COURTS REFORM (SCOTLAND) BILL [AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these Revised Explanatory Notes are published to accompany the Courts Reform (Scotland) Bill (introduced in the Scottish Parliament on 6 February 2014) as amended at stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Courts Reform (Scotland) Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill seeks to support the aims set out in the Policy Memorandum by introducing reforms to modernise and enhance the efficiency of the Scottish civil justice system. The provisions in the Bill take forward many of the recommendations from Lord Gill's review of the civil courts, The Scottish Civil Courts Review[1] (SCCR), which reported in 2009. The Scottish Government issued its response[2] to the review in 2010. Some recommendations from the SCCR have already been taken forward, such as modernising children's hearings. The Bill will implement the majority of the recommendations that the Government accepted in its response in 2010. A consultation in 2007 informed the review. Further consultations on the draft Bill and treatment of civil appeals from the Court of Session were undertaken in 2013. Further information on the Scottish Government consultations can be found in the Policy Memorandum.

5. The Bill does not attempt to legislate for all of the recommendations made in the SCCR, some of which have been or are being taken forward separately, such as reforms to children's

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[1] The Scottish Civil Courts Review - http://www.scotcourts.gov.uk/about-the-scottish-court-service/the-scottish-civil-courts-reform

[2] The Scottish Government Response to the Report and Recommendations of the Scottish Civil Courts Review - http://www.scotland.gov.uk/Resource/Doc/330272/0107186.pdf

hearings. Many of the changes which have been recommended have already been implemented such as some of the reforms of the Inner House of the Court of Session, or will be implemented by court rules made by the Court of Session by act of sederunt, such as some of the procedural reforms within the Court of Session envisaged by the Bill. The Bill seeks to set out the framework within which the court rules will add the necessary detail.

6. The opportunity has been taken to modernise and consolidate most of the remaining provisions of the Sheriff Courts (Scotland) Acts of 1907 and 1971 (although a few provisions of the 1907 Act will still remain). Not every provision has been replicated and the wording has been changed in some provisions. Some provisions have been amalgamated while others have been expanded.

7. The Bill amends the Judiciary and Courts (Scotland) Act 2008 to establish a joint administration for courts and tribunals. It renames the organisation and changes the board structure to allow the merged organisation to operate effectively for both courts and tribunals.

8. The Bill is in eleven Parts.

9. Part 1 (Sheriff courts) includes provisions on sheriffdoms, sheriff court districts and sheriff courts, the judiciary of the sheriffdoms, the organisation of the business, and competence and jurisdiction of the sheriffs. This part provides for the creation of the summary sheriff judicial office holder, and for the designation of specialist judiciary. It also provides for the power to confer an all-Scotland jurisdiction for specified cases on a specific court which is intended to enable an all-Scotland specialist personal injury court. It provides for the raising of the exclusive competence of the sheriff court. Schedule 1 specifies the civil proceedings etc. in relation to which a summary sheriff will have competence.

10. Part 2 (The Sheriff Appeal Court) makes provision for the Sheriff Appeal Court which will hear summary criminal appeals from the sheriff court and the justice of the peace (JP) court, as well as civil appeals from the sheriff court. The provisions specify the jurisdiction and competence of the Sheriff Appeal Court as well as the status of its decisions in precedent, and sets out the arrangements for the President and Vice President of the Sheriff Appeal Court. The provisions set out how sheriffs principal and sheriffs are able to be Appeal Sheriffs. They confer on the President the responsibility for the efficient disposal of business in the Sheriff Appeal Court. They make further provision about court sittings, the Clerk and Deputy Clerks. (Further provision on criminal appeals is made in Part 5.) . Schedule 1A makes temporary provision for Senators of the College of Justice to act as Appeal Sheriffs during a period of 3 years beginning with the day on which the Sheriff Appeal Court is established.

11. Part 3 (Civil procedure) makes provision for civil jury trials in an all-Scotland sheriff court. It also includes provisions for simple procedure which will replace small claims and summary cause procedures. (The Court of Session is able to make further general provision about simple procedure in an act of sederunt made under section 97). This part also includes provisions on the granting and enforcement of interdicts with effect in more than one sheriffdom, the execution of deeds relating to heritage by the Sheriff Clerk and interim orders. It includes provision on judicial review and warrants of ejection. This part also makes provision for the remit of cases to or from the Court of Session, and to the Scottish Land Court. It includes

provision on lay representation in simple procedure cases and in other proceedings. It includes provision on jury service. It also contains provisions on vexatious litigants.

12. Part 3A (Procedure and Fees) includes provisions to allow the Court of Session to regulate its own procedure and that of the sheriff court and Sheriff Appeal Court. It also includes provisions allowing the Court of Session to regulate the fees of those who provide services in the Court of Session and sheriff courts. This part also makes provisions for the charging of fees by the Scottish Courts and Tribunals Service and relevant officers of court in relation to the running costs of the court itself, re-enacting the previous provisions relating to such charges contained in the Court of Law Fees (Scotland) Act 1895. This part also sets out the rules to be applied by the court in determining for the purposes of determinations on expenses, whether to grant sanction for the employment of counsel in the sheriff and Sheriff Appeal Courts.

13. Part 4 (Civil appeals) includes provisions on civil appeals to the Sheriff Appeal Court and to the Court of Session, the effect of appeal, and appeals to the Supreme Court.

14. Part 5 (Criminal appeals) makes provision for appeals from summary criminal proceedings including appeals from the Sheriff Appeal Court to the High Court and bail appeals. Schedule 2 makes modifications to the Criminal Procedure (Scotland) Act 1995 consequential upon the transfer of summary appeal jurisdiction from the High Court to the Sheriff Appeal Court.

15. Part 5A (Remuneration and Expenses of Senators of the College of Justice) makes provision for payment of salaries and expenses of judges of the Court of Session by the Scottish Courts and Tribunals Service.

16. Part 6 (Justice of the peace courts) makes provision relating to the establishment, relocation and disestablishment of JP courts, the abolition of the office of stipendiary magistrate, the conversion of existing stipendiary magistrates to be summary sheriffs, and a provision enabling summary sheriffs to sit in JP courts.

17. Part 7 (The Scottish Courts and Tribunals Service), together with schedule 3 amends the Judiciary and Courts (Scotland) Act 2008 to change the name of the Scottish Court Service to the Scottish Courts and Tribunals Service ("the SCTS") and confers power on the merged organisation to provide administrative support for the Scottish Tribunals and their members.

18. Part 7A (The Judicial Appointments Board for Scotland) provides for the appointment of persons to assist the Board with the carrying out of its functions.

19. Part 8 (General) includes provision in relation to subordinate legislation, interpretation and commencement, and gives effect to schedule 4 which makes minor and consequential amendments to a number of enactments.

THE BILL

PART 1 - SHERIFF COURTS

Chapter 1 - Sheriffdoms, sheriff court districts and sheriff courts

Section 1 – Sheriffdoms, sheriff court districts and sheriff courts

20. Subsections (1) to (3) set out that Scotland is to be divided into sheriffdoms which are to be further divided into sheriff court districts. They take account of the fact that not all sheriffdoms are divided into sheriff court districts (Glasgow and Strathkelvin is currently the only sheriffdom that is not so divided) and retain flexibility to cater for the possibility that in the future other sheriffdoms may be undivided. Subsections (4) to (6) provide that, subject to any order under section 2, existing sheriffdoms, sheriff court district and sheriff court locations will continue as they are following the coming into force of section 1.

Section 2 – Power to alter sheriffdoms, sheriff court districts and sheriff courts

21. Section 2 updates the powers to alter sheriffdoms and sheriff court districts in sections 2(1) and 3(2) of the 1971 Act, combining the two powers into one section, and also adds new provisions. Previously the Scottish Ministers were only able to make changes with the consent of the Lord President of the Court of Session and the Scottish Courts Service, the latter being placed under a duty to consult parties who are likely to have an interest. This meant that the Scottish Courts Service first had to consult, the Scottish Ministers then made an order and then the Lord President had to consent to the order including further consultation with e.g. the sheriffs principal. The process was bureaucratic and not well sequenced. The provisions now set out in subsections (2) to (5) endeavour to make the process more straightforward. Firstly, SCTS (as the Scottish Court Service is renamed by section 120 of the Bill) must consult such persons as it considers appropriate before submitting a proposal under subsection (1). Then it may, with the agreement of the Lord President, submit a proposal to the Scottish Ministers. The Scottish Ministers must then consider the proposal, and decide whether to make an order and what provision to make in the order. The making of the order is subject to the consent of the SCTS and the Lord President. The order made by the Scottish Ministers is subject to affirmative procedure.

Chapter 2 - Judiciary of the sheriffdoms

Permanent and full-time judiciary

Section 3 – Sheriff principal

22. Section 3 provides that there continues to be the office of sheriff principal, appointed by Her Majesty on the same basis as prior to the Bill (that is, on the recommendation of the First Minister, after consulting the Lord President, in accordance with section 95(4)(b) of the Scotland Act 1998). The appointment procedure set out in section 3 does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008, the effect of which is that the First Minister may only recommend an individual who has been recommended for appointment by the Judicial Appointments Board for Scotland (subsection (4)).

Section 4 – Sheriffs

23. Section 4 provides that there continues to be the office of sheriff, appointed by Her Majesty on the same basis as prior to the Bill (that is, on the recommendation of the First Minister, after consulting the Lord President, in accordance with section 95(4)(b) of the Scotland Act 1998). The appointment procedure set out in section 4 does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008, the effect of which is that the First Minister may only recommend an individual who has been recommended for appointment by the Judicial Appointments Board for Scotland (subsection (4)).

Section 5 – Summary sheriffs

24. Section 5 introduces a new office of summary sheriff who will be subject to the same appointment procedures as for sheriffs – that is, subject to the qualification requirements contained in section 14, and appointed by Her Majesty on the recommendation of the First Minister, after consulting the Lord President. The appointment procedure set out in section 5 does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008, the effect of which is that the First Minister may only recommend an individual who has been recommended for appointment by the Judicial Appointments Board for Scotland (subsection (4)). Sections 43 and 44 make provision about the competence and jurisdiction of summary sheriffs.

Temporary and part-time judiciary

Section 6 – Temporary sheriff principal

25. Section 6 which effectively re-enacts, with amendments, section 11 of the 1971 Act makes provision for the appointment of a temporary sheriff principal in the circumstances set out in subsection (1). In these circumstances, and if the Lord President requests, the Scottish Ministers must appoint a temporary sheriff principal. Those eligible for appointment are a sheriff (subsection (2)(a)) or a "qualifying former sheriff principal" (subsection (2)(b)) defined in subsection (3) as an individual who ceased to hold office as sheriff principal other than by virtue of an order under section 25 (removal from office) and who has not reached the age of 75. Subsection (4) sets out that a temporary sheriff principal may be appointed to exercise either all of the sheriff principal's functions or only those which the sheriff principal is unable to perform or is precluded from exercising. The Lord President may request the appointment of a temporary sheriff principal on the ground that a vacancy has occurred in the office of sheriff principal, only if the Lord President considers such an appointment to be necessary or expedient in order to avoid a delay in the administration of justice in the sheriffdom (subsection (6)).

Section 7 – Temporary sheriff principal: further provision

26. Section 7 makes further provision for the arrangements for a temporary sheriff principal. An appointment as a temporary sheriff principal ceases when it is recalled by the Scottish Ministers on the request of the Lord President (subsection (2)) or when the individual concerned ceases to be a sheriff or is suspended from that office (subsection (3)). (For suspension and removal of sheriffs, see section 22 and 25 respectively). Except where the temporary sheriff is appointed to exercise only limited functions (in terms of section 6(4)(b)), he or she may exercise the jurisdiction and powers of sheriff principal of the sheriffdom (subsection (4)). A temporary sheriff principal retains his or her appointment as a sheriff (subsection (5)), but where the appointment is as a temporary sheriff principal of a sheriffdom other than that for which the person is a sheriff, he or she will only be able to act as a sheriff within the sheriffdom in which

appointment as the temporary sheriff principal is held and not in his or her "home" sheriffdom (subsection (6)).

Section 8 – Part-time sheriffs

27. Section 8, which governs the appointment of part-time sheriffs, replicates the majority of section 11A of the 1971 Act (sections 11A to 11D of which were inserted by the Bail, Judicial Appointments etc (Scotland) Act 2000). Subsection (1) provides for the Scottish Ministers to appoint individuals to "act as" sheriffs, and for individuals so appointed to be known as "part-time sheriffs". The qualifications for appointment, set out in section 14 are the same as for sheriffs, and the Scottish Ministers may make an appointment only after consulting the Lord President (subsection (2)). In terms of subsection (3), an appointment as part-time sheriff lasts for five years, unless it ceases in accordance with section 20 (Cessation of appointment of judicial officers); but see section 9, which provides (with exceptions) for automatic re-appointment at the end of each five-year period. A part-time sheriff may exercise the powers and jurisdiction that attach to the office of sheriff in every sheriffdom (subsection (4)) and is subject to the administrative direction of the sheriff principal of the sheriffdom in which the part time sheriff is for the time being sitting (subsection (5)) (for the powers of sheriffs principal in this regard, see sections 27 and 28). Sheriffs principal are directed by subsection (6) to have regard to the desirability of ensuring that each part-time sheriff is given the opportunity of sitting for at least 20 days, and not more than 100 days, per year. Section 11A(5) of the 1971 Act, as amended by the Maximum Number of Part-Time Sheriffs (Scotland) Order 2006 (S.S.I 2006/257) imposed a limit of 80 upon the number of part-time sheriffs. Section 11A(5) is not re-enacted, and there is no longer a limit on the number of part-time sheriffs.

Section 9 – Reappointment of part-time sheriffs

28. Section 9 replicates with some amendments section 11B of the 1971 Act. The Bill does not, however, re-enact the prohibition on those aged 69 from being reappointed. Retirement ages in general are not reproduced in the Bill and are instead consolidated through amendments made to the Judicial Pensions and Retirement Act 1993 by schedule 4, paragraph 8. Section 11B(9), of the 1971 Act which prevented part-time sheriffs who were solicitors from acting as part-time sheriffs in the same sheriff court district as that individual's principal place of business, is substantially re-enacted in section 15(3).

29. The effect of section 9 is that, except where one of the conditions in subsection (1)(a)-(c) is met, or the individual in question has reached the statutory retirement age of 70 contained in section 26(1) of the Judicial Pensions and Retirement Act 1993, that individual must be re-appointed at the expiry of each five-year appointment.

Section 10 – Part-time summary sheriffs

30. This section creates the office of part-time summary sheriff on terms identical to those applying to part-time sheriffs. Reference is made to the notes at paragraph 23.

Section 11 – Reappointment of part-time summary sheriffs

31. Section 11 replicates the provisions of section 9 in respect of part-time summary sheriffs. Reference is made to the notes at paragraph 24.

Re-employment of former holders of certain judicial offices

Section 12 – Re-employment of former judicial office holders

32. Section 12 substantially re-enacts section 14A of the 1971 Act, as inserted by the Judiciary and Courts (Scotland) Act 2008. That section provided for the re-appointment of retired sheriffs principal and sheriffs; section 12 also allows for the re-appointment of former qualifying part-time sheriffs and summary sheriffs and part-time summary sheriffs. The section allows a sheriff principal to appoint a qualifying former sheriff principal, a qualifying former sheriff or a qualifying former part-time sheriff to act as a sheriff of the sheriffdom and a qualifying former summary sheriff or part-time summary sheriff to act as a summary sheriff of the sheriffdom. Such an appointment only permits the individual in question to act during such period or periods as the sheriff principal may determine (subsection (2)), and an appointment may only be made where it appears to the sheriff principal to be expedient as a temporary measure in order to facilitate the disposal of business in the sheriff courts of the sheriffdom (subsection (3)). So, for example, a former judicial office holder might be appointed to fill a temporary gap created by the appointment of one of the sheriffs of the sheriffdom as a temporary sheriff principal in terms of section 6. Subsections (4) to (8) define what is meant by a "qualifying" former judicial office holder: in order to be "qualifying", the former office holder must not have been removed from office under section 25, nor have reached the age of 75.

Section 13 – Re-employment of former judicial office holders: further provision

33. This section makes further provisions about the use of former judicial office holders. Subsection (1) provides that an appointment continues until recalled by the relevant sheriff principal. Subsections (2) and (3) provide that a re-appointed judicial officer may exercise the powers of a sheriff, or as the case may be a summary sheriff of the sheriffdom. Subsection (4) provides that an appointment under section 12(1) comes to an end when the individual reaches the age of 75. Subsection (5) permits an individual to continue to deal with matters relating to a case begun before the ending of his or her appointment under section 12(1) and providing that for that purpose the individual concerned is to be treated as acting under that appointment.

Qualification and disqualification

Section 14 – Qualification for appointment

34. Section 14 sets out the qualification for appointment as a sheriff principal, sheriff, summary sheriff, part-time sheriff or part-time summary sheriff. It re-enacts the substance of section 5 of the 1971 Act by requiring that an individual must have been a solicitor or advocate during the 10 years immediately prior to appointment. Subsection (1)(a) makes it explicit that experience in a judicial office specified in subsection (2) immediately prior to appointment also qualifies an individual for appointment.

Section 15 – Disqualification from practice, etc.

35. Subsections (1) and (2) of section 15 prohibit sheriffs principal, sheriffs and summary sheriffs from engaging in any other business, or being in partnership with or employed by or acting as agent for any person so engaged. (In doing so, they substantially re-enact, and extend to summary sheriffs, section 6 of the 1971 Act). The prohibition on private practice and business is intended to cover all private business as there would be an obvious potential for conflict of interest if a sheriff had outside business interests.

36. Part-time sheriffs and part-time summary sheriffs are not prohibited from practice since they are appointed specifically for expertise and experience in that practice, but subsection (3) makes clear that part-time sheriffs and part-time summary sheriffs cannot act in the part-time judicial capacity in the sheriff court district in which their place of business as a solicitor is situated. This prohibition now extends to any place of business as a solicitor, not just the main place of business.

Remuneration and expenses

Section 16 – Remuneration

37. Section 16 consolidates a number of provision of the 1907 and 1971 Acts dealing with the remuneration of sheriffs, sheriffs principal, part-time sheriffs and re-employed former judiciary and makes new provision for the remuneration of summary sheriffs and part-time summary sheriffs. The remuneration of sheriffs principal and sheriffs is a reserved matter under the Scotland Act 1998. Subsections (1) and (2) in providing for the determination of the remuneration of sheriffs and sheriffs principal by the Secretary of State with consent of the Treasury, re-enact section 14 of the 1907 Act. Subsections (3) and (4) provide for the remuneration of summary sheriffs to be determined and paid by the Scottish Ministers. Subsections (5), (6) and (7) deal with the remuneration of part-time and re-employed judiciary. Again the remuneration of these judiciary is determined by the Scottish Ministers. Subsections (8) and (9) restate section 10(4) of the 1971 Act in relation to payments to be made to sheriffs principal and sheriffs who are directed to perform the judicial functions of sheriffs principal and sheriffs in another sheriffdom. Subsections (10) and (11) make similar provision in relation to summary sheriffs who act in another sheriffdom; in contrast to sheriffs principal and sheriffs, in respect of whom the function of determining remuneration continues to rest with the Secretary of State with the consent of the Treasury, any additional remuneration of summary sheriffs is to be determined by the Scottish Ministers.

38. Subsection (12) makes it clear that salaries and remuneration for the judicial officers listed under subsections (1) to (11) will be paid by the SCTS to reflect the fact that, when the Lord President became responsible for the deployment of the judiciary under the Judiciary and Courts (Scotland) Act 2008, budgets in support of that (for example travel and subsistence and part-time sheriffs) were transferred to the Scottish Courts Service or the Judicial Office.[3] The salary budget (which is paid from the Scottish Consolidated Fund) did not transfer because the appointment of the judiciary remains a matter for Her Majesty on the advice of the Scottish Ministers. Subsection (13) provides that the salaries of sheriffs principal and sheriffs and the remuneration due to summary sheriffs will be charged on the Scottish Consolidated Fund.

Section 17 – Expenses

39. There are a variety of provisions in the 1971 Act that make provision for the payment of expenses and allowances to holders of judicial offices in the sheriff court and which are distinct from remuneration provisions. These are section 10(4) (sheriff directed to perform duties in a sheriffdom other than that which he was appointed), section 11(8) (temporary sheriffs principal), section 11A(8) (part-time sheriffs), section 14A(6) (re-employment of retired sheriffs) and section 19 (travelling expenses for sheriffs principal). Section 17 consolidates these provisions and provides that the judicial officers listed in subsection (3) may be paid expenses by the SCTS

[3] The Judicial Office is a part of the Scottish Court Service that provides support to the Lord President in his role as head of the Scottish judiciary undertaking such functions as training, welfare, deployment etc.

if they were reasonably incurred in the performance of the officer's duties. There is now no provision for the payment of "allowances".

Leave of absence

Section 18 – Leave of absence

40. Section 18 provides for leave of absence for sheriff court judiciary. In terms of subsection (1) it is for the Lord President to approve leave of absence for sheriffs principal and temporary sheriffs principal. In terms of subsection (2) it is for the sheriff principal to approve leave of absence for a sheriff or summary sheriff. The maximum amount of recreational leave which may be approved for any one judicial officer in a given year is seven weeks (subsection (3)), although this limit may be exceeded with the permission of the Lord President (subsection (4)), which the Lord President may give only if there are special reasons which justify exceeding the limit in the particular case (subsection (5)). There is no limit upon the amount of leave which may be approved for non-recreational purposes (defined in subsection (7) as including, without limitation, sick leave, compassionate leave and study leave). Subsection (6) allows the Lord President to delegate to another judge of the Court of Session any of the functions conferred upon the Lord President by this section. (So far as leave of absence for sheriffs principal and sheriffs is concerned, the provision made by section 18 is substantially equivalent to that currently provided for in sections 13(2) and (3) and 16(2) and (2A) of the 1971 Act).

Residence

Section 19 – Place of residence

41. Section 19 replicates sections 13(1) and 14(2) of the 1971 Act to preserve, and extend to summary sheriffs, the existing power of the Lord President to require a judicial officer to have an ordinary residence at such place as the Lord President may require – which would normally be within reasonable travelling distance to the court or courts where that judicial officer sits.

Cessation of appointment

Section 20 – Cessation of appointment of judicial officers

42. Section 20 sets out the grounds upon which the appointment of a sheriff principal, a sheriff, a summary sheriff, a part-time sheriff or a part-time summary sheriff may come to an end. Subsection (1) allows for resignation at any time by giving notice to that effect to the Scottish Ministers. Subsection (2) provides that the appointment of that officer will end on giving such notice or resignation, upon retirement, upon removal from office in accordance with section 25, or upon appointment as another judicial officer specified in subsection (3).

Fitness for office

43. Section 21 to 25 re-enact, and extend to summary sheriffs and part-time summary sheriffs, sections 12A to 12E of the 1971 Act, as inserted by the Judiciary and Courts (Scotland) Act 2008. These provisions are consistent with those which apply to the senior judiciary by virtue of sections 35 to 39 of the latter Act.

Section 21 – Tribunal to consider fitness for office

44. Section 21 provides that the First Minister must set up a tribunal to investigate and report on whether a person is unfit to hold judicial office by reason of inability, neglect of duty or

misbehaviour where requested to do so by the Lord President (subsection (1)) or in other such circumstances as the First Minister thinks fit, having consulted the Lord President (subsection (2)). Subsection (3) provides that sheriffs principal, sheriffs, summary sheriffs, part-time sheriffs and part-time summary sheriffs are all subject to the jurisdiction of such tribunals. Subsection (4) provides that the tribunal is to consist of one judge who must be a qualifying member of the Judicial Committee of the Privy Council (and who will, by virtue of subsection (7), chair the tribunal and have a casting vote); one holder of the relevant judicial office; one individual who has been qualified for at least 10 years as a solicitor or advocate; and one individual who does not, and never has, fallen within any of the other categories. The terms "qualifying member of the Judicial Committee of the Privy Council" and "relevant judicial office" are defined in subsection (5). The membership of the tribunal is to be selected by the First Minister, with the agreement of the Lord President (subsection (6)).

Section 22 – Tribunal investigations: suspension from office

45. Section 22 provides for the suspension from judicial office of the individual who is the subject of the tribunal's investigation. This suspension may be effected by the Lord President, where the tribunal was constituted at the Lord President's request (subsections (1) and (2)), or by the First Minister, on receiving a recommendation to that effect from the tribunal (subsections (4) and (5)). In each case, the suspension lasts until the person who made it orders otherwise (subsections (3) and (6). Suspension does not affect the remuneration of the suspended judicial officer (subsection 7)).

Section 23 – Further provision about tribunals

46. Section 23 provides that a tribunal may require any person to attend its proceedings to give evidence or may require any person to produce documents (subsection (1)). The limits upon the requirements which may be made are the same as those which apply to requirements made by a court (subsection (2)). Subsection (3) provides for the enforcement of these requirements by providing that if a person fails to comply with either or both of these requirements the tribunal may make an application to the Court of Session. The Court of Session may, in turn, make an order enforcing compliance or deal with the matter as if it were a contempt of the court (subsection (4)). Subsection (5) gives the Court of Session power, by act of sederunt, to make provision as to the procedure to be followed by and before a tribunal constituted under section 21 (subsection (5)). The expenses of a tribunal, and the payment of remuneration and expenses to its members are for the Scottish Ministers (subsection (6).

Section 24 – Tribunal report

47. Section 24 provides that the report of a tribunal must be in writing, contain the reasons for the tribunal's decision, and be submitted to the First Minister (subsection (1)), who must then lay the report before the Parliament (subsection (2)).

Section 25 – Removal from office

48. Section 25 provides for a judicial office holder's removal from office following the report of a tribunal constituted under section 21. Subsection (1) provides that the First Minister may remove an individual from the office of sheriff principal, sheriff, part-time sheriff, summary sheriff or part-time summary sheriff if the tribunal has reported that the individual is unfit to hold that office, and after the report has been laid before the Parliament. In the case of a sheriff

principal, sheriff or summary sheriff, such removal requires an order made by statutory instrument under the negative procedure (subsection (2) and (3)).

Chapter 3 — Organisation of business

Sheriff principal's general responsibilities

Section 27 – Sheriff principal's responsibility for efficient disposal of business in sheriff courts

49. Section 27, which substantially re-enacts the provisions of sections 15 and 16(1) of the 1971 Act, gives the sheriff principal responsibility to ensure the efficient disposal of business in sheriff courts (subsection (1)) and power to make such arrangements as appear necessary or expedient for the purpose of carrying out that responsibility (subsection (2)). In particular, the sheriff principal has power to allocate business among the judiciary of the sheriffdom (subsection (3)), and to give directions of an administrative character to such judiciary and to members of the staff of the SCTS (subsection (5)). The "judiciary of the sheriffdom" is defined in section 125(2) as all judicial officers within the sheriffdom including part-time sheriffs and part-time summary sheriffs. Subsection (7) makes it clear that the powers of the sheriff principal under this section are subject to the Lord President's overall responsibility for the efficient disposal of business in the Scottish courts under provisions in the Judiciary and Courts Act 2008.

Section 28 – Sheriff principal's power to fix sittings of sheriff courts

50. Section 28, which re-enacts and updates section 17 of the 1971 Act, gives the sheriff principal power by order to prescribe where and when sheriff courts will sit and the descriptions of business to be dispose of at those sittings. The provisions of section 28 are again subject to the Lord President's overall responsibility for the efficient disposal of business in the Scottish courts.

Section 29 – Lord President's power to exercise functions under sections 27 and 28

51. Section 29 permits the Lord President to intervene where the Lord President considers that a sheriff principal has exercised functions under section 27 or 28 in a way which is prejudicial to the efficient disposal of business in the sheriff courts, is prejudicial to the efficient organisation or administration of those courts, or is otherwise against the public interest (subsection (1)). In such a case, the Lord President may rescind the exercise of the function by the sheriff principal and exercise the function (subsection (2)). This section makes equivalent provision to section 17A of the 1971 Act.

Deployment of judiciary

Section 30 – Power to authorise a sheriff principal to act in another sheriffdom

52. Sections 30 to 33 enable the Lord President to deploy and re-allocate sheriffs principal, sheriffs and summary sheriffs across sheriffdoms, and, in the case of sheriffs and summary sheriffs, across sheriff court districts.

53. Section 30 permits the Lord President to authorise the sheriff principal of one sheriffdom to exercise all or some of the functions of sheriff principal of another sheriffdom in any of the circumstances set out in subsection (1). Subsection (6) removes any doubt that a temporary sheriff principal may be asked to act in another sheriffdom while appointed.

Section 31 – Power to direct a sheriff or summary sheriff to act in another sheriffdom

54. Section 31 provides that a sheriff or summary sheriff may be directed by the Lord President to perform the judicial functions that that individual already performs in another sheriffdom or sheriffdoms until the Lord President directs otherwise (subsections (1) and (3)). It also provides that this may be instead of, or in addition to, the performance of the duties that that individual already performs in the sheriffdom in which they are based (subsection (2)) or, where that individual has already been directed to act in another sheriffdom, to that individual's duties in that sheriffdom (subsection (4)).

Section 32 – Power to re-allocate sheriffs principal, sheriffs and summary sheriffs between sheriffdoms

55. This section enables the Lord President permanently to transfer sheriffs principal, sheriffs and summary sheriffs between sheriffdoms. (So far as sheriffs are concerned, this power re-enacts the existing provision in section 14(4) of the 1971 Act).

Section 33 – Allocation of sheriffs and summary sheriffs to sheriff court districts

56. Section 33 updates and replicates section 14(3) of the 1971 Act and extends its provisions to summary sheriffs. It provides that the Lord President is to designate in a direction a particular sheriff court district in which a sheriff or summary sheriff is to sit. Further it allows the Lord President to move a sheriff or summary sheriff to a different district within the sheriffdom by designation in a direction. Subsection (3) clarifies the interaction between the power in subsection (1) with the power of the sheriff principal to make temporary special provisions under section 27(3)(b), giving precedence to the sheriff principal's use of that power.

Judicial specialisation

57. Sections 34 to 37 are new provisions which implement the recommendations of the SCCR in relation to the desirability of greater specialisation in the sheriff courts.

Section 34 – Determination of categories of case for purposes of judicial specialisation

58. This section permits the Lord President to decide categories of cases within the sheriff courts which should be heard by judicial officers who specialise in that category of case.

59. Subsection (2) provides that the categories of cases designated for specialisation by the Lord President may be determined by subject matter, value or other such criteria as the Lord President considers appropriate. Subsections (3) and (4) give the Lord President further flexibility in relation to the operation of specialisation among the judicial officers.

Section 35 – Designation of specialist judiciary

60. Once categories of cases for specialist treatment have been determined by the Lord President, section 35 permits a sheriff principal to designate one or more sheriffs or summary sheriffs as specialists in one or more of those categories. Under subsections (5) and (6), the Lord President is permitted to similarly designate one or more part-time sheriffs or part-time summary sheriffs as specialists in cases falling within designated categories and which are within the competence of those judicial officers.

61. Subsection (7) provides that the designation of a judicial officer as a specialist in one of the categories determined by the Lord President does not affect that officer's ability to deal with cases other than those in relation to which they have been designated as specialist, nor does it mean that a judicial officer who has not been designated as a specialist cannot deal with a matter that falls within a specialisation.

Section 36 – Allocation of business to specialist judiciary

62. Section 36 places a duty on both the Lord President and the sheriff principal of a sheriffdom, when allocating business within a sheriffdom, to have regard to the desirability of ensuring that cases which fall within the specialist categories are dealt with by judicial officers who are designated as specialists in those categories.

Section 37 – Saving for existing powers to provide for judicial specialisation

63. Section 37 provides that, notwithstanding the provisions of sections 34 to 36, any other power which the Lord President already has to allocate business, including specialist business, among the judiciary of the sheriff courts is not affected by those sections.

Chapter 4 - Competence and jurisdiction

64. This chapter of the Bill restates and updates the existing provisions of the 1907 and 1971 Acts concerning those actions and other applications that can competently be brought in the sheriff court and the competence and jurisdiction of that court. It makes certain additions to the range of actions that can competently be raised in the sheriff court, in line with recommendations made by the SCCR, and also makes fresh provision regarding the privative jurisdiction of the sheriff court (referred to in the Bill as the "exclusive competence"). It specifies the competence and jurisdiction of the summary sheriff. The territorial jurisdiction of sheriffs is re-stated and extended to summary sheriffs.

Sheriffs: civil competence and jurisdiction

Section 38 – Jurisdiction and competence of sheriffs

65. Subsection (1) is a statement of the civil competence of sheriffs. The approach taken in the Bill is to frame this in terms of the competence of a sheriff, rather than the sheriff court. The generality provided for in subsection (1) that sheriffs will retain all the competence and jurisdiction which they had before this Bill is enacted is not restricted by the specific kinds of actions listed in subsection (2). This list reflects extensions to competence and jurisdiction after the Sheriff Courts (Scotland) Act 1907.

66. Actions for proving the tenor of documents and reduction are added to the list as recommended by the SCCR.

Section 39 – Exclusive competence

67. Section 39 sets out which cases fall within the exclusive competence of the sheriff court. It provides that in civil proceedings about which the sheriff has competence, and, in which an order of value of £100,000 or less is sought, (or where more than one order is sought, the aggregate total of such orders is £100,000 or less), the proceedings must be brought in the sheriff court.

68. Subsection (3) exempts family proceedings (defined in section 124), from the operation of this section, unless the only order sought is an order for payment of aliment. Subsection (4) provides that this section is subject to the operation of section 88(8) of the Bill which permits remit of cases to the Court of Session in exceptional circumstances. Subsection (5) provides that the Scottish Ministers may by order (subject to affirmative procedure) substitute for the sum of £100,000 another sum. Subsection (6) defines what is meant by an "order of value". Subsections (7) and (8) provide that further detail on how the value of an order or the aggregate total value of orders is to be determined may be provided in an act of sederunt made by the Court of Session which may make different provision for different purposes.

Section 40 – Territorial jurisdiction

69. Section 40 re-enacts section 4 of the 1907 Act so far as it applies to civil proceedings provides for the territorial jurisdiction of the sheriff. Given the operation of section 123 which governs reference to 'sheriff' throughout the Bill, the reference to sheriff in this provision includes reference to any other member of the judiciary of the sheriffdom. The general provisions of the section are without prejudice to any other enactment or rule of law which has effect for the purposes of determining the territorial jurisdiction of a sheriff (subsection (4)), and are subject to an order under section 41(1) (subsection (5)).

Section 41 – Power to confer all-Scotland jurisdiction for specified cases

70. Section 41 provides that the Scottish Ministers may by order (subject to negative procedure) set out that the jurisdiction of a sheriff of a specified sheriffdom sitting at a specified sheriff court will extend throughout Scotland for specified kinds of civil proceedings, (such as personal injury proceedings)(subsection (1)). An order may be made by Ministers only with the consent of the Lord President (subsection (2)), and does not affect the jurisdiction of any other sheriff court, which may still deal with the kind of proceedings, nor does it restrict the specified court to only deal with the specified kinds of proceedings (subsection (3)). The section does not apply in relation to proceedings under the Children's Hearings (Scotland) Act 2011 (subsection (5)).

Section 42 – Jurisdiction over persons etc

71. Section 42 makes provision in relation to the civil jurisdiction in the sheriff court. It is a re-enactment of section 6 of the 1907 Act. Section 6 of the 1907 Act is a source of jurisdiction in relation to certain civil matters, where no other legislation has impliedly or explicitly displaced its operation and accordingly its re-enactment is required in this section. In recognition, however, that section 6 has been largely but not completely displaced, subsection (3) provides that its re-enactment in section 42 is subject to any other rules of jurisdiction.

Summary sheriffs: civil and criminal competence and jurisdiction

Section 43 – Summary sheriff: civil competence and jurisdiction

72. Section 43 provides that a summary sheriff may exercise all of the jurisdiction and powers of the sheriff in relation to civil proceedings, but only with regard to the proceedings and matters listed in schedule 1 (subsection (1)). Subsection (2) provides that a sheriff still has jurisdiction and competence over the matters in schedule 1. Subsection (3) permits the Scottish Ministers by order to amend schedule 1. (For the procedure applying to such an order, see section 122).

Section 44 – Summary sheriff: criminal competence and jurisdiction

73. Section 44 provides that a summary sheriff may exercise all of the jurisdiction and powers of the sheriff in criminal investigations and proceedings (subsection (1)) including the powers of a sheriff under the Criminal Procedure (Scotland) Act 1995 (subsection (2)). This is subject to subsection (3), which exempts certain aspects of solemn criminal proceedings from the powers and jurisdiction of the summary sheriff. The provisions of this section are without prejudice to the jurisdiction and competence of a sheriff in relation to criminal investigations and proceedings (subsection (4)).

PART 2 - SHERIFF APPEAL COURT

74. The SCCR recommended the establishment of a Sheriff Appeal Court to deal with all civil appeals from the sheriff court and all summary criminal appeals by an accused on conviction or sentence; appeals by the Crown on acquittal or sentence; and bail appeals (emanating from the sheriff court or the justice of the peace court).

75. In civil appeals, the appellate jurisdiction that presently attaches to the office of sheriff principal will cease, as will the right to take an appeal directly from the sheriff court to the Inner House. Instead all civil appeals from cases heard at first instance by the sheriff court will lie to the Sheriff Appeal Court. It will have power to remit or transfer a particularly important or complex appeal to the Inner House. Onward appeal to the Inner House from the Sheriff Appeal Court will require the permission of the Sheriff Appeal Court, failing which the Inner House, and permission will only be given if a "second appeals" test is met.

76. In summary criminal cases there will no longer be a right of appeal directly to the High Court against conviction or sentence or, in the case of the Crown, against acquittal or sentence. Such appeals will also lie to the Sheriff Appeal Court in the first instance, although there will be a corresponding power to remit complex appeals to the High Court. An onward appeal to the High Court would require permission, which would only be granted where there are clearly arguable grounds of appeal, on a point of law.

77. The provisions in this Part of the Bill provide for the establishment of the Sheriff Appeal Court, its membership, its clerking arrangements and its rules of court etc. The territorial jurisdiction of the Court is determined by the courts whose decisions are appealable to the Court.

Chapter 1 - Establishment and role

Section 45 – The Sheriff Appeal Court

78. This section provides for the establishment of the Sheriff Appeal Court as a "court of law". This point is expanded upon in section 46. Subsection (2) provides that the court is made up of judicial office holders each known as an Appeal Sheriff.

Section 46 – Jurisdiction and competence

79. Subsection (1) sets out the jurisdiction and competence of the Sheriff Appeal Court, providing that it will determine appeals to such extent as is provided for in the Bill or in any other enactment. With regard to the Bill, the court will hear civil appeals under the provisions set out in Part 4 and criminal appeals under the provisions set out in Part 5. The court is a collegiate

one with a decision of the court being constituted by a decision of one or more Appeal Sheriffs. Subsection (3) expands upon the phrase "court of law" used in section 45, putting beyond any doubt that the Sheriff Appeal Court is a court with the same inherent features as other courts in Scotland. This is intended to make clear that the court has the inherent jurisdiction of a court of law and thus ensures that, for example, the law on contempt of court and other rules relative to courts and court proceedings, such as rules about privilege, are to apply.

Section 47 – Status of decisions of the Sheriff Appeal Court in precedent

80. This section makes specific provision about precedent. While the position of the court in the hierarchy of courts in Scotland should ensure that its decisions will be binding upon those courts whose appeals it hears, this section puts that beyond doubt. Accordingly this section provides that in its interpretation or application of the law, the criminal decisions of the Sheriff Appeal Court will be binding on all JP courts throughout Scotland; and, the civil and criminal decisions of the Sheriff Appeal Court will be binding on all sheriffs throughout Scotland, as well as on the Sheriff Appeal Court (unless that Court is composed of a greater number of Appeal Sheriffs than composed the Court which made the decision). The use of 'sheriff' in subsection (1)(a) and (2), will take on the definition in section 123, and will therefore bind the decisions of a sheriff principal sitting as a judge of first instance and any other judicial officer in the sheriff court.

81. Subsection (2) puts beyond doubt that a decision of the Sheriff Appeal Court also binds sheriffs in solemn criminal proceedings (before a sheriff and jury). Part 5 of the Bill does not provide for an appeal from a solemn case in the sheriff court. Accordingly it was thought necessary to ensure that, despite the absence of such an appeal, the interpretation and application of the law as set out by the Sheriff Appeal Court will be the same when applied by the sheriff, whether in a summary or solemn case.

Chapter 2 – Appeal sheriffs

Section 48 – Sheriffs principal to be Appeal Sheriffs

82. This section makes provision for sheriffs principal to automatically become Appeal Sheriffs without the need for formal appointment. Sheriffs principal will thus hold two offices. Holding office as an Appeal Sheriff is dependent upon the sheriff principal continuing to hold office as a sheriff principal. Further, suspension from the office of sheriff principal will mean suspension from the office of Appeal Sheriff.

Section 49 – Appointment of sheriffs as Appeal Sheriffs

83. Section 49 provides that sheriffs who have held office as such for at least five years may be appointed by the Lord President to be Appeal Sheriffs. The Bill makes no distinction between Appeal Sheriffs who are appointed by virtue of section 48 or 49 in terms of the judicial functions of Appeal Sheriffs or judicial authority; accordingly an Appeal Sheriff appointed by virtue of section 48 is not to be treated as a more senior Appeal Sheriff to an Appeal Sheriff appointed under section 49.

84. Sheriffs appointed under this section may continue to act as sheriffs. The number of appointed Appeal Sheriffs will be a matter for the Lord President. In a similar way to section 48, holding office as an Appeal Sheriff is dependent upon the sheriff continuing to hold office as a

sheriff, and suspension from the office of sheriff will mean suspension from the office of Appeal Sheriff.

Section 50 – Re-employment of former Appeal Sheriffs

85. Section 50 enables the Lord President to appoint retired Appeal Sheriffs to sit in the Sheriff Appeal Court in the same way and under the same conditions as retired sheriffs principal, sheriffs and summary sheriffs may be re-employed in the sheriff court. Accordingly, it provides that the Lord President may appoint as a temporary measure, in order to facilitate the disposal of business, former Appeal Sheriffs to act as an Appeal Sheriff. In order to be able to be appointed, the former Appeal Sheriff must not have been removed from office under section 25 or 49(7), nor be aged 75 or over Subsections (7) to (9) make provision for the Scottish Ministers to determine the amounts to be paid to re-employed Appeal Sheriffs by the SCTS.

Section 51 – Expenses

86. This section allows the SCTS, as it sees fit, to pay expenses to Appeal Sheriffs which are reasonably incurred in the performance of the duties of Appeal Sheriffs.

Section 51A – Temporary provision

87. Section 51A introduces schedule 1A to the Bill. This schedule makes provision for the Lord President of the Court of Session to appoint Senators of the College of Justice to act as Appeal Sheriffs in the Sheriff Appeal Court. The intention is that Senators will be able to assist the Appeal Sheriffs in the new court with appellate work. The appointment of Senators to act as Appeal Sheriffs will only be possible for a period of three years from the commencement of the provisions establishing the Sheriff Appeal Court

Chapter 3 - Organisation of business

President and Vice President

Section 52 – President and Vice President of the Sheriff Appeal Court

Section 53 – President and Vice President: incapacity and suspension

88. Sections 52 and 53 make provision for the appointment of the President and Vice President of the Sheriff Appeal Court who will be appointed from the ranks of those Appeal Sheriffs who are also sheriffs principal. Provision is also made here for where the President or Vice President is unable to carry out the function of the office that these individuals hold or is suspended from office. It is intended that the role of the President and Vice President will be purely administrative and will be concerned solely with the organisation of sittings of the Sheriff Appeal Court. Accordingly the President or Vice President will, in terms of judicial functions or judicial authority, not be treated as a more senior Appeal Sheriff to an Appeal Sheriff who does not hold that role.

Disposal of business

Section 54 – President's responsibility for efficient disposal of business

89. The President of the Sheriff Appeal Court is tasked with the organisation of the efficient disposal of business in the Court similar to the sheriff principal's responsibility for this in his or her sheriffdom. The President has wide powers in subsection (2) to make such arrangements as

are necessary or expedient in the carrying out of that responsibility. Subsection (4) provides that, in carrying out the responsibility imposed by subsection (1), the President may give administrative directions to those persons referred to in subsection (5). Subsection (6) makes it clear however that the President's responsibilities conferred by this section are subject to the overall responsibility of the Lord President for the efficient disposal of business in the Scottish courts.

Sittings

Section 55 – Sittings of the Sheriff Appeal Court

90. Subsection (1) permits maximum flexibility to allow the Sheriff Appeal Court to sit at any place in Scotland designated by the Bill as a place for the holding of a sheriff court (which may be as general as a reference to a town or city). For example, this means that, although the Sheriff Appeal Court could sit centrally in Edinburgh for criminal appeals, there will remain the possibility of civil appeals being heard in the sheriffdom in which they originated. (This also includes the possibility that criminal and civil appeals could be heard in Parliament House in Edinburgh as "Edinburgh" is currently (and will remain) a place designated where a sheriff court is to be held.) Under subsection (5), these arrangements are subject to the overall responsibility for the efficient disposal of business in the Scottish courts placed on the Lord President.

Section 56 – Rehearing of pending case by a larger Court

91. Section 56 provides for the Appeal Sheriffs to determine that a case be reheard by a fuller bench of the Sheriff Appeal Court in circumstances where they are equally divided or where they consider the matter to merit such treatment.

Chapter 4 – Administration

Clerks

Section 57 – Clerk of the Sheriff Appeal Court

Section 58 – Deputy Clerks of the Sheriff Appeal Court

Section 59 – Clerk and Deputy Clerks: further provision

92. Sections 57, 58 and 59 make provision for the clerking arrangements in the Sheriff Appeal Court. Individuals can hold the office of the Clerk of the Sheriff Appeal Court only if they also hold the office of sheriff clerk. Provision is made for the SCTS to determine periods of appointment and terms and conditions for individuals' appointed as Clerk and Deputy Clerks. The Clerk and Deputy Clerks of the Sheriff Appeal Court are staff of the SCTS. The Clerk, with permission of the SCTS, may delegate his or her functions to a Deputy Clerk of the Sheriff Appeal Court or a member of staff of the SCTS, for example the functions conferred by section 60(1)(b). Further provision is made for the SCTS to make provision to cover temporary absences of the Clerk, or Deputy Clerk, with other members of staff of the SCTS.

Records

Section 60 – Records of the Sheriff Appeal Court

93. Section 60 provides for the authentication of records of the Sheriff Appeal Court and makes provision enabling the records to be in electronic form.

PART 3 – CIVIL PROCEDURE

Chapter 1 – Sheriff court

Civil jury trials

94. Sections 61 to 69 provide for civil jury trials in certain sheriff courts. The intention is to introduce a procedure similar to that operating in the Court of Session and, accordingly, the provisions largely reflect the language and procedures currently set out in the Court of Session Act 1988 (the "1988 Act").

Section 61 – Civil jury trials in an all-Scotland sheriff court

95. Section 61(1) read with subsection (8) sets out the types of actions which may require a jury trial. The section only applies to those types of civil proceedings which have been specified in an order made under section 41, and only at the sheriff court or courts which have been specified as having jurisdiction throughout Scotland for those types of civil proceedings. Further, subsection (8) provides that a civil jury trial is only to take place for those types of proceedings which, if they were competent in the Court of Session, would be tried by a jury there, under section 11 of the 1988 Act.

96. Section 61(2) makes it clear that a jury trial must take place where proceedings have been remitted to probation (i.e. that it has been decided to allow evidence to be led to establish the facts). This qualification makes it clear that it is unnecessary to have a jury trial where the pleadings are irrelevant or there is some other fundamental problem. However, subsection (2) also makes it clear that a jury trial will not go ahead if the parties agree otherwise or special cause is shown. The use of the phrase "special cause" is deliberately identical to that in section 9(b) of the 1988 Act and subsection (3) explicitly provides that the sheriff will apply that test in the same way as the Court of Session currently does.

97. Subsection (4) sets out the questions which are to be put to the jury, being the "issues" put to the jury in the equivalent action in the Court of Session, in terms of section 12 of the 1988 Act. Again, as with civil jury trials in the Court of Session, a jury will consist of 12 people (subsection (5)).

Section 62 – Selection of the jury

98. Section 62 is based on section 13 of the 1988 Act, with the continued expectation that practice and procedure in the Court of Session, including with regard to the effect of any challenge to a potential juror, will be adopted in this regard in the sheriff court. Further detailed rules in relation to civil jury trials in the sheriff court, for example on how the ballot is to be conducted, may be made in an act of sederunt under section 97.

Section 63 – Application to allow the jury to view property

99. Section 63 is based on section 14 of the 1988 Act. It provides for a party to the proceedings to apply to the sheriff to allow the jury to view any property which is relevant to the proceedings.

Section 64 – Discharge or death of juror during trial

100. Section 64 provides that the sheriff may allow a juror not to take any further part in the proceedings, and for the way in which the proceedings are to continue should a juror be permitted to take no further part or die during proceedings. It is based on section 15 of the 1988 Act, except that subsection (4) makes further provision if the number of members of the jury falls below 10.

Section 65 – Trial to proceed despite objection to opinion and direction of the sheriff

101. Section 65 is based on section 16 in the 1988 Act and provides similarly that if an objection is taken during the trial to the opinion or direction of the sheriff, that this is not to prevent the trial from proceeding nor the jury returning the verdict and assessing damages.

Section 66 – Return of verdict

102. Section 66 is drawn from section 17 of the 1988 Act. It concerns the determination of a verdict by the jury and the status of that verdict, and includes provisions on the selection of a juror to speak for the jury and the ability of the sheriff to discharge the jury and order another jury trial should the jury be unable to agree upon a verdict after a period of three hours. Court rules will be provided under section 97 in relation to giving effect to the jury's verdict.

Section 67 – Application for new trial

103. Subsections (1) to (4) are based on section 29(1) and (2) of the 1988 Act except that the application for a new trial from the all-Scotland sheriff court will be to the Sheriff Appeal Court rather than the Inner House. It concerns the grounds under which a party to the proceedings may apply to the Sheriff Appeal Court for a new trial and what that court may do with such an application. Subsection (4) makes it clear that the powers of the Sheriff Appeal Court are subject to the operation of section 68 which sets out conditions on those powers. Subsection (5) is new and makes clear, for the avoidance of doubt, what the consequences are of granting a new trial. Subsections (6) and (7) are based on section 29(3) of the 1988 Act and provide where the Sheriff Appeal Court may, instead of granting a new trial, set aside the decision of the jury and enter a judgment in favour of the unsuccessful party. Subsection (8) sets out that, if the Sheriff Appeal Court consists of more than one Appeal Sheriff, the Court may set aside the verdict of a jury or enter judgment for the party unsuccessful at the trial only if that is the opinion of all the Appeal Sheriffs hearing the appeal.

Section 68 – Restrictions on granting a new trial

104. Section 68 is drawn from the provisions of section 30 of the 1988 Act. It provides for various circumstances where the court must grant a new trial, may grant a new trial restricted to the question of damages, or may not grant a new trial. Subsection (4) varies from section 30(2) of the 1988 Act, however, in that in the circumstances set out in section 68(1), the court must refuse to grant a new trial, whereas section 30(2) states that the court may refuse to grant a new trial. Subsection (7) explains that, where the Court is constituted by more than one Appeal Sheriff, an application for a new trial may not be granted unless the majority of those Appeal Sheriffs hearing the case agree that it should.

Section 69 – Verdict subject to opinion of the Sheriff Appeal Court

105. Section 69 is based on section 31 of the 1988 Act. It provides that a party to the case may apply to the Sheriff Appeal Court for that court to direct that a verdict be returned in whole (or in part) in that party's favour. It further sets out what the Sheriff Appeal Court may do in respect of that application.

Simple procedure

106. At present, cases for sums up to £5,000 fall to be dealt with under small claims or summary cause procedure in the sheriff court. The SCCR concluded that it was unnecessary to have two different sets of procedures for cases for £5,000 or less, but that there was a continuing need for a distinct procedure for low value claims. It considered that the financial limit should be set at £5,000 for the time being, but recommended the creation of a new procedure for cases under £5,000, to be dealt with primarily by summary sheriffs. The Bill refers to this new procedure as "simple procedure".

107. The Review advocated a flexible procedure based on a problem-solving, interventionist approach in which the court should identify the issues and specify what it wishes to see or hear by way of evidence or argument. The new procedure should be accessible to party litigants, with clear, straightforward court rules in plain English and under which the summary sheriff would be able to assist the parties to reach settlement.

Section 70 – Simple procedure

108. Subsection (1) establishes a new type of civil proceedings in the sheriff court called simple procedure. Simple procedure replaces the form of procedure known as summary cause which will be abolished through the repeal of sections 35 to 38 of the 1971 Act by paragraph 6 of schedule 4 to the Bill. The abolition of summary cause proceedings will also mean the abolition of small claim proceedings which are a subset of summary cause proceedings. Subsection (2) makes it clear that most of the provisions about simple procedure will be made by court rules made under section 97.

109. Subsection (3) lists the types of proceedings which can only be brought by simple procedure, providing a monetary limit of £5,000 with respect to such proceedings. No other types of proceedings can be brought subject to simple procedure. Subsection (3A) makes clear that the limitation on the type of case which must be brought under simple procedure does not prevent cases already raised under different forms of procedure from being transferred to simple procedure under section 75, or affect the operation of section 79 which provides that cases which are currently subject to summary cause procedure will become subject to simple procedure. It also makes clear that this limitation does not prevent a simple procedure case from being transferred out of that procedure under section 76.

110. Subsection 4 makes it clear that the obligation to raise an action falling within the description in 70(3)(a) by simple procedure does not apply where such a case is also of a type affected by section 70A (proceedings in the specialist court), nor where it is also of a type affected by section 71 (certain proceedings for aliment). Subsection (5) provides that court rules made by an act of sederunt by the Court of Session will determine the way in which the sum in subsection (3) may be calculated. Subsection (6A) enables rules of court to clarify when proceedings are of a type that are to be subject to simple procedure. The current method through

which the court determines whether a case must be raised under summary cause procedure is set out in the case of Milmor Properties v W & T investments Co. Ltd. [2000]. This power permits rules of court to adopt or modify this method.

111. Subsection (7) ensures that the term "simple procedure case", when used in Part 3 of the Bill includes cases which have been transferred to simple procedure under section 75 and cases which have been made subject to simple procedure by other enactments. Subsection (9) provides that the £5,000 limit may be varied by the Scottish Ministers by order (which is made subject to affirmative procedure by virtue of section 122(2)(a) of the Bill).

Section 70A – Proceedings in an all-Scotland sheriff court

112. Section 70A provides that where proceedings for the payment of a sum of £5,000 or less may be brought in an all-Scotland sheriff court (i.e. the proposed personal injury court) by virtue of an order under section 41(1), then those proceedings are not subject to simple procedure in the specialist court. The claimant has the choice of raising his or her claim in the local sheriff court under simple procedure, or in the specialist court.

Section 71 – Proceedings for aliment of small amounts under simple procedure

113. Section 71 re-enacts and updates the drafting of section 3 of the Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963. It provides that, regardless of the general rules in any enactment on simple procedure, that an action for aliment where the amount claimed does not exceed a certain sum may be brought subject to simple procedure. The sum set by the section may be varied by an order made by the Scottish Ministers, subject to negative procedure. Given the re-enactment of section 3, the 1963 Act is now wholly repealed by paragraph 21 of schedule 4 to the Bill.

Section 72 – Rule-making: matters to be taken into consideration

114. Section 72 establishes that, as far as possible, the rules of court which govern simple procedure will enable an interventionist and problem-solving approach. It is to be read subject to the obligation on the Scottish Civil Justice Council to draft the rules in accordance with the principle that they should be as clear and easy to understand as possible, in terms of section 2(3)(b) of the Scottish Civil Justice Council and Criminal Legal Assistance (Scotland) Act 2013. The obligation to make rules of court which reflect such principles is deliberately framed to be exercised "so far as possible" in order to avoid any obligation to create rules that may be inconsistent or contradictory with one another. Paragraph (d) is intended to ensure that the rules are flexible enough to allow a sheriff to follow the procedure that is most appropriate to the circumstances of the case.

Section 73 – Service of documents

115. Section 73, which is derived from section 36A of the 1971 Act, permits rules made under section 97 to provide for the sheriff clerk to be required to effect service of any document on behalf of parties in a simple procedure case.

Section 74 – Evidence in simple procedure cases

116. Subsection (1) is based on section 35(3) of the 1971 Act and is a reflection of the desire to make the simple procedure less bound up in technical, legal rules. Subsection (2) replicates

section 36(3) of the 1971 Act which was included as ordinary cause rules in the sheriff court require the recording of evidence. Ordinary cause procedure will not exist after the Bill is enacted (by virtue of the repeal of Schedule 1 to the 1907 Act by schedule 4 paragraph 4(h) of the Bill). However the new rules of procedure are likely to require the recording of evidence in at least some cases and so section 74(2) is necessary to make it clear that such recording is not required in simple procedure cases.

Section 75 – Transfer of cases to simple procedure

117. Section 75 provides for cases which are not being dealt with under simple procedure to be transferred to that form of proceedings, provided they are now of a type that could be brought under simple procedure. Accordingly if proceedings develop to such an extent that, if they had been raised at that point, they would have had to have been raised under simple procedure, they may be transferred to simple procedure. Subsection (2)(b) permits cases to be transferred to simple procedure if the parties agree, even if the sum sought would exceed the usual monetary limit for simple procedure cases. In such a transfer there is no obligation that the sum sought requires to be lowered to meet the financial limit set out in section 70(3) or 71(2). Accordingly the parties' agreement to continue subject to simple procedure does not have the effect of capping the sum sought to those financial limits.

Section 75A – Proceedings in an all-Scotland sheriff court: transfer to simple procedure

118. This section provides for a party to a case raised in the specialist court to apply to have it transferred out of that court, and into simple procedure in another sheriff court having jurisdiction, on special cause shown.

Section 76 – Transfer of cases from simple procedure

119. Section 76 provides for the transfer of cases out of simple procedure. Given the abolition of ordinary cause rules, it is left to court rules under section 97 to determine if a uniform set of rules is to be adopted for all remaining cases outwith simple procedure or if different rules are to apply to different kinds of case. This provision simply states that cases will be transferred from simple procedure without specifying the procedure to which they are being transferred.

Section 77 – Expenses in simple procedure cases

120. Section 77 re-enacts section 36B of the 1971 Act with modifications to reflect the new system of simple procedure. Subsection (1) provides that the Scottish Ministers may prescribe, by order (subject to affirmative procedure by virtue of section 122(2)(a)), categories of simple procedure to which alternative expenses rules will apply. Subsection (2) makes it clear that these categories will be defined by reference to the value of the claim or the subject matter of the claim, permitting types of actions, for example personal injury, to be excluded from any limitation on expenses.

121. An order under subsection (3) could also specify some civil proceedings where different expenses could apply, excepting them from categories set out in subsection (2).

122. Subsection (4) then sets out cases in which those rules are disapplied. Subsection (5) is based on section 36B(3) of the 1971 Act and lists the circumstances in which the restrictions on expenses should not apply due to the behaviour of one of the parties to the case. Subsections (6)

and (7) allow the sheriff to make an direction disapplying the restrictions on expenses in an order under subsection (1), in complex cases.

Section 78 – Appeals from simple procedure cases

123. This section provides that an appeal on a point of law may be taken under section 104 to the Sheriff Appeal Court, however only against the final judgment of the sheriff. No further provision is required in this section for onward appeals of simple procedure cases from the Sheriff Appeal Court to the Court of Session, (which are possible under the Bill) since such appeals will be governed by the general rules applicable to section 104 appeals.

Section 79 – Transitional provision: summary causes

124. Section 79 makes provision to deal with the transition between summary cause procedure and its replacement, simple procedure. This ensures that all references in legislation which currently refer to summary cause are to be read as referring to simple procedure.

Interdicts and other order: effect outside sheriffdom

Section 80 – Interdicts having effect in more than one sheriffdom

Section 81 – Proceedings for breach of an extended interdict

125. Section 80 gives a sheriff competence to grant an interdict or interim interdict having effect outwith the sheriff's sheriffdom.

126. Section 81 sets out that these types of interdicts are to be known as "extended interdicts", and that proceedings for a breach of an extended interdict will be capable of being validly raised and enforced by an action in a number of sheriff courts: in the sheriffdom in which the defender is domiciled; in the sheriffdom in which the interdict was granted; and in the sheriffdom in which the alleged breach occurred.

127. Further, on the application of a party to the proceedings or on the sheriff's own initiative, a sheriff may transfer proceedings to a sheriff of another sheriffdom, if satisfied that this would be more appropriate. This sheriff may transfer the proceedings to any other sheriffdom in this case, and is not limited to the sheriffdom in which the defender is domiciled, the sheriffdom in which the interdict was granted or the sheriffdom in which the alleged breach occurred. Where a case is transferred to another sheriff in this way, then that sheriff has the competence to consider and determine the proceedings.

128. This provision is a permissive one, however, and makes it clear that the sheriff will be able to use discretion in determining whether proceedings should be raised before them. This discretion applies to the operation of all the rules in the section. It is anticipated that, by providing that the test does not affect the power of the sheriff to decline jurisdiction, a sheriff will continue to be able to decline jurisdiction on the basis that his or her court is not an appropriate forum for determining the matter in dispute (*forum non conveniens)*.

Section 82 – Power to enable sheriff to make orders having effect outside sheriffdom

129. Section 82 enables the Scottish Ministers to provide by order (subject to negative procedure) for the types of orders (including interim orders) which a sheriff has competence to

make which would be capable of having effect and be able to be enforced outwith the sheriffdom in which they were granted. This provides that other types of court proceedings may be identified and the effect and enforcement of these proceedings extended in a similar way to that of interdict.

Execution of deeds relating to heritage

Section 83 – Power of sheriff to order sheriff clerk to execute deed relating to heritage

130. Section 83 provides, where the grantor of any deed relating to heritable property (as defined in subsection (6)), is unable, refuses or fails to execute a deed relating to heritable property, or cannot be found, that the sheriff may make an order which dispenses with the need for the grantor to execute the deed and directs the sheriff clerk to execute the deed. The effect of an execution by the sheriff clerk is that the deed is taken to have the same effect as it would have if it had been executed by the grantor. This section is intended to replicate, and to have the same legal effect, as section 5A of the 1907 Act, though the distinction in section 5A(2) between applications and summary applications is not perpetuated as the latter are no longer to be a defined category of proceedings in the Bill. The grantee will simply make an application for an order in either of the cases mentioned in subsection (1).

Interim orders

Section 84 – Interim orders

131. At present there are no statutory powers conferring on sheriffs a general power to grant interim orders corresponding to section 47 of the 1988 Act. This suggests that there is a real doubt regarding the power of a sheriff to grant an interim order *ad factum* praestandum (that is, an order requiring that something (other than the payment of a sum of money) be done pending the final determination of the proceedings) and that it would be appropriate to confer an express power on sheriffs to make such orders along with the power to grant orders regarding the interim possession of any property to which the proceedings relate.

Chapter 2 – Court of Session

Section 85 – Judicial review

132. Section 85 inserts new sections 27A to 27D into the 1988 Act which reform the procedures for petitions for judicial review as recommended in Chapter 12 of the SCCR. At present, there are no statutory time limits within which an application for judicial review must be made. Section 27A provides that a time limit of three months starting from the date that the grounds giving rise to the application for judicial review arose will apply to applications to the supervisory jurisdiction of the court. This is subject to the exercise of the court's discretion to permit an application to be made outwith that period, for example if there is good reason for delay in making an application, or where the court is satisfied that injustice would result if an application presented outwith the time period is not allowed to proceed. Subsection (2) provides that the time limit of three months will not apply to an application to the supervisory jurisdiction of the court under any enactment that specifies another period ending before the period of three months. Sections 27B, 27C and 27D add a new preliminary stage at which permission to proceed to judicial review is granted or refused. Each case will be considered by a judge from the Outer House of the Court of Session. There will be no necessity for a hearing at this stage. The judge will consider whether the applicant has sufficient interest in the subject matter and whether the application has a real prospect of success.

133. The Supreme Court in *Axa General Insurance Ltd & Ors v the Lord Advocate & Others [2011] UK SC 46*[4] reviewed the law on title and interest to sue as regards judicial review provision – in particular, Lord Hope at paragraphs 62 to 63 and Lord Reed at paragraphs 170 and 175. The decision related to the "standing" of a third party to enter the process as respondents, but it is clear from the judgments that the statements on "standing" apply to applicants for judicial review, and that the substantive law in Scotland allows for a single test in which the petitioner for judicial review must demonstrate a sufficient interest in the subject matter of the proceedings. The Bill reflects this in section 27B(2)(a) as part of the permission test.

134. The reference to a real prospect of success in section 27B(2)(b), reflects Lord Gill's recommendations. In deciding whether or not to grant permission, the court will assess not whether the case is merely potentially arguable but whether it has a realistic prospect of success subject to the important qualification that arguability cannot be judged without reference to the nature and gravity of the issue to be argued. Court rules will set out the process for the permission hearing. Lord Gill envisaged that the applicant would be required to serve upon the respondent and any interested party, within seven days of lodging the application, the application itself, a time estimate for the permission hearing, any written evidence in support of the application, copies of any document on which the applicant proposes to rely and a list of essential documents for advance reading by the court with the respondent having 21 days to answer the application and to decide whether to oppose the granting of leave.

135. The possible outcomes at the permission stage are that the court may:

- grant permission for the application to proceed
- grant permission for the application to proceed, but with specified conditions or only on particular grounds; or
- refuse permission.

136. Section 27C provides that, if the permission to apply for judicial review is refused or granted subject to conditions or only on particular grounds and this was done without an oral hearing, then the applicant has seven days within which to request an oral hearing to review the original decision.

137. The request for review requires to be considered by a different judge. Section 27C(6) provides that section 28 of the 1988 Act does not apply where there is a right to request a review at an oral hearing. In other words, there is no right of appeal to the Inner House against a decision made under section 27B – an applicant who wishes to challenge the decision must request a review under section 27B(2). Similarly, there is no right of appeal to the Inner House if the judge refuses the request for a review.

138. Under section 27D, where the court refuses permission or grants permission subject to conditions or only on particular grounds following an oral hearing (whether at the first stage of permission or following a request under section 27C(2)), the applicant can appeal to the Inner House within 7 days of the Court's decision.

[4] http://supremecourt.uk/decided-cases/docs/UKSC_2011_0108_Judgment.pdf

139. The provisions in the Bill also deal with the interaction between the new judicial review permission stage and applications to the Court of Session for judicial review of unappealable decisions of the Upper Tribunal for Scotland. Section 50(4) of the Tribunals (Scotland) Act 2014 makes provision preventing the Court of Session and the Upper Tribunal for Scotland from granting permission for a second appeal unless the second appeals test set out by the Supreme Court in *Eba v Advocate General for Scotland [2011] UKSC 29*[5] is satisfied - the second appeal raises an important point of principle or practice or there is some other compelling reason for allowing it to proceed.

140. The Bill ensures that the same second appeals test is applied at the permission stage where the application for judicial review relates to 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 – see section 27B(3). Therefore, the court may only grant permission for the application to proceed if it is satisfied that the second appeals test is satisfied in addition to the new judicial review permission test set out in section 27B(3)(a) and (b). The second appeals test is set out in section 27B(3)(c). It will be necessary for a section 104 order under the Scotland Act 1998 to make similar provision to section 27B(3) to ensure that the second appeals test is dealt with at the permission stage where the application for judicial review relates to an unappealable decision of the UK Upper Tribunal as those decisions relate to reserved matters.

Section 86 – Interim orders

141. The SCCR recommended at paragraphs 142 -143 of Chapter 4 that powers to make orders *ad* factum *praestandum* (that is, orders requiring the performance of a certain act other than the payment of a sum of money) and orders for specific implement on an interim or final basis conferred on the Scottish Land Court by section 84 of the Agricultural Holdings (Scotland) Act 2003 should also be conferred on the Court of Session and the sheriff court. Section 87 confers on the Court of Session in section 47 of the Court of Session Act 1988 a power to make an order (either final or interim) *ad factum praestandum*.

Section 87 – Warrants for ejection

142. The SCCR recommended that the Court of Session should have jurisdiction to grant a decree of removing or warrant of ejection (paragraph 144, Chapter 4). The Court of Session can only grant a decree of removing if this is ancillary to another remedy sought. Section 87 inserts a new section 47A into the Court of Session Act 1988 giving the Court of Session competence to grant a warrant of ejection where it grants a decree for removing, so that no further order is required to compel the occupier of land to give up occupation.

Chapter 3 - Remit of cases between courts

Section 88 – Remit of cases to the Court of Session

143. Subsections (1) and (2) permit a sheriff to remit a case (to which the exclusive competence of the sheriff court under section 39 does not apply i.e. if the £100,000 limit does not apply) if the sheriff considers that the importance or difficulty of the case makes it appropriate. This replicates section 37(1)(b) of the 1971 Act.

[5] http://supremecourt.uk/decided-cases/docs/UKSC_2010_0206_Judgment.pdf

144. The recommendation that the Court of Session should be able to decline the remit of a case below the exclusive competence (where section 39 does apply) is given effect to in subsections (3) and (4) which permit the sheriff to request the Court of Session to allow proceedings to which section 39 does apply to be remitted to that Court if the importance or difficulty of the proceedings makes it appropriate to do so. Under subsection (5), the Court of Session may permit the proceedings to be remitted "on cause shown".

Section 89 – Remit of cases from the Court of Session

145. The SCCR also recommended that where the value of an action raised in the Court of Session is likely to be below the exclusive competence limit, as assessed by the judge at a case management hearing, there should be a presumption in favour of a remit to the sheriff court. Section 89 implements these recommendations.

146. Subsections (1) and (2) set out that proceedings must be remitted to the sheriff court (unless "on cause shown" there are reasons for not so doing), if at any stage the court is of the view that the value of the order is likely to be below the value set for the time being in section 39(1)(b)(ii). Subsection (1)(c) sets out that these provisions would apply to the aggregate total value of all orders likely to be granted in the proceedings below the value set for the time being in section 39(1)(b)(ii). Under subsection (3), the Court will not have to reach any view on liability or contributory negligence and "likely value" is to be assessed on the assumption that liability will be established. Subsections (4) and (5) give a permissive power to the Court to remit cases to which the monetary rule does not apply.

Section 90 – Remit of cases to the Scottish Land Court

147. Section 90 reproduces section 37(2D) of the 1971 Act to permit a case to be remitted by the sheriff to the Scottish Land Court in appropriate cases. There is no appeal against a decision to remit or not to remit.

Chapter 4 – Lay representation for non-natural persons

Section 91 – Key defined terms

148. Section 91 sets out key definitions of non-natural persons (companies and other bodies) in Chapter 4, as well as lay and legal representatives for the purposes of Chapter 4. Chapter 4 makes clear that non-natural persons are entitled to lay representation in certain circumstances in simple procedure cases, and may be permitted, in certain circumstances to be represented by a lay person in other civil proceedings.

Section 92 - Lay representation in simple procedure cases

149. Section 92 sets out the scope for permitting lay representation on behalf of non-natural persons in simple procedure cases. This section is subject to provision that the Court of Session may make by act of sederunt under section 94 regulating the authorisation of lay representatives for non-natural persons.

Section 93 – Lay representation in other proceedings

150. Section 93 sets out the scope for permitting lay representation on behalf of non-natural persons in non-simple procedure cases in the sheriff court, the Sheriff Appeal Court and the

Court of Session. The decision on whether to permit lay representation in non-simple procedure cases lies with the court, who may grant permission subject to the fulfilment of the conditions in subsection (3). The suitability of the choice of lay representative is assessed in light of subsection (4) with the assessment of whether permitting lay representation is in the interest of justice in subsection (6). The assessment of such concepts as "interests of justice" and "suitability" in subsection (3) will ensure that the power to determine whether to permit lies firmly in the hands of the court taking into account the particular circumstances of the case.

Section 94 – Lay representation: supplementary provision

151. Section 94 enables the Court of Session to make further provision by act of sederunt about granting permission for lay representatives under section 93 and, more generally, the way that the proceedings are conducted by lay representatives. Subsection (2) sets out particular provisions that the Court of Session may make in the act of sederunt through its powers in subsection (1) including enabling the court (including the sheriff in the case of proceedings in the sheriff court) to make an order preventing a lay representative from conducting proceedings other than non-simple procedure cases before the court and allowing applications to be considered in chambers and without hearing the parties. Subsection (2) is not an exhaustive list of the provisions which may be made under subsection (1).

Chapter 5 – Jury service

Section 95 – Jury service

152. Section 95 provides for the alignment of age limits for jury service for jurors in civil cases with those for jurors in criminal cases i.e. it removes the upper age limit for jurors in civil cases of 65 years of age. It does this through an amendment to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010). Section 95 also brings arrangements for claiming excusal as of right from civil jury service into line with those established for criminal jury service by the Criminal Justice and Licensing (Scotland) Act 2010 i.e. that civil jurors aged 71 or over could claim excusal as of right. Jurors serving in criminal cases who attended for jury service but did not serve had their automatic excusal time shortened from five years to two years by the 2010 Act, and this is now applied to jurors serving in civil cases.

Chapter 7 – Vexatious proceedings

Section 100 – Vexatious litigation orders

Section 101 – Vexatious litigation orders: further provision

153. Sections 100 and 101 replace and update the Vexatious Actions (Scotland) Act 1898. They retain the role of the Lord Advocate as guardian of the public interest, permitting the Lord Advocate to seek a 'vexatious litigation order' from the Inner House which requires the vexatious litigant to obtain the consent of a Lord Ordinary prior to raising a civil action (section 100(2)(a)). The test for obtaining an order from the Inner House, and the test which requires to be met by a litigant in seeking permission from a judge of the Outer House remains mostly the same but has been updated with a more modern form of drafting (section 101(1) and (4) respectively). For the first time however, the Court in determining whether to grant a vexatious litigation order will be able to take into account the proposed vexatious litigant's behaviour in proceedings outwith Scotland (section 101(2)).

154. The sections also allow the Lord Advocate to seek to prevent a vexatious litigant from taking a specified step in specified on-going proceedings (section 100(2)(b)). This power is based on the similar powers of the Attorney General of England and Wales in section 42 of the Senior Courts Act 1981 and the existing power of the Lord Advocate in 33(2)(b) the Employment Tribunals Act 1996. Further, the court may also determine that a vexatious litigation order has effect only for such a period as specified in the order (section 100(4)).

155. Subsections (6) to (8) of section 101 make provision permitting a court dealing with on-going civil proceedings that are halted by an order under section 100(2)(b) to make orders in those proceedings in consequence, including with regard to the disposal of those proceedings.

Section 102 – Power to make orders in relation to vexatious behaviour

156. Section 102(4) allows the Scottish Ministers to make regulations (subject to negative procedure) to empower the courts to deal with vexatious behaviour. Scottish Ministers will require to consult the Lord President prior to making regulations.

157. This section is designed to empower the courts to deal with vexatious behaviour and abuse of process in a similar way to the use of Civil Restraint Orders (CROs) by the courts of England and Wales. CROs are part of the inherent powers of the courts of that jurisdiction and are a form of order which may be granted by them in response to unmeritorious applications or claims by a litigant. The effect of such orders is to require a litigant to obtain the permission of a specified judge or court (as the case may be) prior to making applications in a particular case or cases, or from raising actions, either generally or in specific courts. They are a flexible, court-led response to abuse of the court process, which can be tailored to ensure that the rights of the litigant in question are balanced against both the rights of the other parties to any action and the efficient operation of the court.

158. Despite section 102 there will continue to be a role for the Lord Advocate as guardian of the public interest (under section 100 and 101): it may be possible for a vexatious litigant, through a wide geographical spread of different actions, not to trouble one court sufficiently to trigger the court-led sanction, but in his or her behaviour overall, to trouble the system or one litigant in a variety of courts. That said, now that the courts will be given this power, it is expected that the number of actions required to be taken by the Lord Advocate will decrease.

PART 3A – PROCEDURE AND FEES

Procedure

159. Sections 96 and 97 provide powers for the Court of Session to make rules of court by act of sederunt to regulate procedure in the Court of Session (section 96) and in the sheriff court and the Sheriff Appeal Court (section 97). The powers to make rules of court are intended to be broadly similar, but with specific variations required to take account of the different jurisdictions of the courts.

160. Given the critical role which rules of court will therefore have in implementing the SCCR, the powers granted in sections 96 and 97 provide the vires for rules of court made in respect of the matters enumerated in those sections.

Section 96 – Power to regulate procedure etc. in the Court of Session

161. Section 96 replaces sections 5 and 5A of the 1988 Act which are repealed in schedule 4, paragraph 28A(3). Section 96 gives the Court of Session a power to make provision in acts of sederunt concerning the procedure and practice of the Court of Session. Subsection (1) contains a broad, general power to make provision regarding procedure and practice. Subsection (2) contains some specific, illustrative examples of the sort of matters which are procedure and practice for the purposes of this power, including the conduct and management of proceedings in the Court of Session, the forms of documents used, appeals against decisions, awards of expenses and the representation of parties by those otherwise not qualified to do so. Given the width of subsection (1), subsection (2) is not designed to be exhaustive, rather it demonstrates a widening of what can be described as practice and procedure.

162. The approach to the description of the powers of the Court contrasts with the specific and narrower powers contained in the original version of section 5 of the 1988 Act and is designed to effect a substantial widening of the powers of the Court of Session to regulate its practice and procedure.

163. Subsection (3) allows these acts of sederunt to make various types of ancillary provision, and subsection (4) clarifies that these new powers do not affect any existing power to make court rules.

Section 97 – Power to regulate procedure etc. in the sheriff court and the Sheriff Appeal Court

164. Section 97 is a replacement for the power to make rules of court in relation to the sheriff court in section 32 of the 1971 Act and extends the power to rules in relation to the Sheriff Appeal Court. It gives the Court of Session a broad power to make acts of sederunt concerning the procedure and practice to be followed in civil proceedings in the sheriff court and Sheriff Appeal Court. Subsection (1) contains a broad general power to make provision regarding procedure and practice. Subsection (2) contains some specific illustrative examples of the sort of matters which are procedure and practice for the purposes of this power, including the conduct and management of proceedings in the sheriff court and Sheriff Appeal Court, the forms of documents used, appeals against decisions, awards of expenses and the representation of parties by those otherwise not qualified to do so.

165. While of a similar nature to section 32 of the 1971 Act, the wider general illustrative examples set out in subsection (2) demonstrate a substantial widening of what can be described as practice and procedure.

166. Subsection (3) provides that the rule-making power is subject to the provisions in sections 70 to 78 concerning simple procedure. Subsection (4) allows these acts of sederunt to make various types of ancillary provision. Subsections (5) and (6) require the Court of Session to consult with the Scottish Civil Justice Council when making acts of sederunt which were not prepared in draft by the Council. Subsection (7) clarifies that these new powers do not affect any existing power to make court rules.

Fees of solicitors etc.

Section 98 – Power to regulate fees in the Court of Session

167. Section 98 gives the Court of Session a broad power to make acts of sederunt concerning the fees, including the fees recoverable in an award of judicial expenses, of various office-holders and persons in relation to proceedings in the Court of Session. An act of sederunt under section 98(1) is subject to negative procedure by virtue of subsection (5)). After consulting the Lord President, the Scottish Ministers can, by order (subject to negative procedure by virtue of section 122(3)), specify new persons in respect of whom this power may be exercised.

168. Section 98(2) specifically excludes the fees that the Scottish Ministers regulate under s.33 of the Legal Aid (Scotland) Act 1986 (fees and outlays of solicitors and counsel) from those listed in section 98(1).

Section 99 – Power to regulate fees in the sheriff court and the Sheriff Appeal Court

169. Section 99 is a replacement for section 40 of the 1971 Act. It gives the Court of Session a broad power to make acts of sederunt concerning the fees, including the fees recoverable in an award of judicial expenses, of various office-holders and persons in relation to proceedings in the sheriff court and Sheriff Appeal Court. An act of sederunt under section 98(1) is subject to negative procedure by virtue of subsection (5)). After consulting the Lord President, the Scottish Ministers can, by order (subject to negative procedure by virtue of section 122(3)), specify new persons in respect of whom this power may be exercised.

Court fees

Section 102A – Power to provide for fees for STCS, court clerks and other officers

170. Section 102A effectively restates and modernises the power currently conferred on the Scottish Ministers by section 2 of the Court of Law Fees (Scotland) Act 1895, (the 1895 Act). Section 2 of the 1895 Act is consequentially repealed by schedule 4, paragraph 25A. This consolidates and updates the law, for example by enabling an order on court fees to explicitly revoke an earlier order.

171. This power permits the Scottish Ministers to set the fees that may be charged by the SCTS and (what the section describes as) "relevant officers" in relation their functions in providing court services. The power permits Ministers to make provision exempting persons from fees and provides that there may be different fees for different courts and types of proceeding. Subsection (4) permits Scottish Minsters to modify the list of courts or officers covered by this section, by order. Such an order is subject to affirmative procedure.

Section 102B – Sanction for counsel in the sheriff court and the Sheriff Appeal Court

172. Section 102B sets out the test to be applied by a court in considering whether to grant sanction for the employment of counsel, when determining the level of expenses which may be due. In terms of this test, the court is required to sanction the employment of counsel if it considers that to do so is reasonable in all the circumstances of the case. In deciding whether granting sanction would be reasonable, the court must have regard to the criteria set out in subsection (3), which include "the desirability of ensuring that no party gains an unfair advantage by virtue of the employment of counsel". The Court of Session is able to modify these provisions through court rules made in an act of sederunt under section 97 or 99 of the Bill.

PART 4 – CIVIL APPEALS

Appeals to the Sheriff Appeal Court

Section 103 – Abolition of appeal from a sheriff to the sheriff principal

173. While the office of sheriff principal will continue, section 103(1) abolishes the right of appeal from the sheriff to the sheriff principal in civil proceedings. This only applies to appeals from the sheriff to the sheriff principal and does not affect any statutory appeals or applications to the sheriff principal from tribunals or other bodies. Subsections (2) and (3) provide that any specific provisions in other enactments which provide for an appeal from a sheriff to the sheriff principal will now be to the Sheriff Appeal Court.

Section 104 – Appeal from a sheriff to the Sheriff Appeal Court

174. Section 104 is based on section 27 of the 1907 Act but provides that the appeal is to the Sheriff Appeal Court rather than the sheriff principal. Permission to appeal is not required in relation to the matters set out in subsection (1). Subsection (2) provides that permission to appeal is, however, required against any other interlocutor of a sheriff in civil proceedings. Subsections (4) to (6) contain a number of qualifications and are intended to replicate section 28(2) of the 1907 Act and, in particular, to preserve any specific provision regarding appeal to the Sheriff Appeal Court or Court of Session that may be contained in other enactments.

Section 105 – Sheriff Appeal Court's powers of disposal in appeals

175. Section 105 sets out the powers of disposal available to the Sheriff Appeal Court. The power in subsection (1)(a) is designed to be wide and is illustrated, but not limited, by the specific disposals listed in sub-paragraphs (i) to (v). Subsection (2) makes it clear that the provisions do not limit the inherent powers possessed by the Sheriff Appeal Court as a court of law conferred under section 46(3).

Section 106 – Remit of appeal from Sheriff Appeal Court to Court of Session

176. Section 106 permits a case to be remitted for the consideration of the Inner House of the Court of Session. However, it is not intended that parties should be able to bypass the Sheriff Appeal Court since the rationale for having such a court is that not all civil appeals merit the attention of the Inner House. Accordingly, section 106(2)(b) permits the Sheriff Appeal Court to remit an appeal on the application of a party to the Court of Session only if the Sheriff Appeal Court considers that it involves complex or novel points of law.

Appeals to the Court of Session

Section 107 – Appeal from the Sheriff Appeal Court to the Court of Session

177. Section 107 provides for an appeal to the Court of Session from a final judgment of the Sheriff Appeal Court, subject to a requirement to obtain permission, in the first instance from the Sheriff Appeal Court and, if refused, then from the Court of Session (subsection (1)). This further right of appeal from a first instance decision is subject to a stringent test and this is set out in subsection (2). It is the same test as for appeals to the Court of Appeal in England and Wales. Subsection (2) provides that permission to appeal may only be granted if the appeal would raise an important point of principle or practice, or there is some other compelling reason for the Court of Session to hear the appeal. Subsections (3) and (4) replicate section 28(2) of the 1907 Act to

preserve any specific provision regarding appeals from the Sheriff Appeal Court to the Court of Session that may be contained in other enactments.

Section 108 – Appeal from the sheriff principal to the Court of Session

178. There are some enactments which provide for applications direct to the sheriff principal rather than the sheriff. Section 108 deals with such first instance judicial decisions made by sheriffs principal and makes it clear that appeals from such judgments are to the Court of Session rather than the Sheriff Appeal Court.

Section 109 –Appeals: granting of leave or permission and assessment of grounds of appeal

179. Section 109 inserts a new section 31A into the Court of Session Act 1988 to give the Court of Session power to provide by act of sederunt for a single judge (a) to determine any applications to the Inner House for leave or permission to appeal to the Inner House; and (b) to consider any appeal proceedings initially (and, where appropriate, after leave or permission has been granted).

180. Section 109 relates to paragraphs 97 to 99 of Chapter 4 of the SCCR which also referred to the Inner House Business Review by Lord Penrose which recommended at paragraph 6.27 what the SCCR termed a "sift mechanism" whereby a single Inner House judge could consider grounds of appeal.

181. By way of background to the new provisions, it is relevant to note that section 2(4) of the 1988 Act provides that, subject to section 5(ba), the quorum for a Division of the Inner House shall be three judges. Section 5(ba) was inserted by the Judiciary and Courts (Scotland) Act 2008 and is replicated in the new section 5(2)(p) of the 1988 Act as inserted by section 98 of the Bill. This subsection gives the Court of Session power to make provision by act of sederunt as to the quorum for a Division of the Inner House considering solely procedural matters. That power is considered sufficient to provide for a single Inner House judge to deal with procedural matters including applications for leave or permission – see Rule 37A of the Rules of Court and as confirmed by the recent case of *MBR v Secretary of State for the Home Department*[6]. However, the power is not considered sufficient to enable Rules of Court to enable a single judge to consider the initial stages of the appeal proceedings and decide by reference to the grounds of appeal whether the appeal proceedings should be allowed to proceed and if so on what grounds.

182. Since a decision on whether to grant leave or permission and an assessment of the grounds of appeal both require some consideration of the merits and will ordinarily affect whether an appeal or part of it can proceed. The Bill provides a power for both of the above matters to enable a consistent approach.

183. New section 31A(1), therefore, provides the Court of Session with a new power relating to applications for leave or permission. When the act of sederunt is made under this new power the existing provisions that deal with the leave or permission process in Chapter 37A (as considered by the Court in the MBR case) will be removed. Subsection (1) does not set out the test to be applied by the Court in determining whether leave or permission should be granted. That will be determined by the common law and any particular provisions in the relevant statutes

[6] 2013 SLT 1108; www.scotcourts.gov.uk/opinions/2013CSIH66.html.

that provide for leave or permission. The second appeals test has now been introduced for the majority of cases – see *Hoseini v Secretary of State for the Home Department 2005 SLT* as referred to by the Court in the MBR case.

184. New 31A(2) provides the Court of Session with a separate power to make provision for the initial appeal proceedings to be dealt with by a single judge with reference to whether the grounds of appeal or any of them are arguable. The Court is also given discretion through this power to apply this procedure to cases where leave or permission has already been granted.

185. New section 31A(3) requires the act of sederunt to make provision about the procedure including for the parties to be heard and for review by a Division of the Inner House.

186. New section 31A(4) provides for the single judge's decision to be final subject to the Inner House review process.

187. New section 31A(7) contains a definition of appeal proceedings. The new process is not capable of being applied to the procedure for permission to appeal to the Supreme Court that is provided for through section 109 of the Bill.

Section 110 – Effect of appeal

188. Section 110 is intended to replicate section 29 of the 1907 Act, and makes provision about the effect of an appeal to either the Sheriff Appeal Court or the Court of Session. It provides that the court considering an appeal will be able to review all of the decisions in the proceedings, whether the decisions are made at first instance or on appeal (subsection (2)), and that the appeal may be insisted upon by any party to the appeal, regardless of whether that party was the one who originally brought the appeal (subsection (3)).

Section 111 – Appeals to the Supreme Court

189. Section 111 sets out new provisions for appeals from the Court of Session to the UK Supreme Court by replacing section 40 of the Court of Session Act with new sections 40 and 40A. It will be competent to appeal against a judgment of the Court of Session to the Supreme Court, but only with the permission of the Inner House or, failing such permission, with the permission of the Supreme Court.

190. Section 40 of the 1988 Act currently provides that it is competent to appeal to the Supreme Court against certain types of judgments without requiring leave from the Inner House. The only restriction on those appeals is that the Supreme Court under Practice Direction 4 requires that the note of appeal must be signed by two Scottish Counsel who certify that the appeal is reasonable.

191. In addition to changing the process for appeals to the Supreme Court, in line with the overall approach in the Bill the opportunity has been taken to update the language and modernise terminology (noting that section 40 was itself a consolidation of the Court of Session Acts of 1808 and 1925). This approach has been applied unless there is any particular reason why existing terminology needs to be kept. The Supreme Court in the recent judgment of *Apollo*

Engineering Limited (Appellant) v James Scott Limited (Respondent) (Scotland) [2013] UKSC 37[7] made some criticism of the language of section 40.

192. The main changes in terminology in the new section 40 are:

- "cause" becomes "proceedings" – Lord Hope notes in the Apollo judgment that "cause" has a very wide meaning and is defined in Rules of Court as covering "any proceedings";
- "leave" becomes "permission" as that is the term that is used more widely now, for example section 288AA(5) of the Criminal Procedure (Scotland) Act 1995 and the Constitutional Reform Act 2005;
- "judgment" and "interlocutory judgment" become "decision". This reflects the fact that "an interlocutory judgment" is any judgment other than a final one and on that basis "decision" is clearer for the user;
- "judgment on the whole merits" becomes "final judgment" as defined in new section 40(10). This is consistent with the new term for "judgment on the whole merits" as in section 125(1) of the Bill which in turn is drawn from section 3 of the Sheriff Courts (Scotland) Act 1907; and
- "dilatory defence" becomes "preliminary defence". This is discussed in the Apollo judgment where Lord Hope notes that "preliminary defence" is more favoured nowadays. The term is defined in new section 40(10).

193. New section 40(1) provides that an appeal may be taken to the Supreme Court against the relevant types of case only with the permission of the Inner House or, if the Inner House has refused permission, with the permission of the Supreme Court.

194. Subsection (2) lists the kinds of decisions that can be appealed with the permission of the Supreme Court (even though the Inner House has refused permission). These are intended to be the same categories of decision as are covered by the existing provisions in section 40(1)(a) and (2) (with the terminological changes mentioned above). See also *Massie v McCaig [2013] CSIH 37*.[8]

195. Subsection (3) then sets out the rule for other cases. It provides that for those other cases the decision is appealable with the permission of the Inner House. In other words, the Inner House is the gatekeeper alone.

196. Subsection (4) is intended to replicate the second part of the old section 40(2). It sets out that the Supreme Court has the same powers as the Inner House had in relation to an appeal against an application under section 29 of the 1988 Act to grant or refuse a new trial in any proceedings, including in particular the powers in section 29(3) of the 1988 Act (power to set aside the verdict in place of granting a new trial) and section 30(3) of the 1988 Act (power to grant a new trial restricted to the question of the amount of damages).

[7] http://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0038_Judgment.pdf
[8] http://www.scotcourts.gov.uk/opinions/2013CSIH14.html

197. Subsections (5) and (6) are intended to replicate the old section 40(3), namely that an appeal cannot be taken to the Supreme Court against a decision of a Lord Ordinary unless that decision has been reviewed by the Inner House.

198. Subsection (7) is intended to replicate the old section 40(4), with the effect that once an appeal is taken to the Supreme Court all prior decisions, whether at first instance or at any stage of appeal, are opened up for review by the Supreme Court.

199. Subsection (8) replicates the opening qualification that is currently expressed in the old section 40(1), namely that the procedure is subject to sections 27(5) and 32(5) of the 1988 Act which make special provision for appeals to the Supreme Court and to provisions in any other enactment which restrict or exclude appeals from the Court of Session to the Supreme Court.

200. Under new section 40(9), the provisions do not affect any right of appeal from the Court of Session to the Supreme Court that arises other than under the new section 40 of the 1988 Act – whether statutory appeals or at common law (although the assumption is that all such appeals are statutory now). For example, paragraph 13 of Schedule 6 to the Scotland Act 1998 sets out a separate process in relation to civil devolution issue appeals which is unaffected by the Bill.

201. New sections 40A(1) and (2) provide a time limit for applications for permission to appeal to the Supreme Court. Applications to the Inner House must be made within 28 days of the date of the decision against which the appeal lies, or such longer period as the court considers equitable having regard to the circumstances. The application to the Supreme Court should be made within 28 days of the date on which the Inner House refused permission, or such longer period as the Supreme Court considers equitable having regard to the circumstances. The time limit is equivalent to the time limits recently provided for in relation to applications for permission to appeal compatibility issues (European Convention on Human Rights and European Union challenges) to the Supreme Court through section 288A(7) and (8) of the Criminal Procedure (Scotland) Act 1995.

202. New section 40A(3) sets out that the test that the Court is to apply when considering an application for leave is whether the appeal raises an arguable point of law of general public importance that ought to be considered by the Supreme Court at the time. This is in line with the comments made by Lord Reed in the case of *Uprichard v Scottish Ministers [2013] UKSC 21*.[9]

PART 5 – CRIMINAL APPEALS

203. The SCCR recommended that the Sheriff Appeal Court should have jurisdiction to deal with all summary criminal appeals by an accused on conviction or sentence, appeals by the Crown on acquittal or sentence and bail appeals. Part 5 gives effect to these recommendations.

Appeals from summary criminal proceedings

Section 112 - Appeals to the Sheriff Appeal Court from summary criminal proceedings

204. Section 112(1) transfers the existing powers and jurisdiction of the High Court of Justiciary relating to appeals from courts of summary criminal jurisdiction to the Sheriff Appeal

[9] http://supremecourt.uk/decided-cases/docs/UKSC_2012_0034_Judgment.pdf

Court. "Courts of summary criminal jurisdiction" are the JP court (as established by section 59 of the Criminal Proceedings etc (Reform) (Scotland) Act 2007) and the sheriff sitting as a summary criminal court. The powers and jurisdiction transferred include those in relation to the hearing and disposal of appeals against conviction and sentence under section 175 of the Criminal Procedure (Scotland) Act 1995, and in relation to bills of suspension and bills of advocation (for which provision is made in section 191 of that Act). Subsection (2) provides that subsection (1) does not apply to the *nobile officium* of the High Court: that is, to its inherent jurisdiction to grant, in extraordinary or unforeseen circumstances in which no other remedy is provided for by law, such orders as may be necessary for the purposes of preventing injustice or oppression. Subsection (3) gives effect to Schedule 2, which modifies Part X (appeals from summary proceedings) of the Criminal Procedure (Scotland) Act 1995 in consequence of the transfer of jurisdiction effected by subsection (1).

Section 113 - Appeals from the Sheriff Appeal Court to the High Court

205. Section 113 makes provision for appeals from the Sheriff Appeal Court to the High Court of Justiciary, by inserting a new Part 10ZA (consisting of sections 194ZB to 194ZL) after Part X (appeals from summary proceedings) of the Criminal Procedure (Scotland) Act 1995 (the "1995 Act")**.**

206. Inserted section 194ZB(1) provides for an appeal from the Sheriff Appeal Court to the High Court against a decision of the Sheriff Appeal Court in criminal proceedings. Such an appeal may only be made on a point of law, and with the permission of the High Court. Appeals in summary proceedings may be taken either by the defence or by the prosecutor; subsection (2) similarly permits an appeal under subsection (1) to be taken by any party to the appeal in the Sheriff Appeal Court. Subsection (3) limits the grounds upon which the High Court may grant permission by providing that permission may only be granted if the Court considers that the appeal raises an important point of principle or practice or that there is some other compelling reason for the Court to hear the appeal. Such an application for permission to appeal must be made within 14 days after the decision of the Sheriff Appeal Court appealed against (subsection (5)). The High Court may extend this period if satisfied that doing so is justified by "exceptional circumstances" – the same test as is being introduced for other time limits by the Criminal Justice (Scotland) Bill.

207. Inserted section 194ZC provides that an appeal under section 194ZB(1) is to be made by note of appeal (subsection (1)), which must specify the point of law on which the appeal is being made (subsection (2)). (The note of appeal will be the principal document upon which the decision to grant or refuse permission to appeal will be based: see inserted section 194ZF(1)(c)(i)). Subsection (3) makes provision in relation to the quorum of the High Court in considering and deciding an appeal under section 194ZB(1). That quorum is three judges of the High Court. Decisions are to be taken by a majority and each judge is entitled to pronounce a separate opinion.

208. Inserted section 194ZD is based on section 180(1) and (3) of the 1995 Act. As under that section, the decision whether to grant permission to appeal is to be taken by a single judge (subsection (1)), who may, in granting permission, make comments in writing in relation to the appeal (subsection (2)). (As to the effects of these comments, see inserted section 195ZG). Where the single judge refuses permission, that judge must give reasons in writing for the refusal, and, where the appellant has been sentenced to imprisonment and is on bail, must grant a

warrant for the appellant's apprehension and imprisonment (subsection (3)). In terms of subsection (4), such a warrant will not have effect until the expiry of the time limit for lodging a further application for permission to appeal in terms of section 194ZE.

209. Section 194ZE, which is based on section 180(4) to (5) of the 1995 Act, makes provision for a further application to the High Court where the single judge of the High Court has refused permission under 194ZD. The application must be made within 14 days of intimation of the single judge's refusal (subsection (1)), although the High Court may extend this time limit if satisfied that doing so is justified by exceptional circumstances (subsections (2) and (3)). The application will be considered by a quorum of three judges (subsection (4)). Where the High Court gives permission, subsection (5) provides that it may make written comments in relation to the appeal (for the significance of which, see inserted section 194ZG). In the event of refusal, the High Court must give written reasons and, if the appellant has been sentenced to imprisonment and is on bail, grant warrant for the appellant's apprehension and imprisonment (subsection (6)).

210. Section 194ZF makes further provision about the procedure for determining applications for leave to appeal. Subsection (1)(a), which is based upon section 180(6) of the 1995 Act provides for applications to be determined in chambers without the parties being present. Subsection (1)(b) requires the application to be determined by reference to section 194ZB(4), i.e. the requirement that the High Court must consider that the appeal would raise an important point of principal or practice, or that there be some other compelling reason for the High Court to hear the appeal. Subsection (1)(c) specifies the documents which must be considered in determining the application. These are the note of appeal and such other document or information (if any) as may be specified by act of adjournal.

211. Inserted section 194ZG provides for the restriction of grounds of appeal to those specified in the note of appeal or as arguable in the written comments of the single judge in terms of section 194ZD(2) or, as the case may be, of the High Court in terms of section 194ZE(5). It is based, with appropriate modifications, on section 180(7) to (9) of the 1995 Act. Where written comments are made, they may specify the arguable grounds of appeal (whether or not they were stated in the note of appeal) (subsection (1)) and, where they do so, the appellant may not found upon any ground which has not been so specified without the permission of the High Court (subsection (2)). An application for such permission must be made, and intimated to the Crown Agent, within 14 days of intimation of the written comments (subsection (3)), which period may be extended by the High Court in exceptional circumstances (subsection (4)). The appellant may not found on any matter not stated in the note of appeal, except with the permission of the High Court on cause shown (subsection (5)), or unless that matter, not specified in the note, has been specified as an arguable ground of appeal in written comments made in terms of section 194ZD(2) or 194ZE(5) (subsection (6)).

212. Inserted section 194ZH provides for the powers of the High Court in disposing of an appeal. In terms of subsection (1), the High Court is empowered either (a) to remit the case back to the Sheriff Appeal Court with its opinion as to direction as to further procedure in, or disposal of, the case, or (b) exercise any power that the Sheriff Appeal Court could have exercised in relation to disposal of the appeal proceedings before that Court. Subsection (3) provides that the statutory powers given to the High Court by section 194ZH do not affect any power in relation to the consideration or disposal of appeals that the High Court otherwise has.

213. Inserted section 194ZI(1) applies section 177 (procedure where appellant in custody) of the 1995 Act to appeals from the Sheriff Appeal Court to the High Court, with the exception of the "excepted appeals" set out in subsection (2). Section 177 provides for the court of first instance to be able to grant bail, grant a sist of execution, or make any other interim order pending the determination of an appeal. The "excepted appeals" set out in subsection (2) are bail appeals under section 32, and appeals under section 177(3). In each of these cases, the subject of the appeal is a decision not to grant bail, and it would not make sense to provide for a further application for bail pending the outcome of an appeal against that refusal.

214. Inserted section 194ZJ, which provides for abandonment of an appeal, is based on section 116(1) of the 1995 Act.

215. Inserted section 194ZK re-enacts section 194ZA of the 1995 Act, as inserted by section 81 of the Criminal Justice Bill, currently before the Parliament. That section provides that the judgments of the High Court in an appeal in summary proceedings are final and not subject to review by any court (subsection (1)). The only exceptions to this absolute finality are consideration by the High Court on a reference from the Scottish Criminal Cases Review Commission in terms of Part XA of the 1995 Act, and consideration by the UK Supreme Court on an appeal under section 288AA of that Act (compatibility issues) or in terms of paragraph 13(a) of Schedule 6 to the Scotland Act 1998 (devolution issues). The Criminal Justice Bill inserts this provision into Part X (appeals from summary proceedings). The effect of section 112 of the present Bill is that Part X ceases to be concerned with appeals to the High Court, being concerned instead with appeals to the Sheriff Appeal Court. In consequence, what was inserted section 194ZA requires to be moved from Part X to the new inserted Part 10ZA.

216. Inserted section 194ZL makes equivalent provision for computation of time periods to that found in section 194(1) of the 1995 Act.

Section 114 - Power to refer points of law for the opinion of the High Court

217. Section 114 amends the 1995 Act to insert a new section 175A after section 175 establishing the basis upon which the Sheriff Appeal Court may refer a point of law in an appeal case to the High Court for its opinion if the Sheriff Appeal Court thinks that the point is a complex or novel one. The Sheriff Appeal Court may do this on its own initiative or on the application of a party in the appeal proceedings.

Section 115 - References by the Scottish Criminal Cases Review Commission

218. Section 115 amends section 194B (references by the Commission) of the 1995 Act to provide for the Scottish Criminal Cases Review Commission to be able to refer to the High Court cases in which the an appeal was originally heard in the Sheriff Appeal Court.

Bail appeals

Section 116 - Bail appeals

219. Section 116 amends section 32 of the 1995 Act (bail appeals) to provide for appeals against bail decisions taken in the sheriff court to go to the Sheriff Appeal Court rather than the High Court.

PART 5A – REMUNERATION AND EXPENSES OF SENATORS OF THE COLLEGE OF JUSTICE

Section 116A – Payment of the salaries of judges of the Court of Session

220. Section 116A provides for the payment of the salaries of Court of Session judges (i.e. Senators) to be made by the SCTS. Senators' salaries have previously been paid by the Scottish Ministers and administered by the Scottish Government. Determination of the level of these salaries remains reserved to Westminster.

Section 116B – Expenses

221. Section 116B provides for the SCTS to pay Senators' expenses.

PART 6 – JUSTICE OF THE PEACE COURTS

Section 117 – Establishing, relocating and disestablishing justice of the peace courts

222. Section 117 replicates the powers to establish JP courts at section 59 of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 and updates the powers in subsections (7) and (7A) of the Act so that the Scottish Ministers may make changes only with the consent of the Lord President of the Court of Session and the SCTS, the latter being placed under a duty to consult parties who are likely to have an interest.

223. This section amends section 59 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, which provides for the establishment of JP courts. The effect of the amendments at subsections (2) and (3) is that the Scottish Minsters will be able to use their powers to establish, relocate or disestablish a JP court only following the submission of a proposal to do so by the SCTS. Such a proposal must be agreed to by the Lord President and have been subject to consultation with persons considered appropriate by the SCTS.

224. It will be for the Scottish Minsters to decide, following the submission of a proposal, whether to exercise their order making powers under section 59(2) or (6) of the 2007 Act. If Ministers do decide to make an order, new section 59(7C), as inserted by this section, will require them to obtain the consent of both the Lord President and the SCTS before the order is made.

225. This provision re-orders the existing provisions which govern the process for the making of an order under section 59(2) and (6), bringing them into line with the process to be followed for an order under section 2 of the Bill (the power to alter sheriffdoms, sheriff court districts and sheriff courts). An order under section 59(2) or (6) is subject to affirmative procedure.

Section 118– Abolition of the office of stipendiary magistrate

226. Section 118 provides that the office of stipendiary magistrate is abolished. Existing stipendiary magistrates are to be appointed as summary sheriffs and part-time stipendiary magistrates are to be appointed as part-time summary sheriffs, unless they decline appointment. Section 74(5) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 provides that a person is not to be appointed as a stipendiary magistrate unless the person is, and has been for at least five years, a solicitor or advocate. It is, therefore, possible that a person currently appointed

as a stipendiary magistrate may not be qualified for appointment as a summary sheriff, as section 14 of the Bill requires ten years legal qualification. Subsections (4) and (7) ensure that they may still be appointed as a summary sheriff.

Section 119 – Summary sheriffs to sit in justice of the peace courts

227. This section permits summary sheriffs to sit in JP courts. When summary sheriffs sit in these courts, they will only be entitled to exercise the same summary criminal powers as the JP.

PART 7 – THE SCOTTISH COURTS AND TRIBUNALS SERVICE

Section 120 – The Scottish Courts and Tribunals Service

228. Section 120 amends the Judiciary and Courts (Scotland) Act 2008 to create a merged organisation to provide administrative support for both courts and tribunals. The Scottish Court Service is renamed as the Scottish Courts and Tribunals Service (the "SCTS"). The SCTS is given the function of providing administrative support to the Scottish Tribunals and their members and to any other tribunals that the Scottish Ministers may by order specify (subject to negative procedure). Schedule 3 makes further provision in relation to the SCTS.

PART 7A – THE JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

Section 120A – Assistants to the Judicial Appointments Board for Scotland

229. Section 120A inserts two new paragraphs into schedule 1 of the Judiciary and Courts (Scotland) Act 2008 and enables the Judicial Appointments Board for Scotland (JABS) to appoint legal assistants and lay assistants to assist it in carrying out its functions. Paragraph 13A deals with the matters connected with their appointment, notice and qualification. Paragraph 13B enables these assistants to do everything that their equivalent Board member can do, short of actually taking part in recommendation decisions.

230. There is also an amendment to paragraph 16A of the 2008 Act (inserted by the Tribunals (Scotland) Act 2014) so that a member of the Scottish Tribunals selected to take part in any JABS proceedings on a Tribunals appointment can elect not to take part if a legal or lay assistant is taking part in the proceedings and that assistant is also a member of the Scottish Tribunals.

PART 8 – GENERAL

Section 121 – Modifications of enactments

231. Section 121 introduces schedule 4, which makes minor modifications of enactments.

Section 122 – Subordinate legislation

232. Subsection (1) of section 122 makes provision allowing any order made by the Scottish Minsters under this Bill to include any incidental, supplemental, consequential, transitional, transitory or saving provision. It also permits an order to make different provisions for different purposes or different parts of the country. Subsections (2) and (3) prescribe the procedure which is to apply to orders made by the Scottish Ministers under the Bill. Subsection (4) provides that this section does not apply to a commencement order made under section 127(2) of the Bill.

Section 123 – References to sheriff

233. Subject to the exceptions narrated by subsection (3), this section makes provision defining references to "sheriff" in the Bill. Accordingly reference to "sheriff" in the Bill and other enactments will be taken, subject to the conditions set out in this section, to include reference to other judiciary of the sheriffdom (as defined in section 125(2)).

Section 124 – Definition of family proceedings

234. This section lists various proceedings which, for the purposes of this Bill, are to be understood as "family proceedings". The Scottish Ministers may modify this list by an order made under subsection (2) subject to affirmative procedure.

Section 125 – Interpretation

235. Subsection (1) sets out the definitions that apply throughout the Bill unless the context requires otherwise.

236. Subsection (2) lists the judicial officers who are included by references to the "judiciary of a sheriffdom".

237. Subsection (3) makes provision explaining that "proceedings in the sheriff court" includes proceedings before any member of the judiciary of a sheriffdom.

Section 126 – Ancillary provision

238. This section allows the Scottish Ministers, by order, to make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act subject to either negative or affirmative procedure.

Section 127 – Commencement

239. This section makes provision for all of this Part, with the exception of section 121 and section 123(2), to come into force on the day after Royal Assent.

Section 128 – Short title

240. This section makes provision for the short title of this Act to be the Courts Reform (Scotland) Act 2014.

Schedule 1 – Civil proceedings, etc. in relation to which summary sheriff has competence

241. Schedule 1, as introduced by section 43, lists civil proceedings in respect of which summary sheriffs are to have jurisdiction and powers. The Scottish Ministers may modify this schedule by order under section 43(3). Any such order is subject to affirmative procedure by virtue of section 122(2)(a).

Schedule 1A – Appeal Sheriffs: temporary provision

242. This schedule makes provision for the Lord President of the Court of Session to appoint Senators of the College of Justice to act as Appeal Sheriffs in the Sheriff Appeal Court. The intention is that Senators will be able to assist the Appeal Sheriffs in the new court with appellate work. This appointment of Senators to act as Appeal Sheriffs will only be possible for a period of three years from the commencement of the provisions establishing the Sheriff Appeal Court.

Schedule 2 – Transfer of summary criminal appeal jurisdiction to the Sheriff Appeal Court: Modification of 1995 Act

243. Schedule 2, as introduced by section 112 of the Bill, makes provision transferring summary criminal appeals from the High Court to the Sheriff Appeal Court. This schedule makes amendments to the Criminal Procedure (Scotland) Act 1995 in consequence of this transfer.

Schedule 3 – The Scottish Courts and Tribunals Service

Part 1 - Conferral of additional functions etc. in relation to tribunals

244. Section 120(3) introduces schedule 3 which confers functions on the SCTS for the effective operation of both courts and tribunals.

245. Paragraph 1 amends the relevant sections in the Judiciary and Courts (Scotland) Act 2008 to update references to the Scottish Court Service to the SCTS. It also confers power on the merged organisation to provide and ensure the provision of property, services and staff as required for the Lord President and the President of the Scottish Tribunals in their tribunals roles. The power of the Scottish Ministers to carry out the functions of the SCTS if they feel that the SCTS is failing to carry out its functions is extended to tribunals. Paragraph 1 of schedule 3 to the Judiciary and Courts (Scotland) Act 2008 is repealed as this provision has never been brought into force. The Scottish Court Service was made an office-holder in the Scottish Administration by section 104 Order (the Judiciary and Courts (Scotland) Act 2008 (Consequential Provisions and Modifications) Order 2009) and so this provision is no longer required.

246. Paragraph 1 also amends the board structure to conflate the senatorial membership on the board with the role of the President of Scottish Tribunals and add a Chamber President of the First-tier Tribunal for Scotland to the board. The President of the Scottish Tribunals and Chamber President are roles created in the Tribunals (Scotland) Act 2014. Remuneration may be paid if the Chamber President is fee-paid. The Judiciary and Courts (Scotland) Act 2008 is also amended to allow the Scottish Ministers to transfer any property or liability in connection with the operation of the Scottish Tribunals to the SCTS.

Schedule 3 Part 2 – Transitional provision

247. Paragraph 2 transfers those staff who currently work as part of the Scottish Tribunals Service to the SCTS.

248. Paragraph 3 creates a power to allow the SCTS to provide administrative support to the listed tribunals until such time as they are transferred-in to the Scottish Tribunals (First-tier Tribunal for Scotland and Upper Tribunal for Scotland) as created in the Tribunals (Scotland) Act 2014. It also allows a current President of the named tribunals to sit on the board of the Scottish Courts and Tribunals until such time as Chamber Presidents are in operation. The Scottish Ministers may by order add tribunals which are to be transferred-in to the Scottish Tribunals to the list of those to be administered in the interim by SCTS, and add office-holders in those tribunals to the list of office-holder eligible to sit on the SCTS board (sub-paragraph (5)). Such an order is subject to affirmative procedure by virtue of section 122(2)(a).

Schedule 3 Part 3 – Consequential repeals

249. Paragraph 4 repeals the provision within the Lands Tribunal Act 1949 that requires the Scottish Ministers to provide administrative support for the Lands Tribunal.

250. Paragraph 5 repeals the provision within the Mental Health (Care and Treatment) (Scotland) Act 2003 that the Scottish Ministers must provide administrative support and accommodation for the Mental Health Tribunal for Scotland.

251. Paragraph 6 repeals the provision within the Education (Additional Support for Learning) (Scotland) Act 2004 that the Scottish Ministers must provide property, staff and services to the President and tribunals of the Additional Support Needs Tribunals for Scotland.

252. Paragraph 7 repeals the provision within the Charities and Trustee Investment (Scotland) Act 2005 that the Scottish Ministers must provide property, staff and services for a Scottish Charity Appeals Panel.

253. Paragraph 8 repeals the provision within the Tribunals (Scotland) Act 2014 that the Scottish Ministers must provide administrative support for the Scottish Tribunals.

Schedule 4 – Modifications of enactments

254. Schedule 4, which is introduced by section 121, makes provision for the amendment of various enactments as a consequence of the provisions of the Bill. Paragraph 12(2) mirrors that in section 1 of the Public Records (Scotland) Act 1937 which deals with the transmission of High Court and Court of Session records by act of adjournal or sederunt (as the case may be).

Part 1 – Sheriff courts

Paragraph 1 – Promissory Oaths Act 1868

255. This paragraph amends the Schedule to the Promissory Oaths Act 1868 as a consequence of the creation of summary sheriffs and part-time summary sheriffs. The effect of the amendment is that summary sheriffs and part-time summary sheriffs will be required to take the oath of allegiance and the judicial oath.

Paragraph 2 – Promissory Oaths Act 1871

256. This paragraph amends section 2 of the Promissory Oaths Act 1871, making provision for persons before whom summary sheriffs and part-time summary sheriffs may take oaths.

Paragraph 3 – Sheriff Courts (Scotland) Act 1876

257. Section 54 of the Sheriff Courts (Scotland) Act 1876 is repealed by this section, so far as not previously repealed. Section 54 gave power to the Court of Session to allocate commissary business in the sheriff courts by act of sederunt. This power now rests with sheriffs principal as part of their general powers to organise the efficient disposal of business in the sheriff courts at sections 27 and 28 of the Bill.

Paragraph 4 – Sheriff Courts (Scotland) Act 1907

258. This paragraph repeals various sections of the Sheriff Courts (Scotland) Act 1907.

259. Sub-paragraph (a) repeals sections 4 to 7 of the 1907 Act which made provision in relation to the jurisdiction of the sheriff court. These sections are largely replaced by Chapter 4 of Part 1 of the Bill, which makes provision in respect of competence and jurisdiction of sheriffs.

260. Sub-paragraph (b) repeals sections 10 and 11 of the 1907 Act. The power of Her Majesty to appoint salaried sheriffs principal and sheriffs previously provided for by section 11 of that Act is recast in sections 3 and 4 of the Bill.

261. Sub-paragraph (c) repeals section 14 of the 1907 Act. Provision for the salaries of sheriffs principal and sheriffs is now made by section 16 of the Bill.

262. Sub-paragraph (d) repeals section 17 of the 1907 Act, which made provision for the appointment of honorary sheriffs by sheriffs principal. The office of honorary sheriff is abolished by section 26 of the Bill.

263. Sub-paragraph (e) repeals section 27 to 29 of the 1907 Act, which dealt with appeals to the sheriff principal and the Court of Session as well as setting out the effect of an appeal. These repeals are in consequence of the creation of the Sheriff Appeal Court by the Bill.

264. Sub-paragraph (f) repeals sections 39 to 40 of the 1907 Act. Section 39 is repealed as consequence of the replacement of ordinary cause rules. The provision in section 40, relating to fees in the Court of Session, is now recast at section 98 of the Bill

265. Sub-paragraphs (g) and (h) repeal section 50 and Schedule 1 of the 1907 Act respectively. These repeals are in consequence of replacement by the Bill of summary cause procedure by simple procedure (section 70 of the Bill) and the replacement of ordinary cause procedure.

Paragraph 5 – Sheriff Courts and Legal Officers (Scotland) Act 1927

266. This paragraph makes amendments to section 8 of the Sheriff Courts and Legal Officers (Scotland) Act 1927. The amendment will allow the Lord Advocate to issue instructions to

procurators fiscal both for the purpose of giving effect to the 1927 Act and for the purpose of the efficient disposal of business in the sheriff courts.

Paragraph 6 – Sheriff Courts (Scotland) Act 1971

267. The Sheriff Courts (Scotland) Act 1971 is repealed by this paragraph, with the exception of sections 2(3) and 3(4), which provide for compensation payment on loss of shrieval office. Sub-paragraphs (3) and (4) amend these provisions to allow them to operate with section 2 of the Bill. The other provisions of the 1971 Act are largely replaced or recast by the Bill.

Paragraph 7 – Civil Jurisdiction and Judgments Act 1982

268. This paragraph amends section 20(3) of the Civil Jurisdiction and Judgments Act 1982 to reflect the recasting of section 6 of the Sheriff Courts (Scotland) Act 1907 as section 42 of the Bill.

Paragraph 8 – Judicial Pensions and Retirement Act 1993

269. This paragraph amends the Judicial Pensions and Retirement Act 1993 to ensure that provisions concerning the retirement of judges apply to the offices created by this Bill.

Paragraph 9 – Judiciary and Courts (Scotland) Act 2008

270. This paragraph makes various repeals and amendments to the Judiciary and Courts (Scotland) Act 2008.

271. Sub-paragraph (3) brings the offices of summary sheriff and part-time summary sheriff within the remit of the Judicial Appointments Board for Scotland.

272. Sub-paragraph (4) adds the offices of summary sheriff and part-time summary sheriff to the definition of "judicial office holder" at section 43 of the 2008 Act. This has the effect of bringing these officer holders under the Lord President's responsibility for welfare, training and guidance at section 2 of the 2008 Act.

Part 2 – Sheriff Appeal Court

Paragraph 11 – Sheriff Courts and Legal Officers (Scotland) Act 1927

273. This paragraph amends section 1 of the Sheriff Courts and Legal Officers (Scotland) Act 1927 by inserting a new subsection (6) as a consequence of the creation of the office of Clerk of the Sheriff Appeal Court by section 57 of the Bill. New subsection (6) sets out that the appointment of a sheriff clerk as Clerk to the Sheriff Appeal Court under section 57 of the Bill is not to be considered as a removal from office.

Paragraph 12 – Public Records (Scotland) Act 1937

274. The Public Records (Scotland) Act 1937 is amended by this paragraph to reflect the creation of the Sheriff Appeal Court by the Bill. The new section 1A inserted into the 1937 Act makes provision for the keeping of Sheriff Appeal Court records.

Paragraph 13 – Administration of Justice (Scotland) Act 1972

275. This paragraph amends section 1 of the Administration of Justice (Scotland) Act 1972 by amending subsections (1), (1A) and (3), extending the powers therein to the Sheriff Appeal Court.

Paragraph 14 – Civil Jurisdiction and Judgments Act 1982

276. Section 50 of the Civil Jurisdiction and Judgments Act 1982 is amended by this paragraph to include a reference to the Sheriff Appeal Court.

Paragraph 15 – Legal Aid (Scotland) Act 1986

277. This paragraph extends the provisions of sections 21(1) and 25 and paragraph 1 of Part 1 of Schedule 2 to the Legal Aid (Scotland) Act 1986 to cover proceedings in the Sheriff Appeal Court.

Paragraph 16 – Criminal Procedure (Scotland) Act 1995

278. This paragraph has the effect of requiring one Appeal Sheriff to be appointed to the Criminal Courts Rules Council by amending section 304(2)(c) of the Criminal Procedure (Scotland) Act 1995.

Paragraph 17 – Judiciary and Courts (Scotland) Act 2008

279. This paragraph makes further amendments to the Judiciary and Courts (Scotland) Act 2008 to take into account the creation of the Sheriff Appeal Court and the office of Appeal Sheriff.

Paragraph 17A – Criminal Justice and Licensing (Scotland) Act 2010

280. This paragraph makes consequential amendments to the provisions of the Criminal Justice and Licensing (Scotland) Act 2010 that deal with sentencing guidelines to take account of the transfer of summary criminal appeal jurisdiction from the High Court to the Sheriff Appeal Court by section 112.

Paragraph 18 – Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

281. This paragraph has the effect of bringing the Sheriff Appeal Court within the remit of the Scottish Civil Justice Council.

Part 3 – Civil jury trials

Paragraph 19 – Law Reform (Miscellaneous Provisions) (Scotland) Act 1980

282. This paragraph amends the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 in light of the provisions of the Bill.

283. Sub-paragraph (2) has the effect of allowing the sheriff to remit a fine imposed on a civil juror for non-attendance where the fine was imposed in the sheriff court.

284. Sub-paragraph (3) amends section 11 of the 1980 Act in light of the creation of all-Scotland sheriff courts by section 61 of the Bill.

Part 4 – Simple procedure

Paragraph 20 – Heritable Securities (Scotland) Act 1894

285. This paragraph amends the Heritable Securities (Scotland) Act 1894 to reflect the creation of simple procedure by section 70 of the Bill.

Paragraph 21 – Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963

286. This paragraph repeals the Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963 which made provision for actions for aliment of small amounts by way of a summary cause action. Provision in this regard is now made by section 71 of the Bill, which enables actions for aliment of small amounts to be made by simple procedure.

Paragraph 22 – Conveyancing and Feudal Reform (Scotland) Act 1970

287. This paragraph amends the Conveyancing and Feudal Reform (Scotland) Act 1970 to reflect the creation of simple procedure by section 70 of the Bill.

Paragraph 23 – Legal Aid (Scotland) Act 1986

288. There is a statutory bar on civil legal aid being available for small claims proceedings as set out in paragraph 3 of Schedule 2 to the Legal Aid (Scotland) Act 1986 ("the 1986 Act"). As a consequence of this Bill, the term 'small claims' will no longer be used. This section ensures that the current position is preserved by amending the 1986 Act and substituting the reference to small claims actions with a reference to those types of simple procedure cases which would be, but for the repeal of the 1971 Act, treated as a small claim.

Part 5 – Judicial review

Paragraph 24 – Tribunals (Scotland) Act 2014

289. This paragraph inserts a new section 57A into the Tribunals (Scotland) Act 2014 which governs the procedural steps to be followed when the Court of Session remits a petition for judicial review to the Upper Tribunal for Scotland under section 57(2) of that Act.

290. Subsection (2) provides that it is for the Upper Tribunal to decide whether the petition has been made timeously and whether or not to grant permission for the petition to proceed under section 27B of the Court of Session Act 1998. (Section 85 of the Bill inserts sections 27A-27D into that Act.) Subsection (2A) makes it clear that the Upper Tribunal may exercise the powers conferred by sections 27A-27C of the 1988 Act in relation to time limits and the granting of permission in relation to any petition remitted to it from the Court of Session. Subsection (3) modifies the provisions of sections 27C(3) and (4) of the Bill so that the references in those sections to requests for review of a permission decision being dealt with by a different Lord Ordinary are to be read as references to different members of the Tribunal from those who refused or granted permission subject to conditions. A similar consequential amendment will require to be made to the Tribunals, Courts and Enforcement Act 2007 through a section 104

Order to provide for the UK Upper Tribunal to deal with the permission stage where a petition for judicial review is remitted to it by the Court of Session.

Part 6 – Remit of cases between courts

Paragraph 25 - Law Reform (Miscellaneous Provisions) Scotland Act 1985

291. This paragraph repeals section 14 of the Law Reform (Miscellaneous Provisions) Scotland Act 1985, which provides for remit from the Court of Session to the sheriff. This is now dealt with by section 89 of the Bill.

Part 7 – Regulation of procedure and fees

Paragraph 25A – Courts of Law Fees (Scotland) Act 1895

292. This paragraph repeals section 2 of the Court of Law Fees (Scotland) Act 1895 in consequence of the new power at section 102A.

Paragraph 26 - Vexatious Actions (Scotland) Act 1898

293. This paragraph repeals the Vexatious Actions (Scotland) Act 1898. This subject is now dealt with by Part 3 Chapter 7 of the Bill.

Paragraph 27 - Execution of Diligence (Scotland) Act 1926

294. This paragraph repeals section 6 (regulations, forms and fees) of the Execution of Diligence (Scotland) Act 1926. This is now dealt with by new section 5ZA(1)(c) of the 1988 Act, inserted by section 98 of the Bill.

Paragraph 28 - Administration of Justice (Scotland) Act 1972

295. As a consequence of the repeal of the Sheriff Courts (Scotland) Act 1971, this paragraph amends a reference in the Administration of Justice (Scotland) Act 1972 to refer to the new provision made by section 97 of the Bill.

Paragraph 28A – Court of Session Act 1988

296. This paragraph repeals the court rule making powers of the Court of Session in sections 5 and 5A of the Court of Session Act 1988 and makes consequential amendment to that Act, ensuring that relevant provisions cross refer to the new rule making powers set out in section 96(1) of the Bill.

Paragraph 28B – Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

297. This paragraph amends the powers of SCJC to put beyond doubt their role in being able to propose rules of court relating to the setting of fees.

Part 8 – Civil appeals

Paragraph 29 - Court of Session Act 1988

298. This paragraph makes amendments to the Court of Session Act 1988 to take account of the introduction of the Sheriff Appeal Court.

Paragraph 30 – Constitutional Reform Act 2005

299. Paragraph 30 repeals section 40(3) of the Constitutional Reform Act 2005 in consequence of the new provisions at section 111 of the Bill. Section 40 of the 2005 Act deals with the jurisdiction of the Supreme Court. Section 40(3) provides that "An appeal lies to the Court from any order or judgment of a court in Scotland if an appeal lay from that court to the House of Lords at or immediately before the commencement of this section".

300. Section 40(3) is essentially a transitional provision which stated what the Supreme Court's Scottish appellate jurisdiction was from day one. It is subject to alteration by subsequent legislation and would always have to be read subject to any such legislation. However, the Bill provides for its repeal to avoid any room for argument that there would be an on-going tension with new section 40(9) of the Court of Session Act 1988 and any suggestion that pre-2005 Act procedures could rely on section 40(3) notwithstanding the replacement of section 40.

Part 8A – Remuneration and expenses of Senators of the College of Justice

Paragraph 30A - Administration of Justice Act 1973

301. This paragraph repeals section 9(5) (judicial salaries) of the Administration of Justice Act 1973 in consequence of section 116A.

Part 9 – Justice of the Peace Courts

Paragraph 31 - Criminal Procedure (Scotland) Act 1995

302. This paragraph makes amendments to the Criminal Procedure (Scotland) Act 1995 to take account of the abolition of the office of stipendiary magistrate by section 118 of the Bill.

Paragraph 32 - Criminal Proceedings etc. (Reform) (Scotland) Act 2007

303. This paragraph makes amendments to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 to take account of the abolition of the office of stipendiary magistrate by section 118 of the Bill.

Paragraph 33 - Judiciary and Courts (Scotland) Act 2008

304. This paragraph makes an amendment to the Judiciary and Courts (Scotland) Act 2008 to take account of the abolition of the office of stipendiary magistrate by section 118 of the Bill.

Part 10 – Miscellaneous

Paragraph 33A – Judicial Offices (Salaries, &c.) Act 1952

305. This paragraph repeals the Judicial Offices (Salaries, &c.) Act 1952 in consequence of sections 17 and 116B.

Paragraph 34 – Court of Session Act 1988

306. This paragraph amends the Court of Session Act 1988 to ensure that references in that Act to enactments include Acts of the Scottish Parliament.

COURTS REFORM (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

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