

Draft Order laid before Parliament under paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
COURT OF SESSION
SHERIFF COURT**

**The Courts Reform (Scotland) Act 2014 (Consequential
Provisions and Modifications) Order 2015**

Made - - - - 2015

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred by sections 104, 112(1), 113(2), (3), (5) and (7) and 114(1) of the Scotland Act 1998⁽¹⁾, makes the following Order.

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Citation, interpretation, commencement and extent

1.—(1) This Order may be cited as the Courts Reform (Scotland) Act 2014 (Consequential Provisions and Modifications) Order 2015.

(2) In this Order, “the 2014 Act” means the Courts Reform (Scotland) Act 2014⁽²⁾.

(3) This article comes into force on the day after the day on which this Order is made.

(4) Article 2 comes into force on the same day as that on which section 2 of the 2014 Act comes into force.

(5) Article 3 comes into force on the same day as that on which section 34 of the 2014 Act comes into force.

(6) Article 4 comes into force on the same day as that on which section 39(2) of the 2014 Act comes into force.

(1) 1998 c.46.

(2) 2014 asp 18.

(7) Article 5 comes into force on the same day as that on which section 41 of the 2014 Act comes into force.

(8) Articles 6 and 7 come into force on the same day as that on which section 89 of the 2014 Act comes into force.

(9) Article 8 comes into force on the same day as that on which (the earliest of) section 103, 104, 105 or 106 of the 2014 Act comes into force.

(10) Article 9 comes into force on the same day as that on which section 130(1) of the 2014 Act comes into force.

(11) Article 10 comes into force—

- (a) for the purposes of paragraph 1 of the Schedule to this Order, on the same day as that on which section 100 of the 2014 Act comes into force;
- (b) for the purposes of paragraph 2 of the Schedule to this Order, on the same day as that on which paragraph 28 of schedule 5 to the 2014 Act comes into force;
- (c) for the purposes of paragraphs 3 and 4 of the Schedule to this Order, on the same day as that on which section 26 of the 2014 Act comes into force;
- (d) for the purposes of paragraph 5 of the Schedule to this Order, on the same day as that on which paragraph 42 of schedule 5 to the 2014 Act comes into force;
- (e) for the purposes of paragraph 6 of the Schedule to this Order, on the same day as that on which paragraph 6(2) of schedule 5 to the 2014 Act comes into force;
- (f) for the purposes of paragraph 7 of the Schedule to this Order, on the same day as that on which paragraph 35 of schedule 5 to the 2014 Act comes into force;
- (g) for the purposes of paragraphs 8 and 9 of the Schedule to this Order, on the same day as that on which (the earlier of) section 5 or 10 of the 2014 Act comes into force;
- (h) for the purposes of paragraph 10 of the Schedule to this Order, on the same day as that on which section 134(2) and (3) of the 2014 Act comes into force;
- (i) for the purposes of paragraph 11(1) of the Schedule to this Order, on the day after the day on which this Order is made;
- (j) for the purposes of paragraph 11(2) of the Schedule to this Order, on the same day as that on which paragraph 7 of schedule 5 to the 2014 Act comes into force;
- (k) for the purposes of paragraph 11(3) of the Schedule to this Order, on the same day as that on which paragraph 13 of schedule 5 to the 2014 Act comes into force;
- (l) for the purposes of paragraph 12 of the Schedule to this Order, on the same day as that on which section 104 of the 2014 Act comes into force;
- (m) for the purposes of paragraph 13 of the Schedule to this Order, on the same day as that on which section 117 of the 2014 Act (appeals to the Supreme Court) comes into force;
- (n) for the purposes of paragraph 14 of the Schedule to this Order, on the same day as that on which section 130(1) of the 2014 Act comes into force.

(12) Articles 2 to 6, 8 and 9, and paragraph 12(3) of the Schedule to this Order extend to Scotland only.

(13) Paragraphs 1, 2, 5, 6, 7, 11 and 13 of the Schedule to this Order do not extend to Scotland.

(14) Paragraphs 4 and 12(1) and (2) of the Schedule to this Order extend to England, Wales and Scotland.

Compensation for loss of office etc. on abolition of sheriffdom etc.

2.—(1) The Scottish Courts and Tribunals Service⁽³⁾ may pay such compensation as the Secretary of State may determine to a person who suffers loss of employment or loss or diminution of emoluments as a consequence of an order under section 2(1) of the 2014 Act.

(2) Paragraph (1) does not permit a payment to a person mentioned in section 51(2)⁽⁴⁾ of the Scotland Act 1998 (non-ministerial office-holders in, and members of the staff of, the Scottish Administration).

(3) Sections 2(3) and 3(4) of the Sheriff Courts (Scotland) Act 1971⁽⁵⁾ are repealed.

Judicial specialisation

3.—(1) The powers referred to in paragraph (2) may be exercised in relation to a category of sheriff court case (within the meaning of section 34(5) of the 2014 Act) that relates to a reserved matter.

(2) Those powers are—

- (a) the powers of the Lord President of the Court of Session under section 34 of the 2014 Act (determination of categories of sheriff court case suited to being dealt with by specialist judicial officers);
- (b) the powers of the sheriff principal of a sheriffdom and of the Lord President under section 35 of that Act (designation of specialist judiciary).

Proceedings for winding up of companies

4. Section 39 of the 2014 Act (exclusive competence) does not apply to proceedings for the winding up of a company, even if an order of value (within the meaning of subsection (6) of that section) is sought in those proceedings.

Power to confer all-Scotland jurisdiction for specified cases

5. An order under section 41(1) of the 2014 Act (power to confer all-Scotland jurisdiction for specified cases) may specify a type of civil proceedings which relates to a reserved matter.

Permission to apply for review of decision of Upper Tribunal

6.—(1) Section 27B of the Court of Session Act 1988⁽⁶⁾ (requirement for permission) is amended as follows.

(2) In subsection (3), for the words from “a decision” to “2014” substitute “a relevant Upper Tribunal decision”.

(3) After subsection (5), insert—

“(6) In this section, “a relevant Upper Tribunal decision” means—

- (a) a decision of the Upper Tribunal for Scotland in an appeal from the First-tier Tribunal for Scotland under section 46 of the Tribunals (Scotland) Act 2014,
- (b) a decision of the Upper Tribunal in an appeal from the First-tier Tribunal under section 11 of the Tribunals, Courts and Enforcement Act 2007⁽⁷⁾.”

(3) The Scottish Court Service was established by section 60(1) of the Judiciary and Courts (Scotland) Act 2008. It was renamed the Scottish Courts and Tribunals Service by section 130 of the Courts Reform (Scotland) Act 2014.

(4) Words were substituted by the Constitutional Reform and Governance Act 2010 (c.25), Schedule 2(1), paragraph 9(2).

(5) 1971 c.58.

(6) 1988 c.36; section 27B of the Court of Session Act 1988 was inserted by section 89 of the Courts Reform (Scotland) Act 2014.

(7) 2007 c.15. Section 11 was amended by the Crime and Security Act 2010 (c.17), Schedule 2, paragraph 5.

Procedural steps where judicial review application transferred from the Court of Session

7. After section 20 of the Tribunals, Courts and Enforcement Act 2007 (transfer of judicial review applications from the Court of Session), insert—

“20A. Procedural steps where application transferred

(1) This section applies where the Court of Session transfers an application under section 20(1)(8).

(2) It is for the Upper Tribunal to determine—

- (a) whether the application has been made timeously, and
- (b) whether to grant permission for the application to proceed under section 27B of the Court of Session Act 1988 (“the 1988 Act”) (requirement for permission).

(3) Accordingly—

- (a) the Upper Tribunal has the same powers in relation to the application as the Court of Session would have had in relation to it under sections 27A to 27C of the 1988 Act(9),
- (b) sections 27C and 27D of that Act apply in relation to a decision of the Upper Tribunal under section 27B(1) of that Act as they apply in relation to such a decision of the Court of Session.

(4) The references in section 27C(3) and (4) of the 1988 Act (oral hearings where permission refused) to a different Lord Ordinary from the one who granted or refused permission are to be read as references to different members of the Tribunal from those of whom it was composed when it refused or granted permission.”.

Powers to regulate court procedure etc.

8.—(1) The powers referred to in paragraph (2) may be exercised in order to make provision which relates to a reserved matter or which modifies the law on reserved matters.

(2) Those powers are the powers of the Court of Session under—

- (a) sections 103 and 105 of the 2014 Act (powers to regulate procedure etc. and fees in the Court of Session);
- (b) sections 104 and 106 of the 2014 Act (powers to regulate procedure etc. and fees in the sheriff court and the Sheriff Appeal Court).

Pensions Appeal Tribunal for Scotland

9.—(1) The functions of the Scottish Ministers(10) referred to in paragraph (2) are transferred to the Scottish Courts and Tribunals Service.

(2) Those functions are—

(8) Section 20(1) was amended by the Borders, Citizenship and Immigration Act 2009 (c.11), Part 4, section 53(3)(a) and by the Crime and Courts Act 2013 (c.22), Part 2, section 22(2).

(9) Sections 27A to 27D of the Court of Session Act 1988 were inserted by section 89 of the Courts Reform (Scotland) Act 2014.

(10) The functions referred to in this article were transferred to the Scottish Ministers by virtue of article 5 of, and paragraph 2 of Schedule 4 to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750). Paragraph 1 of the Schedule of the Pensions Appeal Tribunals Act 1943 was substituted by section 15(1) of, and paragraphs 24 and 28(1) and (2) of Schedule 4 to, the Constitutional Reform Act 2005 (c.4) and amended by the Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), Schedule 3, paragraph 21(2). There are other amendments to the Schedule not relevant to this Order.

- (a) the provision of premises for the purposes of carrying out the functions of a Pensions Appeal Tribunal (constituted under the Schedule to the Pensions Appeal Tribunals Act 1943⁽¹¹⁾);
- (b) the provision of staff to assist a Pensions Appeal Tribunal to carry out its functions; and
- (c) the funding of payments made by a Pensions Appeal Tribunal under rule 26 of the Pensions Appeal Tribunals (Scotland) Rules 1981⁽¹²⁾.

Modification of enactments

10. The Schedule to this Order contains modifications of enactments in consequence of the 2014 Act.

Address
Date

Name
Parliamentary Under Secretary of State

⁽¹¹⁾ 1943 c.39.
⁽¹²⁾ S.I. 1981/500 (S. 50).

SCHEDULE

Article 10

MODIFICATION OF ENACTMENTS

Vexatious Actions (Scotland) Act 1898

1. The Vexatious Actions (Scotland) Act 1898(**13**) is repealed.

Execution of Diligence (Scotland) Act 1926

2. Section 6 of the Execution of Diligence (Scotland) Act 1926(**14**) (regulations, forms and fees) is repealed.

Incitement to Disaffection Act 1934

3. In section 4 of the Incitement to Disaffection Act 1934(**15**), subsection (2)(c) (honorary sheriffs) is repealed.

Public Order Act 1936

4. In section 8 of the Public Order Act 1936(**16**), subsection (4) (honorary sheriffs) is repealed.

Judicial Offices (Salaries, &c.) Act 1952

5. The Judicial Offices (Salaries, &c.) Act 1952(**17**) is repealed.

Sheriff Courts (Scotland) Act 1971

6. Section 4 of the Sheriff Courts (Scotland) Act 1971(**18**) (offices of sheriff principal and sheriff) is repealed.

Administration of Justice Act 1973

7. In section 9 of the Administration of Justice Act 1973(**19**) (judicial salaries), in subsection (5), for “other salaries payable under this section” substitute “salaries payable under subsection (1)(e)”.

House of Commons Disqualification Act 1975

- 8.—(1) Part 1 of Schedule 1 to the House of Commons Disqualification Act 1975(**20**) (judicial offices) is amended as follows.

(2) For the entry for “Judge of the Court of Session, or Temporary Judge appointed under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990” substitute—

“Judge of the Court of Session, or Temporary Judge in Scotland”.

(13) 1898 c.35.

(14) 1926 c.16.

(15) 1934 c.56.

(16) 1936 c.6.

(17) 1952 c.12.

(18) 1971 c.58.

(19) 1973 c.15; section 9(5) was amended by the Justice (Northern Ireland) Act 2002 (c.26), Schedule 12, paragraph 11.

(20) 1975 c.24; Schedule 1, Part 1 was relevantly amended by S.I. 1997/861, Schedule 1, paragraph 1 and S.I. 2010/762, Schedule 1, paragraph 3.

(3) For the entry for “Sheriff Principal or Sheriff (other than Honorary Sheriff) appointed under the Sheriff Courts (Scotland) Act 1907, or Temporary Sheriff Principal or part-time sheriff appointed under the Sheriff Courts (Scotland) Act 1971” substitute—

“Sheriff principal, sheriff, summary sheriff, temporary sheriff principal, part-time sheriff or part-time summary sheriff in Scotland”.

(4) The entry for “Stipendiary Magistrate in Scotland” is repealed.

Northern Ireland Assembly Disqualification Act 1975

9.—(1) Part 1 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975**(21)** (judicial offices) is amended as follows.

(2) For the entry for “Sheriff Principal or Sheriff (other than Honorary Sheriff) appointed under the Sheriff Courts (Scotland) Act 1907, or Temporary Sheriff Principal or Temporary Sheriff appointed under the Sheriff Courts (Scotland) Act 1971” substitute—

“Sheriff principal, sheriff, summary sheriff, temporary sheriff principal, part-time sheriff or part-time summary sheriff in Scotland”.

(3) The entry for “Stipendiary Magistrate in Scotland” is repealed.

Interpretation Act 1978

10. In Schedule 1 to the Interpretation Act 1978**(22)** (words and expressions defined), for the entry for “Sheriff” substitute—

““Sheriff” is to be construed in accordance with section 134(2) and (3) of the Courts Reform (Scotland) Act 2014.”.

Civil Jurisdiction and Judgments Act 1982

11.—(1) The Civil Jurisdiction and Judgments Act 1982**(23)** is amended as follows.

(2) In section 20(3) (rules as to jurisdiction in Scotland)—

(a) for the opening words substitute “Section 43 of the Courts Reform (Scotland) Act 2014 does not apply—”;

(b) in paragraph (a), the words “to the extent that it determines jurisdiction” are repealed.

(3) In section 50 (interpretation), in the definition of “court of law”, in paragraph (c) after “Session” insert “, the Sheriff Appeal Court”.

Child Support Act 1991

12.—(1) The Child Support Act 1991**(24)** is amended as follows.

(2) In section 39(2) (enforcement in Scotland of orders made elsewhere in the UK), for the words from “section” to “court)” substitute “section 104 of the Courts Reform (Scotland) Act 2014 (power to regulate procedure etc. in the sheriff court and Sheriff Appeal Court)”.

(3) Section 49 (right of audience: Scotland) is repealed.

(21) 1975 c.25.

(22) 1978 c.30.

(23) 1982 c.27; section 20(3) of that Act was amended by S.I. 2011/1484, Schedule 4, paragraph 4. There are amendments to section 50 of that Act which are not relevant to this Order.

(24) 1991 c.48.

Constitutional Reform Act 2005

13. In section 40 of the Constitutional Reform Act 2005⁽²⁵⁾ (jurisdiction of the Supreme Court), subsection (3) is repealed.

Judiciary and Courts (Scotland) Act 2008 (Consequential Provisions and Modifications) Order 2009

14.—(1) The Judiciary and Courts (Scotland) Act 2008 (Consequential Provisions and Modifications) Order 2009⁽²⁶⁾ is amended as follows.

(2) In article 2 (status of the Scottish Court Service as part of the Scottish Administration)—

- (a) for “Court Service established by section 60(1) of the 2008 Act” substitute “Courts and Tribunals Service”;
- (b) the title of that article becomes “Status of the Scottish Courts and Tribunals Service as part of the Scottish Administration”.

(3) In article 3 (construction of references to an office-holder in the Scottish Administration), in paragraph (1) for “Court Service established by section 60(1) of the 2008 Act” substitute “Courts and Tribunals Service”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision which is expedient in consequence of the Courts Reform (Scotland) Act 2014 (“the 2014 Act”).

Article 2 substantially re-enacts sections 2(3) and 3(4) of the Sheriff Courts (Scotland) Act 1971, and consequentially repeals these sections. (The Sheriff Courts (Scotland) Act 1971 was otherwise repealed, as a matter of Scots law, by paragraph 6 of schedule 5 to the 2014 Act.)

Sections 34 and 35 of the 2014 Act provide for the Lord President of the Court of Session to direct certain categories of sheriff court case as suitable to be dealt with by specialist judiciary, and for the Lord President or the sheriff principal of a sheriffdom to be able to designate particular members of the sheriff court judiciary as specialists in one or more areas. Articles 3 and 5 provide for these powers to be exercisable in relation to categories of case which relate to reserved matters.

Section 39(1) of the 2014 Act provides that civil proceedings which a sheriff has competence to deal with and in which orders of value are sought of an aggregate value of £100,000 or less may be brought only in the sheriff court. Article 4 prevents this section from applying to proceedings for winding up of a company, with the consequence that such proceedings will remain competent in the Court of Session regardless of any order for value sought.

Article 6 amends section 27B of the Court of Session Act 1988 (which was introduced by section 89 of the 2014 Act) to apply the same test for applications relating to decisions of the Upper Tribunal

⁽²⁵⁾ 2005 c.4.

⁽²⁶⁾ S.I. 2009/2231.

as apply, by virtue of that section, to applications relating to decisions of the Upper Tribunal for Scotland.

Article 7 makes provision for the procedural steps where an application to the supervisory jurisdiction of the Court of Session is transferred to the Upper Tribunal under section 20 of the Tribunals, Courts and Enforcement Act 2007. This is equivalent to the provision made for applications transferred from that Court to the Upper Tribunal for Scotland by section 57A of the Tribunals (Scotland) Act 2014 (as inserted by paragraph 24 of schedule 5 to the 2014 Act).

Sections 103 to 106 of the 2014 Act confer powers upon the Court of Session by act of sederunt to regulate procedure and practice in connection with civil proceedings in the Court of Session, sheriff court and Sheriff Appeal Court, and to regulate the fees of specified persons. These re-enact and extend the existing powers of the Court of Session under section 5 of the Court of Session Act 1988 and section 32 of the Sheriff Courts (Scotland) Act 1971. Article 8 permits these powers to be exercised to make provision which relates to a reserved matter or modifies the law on reserved matters.

Article 9 transfers to the Scottish Courts and Tribunals Service the functions of the Scottish Ministers relating to the provision of accommodation and administrative support to, and the payment of allowances, fees and expenses in relation to, the Pensions Appeal Tribunal (Scotland).

The Schedule contains consequential amendments.

Paragraphs 1, 2, 5, 6 and 13, which do not extend to Scotland, repeal provisions which are repealed as a matter of Scots law by the 2014 Act.

Paragraphs 3 and 4 make repeals which are consequential upon the abolition of the office of honorary sheriff by section 26 of the 2014 Act.

Paragraph 7, which does not extend to Scotland, amends section 9 to the Administration of Justice Act 1973 to remove that section's application to Scottish judiciary. (Section 9 is repealed, as a matter of Scots law, by the 2014 Act.)

Paragraphs 8 and 9 amend the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 to add the new offices of summary sheriff and part-time summary sheriff to the list of those judges who are disqualified from membership of the House of Commons and Northern Ireland Assembly. They also update the references in those Acts to existing disqualified judges to reflect the new legal basis for their appointment or continuation in office under the 2014 Act.

Paragraph 10 amends the entry for "sheriff" in Schedule 1 to the Interpretation Act 1978.

Paragraph 11, which does not extend to Scotland, makes equivalent amendments to those made to the Civil Jurisdiction and Judgments Act 1982 as a matter of Scots law by paragraphs 7 and 13 of schedule 5 to the 2014 Act.

Paragraph 12 amends the Child Support Act 1991 in consequence of the repeal by the 2014 Act of the Sheriff Courts (Scotland) Act 1971.

Paragraph 14 amends the Judiciary and Courts (Scotland) Act 2008 (Consequential Provisions and Modifications) Order 2009 (which provided that Scottish Court Service established by section 60(1) of the Judiciary and Courts (Scotland) Act 2008 was part of the Scottish Administration) to reflect the re-naming of that body as the Scottish Courts and Tribunals Service by section 130(1) of the 2014 Act.

A full regulatory impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.