



# Court of Session Act 1988

## 1988 CHAPTER 36

### PART IV

#### OTHER CAUSES

##### *Consistorial causes*

#### **19 Lord Advocate as party to action for nullity of marriage or divorce.**

<sup>F1</sup> .....

##### **Textual Amendments**

**F1** S. 19 repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp. 2\)](#), ss. 45(2), 46(2), [Sch. 3](#); [S.S.I. 2006/212](#), [art. 2](#)

<sup>F2</sup>**20** .....

##### **Textual Amendments**

**F2** S. 20 repealed (1.11.1996) by [1995 c. 36](#), s. 105(5), [Sch. 5](#) (with s. 103(1)); [S.I. 1996/2203](#), [art. 3\(3\)](#), [Sch. Table](#)

##### *Exchequer causes*

#### **21 Exchequer causes to have precedence.**

Exchequer causes shall at all times take precedence of and have preference over all other causes in the Court.

*Status: Point in time view as at 22/09/2015.*

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## 22 Lord Advocate to sue and be sued on behalf of the Crown.

Except where any enactment otherwise provides, all exchequer causes brought—

- (a) on behalf of the Crown, shall be at the instance of [<sup>F3</sup>the appropriate Law Officer within the meaning of section 4A of the Crown Suits (Scotland) Act 1857];
- (b) by any person alleging any ground of action against the Crown, shall be directed against [<sup>F3</sup>the appropriate Law Officer within the meaning of section 4A of the Crown Suits (Scotland) Act 1857].

### Textual Amendments

**F3** Words in s. 22(a)(b) substituted (20.5.1999) by 1999/1042, arts. 1(2)(b), 4, Sch. 2 Pt. 1 para. 8

## 23 Lord Advocate may be heard last.

In all exchequer causes, [<sup>F4</sup>the appropriate Law Officer within the meaning of section 4A of the Crown Suits (Scotland) Act 1857] shall, in pleading on behalf of the Crown, have the privilege of being heard last.

### Textual Amendments

**F4** Words in s. 23 substituted (20.5.1999) by S.I. 1999/1042, arts. 1(2)(b), 4, **Sch. 2 Pt. 1 para. 8**

## <sup>F6</sup>24 Appeal to [<sup>F5</sup>Supreme Court].

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### Textual Amendments

**F5** Words in s. 24 sidenote substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 49\(2\)](#); S.I. 2009/1604, [art. 2\(d\)](#)

**F6** S. 24 repealed (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\), s. 138\(2\), Sch. 5 para. 32\(2\)](#); S.S.I. 2015/247, [art. 2, Sch. \(with art. 5\(1\)\)](#)

## *Petitions*

## 25 Disposal of petitions initiated in Outer House.

- (1) The Lord Ordinary before whom any cause initiated by a petition comes shall have power to dispose of the petition himself.
- (2) For the purpose of disposing of such a cause, the Lord Ordinary may make such investigation and require such assistance from professional persons or persons of science or of skill as he thinks fit.
- (3) On any such cause coming before him, the Lord Ordinary may grant commission to take the depositions of havers and the evidence of witnesses as provided in section 10 of this Act with respect to an action.

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### *Summary trials*

#### **26 Summary trials.**

- (1) The parties to any dispute or question to which this section applies may present a petition in the Outer House setting out the dispute or question and craving that it may be decided by a particular Lord Ordinary, and any such petition shall stand referred to such Lord Ordinary for his determination of the dispute or question.
- (2) The parties to any action in dependence in the Outer House not affecting the status of any person may agree by joint minute, or in such other manner as may be prescribed, that the provisions of this section shall apply to the action, and thereafter those provisions shall apply accordingly.
- (3) Provision shall be made by act of sederunt under [F7section 103(1) of the Courts Reform (Scotland) Act 2014] for securing that causes under this section shall be disposed of with as little delay as possible.
- (4) This section shall apply to any dispute or question not affecting the status of any person which might competently be the subject of any cause in the Outer House, or which might competently have been the subject of any such cause but for [F8section 39 of the Courts Reform (Scotland) Act 2014].

#### **Textual Amendments**

- F7** Words in s. 26(3) substituted (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 5 para. 30\(4\)](#); [S.S.I. 2015/77](#), art. 2(2)(3), Sch.
- F8** Words in s. 26(4) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, [Sch. 1 para. 1](#)

### *Special cases*

#### **27 Special cases.**

- (1) Where any parties interested, whether personally or in some fiduciary or official capacity, in the decision of a question of law are agreed upon the facts, and are in dispute only on the law applicable to those facts, it shall be competent for them without raising any proceeding, or at any stage of any proceeding, to present to the Inner House a case (in this section referred to as a special case) signed by their counsel setting out the facts upon which they are so agreed and the question of law arising from those facts; and the parties may ask the Court either for its opinion or for its judgment on that question of law.
- (2) The Court may, if it thinks fit, in case of difficulty or importance or of equal division, appoint a special case to be reheard by a larger court under section 36 of this Act.
- (3) The Court shall dispose of all questions of expenses arising in a special case.
- (4) Any judgment pronounced by the Court by virtue of this section shall be extractible in common form.

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- (5) Any judgment pronounced by the Court by virtue of this section shall be liable to review by the [<sup>F9</sup>Supreme Court] unless such review is excluded by consent of all the parties to the special case.

**Textual Amendments**

**F9** Words in s. 27(5) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 49\(3\)](#); S.I. 2009/1604, [art. 2\(d\)](#)

*[<sup>F10</sup>Applications to the supervisory jurisdiction of the Court*

**Textual Amendments**

**F10** Ss. 27A-27D and cross-heading inserted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), ss. 89, 138(2); S.S.I. 2015/247, [art. 2](#), [Sch.](#) (with [art. 4](#))

**27A Time limits**

- (1) An application to the supervisory jurisdiction of the Court must be made before the end of—
- (a) the period of 3 months beginning with the date on which the grounds giving rise to the application first arise, or
  - (b) such longer period as the Court considers equitable having regard to all the circumstances.
- (2) Subsection (1) does not apply to an application to the supervisory jurisdiction of the Court which, by virtue of any enactment, is to be made before the end of a period ending before the period of 3 months mentioned in that subsection (however that first-ending period may be expressed).

**27B Requirement for permission**

- (1) No proceedings may be taken in respect of an application to the supervisory jurisdiction of the Court unless the Court has granted permission for the application to proceed.
- (2) Subject to subsection (3), the Court may grant permission under subsection (1) for an application to proceed only if it is satisfied that—
- (a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and
  - (b) the application has a real prospect of success.
- (3) Where the application relates to [<sup>F11</sup>a relevant Upper Tribunal decision], the Court may grant permission under subsection (1) for the application to proceed only if it is satisfied that—
- (a) the applicant can demonstrate a sufficient interest in the subject matter of the application,
  - (b) the application has a real prospect of success, and
  - (c) either—

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- (i) the application would raise an important point of principle or practice,  
or
  - (ii) there is some other compelling reason for allowing the application to proceed.
- (4) The Court may grant permission under subsection (1) for an application to proceed—
- (a) subject to such conditions as the Court thinks fit,
  - (b) only on such of the grounds specified in the application as the Court thinks fit.
- (5) The Court may decide whether or not to grant permission without an oral hearing having been held.
- [<sup>F12</sup>(6) In this section, “a relevant Upper Tribunal decision” means—
- (a) a decision of the Upper Tribunal for Scotland in an appeal from the First-tier Tribunal for Scotland under section 46 of the Tribunals (Scotland) Act 2014,
  - (b) a decision of the Upper Tribunal in an appeal from the First-tier Tribunal under section 11 of the Tribunals, Courts and Enforcement Act 2007.]

#### Textual Amendments

- F11** Words in s. 27B(3) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions and Modifications\) Order 2015 \(S.I. 2015/700\)](#), arts. 1(8), **6(2)**
- F12** S. 27B(6) inserted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions and Modifications\) Order 2015 \(S.I. 2015/700\)](#), arts. 1(8), **6(3)**

### 27C Oral hearings where permission refused, etc.

- (1) Subsection (2) applies where, in relation to an application to the supervisory jurisdiction of the Court—
- (a) the Court—
    - (i) refuses permission under subsection 27B(1) for the application to proceed, or
    - (ii) grants permission for the application to proceed subject to conditions or only on particular grounds, and
  - (b) the Court decides to refuse permission, or grant permission as mentioned in paragraph (a)(ii), without an oral hearing having been held.
- (2) The person making the application may, within the period of 7 days beginning with the day on which that decision is made, request a review of the decision at an oral hearing.
- (3) A request under subsection (2) must be considered by a different Lord Ordinary from the one who refused permission or granted permission as mentioned in subsection (1)(a)(ii).
- (4) Where a request under subsection (2) is granted, the oral hearing must be conducted before a different Lord Ordinary from the one who refused or so granted permission.
- (5) At a review following a request under subsection (2), the Court must consider whether to grant permission for the application to proceed; and subsections (2), (3) and (4) of section 27B apply for that purpose.
- (6) Section 28 does not apply—
- (a) where subsection (2) applies, or

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(b) in relation to the refusal of a request made under subsection (2).

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

- C1** S. 27C applied (with modifications) (22.9.2015) by [Revenue Scotland and Tax Powers Act 2014 \(asp 16\)](#), [ss. 41\(3\)\(b\)\(4\)](#), [260\(2\)](#) (with [ss. 257-259](#)); [S.S.I. 2015/247](#), art. 2, Sch.; [S.S.I. 2015/110](#), art. 2(2)
- C2** Ss. 27C, 27D applied by 2014 asp 10, s. 57A(3)(b) (as inserted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 5 para. 24](#); [S.S.I. 2015/247](#), art. 2, Sch.)
- C3** S. 27C(3)(4) modified by 2014 asp 10, s. 57A(4) (as inserted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 5 para. 24](#); [S.S.I. 2015/247](#), art. 2, Sch.)

**27D Appeals following oral hearings**

- (1) Subsection (2) applies where, after an oral hearing to determine whether or not to grant permission for an application to the supervisory jurisdiction of the Court to proceed, the Court—
  - (a) refuses permission for the application to proceed, or
  - (b) grants permission for the application to proceed subject to conditions or only on particular grounds.
- (2) The person making the application may, within the period of 7 days beginning with the day on which the Court makes its decision, appeal under this section to the Inner House (but may not appeal under any other provision of this Act).
- (3) In an appeal under subsection (2), the Inner House must consider whether to grant permission for the application to proceed; and subsections (2), (3) and (4) of section 27B apply for that purpose.
- (4) In subsection (1), the reference to an oral hearing is to an oral hearing whether following a request under section 27C(2) or otherwise.]

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

- C2** Ss. 27C, 27D applied by 2014 asp 10, s. 57A(3)(b) (as inserted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 5 para. 24](#); [S.S.I. 2015/247](#), art. 2, Sch.)
- C4** S. 27D applied (with modifications) (22.9.2015) by [Revenue Scotland and Tax Powers Act 2014 \(asp 16\)](#), [ss. 41\(3\)\(b\)\(4\)](#), [260\(2\)](#) (with [ss. 257-259](#)); [S.S.I. 2015/247](#), art. 2, Sch.; [S.S.I. 2015/110](#), art. 2(2)

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