



Sheriff Courts and Legal Officers (Scotland) Act 1927

1927 CHAPTER 35

An Act to amend the law relating to the offices of Sheriff Clerk, Procurator Fiscal, and Commissary Clerk in Scotland, and to make further provision regarding Sheriff Courts. [22nd December 1927.]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I

SHERIFF CLERKS, PROCURATORS FISCAL, &C

1 Appointment of sheriff clerk and procurator fiscal

- (1) The right of appointing to and removing from the office of sheriff clerk shall be vested in one of His Majesty's Principal Secretaries of State. There shall be a sheriff clerk for each county in Scotland as heretofore, provided that it shall be lawful for the Secretary of State, where the division of sheriff court districts or other circumstances appear to him to render such a course expedient, to appoint a sheriff clerk for an area other than a county whether situated entirely within one county or not.
- (2) The right of appointing to and removing from the office of procurator fiscal shall be vested in the Lord Advocate, and the Lord Advocate may with the consent of the Treasury from time to time fix the number of procurators fiscal in Scotland, and the limits of the districts for which such procurators fiscal shall act.
- (3) Notwithstanding anything in either of the foregoing subsections, no sheriff clerk or procurator fiscal shall be removed from his office except upon a report by the Lord President of the Court of Session and the Lord Justice Clerk :

Provided that no such report shall be required in any case of retirement of a sheriff clerk or procurator fiscal in circumstances which would qualify him for an award under the Superannuation Acts, 1834 to 1919, or in consequence of the operation of an age limit.

2 Appointment of sheriff clerk and procurator fiscal deputes

In each county or district the Secretary of State and the Lord Advocate may respectively, with the consent of the Treasury as to numbers and salaries, appoint such sheriff clerk deputes or procurator fiscal deputes as may be necessary.

3 Whole-time sheriff clerks and procurators fiscal and deputes

The Secretary of State in the case of the office of any sheriff clerk or sheriff clerk depute, and the Lord Advocate in the case of the office of any procurator fiscal or procurator fiscal depute, and in either case with the consent of the Treasury, may from time to time, having regard to the amount of business to be performed, determine that such office shall be a whole-time office; and no person appointed to any such office under this Act (in this Act referred to as a whole-time officer) shall engage directly or indirectly in practice as a law agent or carry on any employment of such a nature as will, in the opinion of the Secretary of State or of the Lord Advocate as the case may be, interfere with the due discharge of the duties of his office.

4 Vacancy in office of sheriff clerk, procurator fiscal or deputes

In the case of a vacancy in the office of sheriff clerk, sheriff clerk depute, procurator fiscal or procurator fiscal depute, or in the case of the incapacity of any such officer, it shall be lawful for the Secretary of State and the Lord Advocate respectively to give directions for the discharge during the vacancy or incapacity of the duties of such officer by any other officer in the sheriff clerk or procurator fiscal service respectively, or by any other fit person.

5 Whole-time clerks

The Secretary of State and the Lord Advocate may respectively, with the consent of the Treasury as to numbers and salaries, appoint such whole-time clerks or other whole-time assistants to a sheriff clerk or procurator fiscal as may be deemed necessary, and such clerks or other assistants are in this Act referred to as whole-time clerks.

6 Tenure of whole-time officers

Every whole-time officer or whole-time clerk appointed under this Act shall be deemed to be employed in the Civil Service of the State, and if a certificate has been issued to him by the Civil Service Commissioners, allowances may be granted in his case accordingly under the Superannuation Acts.

7 Existing officers

- (1) A sheriff clerk, procurator fiscal, sheriff clerk depute, procurator fiscal depute or clerk in the office of a sheriff clerk or procurator fiscal, holding office at the commencement of this Act (which officers are hereinafter in this section referred to as existing sheriff court officers) to whom this section applies shall, notwithstanding anything in any Act

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or in the terms of his appointment, hold his office (subject to the provisions hereinafter in this section contained) on the like terms and conditions as if he had been appointed by the Secretary of State or the Lord Advocate under this Act.

- (2) No existing sheriff court officer shall for the purposes of the Superannuation Acts, 1834 to 1919, be deemed to be employed in the Civil Service of the State unless he was less than fifty-five years of age on the first day of October, nineteen hundred and eighteen, and has been granted a certificate by the Civil Service Commissioners, and no account shall be taken for the purposes of superannuation of any service by such officer prior to the issue of the certificate, except and in so far as the Treasury may otherwise direct.
- (3) An existing sheriff court officer to whom this section applies and who is not eligible for a superannuation allowance shall be deemed to be employed in a public department and shall be retired from his office on attaining the age of sixty-five years or on the commencement of this Act if he has attained such age prior thereto : Provided that the service of such officer may, with the consent of the Treasury, be extended by the Secretary of State or the Lord Advocate, as the case may be, for such period and on such conditions as he may direct.
- (4)
 - (a) Where an existing sheriff court officer to whom this section applies and who attained the age of fifty-five years on or before the first day of October, nineteen hundred and eighteen, is required, by reason only of his having attained any age, to retire from his employment, the Treasury may grant to him by way of compensation upon his retirement such gratuity in respect of any period during which he has been required to devote his whole time to the duties of his office, not exceeding twice the amount of the salary and emoluments received by him from any source whatsoever in respect of his office during his last year of service, as may seem to them just.
 - (b) In the case of an existing sheriff court officer to whom this section applies and who attained the age of fifty-five years on or before the first day of October, nineteen hundred and eighteen, the Treasury may, if in their opinion any special circumstances of the case warrant such a course, take account for the purpose of awarding a compassionate gratuity under section four of the Superannuation Act, 1887, as amended by section three of the Superannuation Act, 1914, of service rendered prior to the commencement of this Act.
 - (c) The decision of the Treasury on any question which arises as to the application of this subsection to any person or as to the amount of any gratuity thereunder shall be final.
- (5) Any remuneration received by any existing sheriff court officer from any source whatsoever in respect of his office during any period of which account may be taken for the purpose of this section shall, for the purpose of authorising the grant of an allowance or a gratuity under this section, be deemed to have been paid out of moneys provided by Parliament.
- (6) This section applies to any existing sheriff court officer in whose case the Secretary of State if the officer is in the sheriff clerk service, and the Lord Advocate if the officer is in the procurator fiscal service, with in either case the consent of the Treasury, directs that it shall apply: Provided always that no such direction shall be given in the case of any sheriff clerk or procurator fiscal without his consent if he was appointed to his office prior to the first day of October, nineteen hundred and twenty, and any sheriff clerk or procurator fiscal in whose case no such direction is given shall continue to hold his office on the terms on which he held it at the commencement of this Act.

- (7) An existing sheriff court officer whose consent is required to a direction under this section, or who is entitled to exercise any option with respect to retirement or to the conditions on which he shall hold his office after the commencement of this Act, shall be entitled to give such consent or exercise such option at any time within one year after the passing of this Act.

8 Secretary of State may issue instructions, & c

- (1) The Secretary of State as regards sheriff clerks and the Lord Advocate as regards procurators fiscal may from time to time issue such instructions as may be deemed necessary for the purpose of giving effect to the provisions of this Act.
- (2) The Secretary of State may from time to time by order make such modifications and adaptations of the provisions of any enactment as may be necessary in consequence of the exercise of the power vested in him by subsection (1) of section one of this Act to appoint a sheriff clerk for an area other than a county.

9 Deputation by sheriff clerk or procurator fiscal

Notwithstanding anything contained in section two of this Act, it shall be lawful for a sheriff clerk with the consent of the Secretary of State, and for a procurator fiscal with the consent of the Lord Advocate, to grant a deputation to a fit person for whose actings (except in the case where such person is a whole-time clerk) he shall be responsible.

10 Application to officers in commissary office

The commissary clerk of Edinburgh shall, for the purposes of this Act, be deemed to be a sheriff clerk, and the provisions of this Act with regard to sheriff clerk deputed and clerks in the office of sheriff clerks shall apply to deputed and clerks in the office of the said commissary clerk accordingly.

11 Power to unite offices

- (1) It shall be lawful for the Secretary of State by Order or Orders to direct that the office of the sheriff clerk of Midlothian, the office of sheriff clerk of chancery, and the office of commissary clerk of Edinburgh, or any two of such offices, shall be united to the effect that the offices shall be held and the duties thereof discharged by one and the same person.
- (2) Section fifty-four of the Titles to Land Consolidation (Scotland) Act, 1868, in so far as it directs that the salary to be paid to the sheriff clerk of chancery shall be payable out of the funds from which the salaries of sheriffs of counties are payable shall cease to have effect, and the said salary shall be paid out of moneys to be provided by Parliament.

12 Prosecutions at instance of procurator fiscal

It shall be lawful for the Lord Advocate, after consultation with the Treasury, by Order to direct in the case of any Act of Parliament that, notwithstanding anything therein contained all proceedings in the sheriff court under the Summary Jurisdiction (Scotland) Acts for a contravention of or an offence against such Act of Parliament shall be taken by and at the instance of the procurator fiscal, and, where any such Order has been made, all fines imposed or expenses awarded to the procurator fiscal

in any such proceedings shall be paid into the Exchequer and the expenses incurred by the procurator fiscal in any such proceedings shall be paid by the Exchequer.

13 Expenses

The salaries, allowances, pensions, gratuities, and any other sums payable under this Part of this Act shall be paid out of moneys provided by Parliament.

PART II

MISCELLANEOUS PROVISIONS

14 Appointment of interim sheriff substitute pending vacancy

An appointment in pursuance of section sixteen of the Sheriff Courts (Scotland) Act, 1907, of a person to act ad interim, in the place of a sheriff substitute to whom leave of absence has been granted, shall, in the event of a vacancy occurring in the office of such sheriff substitute prior to the expiry of the period of leave of absence, have effect as an appointment to act as sheriff substitute until the vacancy shall be filled.

15 Fees in workmen's compensation proceedings

Paragraph 13 of the First Schedule to the Workmen's Compensation Act, 1925, in so far as it excludes from application to Scotland paragraph 12 of the said Schedule shall cease to have effect and accordingly in the said paragraph 13 the words from "and in its application " to the end of the paragraph shall be repealed.

16 Court of Session may prescribe forms, & c

The Court of Session may from time to time by Act of Sederunt prescribe any form of procedure in the sheriff's ordinary or small debt court or in proceedings for the confirmation of executors, or any other form required in connection with any duty devolving on a sheriff clerk or the form of any register required to be kept by a sheriff clerk and the particulars to be entered therein, and, where any such form as aforesaid is prescribed by any Act of Parliament, the Court may, notwithstanding anything in such Act contained, in the exercise of the power hereinbefore conferred, alter or amend any such form or cancel the same and substitute another form therefor. The foregoing provisions shall not extend to forms of procedure under the Summary Jurisdiction (Scotland) Acts.

17 Recording of memoranda in workmen's compensation proceedings

Where a sheriff clerk is required under section twenty-three of the Workmen's Compensation Act, 1925, to record a memorandum in the special register, it shall be sufficient compliance with such requirement if the sheriff clerk endorses and signs a note on the memorandum specifying the date of recording of the same and retains such memorandum, which shall in any such case be deemed to be recorded in and to form part of such special register.

18 Fee for consent to exemption of dogs from, excise licence

On an application to the sheriff or sheriff substitute under section five of the Dogs Act, 1906, for consent to the grant of a certificate of exemption from duty in respect of a dog, there shall be chargeable such fee, not exceeding one shilling, as may be prescribed by Act of Sederunt under the said section, and the words in subsection (2) of the said section from " No fee " to the end of the subsection are hereby repealed.

19 Calendar of confirmations

It shall be lawful for the Secretary of State by Order to direct that the calendar of confirmations and inventories prepared under section forty-five of the Sheriff Courts (Scotland) Act, 1876, shall contain, in lieu of the particulars specified in the said section, such particulars as may be prescribed in the Order and that copies of such calendar shall be sent to such persons as may be prescribed in lieu of the persons specified in the said section, and to prescribe the particulars which shall be included in the lists or registers furnished by the sheriff clerk to the commissary clerk in pursuance of the said section.

20 Summary complaints at instance of procurator fiscal

A complaint under the Summary Jurisdiction (Scotland) Acts at the instance of a person discharging the duties of procurator fiscal for any district, may, in the event of that person dying or ceasing to be entitled to discharge the duties of procurator fiscal for such district, be taken up and proceeded with by any other person entitled to discharge such duties.

21 Amendment of 7 Edw.7 c.51

Rule 85 of the First Schedule to the Sheriff Courts (Scotland) Act, 1907, shall be amended by the substitution for the words " if the same shall not have " been sooner appealed against" of the words "unless " either an appeal has been taken or leave to appeal has " been applied for," and by the addition at the end of the Rule of the words " provided that an application for " leave to appeal shall not preclude the issuing of extract " unless leave is granted and an appeal is taken within " seven days after leave is granted."

22 Commencement of sections 14 to 20

The foregoing provisions of this Part of this Act shall come into operation on the passing thereof.

23 Repeals

The enactments specified in the Schedule are hereby repealed to the extent mentioned in the third column of that Schedule.

24 Commencement, extent and short title

- (1) This Act shall (save as otherwise expressly provided) come into operation on such date not later than the expiry of three months after the passing of the Act, as may be fixed by the Secretary of State.

- (2) This Act shall extend to Scotland only, and may be cited as the Sheriff Courts and Legal Officers (Scotland) Act, 1927.

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SCHEDULE

Section 23.

Session and Chapter.	Short Title.	Extent of Repeal.
1 & 2 Vict. c. 119.	The Sheriff Courts (Scotland) Act, 1838.	Section twenty-eight.
39 & 40 Vict. c. 70.	The Sheriff Courts (Scotland) Act, 1876.	Section forty.
7 Edw. 7. c. 51	The Sheriff Courts (Scotland) Act, 1907.	Sections twenty-two to twenty-four.