



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

## 1985 CHAPTER 73

### *Provisions relating to leases*

#### **1 Limitation on use of property held on long lease not to apply to property held on certain renewable leases.**

In subsection (4) of section 8 of the <sup>M1</sup>Land Tenure Reform (Scotland) Act 1974 (property on long lease not to be used as private dwelling house) in the definition of “long lease” there shall be inserted at the end the following—

“but, in relation to a lease granted before 1st September 1974, does not include its renewal (whether before or after the commencement of section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985) in implement of an obligation in or under it.”

#### **Marginal Citations**

**M1** 1974 c. 38.

#### **2 Power of sheriff to grant renewals of certain long leases.**

After section 22 of the <sup>M2</sup>Land Registration (Scotland) Act 1979 there shall be inserted the following section—

##### **“22A Power of sheriff to grant renewals of certain long leases.**

- (1) Where a landlord has failed to renew a long lease in implement of an obligation in or under it, the sheriff may, on summary application by the tenant, make an order directing the sheriff clerk to execute a renewal of the lease instead of the landlord.

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- (2) On making an order under subsection (1) above, the sheriff may require the tenant to consign in court such amount (whether by way of rent or expenses or otherwise) in respect of the lease and its renewal as appears to the sheriff to be lawfully due and payable or appears to him would have been so due and payable had the landlord duly renewed the lease.
- (3) A renewal executed under this section shall have the like force and effect as if it were executed by the landlord.
- (4) Without prejudice to subsection (7)(a) below, a landlord shall be regarded, for the purposes of subsection (1) above, as having failed to renew a lease in implement of an obligation in or under it if, having been given written notice in accordance with subsection (5) below by the tenant that he requires the landlord, in implement of the obligation, to renew the lease, the landlord has failed to do so when he was obliged to and continues so to fail.
- (5) Notice is in accordance with this subsection if it is given not less than 3 months before the lodging of the summary application.
- (6) Subsection (4) above is subject to subsection (7)(b) below and to any provision in or under the lease for earlier, or a longer period of, notice requiring renewal of the lease than that mentioned in subsection (5) above.
- (7) If the sheriff is satisfied that a landlord is unknown or cannot be found, he may—
  - (a) in a case where the tenant is thereby prevented from bringing the landlord, in accordance with the lease, under an obligation to renew it, order that the landlord shall be regarded, for the purposes of subsection (1) above, as having failed to renew the lease in implement of an obligation under it; and
  - (b) in any other case, dispense with notice under subsection (4) above.
- (8) The sheriff may, on the application of any party, order the investment, payment or distribution of any sums consigned in court under subsection (2) above, and in so doing the sheriff shall have regard to the respective interests of any parties appearing to have a claim on such sums.
- (9) The sheriff's power under subsection (8) above extends to ordering that any award of expenses of the application under this section be paid out of any sums consigned in court under subsection (2) above."

#### Marginal Citations

M2 1979 c. 33.

### 3 Creation of real conditions in assignments of certain long leases.

Section 3 of the <sup>M3</sup>Registration of Leases (Scotland) Act 1857 (assignments of recorded leases) shall be renumbered as subsection (1) of that section and after that subsection there shall be inserted the following subsections—

“(2) Notwithstanding—

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- (a) any restriction imposed by subsection (1) above on the power under that subsection to assign such a lease; or
  - (b) any rule of law to the contrary,
- it shall be, and shall be deemed always to have been, competent in an assignation under this section to impose conditions and make stipulations which, upon the recording of such assignation or the registration under the Land Registration (Scotland) Act 1979 of the assignee's interest, shall be as effectual against any singular successor of the assignee in the subjects assigned as if such assignee had been a grantee of the lease and it had been duly recorded or, as the case may be, the grantee's interest had been so registered.
- (3) Nothing in subsection (2) above makes effectual against any successor of the assignee any obligation of periodical payment other than a payment—
    - (a) of rent or of an apportionment of rent;
    - (b) in defrayal of a contribution towards some continuing cost related to the lands and heritages subject to the lease assigned; or
  - (4) A provision in an assignation which purports to make effectual against any successor of the assignee any obligation of periodic payment other than one specified in paragraphs (a) to (c) of subsection (3) above shall not render the deed void or unenforceable, but the assignation shall have, and shall be deemed always to have had, effect only to the extent (if any) that it would have had effect if it had not imposed such obligation.
  - (5) Section 32 of the Conveyancing (Scotland) Act 1874 (which enables reservations, conditions, covenants etc. affecting lands to be effectually imported into one deed by reference to another) and section 17 of the Land Registration (Scotland) Act 1979 (which provides that certain obligations in deeds of conditions shall become real obligations upon the recording of the deed or registration of the obligation) shall, with the necessary modifications, respectively apply for the purposes of enabling conditions and stipulations to be effectually imported into any assignation under this section and enabling land obligations in a deed of conditions relating to the land subject to the assignation to become real obligations affecting the land.

In this subsection "land obligation" has the meaning assigned to it by section 1(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970."

#### Marginal Citations

M3 1857 c. 26.

#### 4 Irritancy clauses etc. relating to monetary breaches of lease.

- (1) A landlord shall not, for the purpose of treating a lease as terminated or terminating it, be entitled to rely—
  - (a) on a provision in the lease which purports to terminate it, or to enable him to terminate it, in the event of a failure of the tenant to pay rent, or to make any other payment, on or before the due date therefor or such later date or within such period as may be provided for in the lease; or
  - (b) on the fact that such a failure is, or is deemed by a provision of the lease to be, a material breach of contract,

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unless subsection (2) or (5) below applies.

- (2) This subsection applies if—
- (a) the landlord has, at any time after the payment of rent or other payment mentioned in subsection (1) above has become due, served a notice on the tenant—
    - (i) requiring the tenant to make payment of the sum which he has failed to pay together with any interest thereon in terms of the lease within the period specified in the notice; and
    - (ii) stating that, if the tenant does not comply with the requirement mentioned in sub-paragraph (i) above, the lease may be terminated; and
  - (b) the tenant has not complied with that requirement.
- (3) The period to be specified in any such notice shall be not less than—
- (a) a period of 14 days immediately following the service of the notice; or
  - (b) if any period remaining between the service of the notice and the expiry of any time provided for in the lease or otherwise for the late payment of the sum which the tenant has failed to pay is greater than 14 days, that greater period.
- (4) Any notice served under subsection (2) above shall be sent by recorded delivery and shall be sufficiently served if it is sent to the tenant's last business or residential address in the United Kingdom known to the landlord or to the last address in the United Kingdom provided to the landlord by the tenant for the purpose of such service.
- (5) This subsection applies if the tenant does not have an address in the United Kingdom known to the landlord and has not provided an address in the United Kingdom to the landlord for the purpose of service.

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

- C1** S. 4 excluded (3.2.1995) by 1994 c. 33, s. 106(3)(a); S.I. 1995/127, art. 2(1), **Sch.1**  
S. 4 excluded (1.8.2000) by 1999 c. 33, s. 149(3)(e); S.I. 2000/1985, art. 2, **Sch.**
- C2** Ss. 4-7 excluded by 2002 c. 29, s. 269A(5) (as inserted (27.4.2017 for specified purposes) by **Criminal Finances Act 2017 (c. 22), ss. 29(5), 58(1), (6)**)

**5 Irritancy clauses etc. not relating to monetary breaches of leases.**

- (1) Subject to subsection (2) below, a landlord shall not, for the purpose of treating a lease as terminated or terminating it, be entitled to rely—
- (a) on a provision in the lease which purports to terminate it, or to enable the landlord to terminate it, in the event of an act or omission by the tenant (other than such a failure as is mentioned in section 4(1)(a) of this Act) or of a change in the tenant's circumstances; or
  - (b) on the fact that such act or omission or change is, or is deemed by a provision of the lease to be, a material breach of contract,
- if in all the circumstances of the case a fair and reasonable landlord would not seek so to rely.
- (2) No provision of a lease shall of itself, irrespective of the particular circumstances of the case, be held to be unenforceable by virtue of subsection (1) above.

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- (3) In the consideration, for the purposes of subsection (1)(a) or (b) above, of the circumstances of a case where—
- (a) an act, omission or change is alleged to constitute a breach of a provision of the lease or a breach of contract; and
  - (b) the breach is capable of being remedied in reasonable time,
- regard shall be had to whether a reasonable opportunity has been afforded to the tenant to enable the breach to be remedied.

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

- C2** Ss. 4-7 excluded by 2002 c. 29, s. 269A(5) (as inserted (27.4.2017 for specified purposes) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 29(5)**, 58(1), (6))
- C3** S. 5 excluded (3.2.1995) by 1994 c. 33, **s. 106(3)(a)**; S.I. 1995/127, art. 2(1), **Sch.1**  
S. 5 excluded (1.8.2000) by 1999 c. 33, **s. 149(3)(e)**; S.I. 2000/1985, art. 2, **Sch.**

**6 Supplementary and transitional provisions relating to sections 4 and 5.**

- (1) The parties to a lease shall not be entitled to disapply any provision of section 4 or 5 of this Act from it.
- (2) Where circumstances have occurred before the commencement of sections 4 and 5 of this Act which would have entitled a landlord to terminate a lease in reliance on a provision in the lease or on the ground that the circumstances constituted a material breach of contract, but the landlord has not before such commencement given written notice to the tenant of his intention to terminate the lease in respect of those circumstances, he shall, after such commencement, be entitled to terminate the lease in respect of those circumstances only in accordance with the provisions of section 4 or 5 (as the case may be) of this Act.
- (3) Nothing in section 4 or 5 of this Act shall apply in relation to any payment which has to be made, or any other condition which has to be fulfilled, before a tenant is entitled to entry under a lease.

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

- C2** Ss. 4-7 excluded by 2002 c. 29, s. 269A(5) (as inserted (27.4.2017 for specified purposes) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 29(5)**, 58(1), (6))
- C4** S. 6 excluded (3.2.1995) by 1994 c. 33, **s. 106(3)(a)**; S.I. 1995/127, art. 2(1), **Sch.1**  
S. 6 excluded (1.8.2000) by 1999 c. 33, **s. 149(3)(e)**; S.I. 2000/1985, art. 2, **Sch.**

**7 Interpretation of sections 4 to 6.**

- (1) In sections 4 to 6 of this Act “lease” means a lease of land, whether entered into before or after the commencement of those sections, but does not include a lease of land—
- (a) used wholly or mainly for residential purposes;<sup>F1</sup>...
  - (b) comprising<sup>F1</sup>... a croft, the subject of a cottar or the holding of a landholder or a statutory small tenant<sup>F2</sup>; or
  - (c) where the lease is an agricultural lease.]
- (2) In subsection (1) above—

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[<sup>F3</sup>“agricultural lease” means a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act);]

“cottar” has the same meaning as in section 28(4) of the <sup>M4</sup>Crofters (Scotland) Act 1955;

“croft” has the same meaning as in section 3 of the Crofters (Scotland) Act 1955; and

“holding” (in relation to a landholder or statutory small tenant), “landholder” and “statutory small tenant” have the same meanings as in the Small Landholders (Scotland) Acts 1886 to 1931.

#### Textual Amendments

- F1** Words in s. 7(1)(a)(b) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 7\(a\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F2** S. 7(1)(c) and preceding word inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 7\(a\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F3** Words in s. 7(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 7\(b\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)

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

- C2** Ss. 4-7 excluded by 2002 c. 29, s. 269A(5) (as inserted (27.4.2017 for specified purposes) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 29\(5\)](#), 58(1), (6))
- C5** S. 7 excluded (3.2.1995) by 1994 c. 33, [s. 106\(3\)\(a\)](#); S.I. 1995/127, art. 2(1), [Sch. 1](#)  
S. 7 excluded (1.8.2000) by 1999 c. 33, [s. 149\(3\)\(e\)](#); S.I. 2000/1985, art. 2, [Sch.](#)

#### Marginal Citations

- M4** 1955 c. 21.

### *Provisions relating to other contracts and obligations*

## 8 Rectification of defectively expressed documents.

- (1) Subject to section 9 of this Act, where the court is satisfied, on an application made to it, that—
- a document intended to express or to give effect to an agreement fails to express accurately the common intention of the parties to the agreement at the date when it was made; or
  - a document intended to create, transfer, vary or renounce a right, not being a document falling within paragraph (a) above, fails to express accurately the intention of the grantor of the document at the date when it was executed,
- it may order the document to be rectified in any manner that it may specify in order to give effect to that intention.
- (2) For the purposes of subsection (1) above, the court shall be entitled to have regard to all relevant evidence, whether written or oral.
- (3) Subject to section 9 of this Act, in ordering the rectification of a document under subsection (1) above (in this subsection referred to as “the original document”), the court may, at its own instance or on an application made to it [<sup>F4</sup>and in either case after

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calling all parties who appear to it to have an interest], order the rectification of any other document intended for any of the purposes mentioned in paragraph (a) or (b) of subsection (1) above which is defectively expressed by reason of the defect in the original document.

[<sup>F5</sup>(3A) If a document is registered in the Land Register of Scotland in favour of a person acting in good faith then, unless the person consents to rectification of the document, it is not competent to order its rectification under subsection (3) above.]

(4) Subject to [<sup>F6</sup>sections 8A and 9(4)] of this Act, a document ordered to be rectified under this section shall have effect as if it had always been so rectified.

(5) Subject to section 9(5) of this Act, where a document recorded in the Register of Sasines is ordered to be rectified under this section and the order is likewise recorded, the document shall be treated as having been always so recorded as rectified.

(6) Nothing in this section shall apply to a document of a testamentary nature.

(7) It shall be competent to register in the Register of Inhibitions and Adjudications, a notice of an application under this section for the rectification of a deed relating to land, being an application in respect of which authority for service or citation has been granted; and the land to which the application relates shall be rendered litigious as from the date of registration of such a notice [<sup>F7</sup>except that this subsection is subject to subsection (8A) below].

(8) A notice under subsection (7) above shall specify the names and designations of the parties to the application and the date when authority for service or citation was granted and contain a description of the land to which the application relates.

[<sup>F8</sup>(8A) A notice under subsection (7) above registered on or after the date on which section 67 of the Land Registration etc. (Scotland) Act 2012 (asp 5) (warrant to place a caveat) comes into force shall not have any effect in rendering litigious any land for which there is a title sheet in the Land Register of Scotland or in placing in bad faith any person acquiring such land. ]

(9) In this section and section 9 of this Act “the court” means the Court of Session or the sheriff.

#### Textual Amendments

- F4** Words in s. 8(3) inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 55(2)(a)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F5** S. 8(3A) inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 55(2)(b)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F6** Words in s. 8(4) substituted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 55(2)(c)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F7** Words in s. 8(7) inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 122, 123, Sch. 5 paras. 30(a)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F8** S. 8(8A) inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 122, 123, Sch. 5 paras. 30(b)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

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

- C6** S. 8 restricted (1.9.1992) by [Further and Higher Education \(Scotland\) Act 1992 \(c. 37\)](#), s. 16, Sch. 3 paras. 3(2), **4(5)**; S.I. 1992/817, art. 3(2), **Sch. 3**

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C7 S. 8 restricted (1.4.1993) by [Further and Higher Education \(Scotland\) Act 1992 \(c. 37\), s. 17\(7\)](#); [S.I. 1992/817, art. 3\(2\), Sch. 4](#)

## [<sup>F9</sup>8A Registration of order for rectification

An order for rectification made under section 8 of this Act in respect of a document which has been registered in the Land Register of Scotland—

- (a) may be registered in that register, and
- (b) does not have real effect until so registered.]

### Textual Amendments

F9 S. 8A inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\), ss. 55\(3\), 122, 123](#) (with [s. 121, Sch. 4 paras. 13, 16](#)); [S.S.I. 2014/127, art. 2](#)

## 9 Provisions supplementary to section 8: protection of other interest.

- (1) The court shall order a document to be rectified under section 8 of this Act only where it is satisfied—
    - (a) that the interests of a person to whom this section applies would not be adversely affected to a material extent by the rectification; or
    - (b) that that person has consented to the proposed rectification.
  - (2) Subject to [<sup>F10</sup>subsections (2A) and (3)] below, this section applies to a person (other than a party to the agreement or the grantor of the document) who has acted or refrained from acting in reliance on the terms of the document <sup>F11</sup>... with the result that his position has been affected to a material extent.
- [<sup>F12</sup>(2A) This section does not apply where the document to be rectified is a deed registered in the Land Register of Scotland.]
- (3) This section does not apply to a person—
    - (a) who, at the time when he acted or refrained from acting as mentioned in subsection (2) above, knew, or ought in the circumstances known to him at that time to have been aware, that the document <sup>F13</sup>... failed accurately to express the common intention of the parties to the agreement or, as the case may be, the intention of the grantor of the document; or
    - (b) whose reliance on the terms of the document <sup>F14</sup>... was otherwise unreasonable.
  - (4) Notwithstanding subsection (4) of section 8 of this Act and without prejudice to subsection (5) below, the court may, for the purpose of protecting the interests of a person to whom this section applies, order that the rectification of a document shall have effect as at such date as it may specify, being a date later than that as at which it would have effect by virtue of the said subsection (4).
  - (5) Notwithstanding subsection (5) of section 8 of this Act and without prejudice to subsection (4) above, the court may, for the purpose of protecting the interests of a person to whom this section applies, order that a document as rectified shall be treated as having been recorded as mentioned in the said subsection (5) at such date as it may specify, being a date later than that as at which it would be treated by virtue of that subsection as having been so recorded.



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<sup>F15</sup>(6) .....

- (7) Where a person to whom this section applies was unaware, before a document was ordered to be rectified under section 8 of this Act, that an application had been made under that section for the rectification of the document, the Court of Session, on an application made by that person within the time specified in subsection (8) below, may—
- (a) reduce the rectifying order; or
  - (b) order the applicant for the rectifying order to pay such compensation to that person as it thinks fit in respect of his reliance on the terms of the document or on the title sheet.
- (8) The time referred to in subsection (7) above is whichever is the earlier of the following—
- (a) the expiry of 5 years after the making of the rectifying order;
  - (b) the expiry of 2 years after the making of that order first came to the notice of the person referred to in that subsection.

#### Textual Amendments

- F10** Words in s. 9(2) substituted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 55(4)(a)(i)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F11** Words in s. 9(2) repealed (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 55(4)(a)(ii)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F12** S. 9(2A) inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 55(4)(b)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F13** Words in s. 9(3)(a) repealed (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 55(4)(c)(i)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F14** Words in s. 9(3)(b) repealed (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 55(4)(c)(ii)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F15** S. 9(6) repealed (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), **ss. 55(4)(d)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

## 10 Negligent misrepresentation.

- (1) A party to a contract who has been induced to enter into it by negligent misrepresentation made by or on behalf of another party to the contract shall not be disentitled, by reason only that the misrepresentation is not fraudulent, from recovering damages from the other party in respect of any loss or damage he has suffered as a result of the misrepresentation; and any rule of law that such damages cannot be recovered unless fraud is proved shall cease to have effect.
- (2) Subsection (1) applies to any proceedings commenced on or after the date on which it comes into force, whether or not the negligent misrepresentation was made before or after that date, but does not apply to any proceedings commenced before that date.
- [<sup>F16</sup>(3) This section does not entitle a person to be paid damages in respect of a misrepresentation if the person has a right to redress under Part 4A of the Consumer Protection from Unfair Trading Regulations 2008 ( [SI 2008/1277](#) ) in respect of the conduct constituting the misrepresentation.

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- (4) Subsection (3) does not prevent a debtor from bringing a claim under section 75(1) of the Consumer Credit Act 1974 against a creditor under a debtor-creditor-supplier agreement in a case where, but for subsection (4), the debtor would have a claim against the supplier in respect of a misrepresentation (and, where section 75 of that Act would otherwise apply, it accordingly applies as if the debtor had a claim against the supplier).]

#### Textual Amendments

- F16** S. 10(3)(4) inserted (1.10.2014 with application in accordance with reg. 1(3)) by [The Consumer Protection \(Amendment\) Regulations 2014 \(S.I. 2014/870\)](#), regs. 1(3), **8**

### 11 Amendment of Bills of Exchange Act 1882 as respects countermanded cheques.

[<sup>F17</sup>In the Bills of Exchange Act 1882—

- (a) at the beginning of section 53(2 (which provides as to the effect of presentment of a bill of exchange) there shall be inserted the words “ Subject to section 75A of this Act, ”; and
- (b) after section 75 there shall be inserted the following section—
- (1) On the countermand of payment of a cheque, the banker shall be treated as having no funds available for the payment of the cheque.
  - (2) This section applies to Scotland only.”]

#### Textual Amendments

- F17** S. 11 ceases to have effect (12.4.2009) by virtue of [Banking Act 2009 \(c. 1\)](#), ss. **254(5)**, 263(2) (with s. 247)

### 12 Limitation of defamation and other actions.

- (1) The <sup>M5</sup>Prescription and Limitation (Scotland) Act 1973 shall be amended in accordance with the following provisions of this section.
- (2) After section 18 of that Act there shall be inserted the following section—

#### “18A Limitation of defamation and other actions.

- (1) Subject to subsections (2) and (3) below and section 19A of this Act, no action for defamation shall be brought unless it is commenced within a period of 3 years after the date when the right of action accrued.
- (2) In the computation of the period specified in subsection (1) above there shall be disregarded any time during which the person alleged to have been defamed was under legal disability by reason of nonage or unsoundness of mind.
- (3) Nothing in this section shall affect any right of action which accrued before the commencement of this section.
- (4) In this section—

*Status: Point in time view as at 27/04/2017.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) “defamation” includes *convicium* and malicious falsehood, and “defamed” shall be construed accordingly; and
  - (b) references to the date when a right of action accrued shall be construed as references to the date when the publication or communication in respect of which the action for defamation is to be brought first came to the notice of the pursuer.”
- (3) In section 19A(1) of that Act (power of court to override time limits) after “18” there shall be inserted the words “ and 18A ”.
- (4) In section 22(2) of that Act (assigned rights of action) for the words “or 18” there shall be substituted the words “ , 18 or 18A ” and for the words “ , as the case may be, 18” there shall be substituted the words “ of the said section 18 or, as the case may be, subsection (4)(b) of the said section 18A ”.
- (5) In Schedule 1 to that Act, in paragraph 2 (obligations to which the five year prescription does not apply) after subparagraph (g) there shall be inserted the following—
  - “(gg) to any obligation to make reparation or otherwise make good in respect of defamation within the meaning of section 18A of this Act;”.

#### Marginal Citations

M5 1973 c. 52.

### 13 Amendments of Matrimonial Homes (Family Protection) (Scotland) Act 1981.

- (1) The <sup>M6</sup>Matrimonial Homes (Family Protection) (Scotland) Act 1981 shall be amended in accordance with the following provisions of this section.
- (2) In section 1(1)(a) of that Act (right of occupying spouse not to be excluded from matrimonial home), for the words from “not” to the end there shall be substituted the words “ to continue to occupy the matrimonial home; ”.
- (3) After section 1 of that Act there shall be inserted the following subsection—
  - “(1A) The rights conferred by subsection (1) above to continue to occupy or, as the case may be, to enter and occupy the matrimonial home include, without prejudice to their generality, the right to do so together with any child of the family.”.
- (4) In section 1(6) of that Act (renunciation of occupancy rights to be sworn or affirmed before notary public) at the end there shall be added the following—
  - “In this subsection, “notary public” includes any person duly authorised by the law of the country (other than Scotland) in which the swearing or affirmation takes place to administer oaths or receive affirmation in that other country.”.
- (5) In section 4(1) of that Act after the words “either spouse” there shall be inserted the words “ whether or not that spouse is in occupation at the time of the application. ”.
- (6) In section 6 of that Act (continued exercise of occupancy rights after dealings with the matrimonial home)—
  - (a) the word “or” occurring immediately after subsection (3)(d) shall be omitted;

*Status: Point in time view as at 27/04/2017.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) in subsection (3)(e)—
- (i) for the words “the purchase of a matrimonial home by” there shall be substituted the words “ a sale to ”;
  - (ii) after the word “at” there shall be inserted the words “ or before ”;
  - (iii) for the words from “entitled spouse”, where first occurring, to the word “spouse”, where thirdly occurring, there shall be substituted the words—  
“seller—  
(i) an affidavit sworn or affirmed by the seller declaring that the subjects of sale are not a matrimonial home in relation to which a spouse of the seller has occupancy rights;”and  
(iv) at the end there shall be added the words—  
“For the purposes of this paragraph, the time of the dealing, in the case of the sale of an interest in heritable property, is the date of delivery to the purchaser of the deed transferring title to that interest.”;
- (c) after subsection (3)(e) there shall be added—  
“; or  
(f) the entitled spouse has permanently ceased to be entitled to occupy the matrimonial home, and at any time thereafter a continuous period of 5 years has elapsed during which the non-entitled spouse has not occupied the matrimonial home.”.
- (7) In section 8(2) of that Act (protection of interests of heritable creditors) after the word “apply” there shall be inserted the words “ to secured loans in respect of which the security was granted prior to the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 ”.
- (8) After section 8(2) of that Act there shall be inserted the following subsections—  
“(2A) This section shall not apply to secured loans in respect of which the security was granted after the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 unless the third party in granting the secured loan acted in good faith and at or before the granting of the security there was produced to the third party by the grantor—  
(a) an affidavit sworn or affirmed by the grantor declaring that the security subjects are not a matrimonial home in relation to which a spouse of the grantor has occupancy rights; or  
(b) a renunciation of occupancy rights or consent to the granting of the security which bears to have been property made or given by the non-entitled spouse.  
  
(2B) for the purposes of subsections (2) and (2A) above, the time of granting a security, in the case of a heritable security, is the date of delivery of the deed creating the security.”.
- (9) In section 18 of that Act (occupancy rights of cohabiting couples)—
- (a) in subsection (1) for the word “3” there shall be inserted the word “ 6 ”; and
  - (b) in subsection (6), in the definition of “occupancy rights”—

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- (i) in paragraph (a) for the words from “not” to the end there shall be substituted the words “ to continue to occupy the house; ” and
- (ii) at the end there shall be inserted the words — “ and, without prejudice to the generality of these rights, includes the right to continue to occupy or, as the case may be, to enter and occupy the house together with any child residing with the cohabiting couple ”.

(10) In section 22 of that Act in the definition of “matrimonial home” there shall be added at the end the following—

“but does not include a residence provided or made available by one spouse for that spouse to reside in, whether with any child of the family or not, separately from the other spouse.”.

(11) Any—

- (a) affidavit lawfully sworn or affirmed before the commencement of this section in pursuance of paragraph (e) of subsection (3) of section 6 or subsection (2) of section 8 of that Act;
- (b) consent lawfully given before such commencement in pursuance of the said subsection (2),

shall have effect for the purposes of the said subsection (3) as amended by this section or, as the case may be, section 8(2A) of that Act as if it had been duly sworn, affirmed or, as the case may be, given in pursuance of the said paragraph (e) as so amended or, as the case may be, the said section 8(2A).

**Marginal Citations**

**M6** 1981 c. 59.

*Provisions relating to civil jurisdiction and procedure*

**F18 14 Remit from Court of Session to sheriff.**

.....

**Textual Amendments**

**F18** S. 14 repealed (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), Sch. 5 para. 25; S.S.I. 2015/247, art. 2, Sch. (with art. 3(3))

**15 Withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property.**

- (1) In any proceeding to which this subsection applies a person shall not be excused, by reason that to do so would tend to expose him to proceedings for a related offence or for the recovery of a related penalty—
  - (a) from answering any questions put to him in the first mentioned proceedings ;  
or
  - (b) from complying with any order made in those proceedings.

*Status: Point in time view as at 27/04/2017.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Subsection (1) above applies to civil proceedings in the Court of Session or the sheriff court—
- (a) for infringement of rights pertaining to any intellectual property or for passing off ;
  - (b) brought to obtain disclosure of information relating to any infringement of such rights or to any passing off ; and
  - (c) brought to prevent any apprehended infringement of such rights or any apprehended passing off.
- (3) The proceedings referred to in subsection (2) above include—
- (a) proceedings on appeal arising out of these proceedings ;
  - (b) proceedings under section 1(1) of the <sup>M7</sup>Administration of Justice (Scotland) Act 1972 (provision in relation to the power of the court to order inspection of documents and other property etc.) which relate to civil proceedings falling within subsection (2) above which are likely to be brought.
- (4) No statement or admission made by a person—
- (a) in answering a question put to him in any proceedings to which subsection (1) above applies ; or
  - (b) in complying with any order made in such proceedings,
- shall in proceedings for any related offence, or for the recovery of any related penalty, be admissable in evidence against him :

Provided that this subsection shall not render ant such statement or admission inadmissable against him in proceedings for perjury or contempt of court.

- (5) In this section—

“intellectual property” means any patent, trade mark, copyright [<sup>F19</sup>or design right], registered design, technical or commercial information or other intellectual property ;

“related offence”, in relation to any proceedings to which subsection (1) above relates, means—

- (a) in the case of proceedings within subsection (2)(a) or (b)—
  - (i) any offence committed by or in the course of the infringement or passing off to which those proceedings relate ; or
  - (ii) any offence not within sub-paragraph (i) committed in connection with that ing fringement or passing off, being an offence involving fraud or dishonesty ;
- (b) in the case of proceedings within subsection (2)(c), any offence revealed by the facts on which the pursuer relies in those proceedings.

“related penalty”, in relation to any proceedings to which subsection (1) above relates, means—

- (a) in the case of proceedings within subsection (2)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement or passing off to which those proceedings relate ;
- (b) in the case of proceedings within subsection (2)(c), any penalty incurred in respect of any act or omission revealed by the facts on which the pursuer relies in those proceedings.

*Status: Point in time view as at 27/04/2017.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F19** Words inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), ss. 303(1), **Sch. 7 para. 32**

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

**C8** S. 15 extended by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), ss. **296(6)(b)**, 298(4)

**C9** S. 15 extended (with modifications) by S.I. 1987/1497

**C10** S. 15 applied (31.10.2003) by 1988 c. 48, ss. 296(7)(b), 296ZA(5)(b), 296ZD(6)(b) (as inserted by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), regs. 1, **24(1)** (with regs. 31-40))

**C11** S. 15 applied (31.10.2003) by 1988 c. 48, s. 296ZG(6) (as inserted by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), regs. 1, **25** (with regs. 31-40))

**C12** S. 15(5) extended by [Patents, Designs and Marks Act 1986 \(c. 39, SIF 67A\)](#), s. 2, **Sch. 2 Pt. I para. 1(2)(h)**

S. 15(5) amended (31.10.1994) by 1994 c. 26, s. 106(1), **Sch. 4 para. 1(2)**; S.I. 1994/2550, **art.2**

**Marginal Citations**

**M7** 1972 c. 59.

**16** ..... **F20**

**Textual Amendments**

**F20** S. 16 repealed by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), ss. 68(2), 69(5)(6)(7), **Sch. 2**

**F21** **17 Power of sheriff to order sheriff clerk to execute deeds relating to heritage.**

.....

**Textual Amendments**

**F21** S. 17 repealed (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 1 para. 1(a)** (with art. 4(1))

**F22** **18 Small claims.**

.....

**Textual Amendments**

**F22** S. 18 repealed (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 1 para. 1(b)** (with art. 4(1))

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**19 Disclosure of names in certain proceedings.**

In section 1 of the <sup>M8</sup>Administration of Justice (Scotland) Act 1972 (which makes provision in relation to the powers of the court to order inspection of documents and other property), after subsection (1) there shall be inserted the following subsection—

“(1A) Without prejudice to the existing powers of the Court of Session and of the sheriff court, those courts shall have power, subject to subsection (4) of this section, to order any person to disclose such information as he has as to the identity of any persons who appear to the court to be persons who—

- (a) might be witnesses in any existing civil proceedings before that court or in civil proceedings which are likely to be brought; or
- (b) might be defenders in any civil proceedings which appear to the court to be likely to be brought.”.

**Marginal Citations**

**M8** 1972 c. 59.

*Other provisions relating to courts*

**F23 20 Removal of prohibition of sheriffs’ principal and sheriffs’ accepting appointment to certain offices.**

.....

**Textual Amendments**

**F23** S. 20 repealed (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 1 para. 1(c)** (with art. 4(1))

**F24 21** .....

**Textual Amendments**

**F24** S. 21 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch.5** (with Sch. 3 paras 1, 3)

**F25 22 Re-employment of retired judges**

.....

**Textual Amendments**

**F25** S. 22 repealed (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 36**; S.S.I. 2015/77, art. 2(2)(3), Sch.



*Status: Point in time view as at 27/04/2017.*

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## **23 Replacement of general jury book by lists of men and women eligible for jury service.**

(1) In section 3 of the Jurors (Scotland) Act 1825 (sheriff principal to maintain the general jury book), for the words from “a book” to “that book” there shall be substituted the words, “in such form as may be approved by the Lord Justice-General, two lists (to be known as the “lists of potential jurors”) containing the names, designations and dates of birth of such number as the sheriff principal considers appropriate of—

- (a) in the first list, men; and
- (b) in the second list, women

within the district who appear to him to be qualified and liable to serve as jurors; and those lists”.

(2) Section 10 of the said Act of 1825, section 4 of the <sup>M9</sup>Juries (Scotland) 1826 and sections 88 to 91 and 98 of the <sup>M10</sup>Criminal Procedure (Scotland) Act 1975 shall have effect subject to the amendments to these enactments specified in Schedule 2 to this Act; and for any other reference, however expressed, in any enactment passed before this Act to the general jury book maintained under section 3 of the Jurors (Scotland) Act 1825 there shall be substituted a reference to the lists of potential jurors.

### **Marginal Citations**

**M9** 1826 c. 8.

**M10** 1975 c. 21.

### *Provisions relating to the care of children*

## **24 Power to increase size of Children’s Panel Advisory Committees.**

After paragraph 3 of Schedule 3 to the <sup>M11</sup>Social Work (Scotland) Act 1968 there shall be inserted the following paragraph—

“3A The Secretary of State may, at the request of the local authority provide for an increase in the membership of the Children’s Panel Advisory Committee for the area of the authority by such number, not exceeding 5, of additional members as the authority specify in relation to their request, the additional members to be nominated as follows—

- (a) the first, second and fourth additional members, by the Secretary of State;
- (b) the third and fifth additional members, by the local authority”.

### **Marginal Citations**

**M11** 1968 c. 49.

*Status: Point in time view as at 27/04/2017.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 25 Amendment of provisions about detention of children.

- (1) In section 42(3) of the <sup>M12</sup>Social Work (Scotland) Act 1968 (which, amongst other things, limits to 7 days the period of detention, pending disposal of the case, of a child who has failed to attend before the sheriff in an application to him in respect of the grounds of referral of the child to a children’s hearing) for the words from “for”, where last occurring, to the end there shall be substituted the words “after whichever is the earlier of the following—
- (a) the expiry of 14 days beginning with the day on which he was first detained;
  - (b) the disposal of the application by the sheriff.”.
- (2) In section 42(6) of the Social Work (Scotland) Act 1968 (remission of case from sheriff to reporter where the sheriff is satisfied that grounds of referral have been established)
- (a) after the word “established” there shall be inserted “ (a) ”; and
  - (b) after the word “case”, where secondly occurring, there shall be inserted “; and
    - (b) if he is satisfied that detention of the child is necessary in his own interest or has reason to believe that the child will run away before the children’s hearing sit to consider the case, he may issue a warrant requiring the detention of the child until the children’s hearing sit to consider the case, but a child shall not be detained under this subsection after whichever is the earlier of the following—
      - (i) the expiry of 3 days beginning with the day on which he was first detained;
      - (ii) the consideration of his case by the children’s hearing.”

### Marginal Citations

M12 1968 c. 49.

## 26 Amendment of power to detain children in secure accommodation.

In the <sup>M13</sup>Social Work (Scotland) Act 1968—

- (a) in section 58B(3) (power to detain child in secure accommodation) for the words from “authorise” to the end there shall be substituted the words “ order that, pending the determination of his case in accordance with section 42(5) or (6) of this Act, the child shall be liable to be placed and kept in secure accommodation in a named residential establishment at such times as the person in charge of that establishment with the agreement of the director of social work of the local authority for the area of the children’s hearing, considers necessary. ”.
- (b) in Section 58E(1) (warrant to detail child in secure accommodation) for the words from “authorise” to the end there shall be substituted the words “ order that the child shall be liable to be placed and kept in secure accommodation in a named residential establishment at such times as the person in charge of that establishment, with the agreement of the director of social work of the local authority, considers necessary. The local authority referred to in this subsection is, in the case of a warrant issued or renewed by the sheriff, the

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local authority for the area of the children’s hearing which was dealing with the child in respect of whom the warrant was issued and, in the case of a warrant issued or renewed by a children’s hearing, the local authority for the area of that children’s hearing.”

**Marginal Citations**

M13 1968 c. 49.

**F26 27 Requirement of children’s hearing for pre-adoptive supervision not to constitute making arrangements for adoption for purposes of Adoption (Scotland) Act 1978.**

.....

**Textual Amendments**

**F26** S. 27 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), s. 121(2), **Sch. 3**; [S.S.I. 2009/267](#), arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

**F27 28 Child subject to supervision requirement to be regarded as in the care of the local authority for the purposes of his being freed for adoption under section 18 of the Adoption (Scotland) Act 1978.**

.....

**Textual Amendments**

**F27** S. 28 repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), s. 121(2), **Sch. 3**; [S.S.I. 2009/267](#), arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

**29 Reporter’s power to arrange review by children’s hearing of supervision requirement.**

In section 48 of the Social Work (Scotland) Act 1968 (review by children’s hearing of supervision requirements) after subsection (4) there shall be inserted the following subsection—

“(4A) If a supervision requirement has not been reviewed under this section during the period of nine months following the date when it was made or last reviewed (whichever is the later), the reporter may arrange for it to be reviewed.”.

*Procedures relating to crofting tenure and the valuation of sheep stocks*

**F28 30** .....

*Status: Point in time view as at 27/04/2017.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F28** S. 30 repealed (5.1.1994) by 1993 c. 44, ss. 63(2), 64(2), **Sch. 7 Pt. II** (with 30(5), Sch. 6 para. 4).

**F29**<sup>31</sup> .....

#### Textual Amendments

**F29** S. 31 repealed (5.1.1994) by 1993 c. 44, s. 63(2), 64(2), **Sch. 7 Pt. II** (with s. 30(5), Sch. 6 para. 4)

**F30**<sup>32</sup> .....

#### Textual Amendments

**F30** S. 32 repealed by **Agricultural Holdings (Scotland) Act 1991** (c. 55, SIF 2:3), s. 88(2), **Sch. 13 Pt. 1** (with Sch. 12 paras. 1,3).

### *Criminal courts, procedure, evidence and justice*

#### **33 Establishment and disestablishment of district courts.**

After section 1 of the <sup>M14</sup>District Courts (Scotland) Act 1975 there shall be inserted the following section—

##### **“1A Further provision as to establishment and disestablishment of district courts.**

- (1) Where it appears to the Secretary of State that—
  - (a) there is insufficient business for the district court in a particular commission area; and
  - (b) such insufficiency of business is likely to continue,
 he may by order provide that the district court for that area cease to exist on a specified date.
- (2) Where it appears to the Secretary of State that, in a commission area in which there is no district court, there is likely to be sufficient business to justify the establishment of such a court, he may by order provide for the establishment of such a court in that area on a specified date.
- (3) An order under subsection (1) or (2) above may contain all such provisions as appear to the Secretary of State to be necessary or expedient for rendering the order of full effect and any incidental, supplemental or consequential provisions which appear to him to be necessary or expedient for the purposes of the order, 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 enactment).

*Status: Point in time view as at 27/04/2017.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Before making an order under subsection (1) or (2) above, the Secretary of State shall consult the district or islands council for the area concerned, and such other persons as appear to him to have an interest in the proposed order.
- (5) Orders under subsection (1) or (2) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

**Marginal Citations**

M14 1975 c. 20.

**34 Power of Secretary of State to remove justices etc.**

In the <sup>M15</sup>District Courts (Scotland) Act 1975—

- (a) at the end of subsection (7) of section 11 (which relates to ex officio justices) there shall be inserted the words “ and, notwithstanding that he remains a duly nominated member of the authority, may be removed from office in like manner as a justice appointed under that section. ”;
- (b) in subsection (2) of section 15 (which relates to the supplemental list of justices), at the end of paragraph (a) there shall be inserted—
  - “(aa) that by reason of the justice’s conduct it is expedient that he should cease to exercise judicial functions as a justice for the area; or”

**Marginal Citations**

M15 1975 c. 20.

<sup>F31</sup>35 .....

**Textual Amendments**

F31 S. 35 repealed (19.2.2001) by 2000 c. 11, s. 125(2), Sch. 16 Pt. I; S.I. 2001/421, art. 2

<sup>F32</sup>36 .....

**Textual Amendments**

F32 S. 36 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch.5 (with Sch. 3 paras 1, 3)

<sup>F33</sup>37 .....

*Status: Point in time view as at 27/04/2017.*

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**Textual Amendments**

**F33** S. 37 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch.5** (with Sch. 3 paras 1, 3)

**38** ..... **F34**

**Textual Amendments**

**F34** S. 38 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, 2

**39** ..... **F35**

**Textual Amendments**

**F35** S. 39 repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**

**F36** **40** .....

**Textual Amendments**

**F36** S. 40 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch.5** (with Sch. 3 paras 1, 3)

**41 Penalties under food and drugs legislation.**

In the <sup>M16</sup>Food and Drugs (Scotland) Act 1956—

- (a) in subsection (1)(a) of section 40 (which relates to penalties) the words from “or to imprisonment” to “offence is continued” shall cease to have effect ;
- (b) in subsection (1)(b) the words from “and”, where it occurs for the second time, to the end shall cease to have effect ;
- (c) in subsection (8A) of section 56 (which specifies certain maximum penalties)
  - (i) in paragraph (a) the words “or imprisonment for a term not exceeding 6 months or both” shall cease to have effect ; and
  - (ii) in paragraph (b)(i) the words “or imprisonment for a term not exceeding 6 months or both” shall cease to have effect.

**Marginal Citations**

**M16** 1956 c. 30.

**42** ..... **F37**

*Status: Point in time view as at 27/04/2017.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F37** Ss. 42, 44, 45 repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

**F38** **43** .....

**Textual Amendments**

**F38** S. 43 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch.5** (with Sch. 3 paras 1, 3)

**44, 45.** ..... **F39**

**Textual Amendments**

**F39** Ss. 42, 44, 45 repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

**46 Post-release supervision of service offenders.**

(1) In section 71AA of the <sup>M17</sup>Army Act 1955 and the <sup>M18</sup>Air Force Act 1955 respectively and section 43AA of the <sup>M19</sup>Naval Discipline Act 1957 (custodial orders), after subsection (6A) in each case there shall be substituted the following subsection—

“(6B) Section 12 of the Criminal Justice (Scotland) Act 1963 (supervision of young offenders following release) shall apply to persons released from a term of detention under a custodial order as it applies to those releases from a term of detention imposed under section 207 or section 415 of the Criminal Procedure (Scotland) Act 1975.”

(2) In paragraph 10 of Schedule 5A to the <sup>M20</sup>Army Act 1955 and to the <sup>M21</sup>Air Force Act 1955 respectively and Schedule 4A to the <sup>M22</sup>Naval Discipline Act 1957 (custodial orders), after sub-paragraph (6A) in each case there shall be inserted the following sub-paragraph—

“(6B) Section 12 of the Criminal Justice (Scotland) Act 1963 (supervision of young offenders following release) shall apply to persons released from a term of detention under a custodial order as it applies to those released from a term of detention imposed under section 207 or section 415 of the Criminal Procedure (Scotland) Act 1975.”

**Marginal Citations**

- M17** 1955 c. 18.
- M18** 1955 c. 19.
- M19** 1957 c. 53.
- M20** 1955 c. 18.
- M21** 1955 c. 19.
- M22** 1957 c. 53.

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### *Miscellaneous and general*

#### **47 Transfer of sheriff clerks and procurators fiscal.**

In section 1 of the <sup>M23</sup>Sheriff Clerks and Legal Officers (Scotland) Act 1927 (appointment of sheriff clerk and procurator fiscal)—

- (a) in subsection (3), after the words “foregoing subsections” there shall be inserted the words “ but subject to subsections (4) and (5) below ”; and
- (b) after subsection (3) there shall be added the following subsections—

“(4) The right vested—

- (a) in the Secretary of State under subsection (1) above shall include the right to transfer the sheriff clerk of one sheriff court district to an office, whether of sheriff clerk or (however styled) of sheriff clerk depute, in another sheriff court district;
- (b) in the Lord Advocate under subsection (2) above shall include the right to transfer the procurator fiscal of one district to an office, whether of procurator fiscal or (however styled) of procurator fiscal depute, in another district,

where in the opinion of the Secretary of State or, as the case may be, of the Lord Advocate the transfer is for the purpose of securing efficient organisation and administration.

- (5) It is hereby declared that, for the purposes of subsection (3) above, a transfer under subsection (4) above is not a removal from office.”.

#### **Marginal Citations**

**M23** 1927 c. 35

#### **48 Power of Lord Advocate and Secretary of State in relation to research into law.**

The Lord Advocate or the Secretary of State may assist (whether financially or otherwise) other persons in conducting research into any matter connected with the law (other than research into any matter referred to in section 75(1) of the <sup>M24</sup>Criminal Justice (Scotland) Act 1949).

#### **Marginal Citations**

**M24** 1949 c. 94.

#### **49 Arrestment of National Savings Bank deposits.**

In section 46 of the <sup>M25</sup>Crown Proceedings Act 1947 (which makes provision as to arrestment in the hands of the Crown)—

- (a) after paragraph (a) of the proviso there shall be inserted the word “ or ” ;
- (b) paragraph (c) of the proviso (which precludes arrestment of money payable on account of a deposit in the National Savings Bank) and the word “or” which precludes that paragraph shall cease to have effect.



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#### Marginal Citations

M25 1947 c. 44.

### 50 Registration of divorces and declarators of nullity of marriage.

- (1) After section 28 of the <sup>M26</sup>Registration of Births, Deaths and Marriages (Scotland) Act 1965 there shall be inserted the following section—

#### “28A Registration of divorces and declarators of nullity of marriage.

- (1) The Registrar General shall maintain at the General Register Office a register of decrees of divorce and of declarator of nullity of marriage (which register shall be known as the “Register of Divorces”).
  - (2) The Register General shall cause to be made and kept at the General Register Office an alphabetical index of the entries in the Register of Divorces (in this section referred to as “the index”).
  - (3) The Register of Divorces shall be in such form as may be prescribed.
  - (4) On payment to him of such fee or fees as may be prescribed, the Register General shall, at any time when the General Register Office is open for that purpose—
    - (a) cause a search of the index to be made on behalf of any person or permit that person to search the index himself ;
    - (b) issue to any person an extract of any entry in the Register of Divorces which that person may require.
  - (5) An extract of an entry in the Register of Divorces shall be sufficient evidence of the decree of divorce or, as the case may be, of declarator of nullity of marriage to which it relates.
  - (6) The Register General may delete or amend any entry in the Register of Divorces or substitute another for it.
  - (7) In this section, references to decrees of divorce are references to decrees thereof of the Court of Session or the sheriff and references to decrees of declarator of nullity of marriage are references to decrees thereof of the Court of Session.”.
- (2) In section 48 of the said Act of 1965 (decrees altering status to be notified to Registrar General) after the words “be made”, where secondly occurring, there shall be inserted—
- “(a) where the decree is of divorce or of declarator of nullity of marriage, in the Register of Divorces ; and
  - (b) in any other case,”.
- (3) Any entry made in the Register of Corrections Etc. between 1st May 1984 and the date of the coming into force of this section which could have been made after the latter date in the Register of Divorces shall be treated as an entry in the Register of Divorces.

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#### Marginal Citations

M26 1965 c. 49.

### 51 Amendments to Mental Health (Scotland) Act 1984 as respects hospital orders.

- (1) The <sup>M27</sup>Mental Health (Scotland) Act 1984 shall be amended in accordance with the following provisions of this section.
- (2) In each of sections 21 (approval of applications by the sheriff : hospital) and 40 (approval of applications by the sheriff : guardianship)—
- (a) the words “for his approval” shall be omitted from subsection (1) ;
  - <sup>F40</sup>(b) .....

#### Textual Amendments

**F40** S. 51(2)(b) repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [Sch. 5 Pt. 1](#); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

#### Marginal Citations

M27 1984 c. 36.

### 52 Application of certain liquor licensing appeal to provisions to certain appeals under Lotteries and Amusements Act 1976.

In section 133(4) of the <sup>M28</sup>Licensing (Scotland) Act 1976 (application of certain provisions relating to appeals in respect of liquor licensing to certain appeals in respect of certain betting and gaming permits and licences)—

- (a) after the word “1968”, where first occurring, there shall be inserted the words “ and paragraph 12 of Schedule 3 to the Lotteries and Amusements Act 1976 ” ; and
- (b) for the words “and 1968”, there shall be substituted the words “ 1968 and 1976 ”.

#### Marginal Citations

M28 1976 c. 66.

### <sup>F41</sup>53 Amendment of definition of “alcoholic liquor”.

.....

#### Textual Amendments

**F41** S. 53 repealed (1.9.2009 at 5.00 a.m.) by [Licensing \(Scotland\) Act 2005 \(asp 16\)](#), s. 150(2), [Sch. 7](#) (with s. 143); S.S.I. 2007/472, art. 3

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**F42 54 Clarification of investment powers of Scottish Hospital Trust and Scottish Hospital Endowments Research Trust.**

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**Textual Amendments**

**F42** S. 54 repealed (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), Sch. 3 para. 7; S.S.I. 2005/644, art. 2(1), Sch. 1

**55 Power of Commissioner for Local Administration to investigate Scottish Special Housing Association and new town development corporations.**

**F43** .....

**Textual Amendments**

**F43** S. 55 repealed (23.10.2002) by Scottish Public Services Ombudsman Act 2002 (asp 11), s. 25, Sch. 6 para. 8; S.S.I. 2002/467, art. 2

**56 Amendment of enactments relating to solicitors.**

The enactments specified in Schedule 1 to this Act (Part 1 of which Schedule contains amendments relating to the incorporation of solicitors' practices and Part II amendments relating to other matters relating to solicitors) shall have effect subject to the amendments to these enactments there set out.

**57 Power to pay extra-parliamentary Commissioners for service on inquiries under the Private Legislation Procedure (Scotland) Act 1936.**

In section 5 of the <sup>M29</sup>Private Legislation Procedure (Scotland) Act 1936 (which provides, amongst other things, as to the appointment of Commissioners for inquiries under the Act) there shall be added at the end the following subsection—

“(9) The Secretary of State may pay Commissioners taken from the extra-parliamentary panel such fees or other amounts in respect of the performance of their duties under this Act as he may, with the approval of the Treasury, determine.”.

**Marginal Citations**

**M29** 1936 c. 52.

**58 Finance.**

There shall be paid out of money provided by Parliament—

- (a) any expenses incurred by the Secretary of State under section 22(5) of this Act or section 5(9) of the Private Legislation Procedure (Scotland) Act 1936 or by the Secretary of State or the Lord Advocate under section 48 of this Act; and

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- (b) any increase attributable to this Act in the sums which, under any other Act, are payable out of money so provided.

## **59 Amendment and repeal of enactments.**

- (1) the enactments specified in Schedule 2 to this Act shall have effect subject to the amendments to these enactments there set out.
- (2) The enactments specified in Schedule 4 to this Act are hereby repealed to the extent there set out.

## **60 Citation, transitional provisions, commencement and extent.**

- (1) This Act may be cited as the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.
- (2) Schedule 3 to this Act shall have effect for the purpose of making transitional provision.
- (3) This Act shall come into force as follows—
  - (a) sections 26 to 29, 54, this section, paragraphs 28 to 30 and 32 of Schedule 2 and so much of section 59(1) as relates to these paragraphs, when it is passed;
  - (b) sections 14, 15, 18, 19 and 36 and paragraphs 8, 12, 13 and 24 of Schedule 2 and so much of section 59(1) as relates to these paragraphs, on such day as the Lord Advocate may be order appoint;
  - (c) sections 35 and 50, on such day as the Secretary of State may by order appoint; and
  - (d) the remaining provisions, at the end of the period of two months beginning with the day on which it is passed.
- (4) Different days may be appointed under subsection (3)(b) and (c) above for the different provisions specified therein.
- (5) An order under this section shall be made by statutory instrument.
- (6) This act applies to Scotland only.

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

**C13** Power of appointment conferred by s. 60(3)(b) fully exercised: [S.I. 1985/2055](#), 1986/1945, 1988/1819

**C14** Power of appointment conferred by s. 60(3)(c) fully exercised by [S.I. 1985/1908](#) (1.2.1986 appointed day for s. 50 under [S.I. 1985/1908](#))

**Status:**

Point in time view as at 27/04/2017.

**Changes to legislation:**

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