



# Court of Session Act 1821

## 1821 CHAPTER 38 1 and 2 Geo 4

An Act for establishing Regulations respecting certain Parts of the Proceedings in the Court of Session, and in the Court of Commissioners for Teinds, and respecting the Duties, Qualifications, and Emoluments of certain Clerks and other Officers of the said Courts. [28th May 1821]

### Modifications etc. (not altering text)

- C1 Short title given by [Short Titles Act 1896 \(c. 14\)](#)
- C2 Act repealed by [Court of Session Act 1825 \(c. 120\)](#), s. 1 in so far as inconsistent with the regulations expressed in that Act and so far as inconsistent with Rules of Court by [S.I. 1948/1681 \(1948 I, p. 3778\)](#), 1965/321
- C3 Preamble (which recites [Court of Session Act 1810 \(c. 112\)](#) and [Court of Session Act 1813 \(c. 64\)](#)) omitted under authority of [Statute Law Revision Act 1890 \(c. 33\)](#)
- C4 The whole Act except s. 32 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in [Sch. 2 Pt. II](#) of that Act)

### [1.] Power to remit, with instructions on bills of advocation and suspension of final judgments.

Upon bills of advocation and suspension complaining of final judgments of [<sup>F1</sup>sheriffs principal] and other inferior judges, it shall hereafter be competent either for the lord ordinary on the bills or for the court to remit the cause to the inferior judge, with instructions how to proceed; but no such remit shall be made except in the case of a suspension of a decret in absence, without hearing counsel, or receiving a written answer on the part of the respondent.

### Textual Amendments

- F1 Words substituted by virtue of [Sheriffs Courts \(Scotland\) Act 1971 \(c. 58\)](#), s. 4

*Status: Point in time view as at 01/02/1991.*  
*Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1821 (repealed). (See end of Document for details)*

.....  
**Textual Amendments**  
F2 S. 2 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

**3 Regulations in certain cases of equality of voices.**

In all cases in which, upon report of the lord ordinary on the bills to the lords of either division, there shall be a difference of opinion, and an equality of voices, such lord ordinary on the bills shall vote in the case: . . . <sup>F3</sup>

.....  
**Textual Amendments**  
F3 Words repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

**4** ..... <sup>F4</sup>

.....  
**Textual Amendments**  
F4 S. 4 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

**5—7.** ..... <sup>F5</sup>

.....  
**Textual Amendments**  
F5 Ss. 5—7 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

**8** ..... <sup>F6</sup>

.....  
**Textual Amendments**  
F6 Ss. 8, 10 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

**9 Principal clerk of teinds, to be an advocate or writer to the signet of three years standing.**

No person shall be capable to be appointed principal clerk of the commissioners for teinds, except a person legally qualified to be appointed a principal clerk of session; and no principal or depute clerk of the bills, to be hereafter appointed, shall after his appointment practise as an advocate or agent before the Court of Session, under pain of deprivation of office; nor shall any person henceforth to be appointed clerk to the commission of teinds practise as an advocate or agent before the commission of teinds, under pain of the like penalty.

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10 ..... F7

**Textual Amendments**

F7 Ss. 8, 10 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

**11 Direction of brieves to the macers in services prohibited.**

..... F8 In all cases in which it is now lawful and competent to grant commission by authority of the Court of Session to the said macers for proceeding in any service, and in which the brief issued from Chancery is thereupon directed to the macers, such commission shall be granted, and such brief issued, according to similar forms, to the [F9sheriff principal] of [F10Lothian and Borders], or his [F9sheriff], as [F9sheriff principal] in that part specially constituted, whether such service may relate to lands and heritages situated in or beyond the sheriffdom of [F10Lothian and Borders], or in several sheriffdoms; and in all cases of competition of brieves, as well as where a party claiming right to appear and oppose a service shall make such appearance, either party may apply for and obtain advocacy of the brieves to the Court of Session, not only from any inferior judge, but also from the said [F9sheriff principal] of [F10Lothian and Borders] acting under special commission; and the lord ordinary, before whom the letters of advocacy shall be called, shall advocate the brief, and remit to the fifth or junior permanent lord ordinary for the time to be judge in the said service, without prejudice, nevertheless, to the power of the court, whether on declinature or any other cause shown, to remit to any other ordinary to be judge in any service; and every such service, whether before the lord ordinary on advocacy, or before the [F9sheriff principal] of [F10Lothian and Borders] on special commission, shall proceed in the same place, form, and manner (unless in so far as the same may hereafter be otherwise regulated in manner hereinafter authorized) as services have heretofore proceeded before the macers, except that the said [F9sheriff principal] shall not be required to take any oath de fidei administratione as in the case of the macers; . . . F11 and the Court of Session is hereby empowered, by any Act or acts of sederunt to make such rules and regulations as may be deemed expedient for altering and amending the form and manner of issuing of brieves and executing the same, and of conducting the procedure in such services; and for every such service deduced before the said [F9sheriff principal] on commission, he shall be entitled to a fee of [F12£5·25] on every service in lands, whereof the valued rent is upwards of two thousand pounds Scots, and in every service of a peer, and of [F12£2·10] in every other service.

**Textual Amendments**

- F8 Recital omitted under authority of [Statute Law Revision Act 1890 \(c. 33\)](#)
- F9 Words substituted by virtue of [Sheriffs Courts \(Scotland\) Act 1971 \(c. 58\)](#), [s. 4](#)
- F10 Words substituted by [S.I. 1974/2087](#), [Sch. II](#)
- F11 Words repealed by [Statute Law Revision Act 1890 \(c. 33\)](#)
- F12 Words substituted by virtue of [Decimal Currency Act 1969](#), (c. 19) s. 10(1)

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## 12 Writers to the signet to be clerks to such services.

It shall not be lawful to any person to be clerk to any such service before the lord ordinary on advocation or before the [<sup>F13</sup>sheriff principal] of [<sup>F14</sup>Lothian and Borders] on commission, unless he be a writer to the signet; and the clerk to every service whatsoever of a retourable brieve shall, along with the verdict, deliver or cause to be delivered into Chancery, to be preserved subject to the orders of the lord clerk register, the original claim of service, minutes of the proceedings, and depositions of the witnesses; and no retour of any service shall be issued without such previous delivery.

### Textual Amendments

**F13** Words substituted by virtue of [Sheriffs Courts \(Scotland\) Act 1971 \(c. 58\)](#), s. 4

**F14** Words substituted by [S.I. 1974/2087](#), [Sch. II](#)

## 13 Provision for contingent expences incurred under authority of the court.

And whereas expences are occasionally incurred under the authority of the court in making up reports for the information and by order of the Houses of Parliament, as well as in other matters connected with the administration of justice, for the payment of which no fund has been hitherto provided: the net amount of all such charges shall from time to time be paid on the order of the barons of Exchequer, on an account of the same being presented to them, certified under the signature of the lord president of the College of Justice, out of the monies charged by certain Acts made in the seventh and tenth years of the reign of her Majesty Queen Anne, with the fees, salaries, and other charges allowed or to be allowed for keeping up the courts of Session, Justiciary, and Exchequer.

### Modifications etc. (not altering text)

**C5** Functions of barons of Exchequer now exercisable by judges of Court of Session: [Court of Session Act 1839 \(c. 36\)](#)

## 14 Keepers of the inner house rolls and clerks of the judges to receive salaries.

.....<sup>F15</sup> None of the said keepers or clerks shall thenceforth be entitled to any fee or other emolument whatsoever; but the whole fees now legally exigible by them shall be received by them respectively, and paid over on the first Monday of every month to the collector of the fee fund, conformably to signed accounts to be delivered to him, and to the verity of which they shall make oath, if required by the accountant of the fee fund: Provided always, that it shall be lawful to the court, by any Act or Acts of sederunt (which they are hereby empowered to make for that purpose), to authorize and direct any other mode of collection of the said fees, or of any part thereof, which may be deemed more expedient, so as the whole of such fees may in the most easy and convenient manner be paid over to the collector of the said fund.

### Textual Amendments

**F15** Words repealed by [Statute Law Revision Act 1890 \(c. 33\)](#)

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

C6 The “said keepers or clerks” means keepers of the inner house rolls and clerks of the judges

15 ..... F16

**Textual Amendments**

F16 S. 15 repealed by [Court of Session \(No. 2\) Act 1838 \(c. 118\)](#), s. 16

16 ..... F17

**Textual Amendments**

F17 S. 16 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), Sch.

17 ..... F18

**Textual Amendments**

F18 Ss. 17, 19–21 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

**18 Duplicates for the record, and abbreviates of adjudications, to be signed by the extractors.**

The duplicates of all decreets for the record, and also all abbreviates of decreets of adjudication, which have been heretofore signed, in compliance with the Act of Regulations in the year one thousand six hundred and ninety-five, by the lords ordinary pronouncing decree, as well as those abbreviates of decreets of adjudication which have been heretofore signed, in compliance with an Act of sedurunt in the year one thousand seven hundred and ninety-three, by the principal clerks of session, shall, from and after the twentieth day of June in this present year, be authenticated by the signature of the extractors respectively by whom the decreets shall be prepared and signed.

19— ..... F19  
21.

**Textual Amendments**

F19 Ss. 17, 19–21 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

22 ..... F20

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**Textual Amendments**

**F20** Ss. 22, 23, 25, 28 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

**23** ..... **F21**

**Textual Amendments**

**F21** Ss. 22, 23, 25, 28 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

**24 Certified copies for appeals, &c. may be signed by the clerks assistants.**

The copies of printed papers and interlocutors and minutes of the court appointed by the <sup>M1</sup>said Court of Session Act 1810 to be received in evidence when an appeal is taken to the House of Lords, and the authenticated copies of proceedings in any cause which the assistants of the principal clerks of session are by the said Act required to furnish, shall and may be certified by the signature either of one of the said clerks, or of one of the said assistants, for whom the principal clerk shall be responsible.

**Marginal Citations**

**M1** 1810 c. 112.

**25** ..... **F22**

**Textual Amendments**

**F22** Ss. 22, 23, 25, 28 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

**26 Keepers of the register of deeds, &c. to be appointed by the lord clerk register.**

The principal and assistant keepers of the register of deeds, probative writings, and instruments of protest, recorded in the books of council and session, shall be under the immediate control and direction of the lord clerk register and his deputy for the time, in the performance of the duties of their offices; and whenever a vacancy shall arise in any of the said offices, the same shall be supplied by the nomination of the lord clerk register, and every such nomination shall be forthwith reported to the court; and the extracts or office copies of all such deeds, probative writings, and instruments of protest, before the transmission thereof to the general register house, shall be authenticated by the subscription of one or other of the said keepers, in the same manner and to the same effect as such extracts have heretofore been authenticated by the signature of a principal clerk of session.

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**27 Indexes of certain records to be formed.**

And whereas it is expedient that the keepers of the several registers of records of seisins, reversions, abbreviates of adjudications, inhibitions, and deeds, and probative writs recorded in the books of council and session, should form alphabetical indexes of the persons and matters to which those records relate, for the purposes of easy reference to the same respectively: it shall and may be lawful for the Court of Session, by any Act or Acts of sederunt, from time to time to regulate the form and manner in which such indexes shall be formed and rendered accessible to the public, and to provide such remuneration for the persons who shall be employed to form the same as may be just and suitable, by the imposition of a fee on the registry of the writings to which the said indexes shall bear reference, not exceeding one fourth part of the ordinary charge paid for copying at the time in the Court of Session: Provided always, that copies of all such Acts of sederunt shall be transmitted by the president of the Court of Session to his Majesty's secretary of state for the home department, to be by him laid before both Houses of Parliament at or immediately after the commencement of the ensuing session; and no such Act or Acts of sederunt shall become in force or receive effect until the expiration of three calendar months after the first day of the meeting of such session of Parliament.

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

**C7** Functions of Secretary of State for home department now exercisable by Secretary of State: [Secretary for Scotland Act 1887 \(c. 52\), s. 2\(1\)](#) and [Secretaries of State Act 1926 \(c. 18\), s. 1\(1\)](#)

**28** ..... **F23**

**Textual Amendments**

**F23** [Ss. 22, 23, 25, 28](#) repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\), Sch.](#)

**29 Remuneration to the collector of the fee fund.**

The remuneration of the collector of the fee fund, including the expence which may become necessary of a clerk or assistant, shall, from and after the twentieth day of June in this present year, be fixed at the rate of four pounds per centum on the whole sums received by him, until such sums shall amount to eleven thousand pounds sterling, in each year, with the addition of a rate of two pounds per centum on the further sums received by him in such year beyond eleven thousand pounds sterling, and that in lieu and stead of the remuneration fixed by the <sup>M2</sup>said Court of Session Act 1810: Provided always, that in case in any year the said remuneration at the rate aforesaid shall fall short of six hundred pounds, the said collector shall in such year be entitled to retain the full sum of six hundred pounds as the allowance for his trouble and for the expence aforesaid; and every person filling the said office shall, in virtue of his appointment, be a member of the College of Justice.

**Marginal Citations**

**M2** [1810 c. 112.](#)

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### 30 Disposal of balance of fee fund, and deficiency to be supplied.

Any balance remaining in the hands of the collector on the twentieth day of December in any year shall be disposed of in manner described by the <sup>M3</sup>said Court of Session Act 1810; and in case of the insufficiency of the said fund at any time for the payment of the sums which the said collector is required to pay, the deficiency shall be supplied in the manner now practised in pursuance of the said Act.

#### Marginal Citations

M3 1810 c. 112.

### 31 Fees may be diminished or abolished by the court; and a copy of the order transmitted to the Secretary of State, to be laid before Parliament.

In case it shall at any time appear that the fees by which the said fund is created produce annually a sum materially exceeding the amount required, it shall be competent to the said court to diminish the amount of or altogether to abolish any of the said fees; anything in this or any other Act to the contrary notwithstanding: Provided always, that if by any diminution or abolition the fund shall become insufficient for the legal demands upon it, the said court shall restore the said fees in whole or in part, so as to keep the fund as nearly as may be equal to the burthens thereon: Provided further, that a copy of every order or Act of sederunt to be made by the said court, diminishing the amount of the said fees or abolishing any of the same, or restoring such fees, shall be transmitted by the president of the Court of Session to his Majesty's secretary of state for the home department, who shall cause a copy of the same to be laid before each House of Parliament at or immediately after the commencement of the then next session thereof; and upon the expiration of three calendar months after the first day of such session, but not sooner, every such fee shall become diminished, or be abolished, or be restored, in the same manner as if the same had been diminished or abolished or restored by authority of Parliament.

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

C8 Functions of Secretary of State for home department now exercisable by Secretary of State: [Secretary for Scotland Act 1887 \(c. 52\), s. 2\(1\)](#) and [Secretaries of State Act 1926 \(c. 18\), s.1\(1\)](#)

### 32 Office of auditor of the Court of Session to be made permanent. During temporary indisposition, &c. a person to be appointed to discharge the duties of auditor.

.....<sup>F24</sup> The office of auditor of accounts shall hereafter be and remain a permanent office in the Court of Session, and the person at present filling the said office shall continue to hold the same ad vitam aut culpam, with power nevertheless to his Majesty to appoint another auditor of accounts, so that there may be an auditor of accounts for each division, whenever it shall be certified to his Majesty, by the lord president of the Court of Session and the lord justice clerk, that in the opinion of the court the due dispatch of the business of the said office shall require that there shall be two such auditors, every such auditor being a fit and proper person, who shall have practised for not less than three years as a writer to the signet or as a member of the incorporation of solicitors before the supreme courts in Scotland; and



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every person filling the said office shall, in virtue of his appointment, be a member of the College of Justice, and shall hold the same ad vitam aut culpam; and upon every vacancy in the said office by death, resignation, or otherwise, it shall be lawful to his Majesty to nominate and appoint a fit and proper person, of the description aforesaid, to supply such vacancy; and no person holding the said office shall under pain of deprivation of office practise either directly or indirectly as an agent before the said Court of Session: Provided always, that in the event that two auditors of account shall be appointed, it shall and may be lawful for the Court of Session, and such Court is hereby empowered, by an Act or Acts of sederunt, to regulate the manner in which the business of the said office shall be performed by the said two auditors, and the manner in which the fees granted by the said recited Act shall be divided between them anything in the said recited Act to the contrary notwithstanding: Provided further, that a copy of every such Act of sederunt shall be transmitted by the president of the Court of Session to his Majesty's secretary of state for the home department, who shall cause a copy thereof to be laid before each House of Parliament at or immediately after the commencement of the then next session; and upon the expiration of three calendar months after the first day of such session, but not sooner, such Act of sederunt shall become in force in the same manner as if the regulations prescribed therein had been made by the authority of Parliament: provided nevertheless, that in case the auditor shall be unable to discharge the duties of the said office by reason of temporary indisposition or absence, it shall and may be lawful for the said court to appoint a fit and proper person, though continuing to practise as an agent before that court, to discharge the duties of such auditor during the period of such temporary indisposition or absence.

**Textual Amendments**

**F24** Recital omitted under authority of [Statute Law Revision Act 1890 \(c. 33\)](#)

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

**C9** Right of appointing Auditor of the Court of Session now vested in Secretary of State and exercisable on nomination by Lord Advocate: [Administration of Justice \(Scotland\) Act 1933 \(c. 41\), s. 25](#)

**C10** Functions of Secretary of State for home department now exercisable by Secretary of State: [Secretary for Scotland Act 1887 \(c. 52\), s. 2\(1\)](#) and [Secretaries of State Act 1926 \(c. 18\), s. 1\(1\)](#)

**33 Decree in absence not to be extracted without the account of expences being taxed by the auditor.**

.....<sup>F25</sup> in all cases in which decree is pronounced in absence of the defender or defenders, an account of expences shall be lodged in process, and taxed by the auditor; and a report thereon by the auditor shall be a sufficient warrant and authority to the extractor to fill up the amount of expences to be awarded against the defender or defenders in the extracted decree, without the said report being brought under the consideration of the lord ordinary, unless by his own direction, or that of the auditor, or on the motion of any party interested; and for the taxing of all such accounts, in cases of decrees in absence, the auditor shall be entitled to charge a fee of [<sup>F26</sup>25p], and no more, when the amount of the account shall not exceed the sum of ten pounds sterling; and when the amount of the account shall exceed that sum, he shall be entitled to charge according to the rates of fees specified and contained in the schedule annexed to the <sup>M4</sup>aforesaid Court of Session Act 1810.

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**Textual Amendments**

**F25** Words repealed by [Statute Law Revision Act 1890 \(c. 33\)](#)

**F26** Words substituted by virtue of [Decimal Currency Act 1969, \(c. 19\) s. 10\(1\)](#)

**Marginal Citations**

**M4** [1810 c. 112.](#)

**34, 35.** ..... **F27**

**Textual Amendments**

**F27** [Ss. 34, 35](#) repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

**Status:**

Point in time view as at 01/02/1991.

**Changes to legislation:**

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