



Court of Session Act 1988

1988 CHAPTER 36

PART IV

OTHER CAUSES

Consistorial causes

19 Lord Advocate as party to action for nullity of marriage or divorce

- (1) The Lord Advocate may enter appearance as a party in any action of declarator of nullity of marriage or for divorce, and he may lead such proof and maintain such pleas as he thinks fit, and the Court shall, whenever it considers it necessary for the proper disposal of any such action, direct that the action shall be brought to the notice of the Lord Advocate in order that he may determine whether he should enter appearance therein.
- (2) No expenses shall be claimable by or against the Lord Advocate in any action in which he has entered appearance under this section.

20 Orders with respect to children

- (1) In any action for divorce, judicial separation or declarator of nullity of marriage, the Court may make, with respect to any child of the marriage to which the action relates, such order (including an interim order) as it thinks fit relating to parental rights, and may vary or recall such order.
- (2) In this section—
 - (a) “child” and “parental rights” have the same meaning as in section 8 of the Law Reform (Parent and Child)(Scotland) Act 1986; and
 - (b) “child of the marriage” includes any child who—
 - (i) is the child of both parties to the marriage; or
 - (ii) is the child of one party to the marriage and has been accepted as a child of the family by the other party.

*Exchequer causes***21 Exchequer causes to have precedence**

Exchequer causes shall at all times take precedence of and have preference over all other causes in the Court.

22 Lord Advocate to sue and be sued on behalf of the Crown

Except where any enactment otherwise provides, all exchequer causes brought—

- (a) on behalf of the Crown, shall be at the instance of the Lord Advocate;
- (b) by any person alleging any ground of action against the Crown, shall be directed against the Lord Advocate.

23 Lord Advocate may be heard last

In all exchequer causes, the Lord Advocate shall, in pleading on behalf of the Crown, have the privilege of being heard last.

24 Appeal to House of Lords

An appeal may be brought to the House of Lords against the judgment of the Inner House in an exchequer cause as if it were a judgment of the Inner House on the whole merits of the cause in an ordinary action.

*Petitions***25 Disposal of petitions initiated in Outer House**

- (1) The Lord Ordinary before whom any cause initiated by a petition comes shall have power to dispose of the petition himself.
- (2) For the purpose of disposing of such a cause, the Lord Ordinary may make such investigation and require such assistance from professional persons or persons of science or of skill as he thinks fit.
- (3) On any such cause coming before him, the Lord Ordinary may grant commission to take the depositions of havers and the evidence of witnesses as provided in section 10 of this Act with respect to an action.

*Summary trials***26 Summary trials**

- (1) The parties to any dispute or question to which this section applies may present a petition in the Outer House setting out the dispute or question and craving that it may be decided by a particular Lord Ordinary, and any such petition shall stand referred to such Lord Ordinary for his determination of the dispute or question.
- (2) The parties to any action in dependence in the Outer House not affecting the status of any person may agree by joint minute, or in such other manner as may be prescribed,

that the provisions of this section shall apply to the action, and thereafter those provisions shall apply accordingly.

- (3) Provision shall be made by act of sederunt under this Act for securing that causes under this section shall be disposed of with as little delay as possible.
- (4) This section shall apply to any dispute or question not affecting the status of any person which might competently be the subject of any cause in the Outer House, or which might competently have been the subject of any such cause but for section 7 of the Sheriff Courts (Scotland) Act 1907.

Special cases

27 Special cases

- (1) Where any parties interested, whether personally or in some fiduciary or official capacity, in the decision of a question of law are agreed upon the facts, and are in dispute only on the law applicable to those facts, it shall be competent for them without raising any proceeding, or at any stage of any proceeding, to present to the Inner House a case (in this section referred to as a special case) signed by their counsel setting out the facts upon which they are so agreed and the question of law arising from those facts; and the parties may ask the Court either for its opinion or for its judgment on that question of law.
- (2) The Court may, if it thinks fit, in case of difficulty or importance or of equal division, appoint a special case to be reheard by a larger court under section 36 of this Act.
- (3) The Court shall dispose of all questions of expenses arising in a special case.
- (4) Any judgment pronounced by the Court by virtue of this section shall be extractible in common form.
- (5) Any judgment pronounced by the Court by virtue of this section shall be liable to review by the House of Lords unless such review is excluded by consent of all the parties to the special case.