



Sheriff Courts (Scotland) Act 1876

1876 CHAPTER 70 39 and 40 Vict

An Act to alter and amend the Law relating to the Administration of Justice in Civil Causes in the ordinary Sheriff Courts in Scotland, and for other purposes relating thereto. [15th August 1876]

Preliminary

1 Short title.

This Act may be cited for all purposes as the Sheriff Courts (Scotland) Act 1876.

2 Application of Act.

.....^{F1} Unless where otherwise expressly provided, this Act shall only apply to civil proceedings in the ordinary sheriff court.

Textual Amendments

F1 Words repealed by [Statute Law Revision Act 1894 \(c. 56\)](#)

3 Interpretation of terms.

In this Act, unless when there is something in the sense or context repugnant to that construction, the following terms have the meanings herein-after assigned to them; that is to say,

“Action” includes every civil proceeding competent in the ordinary sheriff court:

“Person” includes company, corporation, and firm:

“Sheriff” includes sheriff substitute:

“Sheriff clerk” includes sheriff clerk depute, and in Part VIII. of this Act means commissary clerk, in those cases in which such office is not abolished:

Status: Point in time view as at 01/02/1991.

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“Agent” means a law agent enrolled in terms of the ^{M1}Law Agents (Scotland) Act 1873:

“Final judgment” means a judgment or interlocutor which, either by itself or taken along with a previous interlocutor or interlocutors, disposes of the whole subject-matter of the cause, or of the competition between the parties in a process of competition, although judgment shall not have been pronounced on all the questions of law or fact raised therein, and although expenses, if found due, have not been taxed, modified, or decerned for.

Modifications etc. (not altering text)

C1 References to sheriff and sheriff substitute to be construed as references to sheriff principal and sheriff respectively: [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\), s. 4](#)

Marginal Citations

M1 1873 c. 63.

4—25. ^{F2}

Textual Amendments

F2 Ss. 4-25 repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\), Sch. 2](#)

26 ^{F3}

Textual Amendments

F3 S. 26 repealed by [Bankruptcy \(Scotland\) Act 1913 \(c. 20\), Sch. 1](#)

27— ^{F4}
34.

Textual Amendments

F4 Ss. 27-34 repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\), Sch. 2](#)

VII. The Commissary Courts abolished

35— ^{F5}
40.

Textual Amendments

F5 Pt. VII (ss. 35—40) repealed by [Statute Law \(Repeals\) Act 1986 \(c. 12\), s. 1\(1\), Sch. 1 Pt. 1 Gp. 4](#)

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VIII. Amendment of Law as to Confirmation of Executors

41 Note in confirmation by sheriff clerk or commissary clerk that deceased died domiciled in Scotland substituted for certified copy interlocutor by the sheriff commissary and to have like effect.

Where, under the provisions of the ninth and subsequent sections of the ^{M2}Confirmation of Executors (Scotland) Act 1858, it shall be desired to include in the inventory of the personal estate of any person dying domiciled in Scotland personal estate situated in England or Ireland, it shall not be necessary to have a special proceeding before the sheriff with the view to his pronouncing therein an interlocutor finding that the deceased died domiciled in Scotland. That fact shall be set forth in the affidavit to the inventory, and it being so set forth therein shall be sufficient warrant for the sheriff clerk to insert in the confirmation or to note thereon and sign a statement that the deceased died domiciled in Scotland; and such statement shall have the same effect as a certified copy interlocutor finding that the deceased person died domiciled in Scotland . . . ^{F6}

Textual Amendments

F6 Words repealed by [Statute Law Revision Act 1894 \(c. 56\)](#)

Modifications etc. (not altering text)

C2 References to Ireland to be construed as exclusive of Republic of Ireland: S.R. & O. 1923/405 (Rev. X, p. 298: 1923, p. 400), art. 2

Marginal Citations

M2 [1858 c. 56.](#)

42, 43. ^{F7}

Textual Amendments

F7 [Ss. 42, 43](#) repealed by [Administration of Estates Act 1971 \(c. 25\), Sch. 2 Pt. I](#)

44 Schedule C. of 21 & 22 Vict. c. 56. hereby repealed, and new form of intimation, &c.

The sheriff clerk shall, after a petition for the appointment of an executor has been intimated by him as provided by section four of the ^{M3}Confirmation of Executors (Scotland) Act 1858, and after receiving the certified copy of the printed and published particulars therein set forth, forthwith certify these facts on the petition in the following or similar terms: "Intimated and published in terms of the statute," which certificate . . . ^{F8} shall be dated and signed by him, and shall be sufficient evidence of the facts therein set forth: Provided always, that special intimation shall be made to all executors already decerned or confirmed to a deceased person of any subsequent petition for the appointment of an executor which may be presented with reference to the personal estate of the same deceased person.

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Textual Amendments

F8 Words repealed by [Statute Law Revision Act 1883 \(c. 39\)](#) and [Statute Law Revision Act 1894 \(c. 56\)](#)

Marginal Citations

M3 [1858 c. 56.](#)

45 A calendar of confirmations and inventories to be published annually.

It shall be the duty of the commissary clerk of Edinburgh on or before the thirty-first day of December in every year to prepare and issue a printed calendar containing a list or register, alphabetically arranged, of all confirmations granted, and of all inventories given in, in cases in which from any cause confirmation shall not have been required in Scotland, in the year ending on the thirty-first day of December immediately preceding, specifying in each case [^{F9}the surname, forenames and addresses of the deceased as shown in the relative inventory; whether he died testate or intestate; and where and on what date confirmation was granted or the inventory was recorded]: Provided as follows:

- (1) It shall be the duty of every sheriff clerk . . . ^{F10} quarterly, on or before the first days of February, May, August, and November in each year, to furnish to the commissary clerk of Edinburgh such a list or register, with such particulars as aforesaid, of all confirmations and inventories granted or given in, within such sheriffdom in the quarters ending on the thirty-first day of December, the thirty-first day of March, the thirtieth day of June, and the thirtieth day of September immediately preceding respectively:
- (2) A copy of every such calendar issued shall be sent by the commissary clerk of Edinburgh [^{F11}to the sheriff clerk of Lanarkshire at Glasgow] who shall keep the same in his office open for the inspection of the public on payment of such fee as may be fixed by act of sederunt, which the Court of Session are hereby authorised and required to pass:
- (3) A copy of every issue of such calendar shall also be sent to the Lord Clerk Register . . . ^{F12}
- (4) The cost of preparing and printing and issuing such calendar and of furnishing copies thereof to the persons to whom they are herein directed to be sent shall be defrayed out of moneys to be voted by Parliament.

Textual Amendments

- F9** Words substituted by [S.I. 1968/140, para. 2\(a\)](#)
F10 Words repealed by [Statute Law Revision Act 1894 \(c. 56\)](#)
F11 Words substituted by [S.I. 1968/140, para. 2\(b\)](#)
F12 Words repealed by [S.I. 1968/140, para. 2\(c\)](#)

Modifications etc. (not altering text)

C3 Power to vary s. 45 conferred by [Sheriff Courts and Legal Officers \(Scotland\) Act 1927 \(c. 35\)](#), **s. 19**

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IX. Miscellaneous Provisions

46— F13
52.

Textual Amendments

F13 S. 46-52 repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), [Sch. 2](#)

53 F14

Textual Amendments

F14 S. 53 repealed by [Statute Law Revision Act 1963 \(c. 30\)](#)

54 Courts to make acts of sederunt.

The Court of Session may from time to time make such regulations by act of sederunt as shall be necessary for carrying into effect the purposes of this Act; and for regulating the forms of petitions, and modes of procedure and of pleadings; and generally the practice of the sheriff courts in respect of the matters to which the Act relates; and for regulating the fees of court, with the concurrence of the Treasury, and also for regulating the fees of the agents practising before the said courts, and of shorthand writers appointed to take down proofs, and, so far as may be found expedient, for altering the course of proceeding herein-before prescribed in respect to the matters to which this Act relates, or any of them, and for regulating the place or places at which in each county the business heretofore conducted in the commissary court thereof shall be hereafter conducted in the sheriff court thereof, . . . ^{F15} and may also repeal or alter the provisions of any act of sederunt relating to any of the matters herein-before specified as may be inconsistent with such new regulations; and for that purpose the Court of Session may meet during vacation as well as during session; and in preparing such act of sederunt the court may take the assistance of any six sheriffs and sheriffs-substitute whom they may select: Provided that every such act of sederunt shall, within one month after the date thereof, be transmitted by the Lord President of the Court of Session to one of Her Majesty's Principal Secretaries of State in order that it may be laid before both Houses of Parliament; and if either of the Houses of Parliament shall, by any resolution passed within thirty-six days after such act of sederunt has been laid before such House of Parliament, resolve that the whole or any part of such act of sederunt ought not to continue in force, in such case the whole or such part thereof as shall be so included in such resolution shall from and after such resolution cease to be binding.

Textual Amendments

F15 Words repealed by [Public Records \(Scotland\) Act 1937 \(c. 43\)](#), [Sch. 2](#)

Modifications etc. (not altering text)

C4 S. 54 repealed, except in so far as it relates to commissary regulations, by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), [Sch. 2](#)

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C5 References to county to be construed as references to sheriffdom: [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), **Sch. 1 para. 1**

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F16F16 SCHEDULES A, B

Textual Amendments

F16 Schs. A, B, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), **Sch. 2**

.....
F16

Status:

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