

2015 No. 77 (C. 17)

COURT OF SESSION

JUDICIAL APPOINTMENTS AND DISCIPLINE

SCOTTISH COURT SERVICE

SHERIFF COURT

**The Courts Reform (Scotland) Act 2014 (Commencement No. 2,
Transitional and Saving Provisions) Order 2015**

Made - - - - - *24th February 2015*

Laid before the Scottish Parliament *26th February 2015*

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 138(2) and (3) of the Courts Reform (Scotland) Act 2014(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Courts Reform (Scotland) Act 2014 (Commencement No. 2, Transitional and Saving Provisions) Order 2015.

(2) This article and article 2(1) come into force on 12th March 2015.

(3) The remaining provisions of this Order come into force on 1st April 2015.

(4) In this Order, “the Act” means the Courts Reform (Scotland) Act 2014.

Appointed day

2.—(1) The day appointed for the coming into force of section 23(5) of the Act (power of Court of Session to make rules about procedure at tribunal constituted under section 21) is 12th March 2015.

(2) Subject to paragraph (3), the day appointed for the coming into force of the provisions of the Act specified in column 1 of the table in the Schedule to this Order (the subject matter of which is specified in column 2 of that table) is 1st April 2015.

(3) Where a purpose is specified in column 3 of the table in the Schedule, a provision specified in column 1 of that table comes into force only for that purpose.

Payment of judicial remuneration and expenses

3.—(1) Paragraphs (2) to (4) apply until the day on which section 16(12) of the Act (salaries and remuneration payable by SCTS) comes into force.

(2) Salaries under section 16(1) of the Act and remuneration under section 16(3) of the Act are to be paid by the Scottish Ministers.

(3) Remuneration under section 16(5), (9) and (11) of the Act is to be paid by the Scottish Courts and Tribunals Service.

(4) Sums required by the Scottish Ministers for the payment of a salary or remuneration under paragraph (2) are charged on the Scottish Consolidated Fund.

Tribunal to consider fitness for office

4. Judicial conduct occurring before 1st April 2015 may be taken into account in any proceedings under section 21 of the Act (tribunal to consider fitness for office).

Re-employment of former sheriffs principal in the Sheriff Appeal Court

5.—(1) Section 51(1) of the Act (re-employment of former Appeal Sheriffs) has effect as if the reference in it to a qualifying former Appeal Sheriff included a reference to a qualifying former sheriff principal.

(2) For that purpose, a “qualifying former sheriff principal” is an individual who—

(a) prior to the commencement of section 49(1) of the Act—

(i) held office as a sheriff principal; and

(ii) ceased to hold that office other than by virtue of an order under section 12E of the Sheriff Courts (Scotland) Act 1971 (removal from office)(a); and

(b) has not reached the age of 75.

Saving for regulation of commissary business

6. Despite the repeal of section 54 of the Sheriff Courts (Scotland) Act 1876(b) (courts to make acts of sederunt) by paragraph 3 of schedule 5 to the Act—

(a) any act of sederunt made under that section shall continue to have effect on or after 1st April 2015 as it had effect immediately before that date; and

(b) that section shall continue to have effect for the purpose of enabling the revocation of any act of sederunt made under it.

Saving for existing subordinate legislation

7.—(1) Despite the coming into force of paragraphs 4(f), 6(2), 26, 28 and 30(3) of schedule 5 to the Act (which repeal the enactments specified in paragraph (2)), any subordinate legislation made under an enactment specified in paragraph (2) continues to have effect.

(a) 1971 c.58; section 12E was inserted by the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 40.

(b) 1876 c.70; section 54 was repealed, except in so far as it relates to commissary regulations, by the Sheriff Courts (Scotland) Act 1907 (c.51), Schedule 2. Section 54 was amended by the Public Records (Scotland) Act 1937 (c.43), Schedule 2 and the Sheriff Courts (Scotland) Act 1971 (c.58), Schedule 1, paragraph 1; the relevant acts of sederunt are S.S.I. 2013/291 and S.S.I. 2014/265.

- (2) The enactments are—
- (a) section 2 of the Court of Law Fees (Scotland) Act 1895(a) (power of Scottish Ministers to regulate court fees);
 - (b) section 6 of the Execution of Diligence (Scotland) Act 1926(b) (regulations, forms and fees);
 - (c) section 40 of the Sheriff Courts (Scotland) Act 1907(c) (Court of Session to regulate fees etc.);
 - (d) in the Sheriff Courts (Scotland) Act 1971—
 - (i) section 32 (power of Court of Session to regulate civil procedure in sheriff court);
 - (ii) section 32A(d) (rules for lay representation); and
 - (iii) section 41 (power of Her Majesty to vary limit to privative jurisdiction of sheriff court etc.);
 - (e) in the Court of Session Act 1988(e)—
 - (i) section 5 (power to regulate procedure etc. by act of sederunt);
 - (ii) section 5A(f) (rules for lay representation); and
 - (iii) section 6 (allocation of business etc. by act of sederunt).

(3) In paragraph (2), a reference to an enactment includes a reference to that enactment as extended, applied or modified by any other enactment.

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
24th February 2015

(a) 1895 c.14; section 2 was substituted by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), section 4.
(b) 1926 c.16.
(c) 1907 c.51.
(d) Section 32A was added by the Legal Services (Scotland) Act 2010 (asp 16), section 127(b).
(e) 1988 c.36.
(f) Section 5A was added by the Legal Services (Scotland) Act 2010 (asp 16), section 126(b).

SCHEDULE

Article 2

Provisions of the Act coming into force on 1st April 2015

<i>Column 1</i> <i>Provisions of the Act</i>	<i>Column 2</i> <i>Subject Matter</i>	<i>Column 3</i> <i>Purpose</i>
Sections 1 and 2	Sheriffdoms, sheriff court districts and sheriff courts	
Sections 3 and 4 Section 5	Sheriffs principal and sheriffs Summary sheriffs	For the purpose of making appointments
Sections 6 to 9 Section 10	Judiciary of the sheriffdoms Part-time summary sheriffs	For the purpose of making appointments
Sections 11 to 15 Section 16(1) to (11) Sections 17 to 22 Section 23	Judiciary of the sheriffdoms Remuneration Judiciary of the sheriffdoms Further provision about tribunals constituted under section 21	For all remaining purposes
Sections 24 and 25	Tribunal report and removal from office	
Sections 27 to 37 Section 38	Organisation of business Jurisdiction and competence of sheriffs	
Section 39	Power to make act of sederunt for determining the value of an order etc.	For the purpose of making provision by act of sederunt
Sections 40 to 43	Jurisdiction and competence of sheriffs	
Section 46	The Sheriff Appeal Court	For the purpose of enabling appointments under sections 49 to 51, 53, 54, 59 and 60
Sections 49 to 53	Sheriff Appeal Court – appointments etc.	
Section 54 to 56	President and Vice President of the Sheriff Appeal Court etc.	
Section 57(3) to (5)	Power to prescribe sittings of the Sheriff Appeal Court	
Sections 59 to 61	Clerk and Deputy Clerks of the Sheriff Appeal Court	
Section 62	Records of the Sheriff Appeal Court	
Section 72	Power to make provision by act of sederunt in relation to simple procedure	For the purpose of making provision by act of sederunt
Section 75	Rule-making: matters to be taken into consideration	
Section 76	Rules relating to service of documents	
Section 81	Expenses in simple procedure cases	For the purpose of enabling an order to be made

<i>Column 1</i> <i>Provisions of the Act</i>	<i>Column 2</i> <i>Subject Matter</i>	<i>Column 3</i> <i>Purpose</i>
Section 86	Power to enable sheriff to make orders having effect outside sheriffdom	For the purpose of enabling an order to be made by the Scottish Ministers
Section 87	Power of sheriff to order sheriff clerk to execute deed relating to heritage	
Section 88	Interim orders	
Section 90	Interim orders	
Section 91	Warrants for ejection	
Section 98	Power to make supplementary provision about lay representation for non-natural persons	
Section 102	Power to make orders in relation to vexatious behaviour	For the purpose of enabling regulations to be made
Sections 103 to 107	Procedure and fees	
Section 115	Appeals: granting of leave or permission and assessment of grounds of appeal	
Section 119	Appeals from the Sheriff Appeal Court to the High Court	For the purpose of enabling the making of an act of adjournment in reliance upon inserted section 194ZF(1)(c)(ii) of the Criminal Procedure (Scotland) Act 1995
Section 123	Appointment of Court of Session Judges etc.	
Section 125	Judges of the Court of Session - expenses	
Section 127	Establishing, relocating and disestablishing justice of the peace courts	
Section 130	The Scottish Courts and Tribunal Service	For all remaining purposes ⁽¹⁾
Section 131	Assistants to the Judicial Appointments Board for Scotland	
Section 132	Modification of enactments	For the purpose of bringing into force the provisions of schedule 5 listed in column 1 below
Section 134(2)	References to “sheriff”	
Schedule 2	Appeal Sheriffs: temporary provision	For the purpose of enabling appointments to be made under paragraph 2(1) of schedule 2
Schedule 4	The Scottish Courts and Tribunals Service	For all remaining purposes ⁽²⁾
The following provisions of schedule 5—	Modifications of enactments	
Paragraphs 1 to 3	Sheriff courts	

<i>Column 1</i> <i>Provisions of the Act</i>	<i>Column 2</i> <i>Subject Matter</i>	<i>Column 3</i> <i>Purpose</i>
Paragraph 4(a)	Repeal of sections 4 to 7 of the Sheriff Courts (Scotland) Act 1907	For the purpose of repealing sections 4 to 6 of the Sheriff Courts (Scotland) Act 1907
Paragraph 4(b) and (c)	Repeal of sections 10, 11 and 14 of the Sheriff Courts (Scotland) Act 1907	
Paragraph 4(f)	Repeal of sections 39 and 40 of the Sheriff Courts (Scotland) Act 1907	For the purpose of repealing section 40 of the Sheriff Courts (Scotland) Act 1907
Paragraph 5	Amendment of the Sheriff Courts and Legal Officers (Scotland) Act 1927	
Paragraph 6(1) and (2)	Repeal of the Sheriff Courts (Scotland) Act 1971, other than sections 2(3) and 3(4) ⁽³⁾	For the purpose of repealing the whole of the Sheriff Courts (Scotland) Act 1971, with the exception of—
		(a) section 31 (privative jurisdiction);
		(b) section 35 (summary causes);
		(c) section 36(2) and (3) (procedure in summary causes);
		(d) sections 36A and 36B (small claims);
		(e) section 37 (remits);
		(f) section 38 (appeal in summary causes);
		(g) section 45 (interpretation).
Paragraph 7	Amendment of the Civil Jurisdiction and Judgments Act 1982	
Paragraph 9	Amendment of the Judiciary and Courts (Scotland) Act 2008	
Paragraph 10	Amendment of the Sheriff Courts and Legal Officers (Scotland) Act 1927	
Paragraph 11	Amendment of the Public Records (Scotland) Act 1937	
Paragraph 12(1) and (4)	Amendment of the Administration of Justice (Scotland) Act 1972	
Paragraph 16	Amendment of the Judiciary and Courts (Scotland) Act 2008	
Paragraph 18	Amendment of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013	
Paragraph 26	Repeal of section 2 of the Court of Law Fees (Scotland) Act 1895	

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provisions of the Act</i>	<i>Subject Matter</i>	<i>Purpose</i>
Paragraphs 28 to 31	Regulation of procedure and fees	
Paragraph 34	Amendment of the Promissory Oaths Act 1868	
Paragraphs 36 to 38	Judges of the Court of Session	
Paragraphs 42 to 45	Miscellaneous	

⁽¹⁾ Section 130 was brought into force for limited purposes by S.S.I. 2015/12 (C. 2).

⁽²⁾ Paragraphs 1(1), (2), (6), (8) and (9) and 3(1) to (4) and (6) of schedule 4 were brought into force for limited purposes by S.S.I. 2015/12 (C. 2).

⁽³⁾ Sections 2(3) and 3(4) are repealed by the Courts Reform (Scotland) Act 2014 (Consequential Provisions and Modifications) Order 2015 (S.I. 2015/[xxx]).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force provisions of the Courts Reform (Scotland) Act 2014 (“the Act”). Section 23(5) of the Act, which permits the Court of Session to make rules regulating a tribunal established under section 21 of the Act, comes into force on 12th March 2015. The provisions specified in column 1 of the table in the schedule to the Order come into force on 1st April 2015. The subject matter of these provisions is set out in column 2 of the table, and where provisions are brought into force only for a limited purpose, this purpose is given in column 3.

Articles 3 to 7 contain transitional and saving provisions.

Article 3 applies until the commencement of section 16(12) of the Act (which provides for all of the salaries and remuneration payable under that section to be paid by the Scottish Courts and Tribunals Service). It provides that the Scottish Ministers shall be responsible for the payment of the salaries and remuneration of sheriffs principal, sheriffs and summary sheriffs, and that the sums required for these payments shall be charged on the Scottish Consolidated Fund. It also provides that the remuneration of other judicial officers under that section shall be paid by the Scottish Courts and Tribunals Service.

Article 4 permits a tribunal constituted under section 21 of the Act (tribunal to consider fitness for office), to consider judicial conduct which took place prior to the commencement of that section.

Article 5 enables former sheriffs principal who have not reached the age of 75 to be appointed to act as Appeal Sheriffs in terms of section 51(1) of the Act (re-employment of former Appeal Sheriffs).

Article 6 saves acts of sederunt made under section 54 of the Sheriff Courts (Scotland) Act 1876 regulating commissary business from the repeal of that section by paragraph 3 of schedule 5 to the Act, and provides for that section to continue to have effect for the purpose of enabling their revocation.

Article 7 provides for existing subordinate legislation made under the powers specified in paragraph (2) of that Article to continue to have effect despite the repeal of those powers.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 130 and paragraphs 1(1), (2), (6), (8) and (9) and 3(1) to (4) and (6), for the purposes of making subordinate legislation under the Judiciary and Courts (Scotland) Act 2008.	2nd February 2015	2015/12 (C. 2)

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