



# Administration of Justice (Scotland) Act 1933

## 1933 CHAPTER 41

### PART III

#### OFFICERS OF THE HIGH COURT OF JUSTICIARY AND OF THE COURT OF SESSION

#### **23 Appointment of clerks in the Court of Justiciary**

- (1) The right of appointing any Depute, Assistant or other Clerk in the Justiciary Office shall be vested in the Secretary of State and shall be exercised after consultation with the Lord Justice General.
- (2) The duties of Clerk of the High Court of Justiciary when sitting in Edinburgh or elsewhere may be performed by the Principal Clerk or by such Depute, Assistant, or other Clerk in the Justiciary Office as the Lord Justice General may approve, and the said Principal Clerk and any such Depute, Assistant, or other Clerk shall perform such duties in relation to the business of the said High Court as the Lord Justice General may direct.

#### **24 Appointment of officers of the Court of Session**

- (1) Any enactment in force at the passing of this Act as to the number or appointment of the Clerks of Court shall cease to have effect and the Secretary of State shall, after consultation with the Lord President, appoint a Principal Clerk of Session and such other clerks and officers of the Court as he may, with the sanction of the Treasury as to numbers, determine to be necessary to discharge the duties devolving, according to the law and practice existing immediately prior to the passing of this Act, on the whole staff of clerks in the Inner and Outer Houses and in the Bill Chamber and on the clerks to the judges, and such other clerks and officers shall, subject to the directions of the Lord President, be under the general supervision of the Principal Clerk of Session, and shall, subject as aforesaid, perform such duties in relation to the business of the Court as the Principal Clerk may require.

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- (2) There shall be a Central Office of the Court which shall comprise the clerks and officers appointed in pursuance of this section and which shall be divided into a General Department and a Petition Department. Causes initiated in the Court by petition shall be assigned to the Petition Department and there shall be assigned to the General Department—
- (a) causes initiated by summons in the Court;
  - (b) special cases;
  - (c) causes brought before the Court by appeal, removal, remit, stated case or other like process; and
  - (d) Exchequer causes.
- (3) The Petition Department and the General Department shall be respectively responsible under the supervision of the Principal Clerk and subject to the directions of the Lord President, for the allocation among the Divisions of the Inner House or the Lords Ordinary, as the case may be, of the causes assigned to the said departments in pursuance of the foregoing subsection, and the General Department shall be responsible for the division of the causes initiated by summons among—
- (a) the Ordinary Roll;
  - (b) the Admiralty and Commercial Roll; and
  - (c) the Consistorial Roll;
- in accordance with any Act of Sederunt made under section seventeen of this Act.
- (4) The clerks and officers appointed in pursuance of this section shall be assigned by the Principal Clerk, subject to the directions of the Lord President and the provisions of any Act of Sederunt, to one or other of the aforesaid departments, provided always that any clerk or officer in the Central Office shall be capable of performing, and shall perform, any duty in relation to the business of the Court as may be required by the Principal Clerk, subject to such directions and provisions as aforesaid.
- (5) Notwithstanding anything in the foregoing provisions of this section, it shall not be competent to allocate any Exchequer Cause to any Lord Ordinary other than the Lord Ordinary in Exchequer Causes.
- (6) Any provision in an Act or an Act of Sederunt regarding the Principal Clerk of Session or the Clerks of Court shall apply to the Principal Clerk and to the clerks appointed in pursuance of this section in like manner as it applies to the Principal Clerk and to the clerks holding office at the passing of this Act, and any reference in any enactment to a depute, assistant or other clerk in the Court of Session or in the Bill Chamber, shall apply, in like manner as it applies to such depute, assistant or other clerk to the clerk required in pursuance of this section to perform the duties devolving on such depute, assistant or other clerk according to the law and practice existing immediately prior to the passing of this Act.
- (7) The right of appointing to the office of Macer, which in accordance with the law and practice existing immediately prior to the passing of this Act was vested in His Majesty, shall be transferred to and vested in the Secretary of State, and shall be exercised on nomination by the Lord Advocate, and it shall be competent to the Secretary of State in pursuance of the power so vested in him to appoint the same persons to be Macers in the High Court of Justiciary and in the Court of Session.

## **25 Appointment of Principal Clerk of Justiciary, and c**

The right of appointing to the offices of Principal Clerk of Justiciary, Accountant of Court, Auditor of the Court of Session, and Principal Extractor of the Acts and Decrees of the Court of Session shall be vested in the Secretary of State, and shall be exercised on nomination by the Lord Advocate.

## **26 Age limit for officers of High Court of Justiciary and Court of Session**

A person appointed, in pursuance of the powers vested in the Secretary of State by this Part of this Act, to any office shall vacate his office on attaining the age of sixty-five years:

Provided that, where the Secretary of State after consultation with the Lord President considers it desirable in the public interest to retain any such person in office after he attains the age of sixty-five years, he may, with the approval of the Treasury, authorise the continuance in office of such person, up to such later age, not exceeding seventy years, as he may think fit.

## **27 Remuneration of officers of High Court of Justiciary and Court of Session**

- (1) The remuneration of the persons appointed to any office in pursuance of the powers vested in the Secretary of State by this Part of this Act, and of any clerk or officer in the High Court of Justiciary or in the Court of Session (including any clerk to a judge) holding office at the passing of this Act, and of any person holding, at the passing of this Act, any office mentioned in section twenty-five of this Act, shall be of such amounts as the Secretary of State may, after consultation with the Lord President and with the concurrence of the Treasury, from time to time, determine, and such remuneration shall be payable out of moneys provided by Parliament.
- (2) The sole remuneration of the persons holding any office mentioned in the immediately preceding subsection (other than the office of Auditor of the Court of Session) shall be the remuneration determined in pursuance of the said subsection, and any fee or other sum paid or received, by virtue of his office, to or by any such person, other than such remuneration, shall be paid over and accounted for in such manner as the Treasury may direct.

## **28 Regulations for admission of officers of High Court of Justiciary and Court of Session**

The Secretary of State may, after consultation with the Lord President and with the concurrence of the Treasury and the Civil Service Commissioners, make regulations prescribing the manner in which persons are to be admitted to any office the right of appointment to which is vested in the Secretary of State by this Part of this Act, and the conditions on which the said Commissioners may issue certificates in accordance with section eight of the Clerks of Session (Scotland) Regulation Act, 1889, which section shall apply to any such office as aforesaid in like manner as it applies to the offices therein mentioned.

## **29 Existing officers**

- (1) Any clerk or officer in the High Court of Justiciary or the Court of Session (not being clerk to a judge), holding office at the passing of this Act, and any person holding, at

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the passing of this Act, any office mentioned in section twenty-five of this Act, shall be deemed to have been appointed in pursuance of the powers vested in the Secretary of State by this Part of this Act, provided that any such clerk, officer or person shall be in no worse position as regards tenure of office, remuneration or superannuation allowance than he would have been if this Act had not passed.

- (2) It shall be lawful for the Secretary of State, after consultation with the Lord President, to direct that any person holding office as clerk to a judge who was appointed clerk to that judge prior to the passing of this Act shall be deemed to have been appointed, in pursuance of the powers vested in the Secretary of State by this Part of this Act, provided that no such direction shall be given without the consent of such person and of such judge. Any such person in whose case such a direction is given shall on his retirement from his employment be entitled, in addition to any superannuation allowance or gratuity payable under the Superannuation Acts, 1834 to 1919, to such annuity in respect of his service as clerk to the judge as he would have been entitled to if such judge had retired immediately before the date when the direction aforesaid was given; and any such person, in whose case no such direction is given, shall continue to hold his office on the terms on which he held it at the passing of this Act.

### **30 Commencement of this Part of this Act**

This Part of this Act (except subsections (2), (3) and (4) of section twenty-four) shall come into operation on the passing thereof.