



# Sheriff Courts (Scotland) Act 1971

## 1971 CHAPTER 58

### PART III

#### CIVIL JURISDICTION, PROCEDURE AND APPEALS

##### *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;
  - [<sup>F1</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;]

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- (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>F2</sup>(i) regulating the expenses which may be awarded by the sheriff to parties in proceedings before him:]
  - [<sup>F3</sup>(j) permitting a person who is not an advocate or solicitor and is not represented by an advocate or solicitor to transmit, whether orally or in writing, the views of a child to the sheriff for the purposes of any enactment which makes provision (however expressed) for the sheriff to have regard to those views.]

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>M1</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 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>M2</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

- F1** S. 32(1)(e) substituted by *Civil Evidence (Scotland) Act 1988 (c. 32, SIF 47)*, ss. **2(2)(4)**, 10(3)
- F2** 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)**
- F3** S. 32(1)(j) inserted (1.11.1995) by 1995 c. 36, s. 105(4), **Sch. 4 para. 18(2)** (with s. 103(1)); S.I. 1995/2787, art. 3, **Sch.**
- F4** Words inserted by *Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1)*, ss. 23, 59, **Sch. 2 para. 12(b)**

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**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)
- C3** S. 32 extended (17.6.1992) by Child Support Act 1991 (c.48), ss. 39(2), 49; S.I. 1992/1431, art. 2, Sch.

**Marginal Citations**

- M1** 1968 c. 71.  
**M2** 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.
- (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.

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- (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>M3</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

- M3** 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
  - (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.

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