



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1940

1940 CHAPTER 42 3 and 4 Geo 6

An Act to amend the law of Scotland relating to enforcement of decrees ad factum praestandum, to solatium and damages, to contribution among joint wrongdoers, and to prorogation of the jurisdiction of the Sheriff Court; to amend and extend the Intestate Husband's Estate (Scotland) Acts, 1911 and 1919; to make provision regarding the powers of the King's and Lord Treasurer's Remembrancer; to enable effect to be given to International Conventions affecting Scottish Courts; and to amend the law of Scotland relating to criminal procedure. [17th July 1940]

## Modifications etc. (not altering text)

C1 Words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3](#)

### <sup>x1</sup>1 **Amendment of the law as to enforcement of decrees ad factum praestandum.**

- (1) No person shall be apprehended or imprisoned on account of his failure to comply with a decree ad factum praestandum except in accordance with the following provisions—
- (i) On an application by the person in right of such a decree (hereinafter referred to as the applicant) to the court by which the decree was granted, the court may, if it is satisfied that the person against whom such decree was granted (hereinafter referred to as the respondent) is wilfully refusing to comply with the decree, grant warrant for his imprisonment for any period not exceeding six months;
  - (ii) Where the court is satisfied that a person undergoing imprisonment in pursuance of a warrant granted under this section has complied, or is no longer wilfully refusing to comply, with the decree, the court shall, notwithstanding any period specified in the warrant, order the immediate liberation of such person, and it shall be the duty of the applicant, as soon as he is satisfied that the decree has been complied with, forthwith to inform the clerk of the court of such compliance;

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- (iii) Imprisonment under a warrant granted under this subsection shall not operate to extinguish the obligation imposed by the decree on which the application proceeds;
  - (iv) The person on whose application a warrant for imprisonment has been granted under this subsection shall not be liable to aliment, or to contribute to the aliment of, the respondent while in prison.
- (2) On any application in pursuance of the foregoing subsection, the court may, in lieu of granting warrant for imprisonment, recall the decree on which the application proceeds and make an order for the payment by the respondent to the applicant of a specified sum or make such other order as appears to the court to be just and equitable in the circumstances, including, in the case where the decree on which the application proceeds is a decree for delivery of corporeal moveables, a warrant to officers of court to search any premises in the occupation of the respondent or of such other person as may be named in the warrant, and to take possession of, and deliver to the applicant, any such moveables which may be found in such premises.
- (3) Any warrant granted under the last foregoing subsection shall be deemed to include authority to open shut and lockfast places for the purpose of carrying the warrant into lawful execution.
- (4) ..... F1

**Editorial Information**

**X1** The text of s. 1 was taken from S.I.F. Group 45:2 (Enforcement: Scotland), s. 3 from S.I.F. Group 122:3 (Tort and Delict: General), s. 4 from S.I.F. Group 36:3 (Courts, Scotland: Sheriff Courts), ss. 5, 6, 11(1)(2) from SIF Group 116:2 (Succession: Confirmation, Scotland) and provisions omitted from SIF have been dealt with as referred to in other commentary.

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**Textual Amendments**

**F1** S. 1(4) repealed by [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), s. 46(2), **Sch. 2 Pt. II**

2 ..... F2

**Textual Amendments**

**F2** S. 2 repealed by [Damages \(Scotland\) Act 1976 \(c. 13\)](#), s. 11, **Sch. 2**

**3 Contribution among joint wrongdoers.**

- (1) Where in any action of damages in respect of loss or damage arising from any wrongful acts or negligent acts or omissions two or more persons are, in pursuance of the verdict of a jury or the judgment of a court found jointly and severally liable in damages or expenses, they shall be liable inter se to contribute to such damages or expenses in such proportions as the jury or the court, as the case may be, may deem just: Provided that nothing in this subsection shall affect the right of the person to whom such damages or expenses have been awarded to obtain a joint and several decree therefor against the persons so found liable.

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- (2) Where any person has paid any damages or expenses in which he has been found liable in any such action as aforesaid, he shall be entitled to recover from any other person who, if sued, might also have been held liable in respect of the loss or damage on which the action was founded, such contribution, if any, as the court may deem just.
- (3) Nothing in this section shall—
- (a) apply to any action in respect of loss or damage suffered before the commencement of this Act; or
  - (b) affect any contractual or other right of relief or indemnity or render enforceable any agreement for indemnity which could not have been enforced if this section had not been enacted.

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

- C2** S. 3 amended by [Crown Proceedings Act 1947 \(c. 44\)](#), **ss. 4(2)**, 43(b); applied by [Law Reform \(Contributory Negligence\) Act 1945 \(c. 28\)](#), **ss. 1**, 5(b) and [Public Utilities Street Works Act 1950 \(c. 39\)](#), **ss. 19**, 36(4); excluded by [Carriage of Goods by Road Act 1965 \(c. 37\)](#), **s. 5**
- C3** S. 3 modified by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), **ss. 6(1)(b)**, 41(2), 47(1)(2)  
S. 3 modified (2.10.2000) by [1998 c. 42, s. 8\(5\)\(a\)](#) (with [ss. 7\(8\)](#), 22(5)); S.I. 2000/1851, **art. 2**
- C4** S. 3 excluded (25.6.2010) by [The Rail Passengers' Rights and Obligations Regulations 2010 \(S.I. 2010/1504\)](#), **regs. 1(2)**, **5(3)**, 5(4)
- C5** S. 3 excluded (21.4.2021) by [Automated and Electric Vehicles Act 2018 \(c. 18\)](#), **ss. 6(5)**, 21; S.I. 2021/396, **reg. 3(a)**
- C6** S. 3 (1)(2) applied by [Animals \(Scotland\) Act 1987 \(c. 9, SIF 4:6\)](#), **s. 1(7)**
- C7** S. 3(2) extended (31.3.2001) by [1996 c. 31, s. 3\(9\)](#) (with [s. 20\(2\)](#)); S.S.I. 2001/98, **art. 3(a)**
- C8** S. 3(2) modified by [Competition Act 1998 \(c. 41\)](#), Sch. 8A paras. 16(3), 38(4) (as inserted (9.3.2017) by [S.I. 2017/385, reg. 1\(2\)](#), **Sch. 1 para. 4** (with [Sch. 1 para. 5](#)))
- C9** S. 3(2) applied by [Competition Act 1998 \(c. 41\)](#), Sch. 8A paras. 38(4)(b), 41(3)(b) (as inserted (9.3.2017) by [S.I. 2017/385, reg. 1\(2\)](#), **Sch. 1 para. 4** (with [Sch. 1 para. 5](#)))
- C10** S. 3(2) restricted (cond.) (7.12.2021) by [Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Act 2021 \(asp 15\)](#), **ss. 46(5)(b)**, ; S.S.I. 2021/419, **reg. 2**
- C11** S. 3(2) applied (8.8.2022) by [Defamation and Malicious Publication \(Scotland\) Act 2021 \(asp 10\)](#), **ss. 15(3)**, 39(2); S.S.I. 2022/154, **regs. 1(2)**, 2

**4 Agreements to prorogate the jurisdiction of the sheriff court.**

- (1) Any provision or agreement in or in relation to a contract to which this section applies, whereby any party to such contract prorogates, or agrees to submit to, the jurisdiction of a particular sheriff court, shall be void.
- (2) This section applies to—
- (a) any contract for the sale of an article
  - [<sup>F3</sup>and
  - (b) .....<sup>F4</sup>]
- [<sup>F5</sup>(3) This section does not apply—
- (a) in the case of an agreement entered into after the dispute in respect of which the agreement is intended to have effect has arisen; or
  - (b) where the contract is one referred to in Rule 3 of Schedule 8 to the Civil Jurisdiction and Judgments Act 1982.]

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**Textual Amendments**

- F3 Word substituted by Hire-Purchase (Scotland) Act 1965 (c. 67), s. 55, **Sch. 5**
- F4 S. 4(2)(b)(c) repealed by virtue of Consumer Credit Act 1974 (c. 39), s. 192(4), **Sch. 5**
- F5 S. 4(3) added by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), s. 23(2), **Sch. 12 Pt. II para. 1** : a previous s. 4(3) was repealed by Hire-Purchase (Scotland) Act 1965 (c. 67), s. 55, **Sch. 6**

5 ..... F6

**Textual Amendments**

- F6 S. 5 repealed with saving by Succession (Scotland) Act 1964 (c. 41), ss. 1(1), s. 34(2), **Sch. 3**

**6 Provisions as to estate falling to Crown *asultimus haeres*.**

- (1) For the removal of doubts it is hereby declared that when any estate shall have fallen to the Crown *asultimus haeres*, [<sup>F7</sup>the Secretary of State] has the like right to uplift and ingather such estate in England [<sup>F8</sup>and Wales as well as in Scotland as an executor nominate to whom confirmation has been granted as mentioned in section 1 of the <sup>M1</sup>Administration of Estates Act 1971].
- (2) Where [<sup>F7</sup>the Secretary of State] is satisfied that any person has a legal right to any sum not exceeding twenty pounds (exclusive of interest) which has been paid over to the said [<sup>F7</sup>Secretary of State] in pursuance of section sixteen of the <sup>M2</sup>Court of Session Consignations (Scotland) Act, 1895, or of section ten of the <sup>M3</sup>Sheriff Courts Consignations (Scotland) Act, 1893, it shall be lawful for the said [<sup>F7</sup>Secretary of State] to pay such sum to that person, without any order of the court:  
Provided that nothing in this subsection shall authorise the said [<sup>F7</sup>the Secretary of State] to pay any sum to which competing claims have been made.

**Textual Amendments**

- F7 Words substituted by S.I. 1974/1274
- F8 Words substituted by Administration of Estates Act 1971 (c. 25), **Sch. 1 para. 4**

**Marginal Citations**

- M1 1971 c. 25.
- M2 1895 c. 19.
- M3 1893 c. 44.

7 ..... F9

**Textual Amendments**

- F9 S. 7 repealed by State Immunity Act 1978 (c. 33), s. 23(2)

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**8** ..... **F10**

**Textual Amendments**

**F10** S. 8 repealed by Criminal Procedure (Scotland) Act 1975 (c. 21), s. 461(2), **Sch. 10 Pt. I**

**9, 10.** ..... **F11**

**Textual Amendments**

**F11** Ss. 9, 10 repealed by Summary Jurisdiction (Scotland) Act 1954 (c. 48), s. 78(1), **Sch. 4**

**11** †**Short title, extent and repeal.**

- (1) This Act may be cited as the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940.
- (2) Save as otherwise expressly provided, this Act shall extend to Scotland only.
- (3) ..... **F12**

**Textual Amendments**

**F12** S. 11(3), Sch. repealed by Statute Law Revision Act 1950 (c. 6), s. 1, **Sch. 1**

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

**C12** A dagger appended to a marginal note means that it is no longer accurate

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F13F13 SCHEDULE

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**Textual Amendments**

**F13** S. 11(3), Sch. repealed by Statute Law Revision Act 1950 (c. 6), s. 1, Sch. 1

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F13

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 3 modified by [2024 asp 1 s. 8\(4\)](#)