

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Schedule 5 – Modifications of enactments

285. *Schedule 5*, which is introduced by section 132, makes provision for the amendment of various enactments as a consequence of the provisions of the Act.

Part 1 – Sheriff courts

Paragraph 1 – Promissory Oaths Act 1868

286. This paragraph amends the Schedule to the Promissory Oaths Act 1868 as a consequence of the creation of summary sheriffs and part-time summary sheriffs. The effect of the amendment is that summary sheriffs and part-time summary sheriffs will be required to take the oath of allegiance and the judicial oath.

Paragraph 2 – Promissory Oaths Act 1871

287. This paragraph amends section 2 of the Promissory Oaths Act 1871, making provision for persons before whom summary sheriffs and part-time summary sheriffs may take oaths.

Paragraph 3 – Sheriff Courts (Scotland) Act 1876

288. Section 54 of the Sheriff Courts (Scotland) Act 1876 is repealed by this section, so far as not previously repealed. Section 54 gave power to the Court of Session to allocate commissary business in the sheriff courts by act of sederunt. This power now rests with sheriffs principal as part of their general powers to organise the efficient disposal of business in the sheriff courts at sections 27 and 28 of the Act.

Paragraph 4 – Sheriff Courts (Scotland) Act 1907

289. This paragraph repeals various sections of the Sheriff Courts (Scotland) Act 1907.
290. Sub-paragraph (a) repeals sections 4 to 7 of the 1907 Act which made provision in relation to the jurisdiction of the sheriff court. These sections are largely replaced by Chapter 4 of Part 1 of the Act, which makes provision in respect of competence and jurisdiction of sheriffs.
291. Sub-paragraph (b) repeals sections 10 and 11 of the 1907 Act. The power of Her Majesty to appoint salaried sheriffs principal and sheriffs previously provided for by section 11 of that Act is recast in sections 3 and 4 of the Act.
292. Sub-paragraph (c) repeals section 14 of the 1907 Act. Provision for the salaries of sheriffs principal and sheriffs is now made by section 16 of the Act.

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293. Sub-paragraph (d) repeals section 17 of the 1907 Act, which made provision for the appointment of honorary sheriffs by sheriffs principal. The office of honorary sheriff is abolished by section 26 of the Act.
294. Sub-paragraph (e) repeals section 27 to 29 of the 1907 Act, which dealt with appeals to the sheriff principal and the Court of Session as well as setting out the effect of an appeal. These repeals are in consequence of the creation of the Sheriff Appeal Court by the Act (see section 110).
295. Sub-paragraph (f) repeals sections 39 to 40 of the 1907 Act. Section 39 is repealed as consequence of the replacement of ordinary cause rules. The provision in section 40, relating to the Court of Session's power to regulate fees, is now recast at section 98 of the Act
296. Sub-paragraphs (g) and (h) repeal section 50 and Schedule 1 of the 1907 Act respectively. These repeals are in consequence of replacement by the Act of summary cause procedure by simple procedure (section 72 of the Act) and the replacement of ordinary cause procedure.

Paragraph 5 – Sheriff Courts and Legal Officers (Scotland) Act 1927

297. This paragraph makes amendments to section 8 of the Sheriff Courts and Legal Officers (Scotland) Act 1927. The amendments will allow the Lord Advocate to issue instructions to procurators fiscal both for the purpose of giving effect to the 1927 Act and for the purpose of the efficient disposal of business in the sheriff courts.

Paragraph 6 – Sheriff Courts (Scotland) Act 1971

298. The Sheriff Courts (Scotland) Act 1971 is repealed by this paragraph, with the exception of sections 2(3) and 3(4), which provide for compensation payment on loss of shrieval office and are to be repealed by Order under section 104 of the Scotland Act 1998. The other provisions of the 1971 Act are largely replaced or recast by the Act.

Paragraph 7 – Civil Jurisdiction and Judgments Act 1982

299. This paragraph amends section 20(3) of the Civil Jurisdiction and Judgments Act 1982 to reflect the recasting of section 6 of the Sheriff Courts (Scotland) Act 1907 as section 43 of the Act.

Paragraph 8 – Judicial Pensions and Retirement Act 1993

300. This paragraph amends the Judicial Pensions and Retirement Act 1993 to ensure that provisions concerning the retirement of judges apply to the offices created by this Act.

Paragraph 9 – Judiciary and Courts (Scotland) Act 2008

301. This paragraph makes various repeals and amendments in the Judiciary and Courts (Scotland) Act 2008. References to the 1971 Act are repealed or updated to refer to the Act as necessary.
302. Sub-paragraph (3) brings the offices of summary sheriff and part-time summary sheriff within the remit of JABS.
303. Sub-paragraph (4) adds the offices of summary sheriff and part-time summary sheriff to the definition of “judicial office holder” at section 43 of the Judiciary and Courts (Scotland) Act 2008. This has the effect of bringing these officer holders under the Lord President's responsibility for welfare, training and guidance at section 2 of the 2008 Act.

Part 2 – Sheriff Appeal Court

Paragraph 10 – Sheriff Courts and Legal Officers (Scotland) Act 1927

304. This paragraph amends section 1 of the Sheriff Courts and Legal Officers (Scotland) Act 1927 by inserting a new subsection (6) as a consequence of the creation of the office of Clerk of the Sheriff Appeal Court by section 57 of the Act (see section 62). New subsection (6) sets out that the appointment of a sheriff clerk as Clerk to the Sheriff Appeal Court under section 57 of the Act is not to be considered as a removal from office.

Paragraph 11 – Public Records (Scotland) Act 1937

305. The Public Records (Scotland) Act 1937 is amended by this paragraph to reflect the creation of the Sheriff Appeal Court by the Act. The new section 1A inserted into the 1937 Act makes provision for the keeping of Sheriff Appeal Court records. (This mirrors provision in section 1 of the 1937 Act which deals with the transmission of High Court and Court of Session records by act of adjournal or sederunt (as the case may be.))

Paragraph 12 – Administration of Justice (Scotland) Act 1972

306. This paragraph amends section 1 of the Administration of Justice (Scotland) Act 1972 by amending subsections (1), (1A) and (3), extending the powers therein concerning the inspection of documents or other property to the Sheriff Appeal Court.

Paragraph 13 – Civil Jurisdiction and Judgments Act 1982

307. The definition of “court of law” in section 50 of the Civil Jurisdiction and Judgments Act 1982 is amended by this paragraph to include a reference to the Sheriff Appeal Court.

Paragraph 14 – Legal Aid (Scotland) Act 1986

308. This paragraph extends the provisions of sections 21(1) and 25 and paragraph 1 of Part 1 of Schedule 2 to the Legal Aid (Scotland) Act 1986 in relation to legal aid for proceedings in the Sheriff Appeal Court.

Paragraph 15 – Criminal Procedure (Scotland) Act 1995

309. This paragraph has the effect of requiring one Appeal Sheriff to be appointed to the Criminal Courts Rules Council by amending section 304(2)(c) of the 1995 Act.

Paragraph 16 – Judiciary and Courts (Scotland) Act 2008

310. This paragraph makes further amendments to the Judiciary and Courts (Scotland) Act 2008 to take into account the creation of the Sheriff Appeal Court and the offices of Appeal Sheriff and President of the Sheriff Appeal Court.

Paragraph 17 – Criminal Justice and Licensing (Scotland) Act 2010

311. This paragraph makes consequential amendments to the provisions of the Criminal Justice and Licensing (Scotland) Act 2010 that deal with sentencing guidelines from the Scottish Sentencing Council, to take account of the transfer of summary criminal appeal jurisdiction from the High Court to the Sheriff Appeal Court by section 118.

Paragraph 18 – Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

312. This paragraph has the effect of bringing the Sheriff Appeal Court within the remit of the Scottish Civil Justice Council, in terms of the Council’s function of reviewing practice and procedure in civil proceedings.

Part 3 – Civil jury trials

Paragraph 19 – Law Reform (Miscellaneous Provisions) (Scotland) Act 1980

313. This paragraph amends the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 in light of the provisions of the Act.
314. Sub-paragraph (2) has the effect of allowing the sheriff to remit a fine imposed on a civil juror for non-attendance where the fine was imposed in the sheriff court.
315. Sub-paragraph (3) amends section 11 of the 1980 Act in light of the creation of jury trials in all-Scotland sheriff courts (for example, a personal injury court) by section 63 of the Act.

Part 4 – Simple procedure

Paragraph 20 – Heritable Securities (Scotland) Act 1894

316. This paragraph amends the Heritable Securities (Scotland) Act 1894 as amended by the Home Owner and Debtor Protection (Scotland) Act 2010 to reflect the creation of simple procedure by section 72 of the Act and the application of simple procedure to certain proceedings for the recovery of immoveable property by section 72(3).

Paragraph 21 – Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963

317. This paragraph repeals the Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963 which made provision for actions for aliment of small amounts by way of a summary cause action. Provision in this regard is now made by section 74 of the Act, which enables actions for aliment of small amounts to be made by simple procedure.

Paragraph 22 – Conveyancing and Feudal Reform (Scotland) Act 1970

318. This paragraph amends the Conveyancing and Feudal Reform (Scotland) Act 1970 as amended by the Home Owner and Debtor Protection (Scotland) Act 2010 to reflect the creation of simple procedure by section 72 of the Act and the application of simple procedure to certain proceedings for the recovery of immoveable property by section 72(3).

Paragraph 23 – Legal Aid (Scotland) Act 1986

319. There is a statutory bar on civil legal aid being available for small claims proceedings as set out in paragraph 3 of Schedule 2 to the Legal Aid (Scotland) Act 1986. As a consequence of this Act, the term “small claims” will no longer be used. This section ensures that the previous position is preserved by amending the 1986 Act and substituting the reference to small claims actions with a reference to those types of simple procedure cases which would be, but for the repeal of the Sheriff Courts (Scotland) Act 1971, treated as a small claim.

Part 5 – Judicial review

Paragraph 24 – Tribunals (Scotland) Act 2014

320. This paragraph inserts a new section 57A into the Tribunals (Scotland) Act 2014 which governs the procedural steps to be followed when the Court of Session remits a petition for judicial review to the Upper Tribunal for Scotland under section 57(2) of that Act.
321. Subsection (2) provides that it is for the Upper Tribunal to decide whether the petition has been made timeously and whether or not to grant permission for the petition to proceed under section 27B of the Court of Session Act 1988. (Section 89 of the Act inserts sections 27A-27D into the 1988 Act.) Subsection (3) makes it clear that the

Upper Tribunal may exercise the powers conferred by sections 27A to 27C of the Court of Session Act 1988 in relation to time limits and the granting of permission in relation to any petition remitted to it from the Court of Session. Subsection (4) modifies the provisions of sections 27C(3) and (4) of the Act so that the references in those sections to requests for review of a permission decision being dealt with by a different Lord Ordinary are to be read as references to different members of the Tribunal from those who refused or granted permission subject to conditions. A similar provision appears in section 41 of the Revenue Scotland and Tax Powers Act 2014 in relation to the Scottish Tax Tribunals.

Part 6 – Remit of cases between courts

Paragraph 25 - Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

322. This paragraph repeals section 14 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, which provides for remit from the Court of Session to the sheriff. This is now dealt with by section 93 of the Act.

Part 7 – Regulation of procedure and fees

Paragraph 26 – Courts of Law Fees (Scotland) Act 1895

323. This paragraph repeals section 2 of the Court of Law Fees (Scotland) Act 1895 in consequence of the new power at section 107.

Paragraph 27 - Vexatious Actions (Scotland) Act 1898

324. This paragraph repeals the Vexatious Actions (Scotland) Act 1898. This subject is now dealt with by Part 3 Chapter 6 of the Act.

Paragraph 28 - Execution of Diligence (Scotland) Act 1926

325. This paragraph repeals section 6 (regulations, forms and fees) of the Execution of Diligence (Scotland) Act 1926.

Paragraph 29- Administration of Justice (Scotland) Act 1972

326. As a consequence of the repeal of the Sheriff Courts (Scotland) Act 1971, this paragraph amends a reference in the Administration of Justice (Scotland) Act 1972 to refer to the new provision made by section 104 of the Act.

Paragraph 30 – Court of Session Act 1988

327. This paragraph repeals the court rule making powers of the Court of Session in sections 5, 5A, and 6 of the Court of Session Act 1988 and makes consequential amendment to that Act, ensuring that relevant provisions cross refer to the new rule making powers set out in section 103(1) of the Act.

Paragraph 31 – Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

328. This paragraph amends the powers of Scottish Civil Justice Council to put beyond doubt their role in being able to propose rules of court relating to the setting of fees.

Part 8 – Civil appeals

Paragraph 32 - Court of Session Act 1988

329. Subparagraph (3) makes amendments to the Court of Session Act 1988 to take account of the introduction of the Sheriff Appeal Court. Subsections (2) and (4) provide for the

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repeal of provisions for exchequer cause appeals to the Supreme Court that are restated in section 117.

Paragraph 33 – Constitutional Reform Act 2005

330. **Paragraph 33** repeals section 40(3) of the Constitutional Reform Act 2005 in consequence of the new provisions at section 117 of the Act. Section 40 of the 2005 Act deals with the jurisdiction of the Supreme Court.

Part 9 – Judges of the Court of Session

Paragraph 34 – Promissory Oaths Act 1868

331. This paragraph amends the Promissory Oaths Act 1868 in consequence of section 123 of the Act which re-enacts provision for the appointment of judges, temporary judges, and re-employed former judges in the Court of Session.

Paragraph 35 - Administration of Justice Act 1973

332. This paragraph repeals section 9(5) (judicial salaries) of the Administration of Justice Act 1973 in consequence of section 124.

Paragraph 36 – Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

Paragraph 37 – Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

333. These paragraphs amend and repeal provisions in the 1985 and 1990 Acts to reflect the provisions in section 123 relating to the appointment of judges, temporary judges, and re-employed former judges in the Court of Session.

Paragraph 38 – Judiciary and Courts (Scotland) Act 2008

334. This paragraph makes amendments to section 43(1)(b) and section 72 of the Judiciary and Courts (Scotland) Act 2008 in consequence of section 123 of the Act to update references to re-enacted provisions. It also repeals section 64(3) and (4) of the Judiciary and Courts (Scotland) Act 2008, which themselves had made amendments to the provisions being re-enacted.

Part 10 – Justice of the Peace Courts

Paragraph 39 - Criminal Procedure (Scotland) Act 1995

335. This paragraph makes amendments to the 1995 Act to take account of the abolition of the office of stipendiary magistrate by section 128 of the Act.

Paragraph 40 - Criminal Proceedings etc. (Reform) (Scotland) Act 2007

336. This paragraph makes amendments to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 to take account of the abolition of the office of stipendiary magistrate by section 128 of the Act.

Paragraph 41 - Judiciary and Courts (Scotland) Act 2008

337. This paragraph makes an amendment to the Judiciary and Courts (Scotland) Act 2008 to take account of the abolition of the office of stipendiary magistrate by section 128 of the Act.

Part 11 – Miscellaneous

Paragraph 42 – Judicial Offices (Salaries, &c.) Act 1952

338. This paragraph repeals the Judicial Offices (Salaries, &c.) Act 1952 in consequence of sections 17 and 125 of the Act.

Paragraph 43 – Court of Session Act 1988

339. This paragraph amends the Court of Session Act 1988 to ensure that references in that Act to “enactments” include Acts of the Scottish Parliament such as the Act.

Paragraph 44 – Criminal Procedure (Scotland) Act 1995

340. [Paragraph 35](#) amends section 85(4) of the 1995 Act which requires jurors in criminal proceedings to be cited (required to attend) through the use of registered post or recorded delivery. The effect of the amendment will mean that the SCTS will be free to choose the method of citation of jurors.

Paragraph 45 – Interpretation and Legislative Reform (Scotland) Act 2010

341. [Paragraph 36](#) updates the definition of “sheriff” in the Interpretation and Legislative Reform (Scotland) Act 2010 in light of the Act. See in this regard the explanatory note to section 134.