



# Sheriff Courts (Scotland) Act 1971

## 1971 CHAPTER 58

### PART III

#### CIVIL JURISDICTION, PROCEDURE AND APPEALS

#### <sup>X1</sup>31 Upper limit to privative jurisdiction of sheriff court to be £250.

Section 7 of the <sup>M1</sup>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 “[<sup>F1</sup>one thousand five hundred pounds]”.

#### Editorial Information

- X1** The text of ss. 31, 46, Sch. 1 paras. 2, 3 and Sch. 2 is in the form in which it was originally enacted; it was not reproduced in Statutes in Force and does not reflect any repeals or amendments which may have been made prior to 1.2.1991

#### Textual Amendments

- F1** Words in s. 31 substituted (30.11.1988) by [The Sheriff Courts \(Scotland\) Act 1971 \(Privative Jurisdiction and Summary Cause\) Order 1988 \(S.I. 1988/1993\)](#), [art. 3](#) (with art. 4)

#### Marginal Citations

- M1** [1907 c. 51](#).

#### *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

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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;
- [<sup>F2</sup>(e) providing in respect of any category of civil proceedings for written statements (including affidavits) and reports, admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988, to be received in evidence, on such conditions as may be prescribed, without being spoken to by a witness;]
- (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 conferring powers or imposing duties on sheriffs principal or sheriffs or relating to proceedings in the sheriff courts:
- [<sup>F3</sup>(i) regulating the expenses which may be awarded by the sheriff to parties in proceedings before him:]

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 [<sup>F4</sup>(as amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985)] with respect to summary causes, or
  - (ii) the provisions of subsection (8) of section 20 of the <sup>M2</sup>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

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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 <sup>M3</sup> 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.

#### Textual Amendments

- F2** S. 32(1)(e) substituted by Civil Evidence (Scotland) Act 1988 (c. 32, SIF 47), ss. 2(2)(4), 10(3)  
**F3** S. 32(1)(i) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 59, Sch. 2 para. 12(a)  
**F4** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), ss. 23, 59, Sch. 2 para. 12(b)

#### Modifications etc. (not altering text)

- C1** S. 32 amended by Social Work (Scotland) Act 1968 (c. 49), ss. 18A(2), 34A(2) (as inserted by Children Act 1975 (c. 72), ss. 66, 78, 108(2)), Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18), ss. 19, 31(3), Administration of Justice (Scotland) Act 1972 (c. 59), s. 1(3) and Presumption of Death (Scotland) Act 1977 (c. 27), s. 15  
**C2** S. 32 extended by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), ss. 97, 108(2), Sch. 7 paras. 5, 9(1)

#### Marginal Citations

- M2** 1968 c. 71.  
**M3** 1933 c. 41.

### 33 Sheriff Court Rules Council.

- [<sup>F5</sup>(1) There shall be established a body (to be known as the Sheriff Court Rules Council, and hereafter in this section and section 34 called "the Council") which shall have the functions conferred on it by section 34, and which shall consist of—
- (a) two sheriffs principal, three sheriffs, one advocate, five solicitors and two whole-time sheriff clerks, all appointed by the Lord President of the Court of Session, after consultation with such persons as appear to him to be appropriate;
  - (b) two persons appointed by the Lord President after consultation with the Secretary of State, being persons appearing to the Lord President to have—
    - (i) a knowledge of the working procedures and practices of the civil courts;
    - (ii) a knowledge of consumer affairs; and
    - (iii) an awareness of the interests of litigants in the civil courts; and
  - (c) one person appointed by the Secretary of State, being a person appearing to the Secretary of State to be qualified 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.

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- (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 [<sup>F6</sup>such consultation as is mentioned in paragraph (a) or, as the case may be, (b) of subsection (1) above], 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 . . . <sup>F7</sup> 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 <sup>M4</sup>Administration of Justice (Scotland) Act 1933 is hereby dissolved, and the said section 35 shall cease to have effect.

#### Textual Amendments

- F5** S. 33(1) substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 36:1\)](#), s. 74(1), **Sch. 8 para. 26(1)**
- F6** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 36:1\)](#), s. 74(1), **Sch. 8 para. 26(2)**
- F7** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. 59, Sch. 2 para. 13, **Sch. 4**

#### Marginal Citations

- M4** 1933 c. 41.

### 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

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- (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 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 <sup>M5</sup>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 [<sup>F8</sup>one thousand five hundred 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 [<sup>F8</sup>one thousand five hundred 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 [<sup>F8</sup>one thousand five hundred 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

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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.

[<sup>F9</sup>(1A) For the avoidance of doubt it is hereby declared that nothing in subsection (1) above shall prevent the Court of Session from making different rules of procedure and practice in relation to different descriptions of summary cause proceedings.]

[<sup>F10</sup>(2) There shall be a form of summary cause process, to be known as a “small claim”, which shall be used for the purposes of such descriptions of summary cause proceedings as are prescribed by the Lord Advocate by order.

(3) No enactment or rule of law relating to admissibility or corroboration of evidence before a court of law shall be binding in a small claim.

(4) An order under subsection (2) above shall be by statutory instrument but shall not be made unless a draft of it has been approved by a resolution of each House of Parliament.]

#### Textual Amendments

**F8** Words substituted by virtue of S.I. 1988/1993, **art. 3**

**F9** S. 35(1A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 59, **Sch. 2 para. 14**

**F10** S. 35(2)–(4) substituted for s. 35(2) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), **s. 18(1)**

#### Modifications etc. (not altering text)

**C3** S. 35: power to transfer functions conferred (19.5.1999) by S.I. 1999/678, art. 2(1), **Sch.**

**C4** S. 35(1)(c) excluded by Land Tenure Reform (Scotland) Act 1974 (c. 38), **s. 9(6)**

#### Marginal Citations

**M5** 1907 c. 51.

### 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) . . . . . <sup>F11</sup>

#### Textual Amendments

**F11** S. 36(4) repealed by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 108, Sch. 7 paras. 5, 9(1), **Sch. 8**

#### Modifications etc. (not altering text)

**C5** S. 36(3) excluded by Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18), **s. 4(4)(b)**

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### [<sup>F12</sup>36A Further provisions as to small claims.

Where the pursuer in a small claim is not—

- (a) a partnership or a body corporate; or
- (b) acting in a representative capacity,

he may require the sheriff clerk to effect service of the summons on his behalf.]

#### Textual Amendments

**F12** Ss. 36A, 36B inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\), s. 18\(2\)](#)

### [<sup>F13</sup>36B Expenses in small claims.

- (1) No award of expenses shall be made in a small claim in which the value of the claim does not exceed such sum as the Lord Advocate shall prescribe by order.
- (2) Any expenses which the sheriff may award in any other small claim shall not exceed such sum as the Lord Advocate shall prescribe by order.
- (3) Subsections (1) and (2) above do not apply to a party to a small claim—
  - (a) who being a defender—
    - (i) has not stated a defence; or
    - (ii) having stated a defence, has not proceeded with it; or
    - (iii) having stated and proceeded with a defence, has not acted in good faith as to its merits; or
  - (b) on whose part there has been unreasonable conduct in relation to the proceedings or the claim;nor do they apply in relation to an appeal to the sheriff principal.
- (4) An order under this section shall be by statutory instrument but shall not be made unless a draft of it has been approved by a resolution of each House of Parliament.]

#### Textual Amendments

**F13** Ss. 36A, 36B inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\), s. 18\(2\)](#)

#### Modifications etc. (not altering text)

**C6** s. 36B: power to transfer functions conferred (19.5.1999) by [S.I. 1999/678, art. 2\(1\), Sch.](#)

## 37 Remits.

- (1) In the case of any ordinary cause brought in the sheriff court the sheriff [<sup>F14</sup>—
  - (a)] 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 [<sup>F15</sup>;
  - (b) may, subject to section 7 of the Sheriff Courts (Scotland) Act 1907, on the motion of any of the parties to the cause, if he is of the opinion that the

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importance or difficulty of the cause make it appropriate to do so, remit the cause to the Court of Session.]

- (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.

[<sup>F16</sup>(2A) In the case of any action in the sheriff court [<sup>F17</sup>, being an action for divorce or an action] in relation to the custody [<sup>F18</sup> guardianship] or adoption of a child the sheriff may, of his own accord, at any stage remit the action to the Court of Session.]

[<sup>F19</sup>(2B) In the case of any small claim the sheriff at any stage—

- (a) may, if he is of the opinion that a difficult question of law or a question of fact of exceptional complexity is involved, of his own accord or on the motion of any party to the small claim;
- (b) shall, on the joint motion of the parties to the small claim, direct that the small claim be treated as a summary cause (not being a small claim) or ordinary cause, and in that case the small claim shall be treated for all purposes (including appeal) as a summary cause (not being a small claim) or ordinary cause as the case may be.

(2C) In the case of any cause which is not a small claim by reason only of any monetary limit applicable to a small claim or to summary causes, the sheriff at any stage shall, on the joint motion of the parties to the cause, direct that the cause be treated as a small claim and in that case the cause shall be treated for all purposes (including appeal) as a small claim and shall proceed accordingly.]

[<sup>F20</sup>(3) A decision—

- (a) to remit, or not to remit, under subsection (2A) [<sup>F21</sup>(2B) or (2C)] above; or
- (b) 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; but from a decision to remit, or not to remit, under subsection (1)(b) above an appeal shall lie to the Court of Session.]

(4) In this section “sheriff” includes a sheriff principal.

#### Textual Amendments

- F14** “—(a)” inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), [s. 16\(a\)\(i\)\(ii\)](#)
- F15** [S. 37\(1\)\(b\)](#) added by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), [s. 16\(a\)\(i\)\(ii\)](#)
- F16** [S. 37\(2A\)](#) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), [s. 16\(b\)](#)



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- F17** Words inserted by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 36:3), s. 6(1), **Sch. 1 para. 12**
- F18** Word in S.37(2A) substituted (25.9.1991) by virtue of Age of Legal Capacity (Scotland) Act 1991 (c.50 SIF 49:1), s. 10(1), Sch. 1 para35.
- F19** S. 37(2B)(2C) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 18(3)(a)
- F20** S. 37(3) substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 16(c)
- F21** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 18(3)(b)

### 38 Appeal in summary causes.

In the case of <sup>F22</sup>—

- (a) any summary cause an appeal shall lie to the sheriff principal on any point of law from the final judgment of the sheriff; and
- (b) any summary cause other than a small claim an appeal shall lie] 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.

#### Textual Amendments

- F22** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 18(4)

#### Modifications etc. (not altering text)

- C7** S. 38 excluded by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), ss. 103(1), 108(2), Sch. 7 paras. 5, 9(1)

### *Miscellaneous and supplemental*

<sup>F23</sup>**39** .....

#### Textual Amendments

- F23** S. 39 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 72:2), s. 28(2), **Sch. 3**

<sup>F24</sup>**40** .....

#### Textual Amendments

- F24** S. 40 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3, 72:2), ss. 11(2), 28(2), Sch. 3

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**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,
  - F25 .....
  - F25 .....
- (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.

**Textual Amendments**

**F25** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3, 72:2\)](#), ss. 11(2), 28(2), [Sch. 3](#)

**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.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Sheriff Courts (Scotland) Act 1971, Part III.