

MODIFICATIONS OF ENACTMENTS

**PART 1**

SHERIFF COURTS

*Promissory Oaths Act 1868*

- 1 In the Promissory Oaths Act 1868, in the second part of the Schedule (persons to take oaths of allegiance and judicial oaths), after “part-time sheriffs” insert “, summary sheriffs, part-time summary sheriffs”.

*Sheriff Courts (Scotland) Act 1907*

- 2 The following provisions of the Sheriff Courts (Scotland) Act 1907 are repealed—
- (a) sections 4 to 7 (jurisdiction, extension of jurisdiction, power of sheriff to order sheriff clerk to execute deeds relating to heritage, action competent in sheriff court and privative jurisdiction in causes under one thousand five hundred pounds value),
  - (b) sections 10 and 11 (privilege not to exempt from jurisdiction and appointment of sheriffs and salaried sheriffs-substitute),
  - (c) section 14 (salaries of sheriffs and sheriffs-substitute),
  - (d) section 17 (honorary sheriff-substitute),
  - (e) sections 27 to 29 (appeal to sheriff, appeal to Court of Session and effect of appeal),
  - (f) sections 39 and 40 (procedure rules and Court of Session to regulate fees etc.),
  - (g) section 50 (summary applications),
  - (h) Schedule 1 (ordinary cause rules 1993).

*Sheriff Courts (Scotland) Act 1971*

- 3 The Sheriff Courts (Scotland) Act 1971 is repealed.

*Civil Jurisdiction and Judgments Act 1982*

- 4 In section 20(3) of the Civil Jurisdiction and Judgments Act 1982 (rules as to jurisdiction in Scotland), for “Section 6 of the Sheriff Courts (Scotland) Act 1907” substitute “Section 41 of the Courts Reform (Scotland) Act 2014”.

*Judicial Pensions and Retirement Act 1993*

- 5 (1) The Judicial Pensions and Retirement Act 1993 is amended in accordance with this paragraph.
- (2) In section 27 (completion of proceedings after retirement), in subsection (3), after paragraph (ff) insert—
- “(ffa) a part-time summary sheriff;”.

- (3) In Schedule 5 (relevant offices for the purposes of retirement provisions)—
- (a) for the entry for “Sheriff principal or sheriff in Scotland” substitute “Sheriff principal, sheriff or summary sheriff in Scotland”, and
  - (b) after the entry for temporary sheriff principal, insert—
 

“Part-time sheriff or part-time summary sheriff in Scotland”.

*Judiciary and Courts (Scotland) Act 2008*

- 6 (1) The Judiciary and Courts (Scotland) Act 2008 is amended as follows.
- (2) In subsection (1) of section 10 (judicial offices with in the remit of the Judicial Appointments Board for Scotland)—
- (a) the “and” immediately following paragraph (f) is repealed,
  - (b) after that paragraph insert—
 

“(fa) the office of summary sheriff,  
(fb) the office of part-time summary sheriff, and”.
- (3) In subsection (2) of section 43 (meaning of “judicial office holder”), after paragraph (g) insert—
- “(ga) the office of summary sheriff,  
(gb) the office of part-time summary sheriff.”.

**PART 2**

SHERIFF APPEAL COURT

*Promissory Oaths Act 1868*

- 7 In the Promissory Oaths Act 1868, in the second part of the Schedule (persons to take the oath of allegiance and judicial oath), after “sheriffdoms,” insert “Appeal Sheriffs appointed under section 49(1) of the Courts Reform (Scotland) Act 2014,”.

*Court of Law Fees (Scotland) Act 1895*

- 8 In section 2 of the Court of Law Fees (Scotland) Act 1895 (power of Scottish Ministers to regulate court fees), in subsection (3), after paragraph (b) insert—
- “(ba) the Sheriff Appeal Court;”.

*Public Records (Scotland) Act 1937*

- 9 (1) The Public Records (Scotland) Act 1937 is amended in accordance with this paragraph.
- (2) After section 1, insert—
- “1A Sheriff Appeal Court records**
- (1) The records of the Sheriff Appeal Court are to be transmitted to the Keeper at such times, and subject to such conditions as may be prescribed—
- (a) in relation to records relating to criminal proceedings, by act of adjournal,

- (b) in relation to other records, by act of sederunt.
- (2) An act of adjournal or act of sederunt under subsection (1) may—
  - (a) fix different times and conditions of transmission for different descriptions or records,
  - (b) make provision for—
    - (i) re-transmission of records to the High Court of Justiciary, the Court of Session or the Sheriff Appeal Court when such re-transmission is necessary for the purposes of proceedings in any of the Courts, and
    - (ii) the return to the Keeper of any records so re-transmitted as soon as they have ceased to be required for such a purpose.
- (3) Before making an Act of Adjournal or Act of Sederunt under subsection (1), the High Court of Justiciary or, as the case may be, the Court of Session must consult the Keeper.”.
- (3) In section 2(2) (re-transmission of sheriff court records from the Keeper to the courts)—
  - (a) after “Session” in the first place it occurs insert “, the Sheriff Appeal Court”,
  - (b) after “Session” in the second place it occurs insert “, of an Appeal Sheriff”.
- (4) In section 2A(3) (re-transmission of JP court records from the Keeper to the courts)—
  - (a) after “Session,” in the first place it occurs insert “the Sheriff Appeal Court,”,
  - (b) after “Session” in the second place it occurs insert “, of an Appeal Sheriff”.
- (5) In section 14(1) (interpretation), after the definition of “records of the Court of Session” and “records of the High Court of Justiciary” insert—
  - “the expression “records of the Sheriff Appeal Court” includes the registers, minute books, processes, writs or documents belonging to or in the custody of the Sheriff Appeal Court;”.

#### *Administration of Justice (Scotland) Act 1972*

- 10 (1) Section 1 of the Administration of Justice (Scotland) Act 1972 (powers of courts to order inspection of documents or other property etc.) is amended in accordance with this paragraph.
- (2) In subsection (1), after “Session” insert “, of the Sheriff Appeal Court”.
- (3) In subsection (1A), after “Session” insert “, of the Sheriff Appeal Court”.
- (4) In subsection (3), after “sheriff court” insert “and the Sheriff Appeal Court”.

#### *Civil Jurisdiction and Judgments Act 1982*

- 11 In section 50 of the Civil Jurisdiction and Judgments Act 1982 (interpretation), in the definition of “court of law”, in paragraph (c) after “Session” insert “, the Sheriff Appeal Court”.

*Criminal Procedure (Scotland) Act 1995*

- 12 In section 304 of the Criminal Procedure (Scotland) Act 1995 (Criminal Courts Rules Council), in subsection (2)(c), before sub-paragraph (i) insert—

“(zi) one Appeal Sheriff;”.

*Judiciary and Courts (Scotland) Act 2008*

- 13 (1) The Judiciary and Courts (Scotland) Act 2008 is amended in accordance with this paragraph.

- (2) In section 2 (Head of the Scottish Judiciary)—

- (a) after subsection (2) insert—

“(2A) If, in carrying out the responsibility mentioned in subsection (2)(a), the Lord President gives a direction of an administrative character to the President of the Sheriff Appeal Court, the President must comply with the direction.”,

- (b) in subsection (6), after paragraph (e) insert—

“(ea) the Sheriff Appeal Court.”.

- (3) In subsection (2) of section 43 (meaning of “judicial office holder”), after paragraph (e) insert—

“(ea) the office of Appeal Sheriff appointed under section 49(1) of the Courts Reform (Scotland) Act 2014.”.

- (4) In section 62 (Scottish Court Service to provide administrative support for other persons), in subsection (1), after paragraph (b) insert—

“(ba) the President of the Sheriff Appeal Court in carrying out the function under section 54 of the Courts Reform (Scotland) Act 2014.”.

*Scottish Civil Justice Council and Criminal Legal Assistance Act 2012*

- 14 In section 2 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2012 (functions of the Scottish Civil Justice Council)—

- (a) in subsection (1)(b), after “in” where it fourth occurs insert “the Sheriff Appeal Court or”,

- (b) in subsection (6)—

- (i) the word “and” immediately following paragraph (a) is repealed,

- (ii) after that paragraph insert—

“(aa) the Sheriff Appeal Court, and”.

**PART 3**

## CIVIL JURY TRIALS

*Law Reform (Miscellaneous Provisions) (Scotland) Act 1980*

- 15 (1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 is amended in accordance with this paragraph.

- (2) In section 2(2) (fining of jurors in civil proceedings for non-attendance), after paragraph (a) insert—
- “(aa) by the sheriff where imposed in the sheriff court;”.
- (3) In section 11 (no jury trial in civil actions in the sheriff court), after subsection (1) insert—
- “(1A) Subsection (1) is subject to section 61 (civil jury trials in all-Scotland sheriff courts) of the Courts Reform (Scotland) Act 2014.”.

#### **PART 4**

##### SIMPLE PROCEDURE

###### *Heritable Securities (Scotland) Act 1894*

- 16 In subsection (2) of section 5 of the Heritable Securities (Scotland) Act 1894 (power to eject proprietor in personal occupation), at the beginning insert—
- “Subject to section 70(3) of the Courts Reform (Scotland) Act 2014 (which provides for certain proceedings for the recovery of heritable property to be subject to simple procedure).”.

###### *Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963*

- 17 The Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963 is repealed.

###### *Conveyancing and Feudal Reform (Scotland) Act 1970*

- 18 In subsection (1D) of section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (application by creditor to court for remedies on default), at the beginning insert—
- “Subject to section 70(3) of the Courts Reform (Scotland) Act 2014 (which provides for certain proceedings for the recovery of heritable property to be subject to simple procedure).”.

#### **PART 5**

##### REGULATION OF PROCEDURE

###### *Administration of Justice (Scotland) Act 1972*

- 19 In section 1(3) of the Administration of Justice (Scotland) Act 1972 (powers of courts to order inspection of documents or other property etc.), for “section 32 of the Sheriff Courts (Scotland) Act 1971” substitute “section 86 of the Courts Reform (Scotland) Act 2014”.

#### **PART 6**

##### CIVIL APPEALS

###### *Court of Session Act 1988*

- 20 Section 32 of the Court of Session Act 1988 is amended as follows—

- (a) in subsection (1), for “sheriff principal or sheriff under section 28 of the Sheriff Courts (Scotland) Act 1907” substitute “Sheriff Appeal Court under section 91 of the Courts Reform (Scotland) Act 2014 or the judgment of a sheriff principal under section 92 of that Act”,
- (b) in each of subsections (2) and (4), for “sheriff principal or sheriff” substitute “Sheriff Appeal Court or (as the case may be) the sheriff principal”.

## PART 7

### JUSTICE OF THE PEACE COURTS

#### *Criminal Procedure (Scotland) Act 1995*

- 21 (1) The Criminal Procedure (Scotland) Act 1995 is amended in accordance with this paragraph.
- (2) In section 6(2) (constitution of JP courts), for “stipendiary magistrate” substitute “summary sheriff”.
  - (3) In section 7 (jurisdiction and powers of JP courts), subsection (5) is repealed.
  - (4) In section 245A (restriction of liberty orders), subsection (9) is repealed.
  - (5) In section 248C(1) (power to prescribe courts to which sections 248A and 248B apply), the words from “and, without prejudice” to the end are repealed.
  - (6) In section 249(8) (compensation orders)—
    - (a) in paragraph (a), the words “, or a stipendiary magistrate,” are repealed, and
    - (b) in paragraph (b), the words “(other than a stipendiary magistrate)” are repealed.
  - (7) In section 307(1) (interpretation)—
    - (a) in the definition of “justice”, the words “stipendiary magistrate or” are repealed, and
    - (b) the definition of “stipendiary magistrate” is repealed.

#### *Criminal Proceedings etc. (Reform) (Scotland) Act 2007*

- 22 (1) The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 is amended in accordance with this paragraph.
- (2) In section 61(3)(a) (efficient disposal of business in JP courts), for “stipendiary magistrate” substitute “summary sheriff”.
  - (3) In section 62 (area and territorial jurisdiction of JP courts)—
    - (a) in each of subsections (4), (5), (6) and (7), the words “or stipendiary magistrate” in each place they appear are repealed,
    - (b) in subsection (4), the words “or (as the case may be) magistrate” are repealed,
    - (c) in subsection (7)(a), the words “or (as the case may be) stipendiary magistrate” are repealed.
  - (4) In section 63 (constitution and powers etc. of JP courts), in each of subsections (2) and (5)(a), for “stipendiary magistrate” substitute “summary sheriff”.
  - (5) The following sections are repealed—



- (a) section 74 (appointment of stipendiary magistrates),
  - (b) section 74A (exercise of functions by stipendiary magistrates),
  - (c) section 75 (stipendiary magistrates: further provision).
- (6) In section 76 (signing functions)—
- (a) in subsection (1), the words “or a stipendiary magistrate” are repealed,
  - (b) in subsection (5), the words “, stipendiary magistrate” are repealed.
- (7) In section 77 (records and validity of appointment)—
- (a) in subsection (1), in both paragraphs (a) and (b)(ii), the words “or stipendiary magistrate” are repealed,
  - (b) in subsection (2), the words “and stipendiary magistrates” are repealed,
  - (c) subsection (5) is repealed.