



Court of Session Act 1988

1988 CHAPTER 36

PART VI

MISCELLANEOUS PROVISIONS

44 Selection of judges for trial of election petitions.

- (1) The judges to be placed on the rota for the trial of parliamentary election petitions in Scotland under Part III of the Representation of the ^{M1}People Act 1983 in each year shall be selected, in such manner as the Lord President may direct, from the judges of the Court exclusive of any who are members of the House of Lords.
- (2) Notwithstanding the expiry of the year for which a judge has been placed on the rota, he may act as if that year had not expired for the purpose of continuing to deal with, giving judgment in, or dealing with any ancillary matter relating to, any case with which he may have been concerned during that year.
- (3) Any judge placed on the rota shall be eligible to be placed on the rota again in the succeeding or any subsequent year.

Marginal Citations

M1 1983 c. 2.

45 Restoration of possession and specific performance.

The Court may, on application by summary petition—

- (a) order the restoration of possession of any real or personal property of the possession of which the petitioner may have been violently or fraudulently deprived; and
- (b) order the specific performance of any statutory duty, under such conditions and penalties (including fine and imprisonment, where consistent with the

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enactment concerned) in the event of the order not being implemented, as to the Court seem proper.

Modifications etc. (not altering text)

- C1** S. 45 applied by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), s. 40\(3\)](#)
S. 45 applied (2.10.2000) by [2000 c. 23, ss. 11\(8\), 12\(7\) \(with s. 82\(3\)\)](#); [S.I. 2000/2543, art. 3](#)
S. 45 applied (26.11.2001) by [S.I. 2001/3755, reg. 13, Sch. 2 para. 7\(1\) \(with regs. 39, 45\)](#)
S. 45 applied (14.12.2001) by [2001 c. 24, s. 104\(7\), 127\(2\)\(g\)](#)
S. 45 applied (5.1.2004) by [2000 c. 23, ss. 22\(8\), 83\(2\) \(with s. 82\(3\)\)](#); [S.I. 2003/3140, art. 2\(a\)](#)
- C2** S. 45 applied (17.2.2003 for certain purposes, otherwise 1.4.2003) by [1999 c. 33, ss. 25\(5\)\(b\), 170\(4\)](#); [S.I. 2003/2, art. 2, Sch.](#)
- C3** S. 45 applied (6.4.2005) by [Pensions Act 2004 \(c. 35\), ss. 71\(10\), 322\(1\) \(with s. 313\)](#); [S.I. 2005/275, art. 2\(7\), Sch. Pt. 7](#)
- C4** S. 45 applied (11.1.2006) by [The Food Hygiene \(Scotland\) Regulations 2006 \(S.S.I. 2006/3\), reg. 24\(4\)](#)
- C5** S. 45 applied (6.4.2008) by [Companies Act 2006 \(c. 46\), ss. 1249\(3\), 1300](#); [S.I. 2007/3495, art. 3\(1\)\(u\) \(with Sch. 4 paras. 37-42\)](#)
- C6** S. 45 applied (6.4.2009) by [The Data Retention \(EC Directive\) Regulations 2009 \(S.I. 2009/859\), reg. 10\(6\)](#)
- C7** S. 45(b) applied (3.4.2000) by [1999 c. 33, s. 101\(5\)](#); [S.I. 2000/464, art. 2, Sch. 2](#)

46 Specific relief may be granted in interdict proceedings.

Where a respondent in any application or proceedings in the Court, whether before or after the institution of such proceedings or application, has done any act which the Court might have prohibited by interdict, the Court may ordain the respondent to perform any act which may be necessary for reinstating the petitioner in his possessory right, or for granting specific relief against the illegal act complained of.

47 Interim interdict and other interim orders.

- (1) In any cause containing a conclusion or a crave for interdict or liberation, the Division of the Inner House or the Lord Ordinary (as the case may be) may, on the motion of any party to the cause, grant interim interdict or liberation; and it shall be competent for the Division of the Inner House or the Lord Ordinary before whom any cause in which interim interdict has been granted is pending to deal with any breach of the interim interdict without the presentation of a petition and complaint.
- (2) In any cause in dependence before the Court, the Court may, on the motion of any party to the cause, make such order regarding the interim possession of any property to which the cause relates, or regarding the subject matter of the cause, as the Court may think fit.
- [^{F1}(2A) The power under subsection (2) to make an order includes, in particular, power to make an order *ad factum praestandum* (including an interim order).]
- (3) Every interim act, warrant and decree granted during the dependence of a cause in the Court shall, unless the Court otherwise directs, be extractible *ad interim*.

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Textual Amendments

- F1** S. 47(2A) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 90**, 138(2); S.S.I. 2015/77, art. 2(2)(3), sch.

[^{F2}47A Power to grant warrant for ejection

In any proceedings where the Court has competence to grant a decree of removing, it also has competence to grant a warrant for ejection.]

Textual Amendments

- F2** S. 47A inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), **ss. 91**, 138(2); S.S.I. 2015/77, art. 2(2)(3), sch.

[^{F3}48 Right of audience of solicitor before the court.

- (1) Any solicitor who has, by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980 a right of audience in relation to the Court of Session shall have the same right of audience in that court as is enjoyed by an advocate.
- (2) Any solicitor shall have a right of audience—
 - (a) before the vacation judge; and
 - (b) in such other circumstances as may be prescribed.]

Textual Amendments

- F3** Ss. 48 and 48A substituted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 36:1), s. 74(1), **Sch. 8 para. 38** and S.I. 1991/1252, **art. 3**, Schedule 1

^{F4}48A Further provision as to rights of audience.

Any person who has complied with the terms of a scheme approved under section 26 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (consideration of applications made under section 25) shall have such rights of audience before the court as may be specified in an act of sederunt made under subsection (7)(a) of that section.

Textual Amendments

- F4** Ss. 48 and 48A substituted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 36:1), s. 74(1), **Sch. 8 para. 38** and S.I. 1991/1252, **art. 3**, Schedule 1

49 Subscription of bill for letters of inhibition.

- (1) Subject to subsection (2) below, the subscription by such of the clerks of session as may be prescribed of a bill craving warrant for the signeting of letters of inhibition shall be sufficient warrant for that purpose without the subscription of the bill by a Lord Ordinary.

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- (2) Where in the case of any such bill a doubt or difficulty occurs to the clerk of session, he shall report the matter to a Lord Ordinary, and where a matter is so reported the subscription of the bill by the Lord Ordinary shall be necessary.

50 Copy of interlocutor granting commission and diligence to be equivalent to formal extract.

A copy of an interlocutor, pronounced by a Lord Ordinary or the Inner House granting commission and diligence, which is certified by a clerk of court shall have the same force and effect as a formal extract of the interlocutor.

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