



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.