



Sheriff Courts (Scotland) Act 1971

1971 CHAPTER 58

PART I

CONSTITUTION, ORGANISATION AND ADMINISTRATION

General duty of the Secretary of State

1 Secretary of State to be responsible for organisation and administration of sheriff courts

Subject to the provisions of this Act, the Secretary of State shall be under a duty to secure the efficient organisation and administration of the sheriff courts, and for the purpose of carrying out that duty shall have, in addition to any functions conferred on him by or under any other enactment, the functions conferred on him by the following provisions of this Act.

Sheriffdoms

2 Power of Secretary of State to alter sheriffdoms

- (1) The Secretary of State may by order alter the boundaries of sheriffdoms, form new sheriffdoms, or provide for the abolition of sheriffdoms existing at the time of the making of the order.
- (2) An order under subsection (1) above may contain all such provisions as appear to the Secretary of State to be necessary or expedient for rendering the order of full effect and any incidental, supplemental or consequential provisions which appear to him to be necessary or expedient for the purposes of the order, including, but without prejudice to the generality of the foregoing words—
 - (a) provision for the abolition of any office,
 - (b) provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this Act, and including any enactment contained in or made under this Act).

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- (3) Where an order under subsection (1) above includes, by virtue of subsection (2)(a) above, provision for the abolition of any office, then—
- (a) that provision shall have effect notwithstanding the provisions of any enactment (including any enactment contained in this Act), or of any instrument in terms of which any person holds that office ;
 - (b) the Secretary of State may, with the concurrence of the Minister for the Civil Service, pay to or in respect of any person who suffers loss of employment, or loss or diminution of emoluments, which is attributable to the said provision such amount by way of compensation as may appear to the Secretary of State to be reasonable in all the circumstances.
- (4) The power to make orders under subsection (1) above shall be exercisable by statutory instrument, but no order shall be made under that subsection unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Sheriff court districts and places where sheriff courts are to be held

3 Sheriff court districts and places where sheriff courts are to be held

- (1) Subject to any alterations made by an order under section 2(1) of this Act or under subsection (2) below—
- (a) the sheriff court districts existing immediately before the commencement of this Act shall continue to exist after such commencement, and
 - (b) sheriff courts shall, after such commencement, continue to be held at the places at which they were in use to be held immediately before such commencement.
- (2) The Secretary of State may by order—
- (a) alter the boundaries of sheriff court districts, form new districts, or provide for the abolition of districts existing at the time of the making of the order ;
 - (b) provide that sheriff courts shall be held, or shall cease to be held, at any place.
- (3) An order under subsection (2) above may contain all such provisions as appear to the Secretary of State to be necessary or expedient for rendering the order of full effect and any incidental, supplemental or consequential provisions which appear to him to be necessary or expedient for the purposes of the order, including, but without prejudice to the generality of the foregoing words, provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this Act, and including any enactment contained in or made under this Act).
- (4) The Secretary of State may, with the concurrence of the Minister for the Civil Service, pay to or in respect of any person who suffers loss of employment, or loss or diminution of emoluments, which is attributable to an order under subsection (2) above such amount by way of compensation as may appear to the Secretary of State to be reasonable in all the circumstances.
- (5) The power to make orders under subsection (2) above shall be exercisable by statutory instrument.
- (6) Without prejudice to subsection (1) above, any enactment or other instrument in force immediately before the commencement of this Act shall, to the extent that it fixes

sheriff court districts or the places at which sheriff courts are to be held, cease to have effect.

Sheriffs principal and sheriffs

4 Offices of sheriff principal and sheriff

- (1) The office of sheriff (that is to say, the office known formerly as the office of sheriff depute, but known immediately before the commencement of this Act as the office of sheriff) shall be known as the office of sheriff principal, the office of sheriff substitute shall be known as the office of sheriff, and the office of honorary sheriff substitute shall be known as the office of honorary sheriff.
- (2) Accordingly, any enactment or other document in force or having effect at the commencement of this Act which refers whether expressly or by implication, or which falls to be construed as referring, or as including a reference, to the office of sheriff (as defined in subsection (1) above), or to the office of sheriff substitute, or to the office of honorary sheriff substitute, or to the holder of any of the said offices, shall be construed in accordance with subsection (1) above.
- (3) Section 28 of the Interpretation Act 1889 (which provides that the expression " sheriff " shall, as respects Scotland, include a sheriff substitute) shall have effect as if for the words " sheriff substitute " there were substituted the words " sheriff principal " ; and the said section 28 shall not apply for the interpretation of this Act.

5 Qualification for offices of sheriff principal and sheriff

- (1) A person shall not be appointed to the office of sheriff principal or sheriff unless he is, and has been for at least ten years, legally qualified.

For the purposes of this subsection, a person shall be legally qualified if he is an advocate or a solicitor.

- (2) Without prejudice to section 11(3) of this Act, in this section " sheriff principal " does not include a temporary sheriff principal and " sheriff " does not include a temporary sheriff or an honorary sheriff.

6 Disqualification of sheriffs principal and sheriffs

- (1) A sheriff principal to whom this subsection applies, or a sheriff, shall not, so long as he holds office as such—
 - (a) engage, whether directly or indirectly, in any private practice or business, or be in partnership with or employed by, or act as agent for, any person so engaged; or
 - (b) accept appointment to any office, except such office as may by statute be attached to the office of sheriff principal or sheriff, as the case may be.
- (2) Subsection (1) above shall apply to any person holding the office of sheriff principal who is appointed to that office after the commencement of this Act and on whose appointment the Secretary of State directs that that subsection shall apply to him.
- (3) The sheriff principal of any sheriffdom, not being either a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or a sheriff

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principal to whom subsection (1) above applies, shall not, so long as he holds office as such, advise, or act as an advocate in any court, in any cause civil or criminal arising within or coming from that sheriffdom.

- (4) Any reference in any enactment passed before the commencement of this Act to a sheriff principal who is restricted by the terms of his appointment from engaging in private practice shall be construed as including a reference to a sheriff principal to whom subsection (1) above applies.
- (5) Without prejudice to the giving of any direction under section 11(5) of this Act, in this section "sheriff principal" does not include a temporary sheriff principal and "sheriff" does not include a temporary sheriff or an honorary sheriff.

7 Jurisdiction of sheriff

For removal of doubt it is hereby declared that a sheriff, by virtue of his appointment as such, has and is entitled to exercise the jurisdiction and powers attaching to the office of sheriff in all parts of the sheriffdom for which he is appointed.

8 Sheriff may be appointed to assist Secretary of State

Notwithstanding anything in section 6 of this Act, a person holding the office of sheriff principal or sheriff may, without relinquishing that office, be appointed by the Secretary of State to assist him to discharge the functions vested in him in relation to the organisation and administration of the sheriff courts, but a person so appointed shall not perform his duties as the holder of the office of sheriff principal or sheriff, as the case may be, while he retains that appointment.

Functions of the Secretary of State in relation to sheriffs principal, sheriffs, etc.

9 Power of Secretary of State to give administrative directions

For the purpose of securing the efficient organisation and administration of the sheriff courts and, in particular, the speedy and efficient disposal of business in those courts, the Secretary of State may give such directions of an administrative nature as appear to him to be necessary or expedient, and any sheriff principal or sheriff, and any officer or servant engaged in the administration of the sheriff courts, to whom a direction is given under this section shall, subject to the provisions of this Act, give effect to that direction.

10 Secretary of State may authorise sheriff principal or direct sheriff to act in another sheriffdom

- (1) Where—
- (a) the sheriff principal of any sheriffdom is by reason of illness or otherwise unable to perform his duties as sheriff principal, or
 - (b) a vacancy occurs in the office of sheriff principal of any sheriffdom,
- the Secretary of State may, if it appears to him expedient so to do in order to avoid delay in the administration of justice in that sheriffdom, authorise the sheriff principal of any other sheriffdom to perform the duties of sheriff principal in the first-mentioned sheriffdom (in addition to his own duties) until the Secretary of State otherwise decides.

- (2) Where as regards any sheriffdom—
- (a) a sheriff is by reason of illness or otherwise unable to perform his duties as sheriff, or
 - (b) a vacancy occurs in the office of sheriff, or
 - (c) for any other reason it appears to the Secretary of State expedient so to do in order to avoid delay in the administration of justice in that sheriffdom,
- the Secretary of State may direct a sheriff appointed for any other sheriffdom to perform, in accordance with the terms of the direction, the duties of sheriff in the first-mentioned sheriffdom (in addition to or in place of his own duties) until otherwise directed by the Secretary of State, and any sheriff to whom a direction is given under this subsection shall give effect to that direction.
- (3) A sheriff principal authorised, or a sheriff directed, under this section to perform duties in any sheriffdom shall for that purpose, without the necessity of his receiving a commission in that behalf, have and be entitled to exercise the jurisdiction and powers attaching to the office of sheriff principal or, as the case may be, sheriff in that sheriffdom.
- (4) The Secretary of State may, with the approval of the Treasury, pay to a sheriff principal or a sheriff, in respect of any duties performed by that sheriff principal or sheriff (in addition to his own duties) in pursuance of an authority or direction under this section, such remuneration and allowances as may appear to the Secretary of State to be reasonable in all the circumstances.
- (5) In this section " sheriff " does not include an honorary sheriff.

11 Secretary of State may appoint temporary sheriffs principal and sheriffs

- (1) Where—
- (a) the sheriff principal of any sheriffdom is by reason of illness or otherwise unable to perform his duties as sheriff principal, or
 - (b) a vacancy occurs in the office of sheriff principal of any sheriffdom,
- the Secretary of State may, if it appears to him expedient so to do in order to avoid delay in the administration of justice in that sheriffdom, appoint a person (to be known as a temporary sheriff principal) to act as sheriff principal of the sheriffdom.
- (2) Where as regards any sheriffdom—
- (a) a sheriff is by reason of illness or otherwise unable to perform his duties as sheriff, or
 - (b) a vacancy occurs in the office of sheriff, or
 - (c) for any other reason it appears to the Secretary of State expedient so to do in order to avoid delay in the administration of justice in that sheriffdom,
- the Secretary of State may appoint a person (to be known as a temporary sheriff) to act as a sheriff for the sheriffdom.
- (3) A person shall not be appointed to be a temporary sheriff principal or a temporary sheriff unless he is legally qualified, and has been so qualified—
- (a) in the case of an appointment as a temporary sheriff principal, for at least ten years ;
 - (b) in the case of an appointment as a temporary sheriff, for at least five years.

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For the purposes of this subsection, a person shall be legally qualified if he is an advocate or a solicitor.

- (4) The appointment of a temporary sheriff principal or of a temporary sheriff shall subsist until recalled by the Secretary of State.
- (5) If the Secretary of State, on appointing any person to be a temporary sheriff principal or a temporary sheriff, so directs, the provisions of section 6(1) of this Act shall apply in relation to that person as they apply in relation to a person holding the office of sheriff.
- (6) A person appointed to be temporary sheriff principal of, or a temporary sheriff for, any sheriffdom shall for the purposes of his appointment, without the necessity of his receiving a commission in that behalf, have and be entitled to exercise the jurisdiction and powers attaching to the office of sheriff principal or, as the case may be, sheriff in that sheriffdom.
- (7) The appointment of any person holding the office of sheriff to be a temporary sheriff principal shall not affect the commission held by that person as sheriff, but he shall not, while his appointment as a temporary sheriff principal subsists, perform any duties by virtue of the said commission.
- (8) The Secretary of State may pay to any person appointed to be a temporary sheriff principal or a temporary sheriff such remuneration and allowances as the Treasury, on the recommendation of the Secretary of State, may determine.

12 Removal from office, and suspension, of sheriff principal or sheriff

- (1) The Lord President of the Court of Session and the Lord Justice Clerk may of their own accord and shall, if they are requested so to do by the Secretary of State, undertake jointly an investigation into the fitness for office of any sheriff principal or sheriff and, as soon as practicable after completing that investigation, shall report in writing to the Secretary of State either—
 - (a) that the sheriff principal or sheriff is fit for office, or
 - (b) that the sheriff principal or sheriff is unfit for office by reason of inability, neglect of duty or misbehaviour,
 and shall in either case include in their report a statement of their reasons for so reporting.
- (2) The Secretary of State may, if a report is made to him under subsection (1) above to the effect that any sheriff principal or sheriff is unfit for office by reason of inability, neglect of duty or misbehaviour, make an order removing that sheriff principal or sheriff from office.
- (3) An order under subsection (2) above—
 - (a) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament,
 - (b) shall not be made so as to come into operation before the expiry, in relation to the order, of the period of forty days mentioned in section 5(1) of the Statutory Instruments Act 1946.
- (4) The Lord President of the Court of Session and the Lord Justice Clerk may, on undertaking an investigation under subsection (1) above or at any time during the course of such an investigation, if they think it proper so to do, recommend in writing

to the Secretary of State that the sheriff principal or sheriff who is the subject of the investigation be suspended from office, and the Secretary of State may, on receiving such a recommendation as aforesaid, suspend that sheriff principal or sheriff from office.

- (5) A sheriff principal or a sheriff suspended from office under subsection (4) above shall remain so suspended until the Secretary of State otherwise directs.
- (6) The suspension from office of a sheriff principal or a sheriff under subsection (4) above shall not affect the payment to him of his salary in respect of the period of his suspension.
- (7) In this section " sheriff principal" does not include a temporary sheriff principal and " sheriff " does not include a temporary sheriff or an honorary sheriff.

13 Functions of Secretary of State with respect to residence and leave of absence of sheriffs principal

- (1) The Secretary of State may require any sheriff principal (being a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or to whom section 6(1) of this Act applies) to reside ordinarily at such place as the Secretary of State may specify.
- (2) The Secretary of State may approve such leave of absence for any sheriff principal (being a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or to whom section 6(1) of this Act applies) as appears to the Secretary of State to be proper, but the amount of leave so approved (other than leave granted on account of ill-health) shall not, unless the Secretary of State for special reasons otherwise permits, exceed seven weeks in any year.

14 Functions of Secretary of State with respect to number, residence and place of duties of sheriffs

- (1) The Secretary of State may, with the approval of the Treasury, by order prescribe the number of sheriffs to be appointed for each sheriffdom.
- (2) The Secretary of State may require any sheriff to reside ordinarily at such place as the Secretary of State may specify.
- (3) The Secretary of State—
 - (a) shall, on the appointment of a person to hold the office of sheriff for any sheriffdom,
 - (b) may, at any subsequent time while the said person holds that office, give to that person a direction designating the sheriff court district or districts in which he is to perform his duties as sheriff:

Provided that a direction given to a sheriff under this subsection shall be subject to any instruction given to that sheriff under section 15 of this Act by the sheriff principal of the sheriffdom, being an instruction given for the purpose of giving effect to any special provision made by the sheriff principal under section 16(1)(b) of this Act.

- (4) If for the purpose of securing the efficient organisation and administration of the sheriff courts, and after consultation with the Lord President of the Court of Session, the Secretary of State by order so directs, a person holding the office of sheriff for any sheriffdom shall, on such date as may be specified in the order, cease to hold that office

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and shall, on and after that date, without the necessity of his receiving a commission in that behalf, hold instead the office of sheriff for such other sheriffdom as may be so specified; and on making an order under this subsection with respect to any person the Secretary of State shall give to that person a direction under subsection (3) above designating the sheriff court district or districts in which he is to perform his duties as sheriff.

- (5) In this section " sheriff " does not include an honorary sheriff, and in subsections (1) and (4) above does not include a temporary sheriff.

Functions of the sheriff principal in relation to sheriffs, etc.

15 General functions of sheriff principal

- (1) Subject generally to the provisions of this Act, and in particular to the provisions of this or any other Act conferring functions on the Secretary of State or anything done under any such provision, the sheriff principal of each sheriffdom shall be under a duty to secure the speedy and efficient disposal of business in the sheriff courts of that sheriffdom, and for the purpose of carrying out that duty shall have, in addition to any functions conferred on him by or under any other enactment, the functions conferred on him by the following provisions of this Act.
- (2) For the purpose of securing the effective discharge of any of the said functions the sheriff principal of any sheriffdom may give such instructions of an administrative nature as appear to him to be necessary or expedient, and any sheriff appointed for that sheriffdom, and any officer or servant engaged in the administration of the sheriff courts in the sheriffdom, to whom an instruction is given under this section shall, subject to the provisions of this Act, give effect to that instruction.

16 Functions of sheriff principal with respect to duties and leave of absence of sheriffs

- (1) The sheriff principal of each sheriffdom shall make such arrangements as appear to him necessary or expedient for the purpose of securing the speedy and efficient disposal of business in the sheriff courts of that sheriffdom, and in particular, but without prejudice to the generality of the foregoing words, may—
- (a) subject to any direction given by the Secretary of State under section 9 of this Act, provide for the division of such business as aforesaid between the sheriff principal and the sheriffs appointed for the sheriffdom, and for the distribution of the business (so far as allocated to the sheriffs) amongst those sheriffs ;
 - (b) where any of those sheriffs is by reason of illness or otherwise unable to perform his duties as sheriff, or a vacancy occurs in the office of sheriff in the sheriffdom, or for any other reason it appears to the sheriff principal expedient so to do in order to avoid delay in the administration of justice in the sheriffdom, make special provision of a temporary nature for the disposal of any part of the- said business either by the sheriff principal or by any of the sheriffs appointed for the sheriffdom, in addition to or in place of the sheriff principal's or, as the case may be, that sheriff's own duties;
- so, however, that nothing done under this subsection shall enable a sheriff to dispose of business which he does not otherwise have power to dispose of.

- (2) The sheriff principal of any sheriffdom may approve such leave of absence for any sheriff appointed for that sheriffdom as appears to the sheriff principal to be proper, but the amount of leave so approved (other than leave granted on account of ill-health) shall not, unless the Secretary of State for special reasons otherwise permits, exceed seven weeks in any year.
- (3) In subsection (2) above " sheriff" shall not include an honorary sheriff.

17 Sheriff principal may fix sittings and business of sheriff courts in sheriffdom, and sessions for civil business

- (1) The sheriff principal of each sheriffdom may by order prescribe—
 - (a) the number of sheriff courts to be held at each of the places within that sheriffdom at which a court is required under or by virtue of this Act to be held,
 - (b) subject to section 25(2) of this Act, the days on which and the times at which those courts are to be held,
 - (c) the descriptions of business to be disposed of at those courts.
- (2) The sheriff principal of each sheriffdom shall by order prescribe the dates of the sessions to be held in the sheriff courts of that sheriffdom for the disposal of civil business, and may prescribe different dates in relation to different courts, so however that—
 - (a) there shall be held in the courts of each sheriffdom three sessions in each year for the disposal of civil business, that is to say, a winter session, a spring session and a summer session ;
 - (b) the dates of the sessions prescribed under this subsection shall not be such as to allow, in any court, a vacation of longer than two weeks at Christmas time, four weeks in the spring and eight weeks in the summer.
- (3) The sheriff principal of each sheriffdom shall, before the end of the spring session in each year, fix in respect of each sheriff court in that sheriffdom at least one day during the vacation immediately following that session for the disposal of civil business in that court, and shall, before the end of the summer session in each year, fix in respect of each court at least two days during the vacation immediately following that session for the said purpose; but civil proceedings in the sheriff courts may proceed during vacation as during session, and interlocutors may competently be pronounced during vacation in any such proceedings.
- (4) A sheriff principal shall give notice of any matter prescribed or fixed by him under the foregoing provisions of this section in such manner as he may think sufficient for bringing that matter to the attention of all persons having an interest therein.
- (5) Subject to anything done under subsection (1) above, or by an order under section 2(1) or section 3(2) of this Act, after the commencement of this Act—
 - (a) there shall be held at each of the places at which a sheriff court was in use to be held immediately before such commencement the same number of courts as was in use to be held there immediately before such commencement;
 - (b) the court days and times in use to be observed in any sheriff court immediately before such commencement (whether in pursuance of any enactment or other instrument or otherwise) shall continue to be observed in that court;

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- (c) the descriptions of business in use to be dealt with on court days in any sheriff court immediately before such commencement shall continue to be dealt with on those days.
- (6) Without prejudice to subsection (5) above, any enactment or other instrument in force immediately before the commencement of this Act shall, to the extent that it contains provisions with respect to any matter which the sheriff principal has power to prescribe under subsection (1) above, cease to have effect.

18 Secretary of State may exercise certain functions of sheriff principal in certain circumstances

If in any case the Secretary of State considers—

- (a) that the exercise by the sheriff principal of any sheriffdom of any of the functions conferred on him by sections 15 to 17 of this Act, or
- (b) that the failure of the sheriff principal of any sheriffdom to exercise any of the said functions,

is prejudicial to the speedy and efficient disposal of business in the sheriff courts of that sheriffdom or to the efficient organisation or administration of the sheriff courts generally, or is otherwise against the interests of the public, the Secretary of State may—

- (i) (in the circumstances mentioned in paragraph (a) above) rescind that exercise of that function by the sheriff principal and, if he thinks fit, himself exercise that function in that case ;
- (ii) (in the circumstances mentioned in paragraph (b) above) himself exercise that function in that case, and the exercise of any function of a sheriff principal by the Secretary of State under this section shall have effect as if it were an exercise of that function by the sheriff principal.

Miscellaneous

19 Travelling allowances for sheriffs principal

The Secretary of State may pay to any sheriff principal, in addition to the salary of that sheriff principal, such allowances as the Secretary of State, with the concurrence of the Treasury, may determine in respect of the travelling expenses incurred by the sheriff principal in the performance of the duties of his office.

20 Extension of purposes for which Lord Advocate may give instructions to procurators fiscal

The purposes for which the Lord Advocate may issue instructions to procurators fiscal under section 8(1) of the Sheriff Courts and Legal Officers (Scotland) Act 1927 shall include, in addition to the purpose mentioned in the said section 8(1), the speedy and efficient disposal of business in the sheriff courts.

21 Amendment of Schedule 1 to House of Commons Disqualification Act 1957

In Part I of Schedule 1 to the House of Commons Disqualification Act 1957 (judicial offices the holders of which are disqualified under that Act), in its application to the House of Commons of the Parliament of the United Kingdom, for the entry relating

to sheriffs, salaried sheriffs substitute and interim sheriffs substitute there shall be substituted the following entry:—

“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.”.

22 Saving for existing functions

Nothing in the foregoing provisions of this Act shall affect the discharge by any person of any function lawfully held by him immediately before the commencement of this Act, except in so far as the discharge of that function is or would be inconsistent with any of those provisions or anything done thereunder.

PART II

COURT HOUSES, BUILDINGS AND OFFICES

23 Transfer of court houses to Secretary of State

- (1) Subject to the provisions of this section, there shall on the transfer date be transferred to and vest in the Secretary of State by virtue of this subsection all interests held by—
 - (a) a county council, being interests in or attaching to property used immediately before the transfer date by them for the purposes of their functions under the Sheriff Court Houses (Scotland) Acts 1860 to 1884 (which provide for the provision and maintenance of sheriff court houses);
 - (b) Court House Commissioners or other bodies charged with the like functions (such Commissioners and other bodies being hereafter in this Part of this Act referred to as Commissioners), being interests in or attaching to property used immediately before the transfer date by them for the purposes of functions conferred on them by any local enactment, being functions relating to the provision or maintenance of a sheriff court house.
- (2) Subject to the provisions of this section, all rights, liabilities and obligations to which a county council or Commissioners were entitled or subject immediately before the transfer date, being rights, liabilities and obligations acquired or incurred for the purposes of any such functions as are mentioned in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above, shall on the transfer date be transferred to and vest in the Secretary of State by virtue of this subsection.
- (3) Subject to the provisions of this section, where before the transfer date a local authority have paid to Commissioners any sum levied on that authority by those Commissioners under any local enactment, being a sum so levied for the purpose of enabling or assisting the Commissioners to discharge any such functions as are mentioned in paragraph (b) of subsection (1) above, then any liabilities or obligations to which the authority were subject immediately before the transfer date shall, to the extent that they were incurred for the purpose of enabling or assisting the authority to pay the said sum, be transferred to and vest in the Secretary of State by virtue of this subsection on the transfer date.
- (4) There shall be apportioned between the Secretary of State and the other persons concerned—

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- (a) interests in or attaching to property used partly for the purposes of the functions mentioned in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above and partly for other purposes;
 - (b) periodical sums payable in respect of such interests;
 - (c) rights, liabilities and obligations acquired or incurred partly for the purposes of any such functions as are mentioned in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above and partly for other purposes.
- (5) The Secretary of State may make regulations providing—
- (a) for the completion of the title of the Secretary of State to heritable property vesting in him by virtue of this section;
 - (b) for the granting of the deeds required to transfer to and vest in the Secretary of State and the other persons concerned, with effect from the transfer date, the appropriate shares of such interests, sums, rights, liabilities or obligations as are specified in subsection (4) of this section;
 - (c) for any other matters for which provision appears to the Secretary of State to be necessary or expedient for the purpose of securing the effective transfer of any assets vesting in the Secretary of State by virtue of this section;
 - (d) for securing that anything done by or in relation to a county council or, as the case may be, Commissioners before the transfer date in connection with the exercise of any such functions as are mentioned in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above is deemed on and after that date to have been done by or in relation to the Secretary of State and, without prejudice to the foregoing provisions of this paragraph, that anything begun before that date by a county council or, as the case may be, Commissioners in the exercise of their said functions may be carried on and completed on and after that date by the Secretary of State ;
- and any such regulations may contain such incidental, supplemental or consequential provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the regulations.
- (6) The power to make regulations under subsection (5) above shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section references to the Secretary of State are references to the Secretary of State for the Environment.

24 Provision and maintenance of court houses by Secretary of State

- (1) The Secretary of State may, with the approval of the Treasury, provide such court houses, offices, buildings and other accommodation as may be necessary or desirable for carrying on the business of the sheriff courts.
- (2) The Secretary of State shall cause all court houses, offices, buildings and other accommodation used for the purpose of carrying on the business of the sheriff courts to be maintained in a proper state of repair and adequately furnished, equipped, cleaned, lighted and heated.
- (3) It is hereby declared that the references to land necessary for the public service in—
 - (a) section 2 of the Commissioners of Works Act 1852 (acquisition by agreement of land necessary for the public service), and

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- (b) section 30(1) of the Town and Country Planning (Scotland) Act 1969 (compulsory acquisition of land necessary for the public service), include references to any land which is required by the Secretary of State for the purpose of the discharge of his functions under this section.
- (4) For the purpose of the acquisition by agreement of land required by the Secretary of State for the purpose of the discharge of his functions under this section, the Lands Clauses Acts (except so much thereof as relates to the acquisition of land otherwise than by agreement and the provisions relating to access to the special Act and except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845), and section 6 and sections 70 to 78 of the Railways Clauses Consolidation (Scotland) Act 1845 (as originally enacted and not as amended by section 15 of the Mines (Working Facilities and Support) Act 1923) are hereby incorporated with this Act, and in construing those Acts for the purposes of this Act, this Act shall be deemed to be the special Act and the Secretary of State shall be deemed to be the promoter of the undertaking.
- (5) Subsections (1), (2) and (3) of section 35 of the Local Government (Scotland) Act 1966 (which, among other things, enable a local authority to enter into an agreement with the Secretary of State for the placing at his disposal, for the purposes of any function of his, of staff, etc., of the authority) shall apply also for the purpose of enabling Commissioners to enter into an agreement with the Secretary of State, being an agreement in relation to the discharge of his functions under this section of such a nature as is described in the said subsection (1); and for the purpose of such application the first and last references to a local authority in each of the said subsections (1) and (2) shall include a reference to Commissioners.

25 Use of public buildings for holding of courts

- (1) Where in any place in which a sheriff court is to be held there is a building, being a court house or other building belonging to a local or other public authority, then, if it appears to the Secretary of State expedient for the purpose of avoiding delay in the administration of justice, that building shall, with all necessary rooms, furniture and fittings therein, be used for the purpose of holding the court, without payment for such use except the reasonable and necessary charges for cleaning, lighting and heating the building when used for the said purpose.
- (2) Where any such building is used for the purpose of holding a sheriff court, the sittings of the court shall be so arranged as not to interfere with the business of the local or other public authority usually transacted in the building or with any purpose for which the building may be used by virtue of any local enactment.

26 Use of court houses by third parties

The Secretary of State may enter into agreements with any person for and with respect to the use by that person, on such terms and conditions as may be determined by the Secretary of State, of court houses, offices, buildings or other accommodation used for the purpose of carrying on the business of the sheriff courts, so however that any use so agreed shall be at such times as the said court houses, offices, buildings or other accommodation are not required for the said purpose.

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27 Compensation for officers and servants

- (1) The Secretary of State may, with the concurrence of the Minister for the Civil Service, make regulations providing for the payment by the Secretary of State, subject to such exceptions or conditions as may be prescribed in the regulations, of compensation to or in respect of persons who suffer loss of employment, or loss or diminution of emoluments, which is attributable to the provisions of this Part of this Act or of any regulations made thereunder.
- (2) Regulations under this section may—
 - (a) include provision for the determination of questions arising under the regulations,
 - (b) be framed so as to have effect from a date earlier than the making of the regulations,but so that regulations having effect from a date earlier than their making shall not place any individual in a worse position than he would have been in if the regulations had been so framed as to have effect only from the date of their making.
- (3) Regulations under this section may contain such incidental, supplemental or consequential provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the regulations.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

28 Repeal and amendment of local enactments

- (1) If it appears to the Secretary of State that any local enactment passed or made before the transfer date is inconsistent with any of the provisions of this Part of this Act or of any regulations made thereunder, or requires to be amended having regard to any of the provisions of that Part or of any such regulations, he may by order repeal or amend that enactment to such extent, or in such manner, as he considers appropriate.
- (2) An order under this section may contain such incidental, supplemental or consequential provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the order.
- (3) The power to make orders under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

29 Determination of disputes

Any dispute arising from the operation of the provisions of this Part of this Act or of regulations made thereunder (other than regulations made under section 27 thereof) shall, in default of agreement, be determined by an arbiter agreed upon by the parties or, failing such agreement, appointed by the Lord President of the Court of Session on the application of any of the parties to the dispute.

30 Interpretation of Part II

In this Part of this Act—

" local enactment " includes a provision in any local Act of Parliament;

" the transfer date " means such date as the Secretary of State may by order made by statutory instrument appoint for the purposes of this Part of this Act.

PART III

CIVIL JURISDICTION, PROCEDURE AND APPEALS

Civil jurisdiction

31 Upper limit to privative jurisdiction of sheriff court to be £250

Section 7 of the Sheriff Courts (Scotland) Act 1907 (which provides that all causes not exceeding fifty pounds in value which are competent in the sheriff court are to be brought in that court only, and are not to be subject to review by the Court of Session) shall have effect as if for the words " fifty pounds " there were substituted the words " two hundred and fifty pounds ".

Regulation of procedure in civil proceedings

32 Power of Court of Session to regulate civil procedure in sheriff court

- (1) Subject to the provisions of this section, the Court of Session may by act of sederunt regulate and prescribe the procedure and practice to be followed in any civil proceedings in the sheriff court (including any matters incidental or relating to any such procedure or practice), and, without prejudice to the generality of the foregoing words, the power conferred on the Court of Session by this section shall extend to—
- (a) regulating the procedure to be followed in connection with execution or diligence following on any civil proceedings;
 - (b) prescribing the manner in which, the time within which, and the conditions on which, an appeal may be taken to the sheriff principal from an interlocutor of a sheriff, or to the Court of Session from an interlocutor of a sheriff principal or a sheriff (including an interlocutor applying the verdict of a jury), or any application may be made to the sheriff court, or anything required or authorised to be done in relation to any civil proceedings shall or may be done ;
 - (c) prescribing the form of any document to be used in, or for the purposes of, any civil proceedings or any execution or diligence following thereon, and the person by whom, and the manner in which, any such document as aforesaid is to be authenticated ;
 - (d) regulating the procedure to be followed in connection with the production and recovery of documents;
 - (e) providing for the admission, on such conditions as may be prescribed, of affidavits in lieu of parole evidence;
 - (f) making such provision as may appear to the Court of Session to be necessary or expedient with respect to the payment, investment or application of any sum of money awarded to or in respect of a person under legal disability in any action in the sheriff court;
 - (g) regulating the summoning, remuneration and duties of assessors;
 - (h) making such provision as may appear to the Court of Session to be necessary or expedient for carrying out the provisions of this Act or of any enactment

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conferring powers or imposing duties on sheriffs principal or sheriffs or relating to proceedings in the sheriff courts:

Provided that nothing contained in an act of sederunt made under this section shall derogate from—

- (i) the provisions of sections 35 to 38 of this Act with respect to summary causes, or
 - (ii) the provisions of subsection (8) of section 20 of the Race Relations Act 1968 with respect to the remuneration to be paid to assessors appointed under subsection (7) of that section.
- (2) An act of sederunt under this section may contain such incidental, supplemental or consequential provisions as appear to the Court of Session to be necessary or expedient for the purposes of that act, including, but without prejudice to the generality of the foregoing words, provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this Act) relating to matters with respect to which an act of sederunt may be made under this section.
- (3) Before making an act of sederunt under this section with respect to any matter the Court of Session shall (unless that act embodies, with or without modifications, draft rules submitted to them by the Sheriff Court Rules Council under section 34 of this Act) consult the said Council, and shall take into consideration any views expressed by the Council with respect to that matter.
- (4) Section 34 of the Administration of Justice (Scotland) Act 1933 (power of Court of Session to regulate civil procedure in sheriff court) shall cease to have effect, but any act of sederunt made under or having effect by virtue of that section shall, if and so far as it is in force immediately before the commencement of this Act, continue in force and shall have effect, and be treated, as if it had been made under this, section.

33 Sheriff Court Rules Council

- (1) There shall be established a body (to be known as the Sheriff Court Rules Council, and hereafter in this section and in section 34 of this Act called "the Council") which shall have the functions conferred on it by the said section 34, and which shall consist of fourteen members, that is to say—
- two sheriffs principal,
 - three sheriffs,
 - one member of the Faculty of Advocates,
 - five solicitors, and
 - two persons each of whom is a whole-time sheriff clerk,
- appointed by the Lord President of the Court of Session after consultation with such persons as may appear to him appropriate, and one person appointed by the Secretary of State, being a person appearing to the Secretary of State to have qualifications suitable for such appointment.
- (2) The members of the Council shall, so long as they retain the respective qualifications mentioned in subsection (1) above, hold office for three years and be eligible for re-appointment.
- (3) Any vacancy in the membership of the Council occurring by reason of death, resignation or other cause before the expiry of the period for which the member whose place is so vacated was appointed shall be filled—

- (a) if the member was appointed by the Lord President of the Court of Session, by the appointment by the Lord President, after consultation with such persons as may appear to him appropriate, of a person having the same qualifications as that member,
 - (b) if the member was appointed by the Secretary of State, by the appointment by the Secretary of State of another person appearing to the Secretary of State to have qualifications suitable for such appointment,
- and a person so appointed to fill a vacancy shall hold office only until the expiry of the said period.
- (4) The Lord President of the Court of Session shall appoint one of the two sheriffs principal who are members of the Council as chairman thereof, and the Secretary of State shall appoint a whole-time sheriff clerk as secretary to the Council.
 - (5) The Council shall have power to regulate the summoning of meetings of the Council and the procedure at such meetings, so however that—
 - (a) the Council shall meet within one month of its being established and thereafter at intervals of not more than six months, and shall meet at any time on a requisition in that behalf made by the chairman of the Council or any three members thereof, and
 - (b) at any meeting of the Council six members shall be a quorum.
 - (6) The Rules Council for the sheriff court established under section 35 of the Administration of Justice (Scotland) Act 1933 is hereby dissolved, and the said section 35 shall cease to have effect.

34 Functions of Sheriff Court Rules Council

- (1) As soon as practicable after it has been established the Council shall review generally the procedure and practice followed in civil proceedings in the sheriff court (including any matters incidental or relating to that procedure or practice) and, in the light of that review and of the provisions of this Act, shall prepare and submit to the Court of Session draft rules, being rules which—
 - (a) are designed to regulate and prescribe that procedure and practice (including any such matters as aforesaid), and
 - (b) are such as the Court of Session have power to make by act of sederunt under section 32 of this Act,and the Court of Session shall make an act of sederunt under the said section 32 embodying those rules with such modifications, if any, as they think expedient.
- (2) After submitting draft rules to the Court of Session under subsection (1) above the Council shall keep under review the procedure and practice followed in civil proceedings in the sheriff court (including any matters incidental or relating to that procedure or practice), and the Council may prepare and submit to the Court of Session draft rules designed to deal with any of the matters relating to the sheriff court which the Court of Session have power under section 32 of this Act to regulate or prescribe by act of sederunt, and the Court of Session shall consider any draft rules so submitted and shall, if they approve the rules, make an act of sederunt under the said section 32 embodying those rules with such modifications if any, as they think expedient.
- (3) For the purpose of assisting it in the discharge of its functions under the foregoing provisions of this section the Council may invite representations on any aspect of the procedure or practice in civil proceedings in the sheriff court (including any

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matters incidental or relating to that procedure or practice), and shall consider any such representations received by it, whether in response to such an invitation as aforesaid or otherwise.

Summary causes

35 Summary causes

(1) The definition of " summary cause " contained in paragraph (i) of section 3 of the Sheriff Courts (Scotland) Act 1907 shall cease to have effect, and for the purposes of the procedure and practice in civil proceedings in the sheriff court there shall be a form of process, to be known as a " summary cause ", which shall be used for the purposes of all civil proceedings brought in that court, being proceedings of one or other of the following descriptions, namely—

- (a) actions for payment of money not exceeding two hundred and fifty pounds in amount (exclusive of interest and expenses);
- (b) actions of multiplepoinding, actions of furthcoming and actions of sequestration for rent, where the value of the fund in medio, or the value of the arrested fund or subject, or the rent in respect of which sequestration is asked, as the case may be, does not exceed two hundred and fifty pounds (exclusive of interest and expenses);
- (c) actions ad factum praestandum and actions for the recovery of possession of heritable or moveable property, other than actions in which there is claimed in addition, or as an alternative, to a decree ad factum praestandum or for such recovery, as the case may be, a decree for payment of money exceeding two hundred and fifty pounds in amount (exclusive of interest and expenses);
- (d) proceedings which, according to the law and practice existing immediately before the commencement of this Act, might competently be brought in the sheriff's small debt court or were required to be conducted and disposed of in the summary manner in which proceedings were conducted and disposed of under the Small Debt Acts;

and any reference in the following provisions of this Act, or in any other enactment (whether passed or made before or after the commencement of this Act) relating to civil procedure in the sheriff court, to a summary cause shall be construed as a reference to a summary cause within the meaning of this subsection.

(2) The Small Debt (Scotland) Act 1837 and the Small Debt Amendment (Scotland) Act 1889 shall cease to have effect.

36 Procedure in summary causes

- (1) In relation to summary causes the power conferred on the Court of Session by section 32 of this Act shall extend to the making of rules permitting a party to such a cause, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.
- (2) A summary cause shall be commenced by a summons in, or as nearly as is practicable in, such form as may be prescribed by rules under the said section 32.
- (3) The evidence, if any, given in a summary cause shall not be recorded.

- (4) Where in a summary cause a decree is granted by a sheriff principal or a sheriff under which a sum of money is payable, whether by way of satisfaction of the claim or by way of expenses or otherwise, the sheriff principal or, as the case may be, the sheriff may direct that, subject to such conditions as he may specify, the money be paid by such instalments, payable at such times, as he may fix.

37 Remits

- (1) In the case of any ordinary cause brought in the sheriff court the sheriff shall at any stage, on the joint motion of the parties to the cause, direct that the cause be treated as a summary cause, and in that case the cause shall be treated for all purposes (including appeal) as a summary cause and shall proceed accordingly.

- (2) In the case of any summary cause, the sheriff at any stage—
- (a) shall, on the joint motion of the parties to the cause, and
 - (b) may, on the motion of any of the parties to the cause, if he is of the opinion that the importance or difficulty of the cause makes it appropriate to do so,
- direct that the cause be treated as an ordinary cause, and in that case the cause shall be treated for all purposes (including appeal) as an ordinary cause and shall proceed accordingly:

Provided that a direction under this subsection may, in the case of an action for the recovery of possession of heritable or moveable property, be given by the sheriff of his own accord.

- (3) The decision of a sheriff in any case to make, or not to make, a direction by virtue of paragraph (b) of, or the proviso to, subsection (2) above shall not be subject to review.
- (4) In this section " sheriff " includes a sheriff principal.

38 Appeal in summary causes

In the case of any summary cause an appeal shall lie—

- (a) to the sheriff principal on any point of law from the final judgment of the sheriff, and
- (b) to the Court of Session on any point of law from the final judgment of the sheriff principal, if the sheriff principal certifies the cause as suitable for such an appeal,

but save as aforesaid an interlocutor of the sheriff or the sheriff principal in any such cause shall not be subject to review.

Miscellaneous and supplemental

39 Amendment of s. 30 of Sheriff Courts (Scotland) Act 1907

In section 30 of the Sheriff Courts (Scotland) Act 1907 (which allows the removal of a cause from the sheriff court to the Court of Session for jury trial in certain cases where the claim exceeds fifty pounds), for the words " fifty pounds " there shall be substituted the words " two hundred and fifty pounds ".

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40 Amendment of s. 31 of Sheriff Courts (Scotland) Act 1907

In section 31 of the Sheriff Courts (Scotland) Act 1907 (which provides for the trial by jury in the sheriff court, in certain circumstances, of actions where the claim exceeds fifty pounds), for the words " fifty pounds " there shall be substituted the words " two hundred and fifty pounds ".

41 Power of Her Majesty to vary limit to privative jurisdiction of sheriff court, etc.

- (1) If it appears to Her Majesty in Council that the sum of two hundred and fifty pounds specified in any of the provisions of this Act mentioned in subsection (2) below (or such other sum as may be specified in that provision by virtue of an Order in Council under this section) should be varied, Her Majesty may by Order in Council, specifying the provision and the sum in question, direct that the provision shall be amended so as to substitute for that sum such other sum as may be specified in the Order.
- (2) The provisions referred to in subsection (1) above are—
 - section 31,
 - paragraphs (a), (b) and (c) of section 35,
 - section 39,
 - section 40.
- (3) An Order in Council under this section may contain such incidental, supplemental or consequential provisions as appear to Her Majesty in Council to be necessary or expedient for the purposes of the Order.
- (4) Any Order in Council made under this section may be revoked by a subsequent Order in Council under this section which substitutes another sum for the sum specified in the Order which is thereby revoked.
- (5) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

42 Application of provisions regarding jurisdiction and summary causes

The following provisions of this Act, namely—

- section 31,
- sections 35 to 40,
- section 46(2) so far as relating to the enactments mentioned in Part II of Schedule 2,
- Schedule 1 (except paragraph 1),

shall not apply in relation to any proceedings commenced before the commencement of this Act.

PART IV

MISCELLANEOUS AND GENERAL

43 Orders, etc.

- (1) Any power conferred by this Act to make an order shall include a power exercisable in the like manner and subject to the like conditions (if any) to vary or revoke the order by a subsequent order.
- (2) It is hereby declared that any power conferred by this Act to include incidental, consequential or supplemental provisions in any instrument made under this Act includes a power to include transitional provisions in that instrument.

44 Expenses

- (1) There shall be paid out of moneys provided by Parliament any sums payable by the Secretary of State in consequence of the provisions of this Act.
- (2) Any sums payable under or by virtue of this Act to the Secretary of State shall be paid into the Consolidated Fund.
- (3) In the application of section 4(1) of the Local Government (Scotland) Act 1966 (variation of rate support grant orders) to a rate support grant order made before the transfer date appointed under section 30 of this Act for a grant period ending after that date, the Secretary of State shall take into account any relief obtained, or likely to be obtained, by local authorities—
 - (a) which is attributable to the coming into operation of Part II of this Act, and
 - (b) which was not taken into account in making the rate support grant order the variation of which is in question.

The provisions of this subsection are without prejudice to section 4(4) of the said Act of 1966 (under which an order under that section may vary the matters prescribed by a rate support grant order).

45 Interpretation

- (1) In this Act, unless the contrary intention appears—
 - (a) references to a sheriff principal include references to a temporary sheriff principal, and references to the office of sheriff principal include references to an appointment as a temporary sheriff principal;
 - (b) references to a sheriff include references to a temporary sheriff and an honorary sheriff, and references to the office of sheriff include references to an appointment as a temporary sheriff and to the office of honorary sheriff;
 - (c) references to an honorary sheriff are references to a person holding the office of honorary sheriff in his capacity as such.
- (2) In this Act—
 - (a) "enactment" includes an order, regulation, rule or other instrument having effect by virtue of an Act;
 - (b) any reference to any enactment shall, unless the contrary intention appears, be construed as a reference to that enactment as amended or extended, and

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as including a reference thereto as applied, by or under any other enactment (including this Act).

- (3) Subject to the foregoing provisions of this section and to any other express provision of this Act, expressions used in this Act and in the Sheriff Courts (Scotland) Act 1907 shall have the same meanings in this Act as in that Act.

46 Amendment and repeal of enactments

- (1) Schedule 1 to this Act (which contains certain minor and consequential amendments of enactments) shall have effect.
- (2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in relation thereto in column 3 of that Schedule.

47 Short title, commencement and extent

- (1) This Act may be cited as the Sheriff Courts (Scotland) Act 1971.
- (2) This Act shall come into operation on such date as the Secretary of State may appoint by order made by statutory instrument, and different dates may be appointed for different provisions of this Act, or for different purposes.

Any reference in any provision of this Act to 'the commencement of this Act shall, unless otherwise provided by any such order, be construed as a reference to the date on which that provision comes into operation.

- (3) This Act, except section 4 (offices of sheriff principal and sheriff) and section 21 (amendment of the House of Commons Disqualification Act 1957), shall extend to Scotland only.