

Courts Reform (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Civil jury trials: summoning of jurors

49

Types of proceedings subject to simple procedure

50, 51, 52, 53, 54, 55, 59

Simple procedure: application to proceedings for damages for personal injuries

43, 31, 44

Simple procedure cases and all-Scotland sheriff court

135, 136, 137

Simple procedure: proceedings for aliment

56, 57

Simple procedure rules: matters to be taken into consideration

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Appeal from simple procedure cases

60, 61

Judicial review: time limits in planning cases

32, 138

Judicial review: general

125, 62, 63, 65, 139, 143, 114, 115, 116, 117

Notes on amendments in this group

Amendment 143 pre-empts amendments 114, 115, 116 and 117 in this group and amendments 111, 112 and 113 in the next group

References to Tribunals (Scotland) Act 2014

64, 102, 103, 111, 112, 113

Notes on amendments in this group

Amendments 111, 112 and 113 are pre-empted by amendment 143 in the previous group

Remit of cases between the Court of Session and the sheriff court

66, 67, 68, 69, 140, 70, 71

Court of Session rules and fees: drafting changes

72, 73, 76, 77, 78, 79, 119, 120

Procedure and fees

74, 75, 80, 81, 91, 108, 118, 124

Regulation of civil court procedure: just conduct of proceedings

126, 127

Sanction for counsel

45, 141, 142, 47, 144

Vexatious proceedings: meaning of “court”

82, 83, 84, 85, 86, 87, 88, 89, 90

Appeals from all-Scotland sheriff court in personal injury cases

128, 129, 130

Appeals to the Court of Session and to the Supreme Court

92, 93, 94, 95, 96, 97

Appeals from Sheriff Appeal Court to High Court: grounds to extend period for application for permission

46

Remuneration and expenses of Senators of the College of Justice

98, 99, 121, 122

Court closure orders: parliamentary procedure

100, 101, 123

Judicial Appointments Board: assistants

104

Judicial retirement ages

105, 106, 107

Sheriff Appeal Court: legal aid

109

Sheriff Appeal Court: sentencing guidelines

110

Exclusive competence and simple procedure: commencement

131, 132, 134

Annual report

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Amendments already debated

Honorary sheriffs

With 22 – 35, 36, 37

Exclusive competence: cases of more than one order of value

With 1 – 20, 19

Sheriff Appeal Court: number of Appeal Sheriffs required to constitute Court

With 5 – 15, 16, 17, 18, 21, 34

Amendments in debating order

Civil jury trials: summoning of jurors

Kenny MacAskill

- 49 In section 61, page 30, line 21, leave out subsection (6)

Types of proceedings subject to simple procedure

Kenny MacAskill

- 50 In section 70, page 34, line 20, after <procedure> insert <(and no other types of proceedings may be so brought)>

Kenny MacAskill

- 51 In section 70, page 34, line 32, at end insert—
<() Subsection (3) is subject to sections 75 (transfer of cases to simple procedure), 76 (transfer of cases from simple procedure) and 79 (transitional provision: summary cause).>

Kenny MacAskill

- 52 In section 70, page 34, line 38, at end insert—
<() An act of sederunt under section 97 may make provision for the purposes of this Act for determining whether proceedings are of a type mentioned in subsection (3).>

Kenny MacAskill

- 53 In section 70, page 35, line 1, leave out <section 79> and insert <any other enactment>

Kenny MacAskill

- 54 In section 70, page 35, line 2, at end insert <or
() are continued subject to simple procedure by virtue of section 75,>

Kenny MacAskill

- 55 In section 70, page 35, line 3, at end insert—
<() Subsection (7) is subject to section 76.>

Kenny MacAskill

- 59 In section 75, page 36, line 14, leave out from <, at> to end of line 19 and insert <the proceedings are of a type that, if brought at the time when the application is made—
() would or could be brought subject to simple procedure by virtue of any enactment, or
() would or could be so brought but for the fact that a financial limit specified in section 70(3) or 71(2) is exceeded.>

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Simple procedure: application to proceedings for damages for personal injuries

Alison McInnes

Supported by: Elaine Murray

- 43 In section 70, page 34, line 21, at end insert <except where the proceedings include a claim for damages in respect of personal injuries,>

John Pentland

- 31 In section 70, page 34, line 33, at end insert—
<() Subsection (3)(a) does not apply to proceedings in which damages consist of or include damages in respect of personal injuries caused by exposure to asbestos.>

Alison McInnes

Supported by: Elaine Murray

- 44 In section 70, page 35, line 5, at end insert—
<() In subsection (3)(a), “personal injuries” means personal injuries to the pursuer or any other person, and includes disease, impairment of physical or mental condition, and death.>

Simple procedure cases and all-Scotland sheriff court

John Finnie

- 135 In section 70, page 34, line 33, leave out <section> and insert <sections (*Proceedings in an all-Scotland sheriff court*) and>

John Finnie

- 136 After section 70, insert—
<Proceedings in an all-Scotland sheriff court
(1) Section 70(3), so far as requiring any relevant proceedings to be brought subject to simple procedure, does not apply to any such proceedings in an all-Scotland sheriff court, and no such proceedings may be brought or continued in such a court subject to simple procedure.
(2) Subsection (1) does not affect the application of section 70(3) in relation to any relevant proceedings brought in any other sheriff court.
(3) In this section—
“all-Scotland sheriff court” means a sheriff court specified in an order under section 41(1),
“relevant proceedings” means proceedings of a type mentioned in section 70(3)(a) so far as they are also of a type specified in an order under section 41(1).>

THIS IS NOT THE MARSHALLED LIST

John Finnie

137 After section 75, insert—

<Proceedings in an all-Scotland sheriff court: transfer to simple procedure

- (1) This section applies to any relevant proceedings in an all-Scotland sheriff court.
- (2) A party to the proceedings may, at any stage, make an application for the proceedings to continue subject to simple procedure in another sheriff court.
- (3) Where such an application is made, the sheriff may, on special cause shown—
 - (a) direct that the proceedings are to continue subject to simple procedure for all purposes (including appeal), and
 - (b) make an order transferring the proceedings to another sheriff court having jurisdiction in relation to the proceedings.
- (4) Where a sheriff makes a direction under section 75(3) in relation to proceedings to which this section applies, the sheriff must make an order transferring the proceedings to another sheriff court having jurisdiction in relation to the proceedings.
- (5) In this section, “all-Scotland sheriff court” and “relevant proceedings” have the same meanings as in section (*Proceedings in an all-Scotland sheriff court*).>

Simple procedure: proceedings for aliment

Kenny MacAskill

56 In section 71, page 35, line 13, leave out <£35> and insert <£100>

Kenny MacAskill

57 In section 71, page 35, line 14, leave out <£70> and insert <£200>

Simple procedure rules: matters to be taken into consideration

Kenny MacAskill

58 In section 72, page 35, line 28, leave out <negotiate with> and insert <facilitate negotiation between or among>

Appeal from simple procedure cases

Kenny MacAskill

60 In section 78, page 37, line 21, after <Court> insert <under section 104>

Kenny MacAskill

61 In section 78, page 37, line 23, leave out <Otherwise, a> and insert <Any other>

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Judicial review: time limits in planning cases

Margaret Mitchell

- 32** In section 85, page 40, line 18, at beginning insert <Subject to subsection (1A),>

Margaret Mitchell

- 138** In section 85, page 40, line 23, at end insert—

<(1A) An application to the supervisory jurisdiction of the Court relating to a decision under Part III of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) must be made—

- (a) in accordance with subsection (1) where the application is made by or on behalf of—
 - (i) an individual,
 - (ii) a body whose sole or primary purpose is the promotion of environmental protection, or
 - (iii) a community body within the meaning given by section 75D of the 1997 Act, or
- (b) in all other cases within the period of 6 weeks beginning with the date on which the grounds giving rise to the application first arise.>

Judicial review: general

Elaine Murray

- 125** In section 85, page 40, line 20, leave out <grounds giving rise to the application first arise> and insert <applicant first had knowledge of the grounds giving rise to the application>

Kenny MacAskill

- 62** In section 85, page 40, line 26, leave out <shorter than> and insert <ending before>

Kenny MacAskill

- 63** In section 85, page 40, line 27, leave out <shorter> and insert <first-ending>

Kenny MacAskill

- 65** In section 85, page 42, line 11, after <may> insert <, within the period of 7 days beginning with the day on which the Court makes its decision,>

Alison McInnes

- 139** Leave out section 85

Alison McInnes

- 143** In schedule 4, page 88, line 18, leave out paragraph 24

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Kenny MacAskill

- 114 In schedule 4, page 88, line 23, leave out from first <in> to <limits> in line 24 and insert <timeously>

Kenny MacAskill

- 115 In schedule 4, page 88, line 26, leave out <that Act> and insert <the Court of Session Act 1988 (“the 1988 Act”)>

Kenny MacAskill

- 116 In schedule 4, page 88, line 26, at end insert—
- <() Accordingly—
- (a) the Upper Tribunal has the same powers in relation to the petition as the Court of Session would have had in relation to it under sections 27A to 27C of the 1988 Act,
 - (b) sections 27C and 27D of that Act apply in relation to a decision of the Upper Tribunal under section 27B(1) of that Act as they apply in relation to such a decision of the Court of Session.>

Kenny MacAskill

- 117 In schedule 4, page 88, line 27, leave out <that> and insert <the 1988>

References to Tribunals (Scotland) Act 2014

Kenny MacAskill

- 64 In section 85, page 41, line 2, leave out <41> and insert <46>

Kenny MacAskill

- 102 In schedule 3, page 79, line 37, leave out <27> and insert <28>

Kenny MacAskill

- 103 In schedule 3, page 81, line 15, leave out <71> and insert <77>

Kenny MacAskill

- 111 In schedule 4, page 88, line 18, leave out <52> and insert <57>

Kenny MacAskill

- 112 In schedule 4, page 88, line 19, leave out <52A> and insert <57A>

Kenny MacAskill

- 113 In schedule 4, page 88, line 21, leave out <52(2)> and insert <57(2)>

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Remit of cases between the Court of Session and the sheriff court

Kenny MacAskill

- 66 In section 88, page 43, line 11, leave out from <there> to end of line and insert <the importance or difficulty of the proceedings makes it appropriate to do so.>

Kenny MacAskill

- 67 In section 88, page 43, line 12, leave out <special>

Kenny MacAskill

- 68 In section 88, page 43, line 14, leave out subsection (6)

Kenny MacAskill

- 69 In section 88, page 43, line 20, leave out subsections (9) to (12)

Roderick Campbell

- 140 In section 88, page 43, line 20, leave out subsections (9) to (12) and insert—
 <(8A) A decision of the sheriff—
 (a) to refuse to remit the proceedings under subsection (2), or
 (b) to refuse to request that the proceedings be remitted under subsection (4),
 may be appealed to the Court of Session.
 (8B) A decision of the Court of Session on appeal under subsection (8A) is final and no
 appeal may be taken against it.>

Kenny MacAskill

- 70 In section 89, page 43, line 38, leave out from <that> to end of line and insert <, on cause shown, that the proceedings should remain in the Court of Session.>

Kenny MacAskill

- 71 In section 89, page 44, line 11, leave out subsection (7)

Court of Session rules and fees: drafting changes

Kenny MacAskill

- 72 In section 96, page 48, leave out lines 15 to 17

Kenny MacAskill

- 73 In section 96, page 48, line 18, after <Court> insert <of Session>

Kenny MacAskill

- 76 In section 98, page 51, leave out lines 30 to 32

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Kenny MacAskill

- 77 In section 98, page 51, line 33, after first <Court> insert <of Session>

Kenny MacAskill

- 78 In section 98, page 52, line 14, after <President> insert <of the Court of Session>

Kenny MacAskill

- 79 In section 98, page 52, leave out line 16

Kenny MacAskill

- 119 In schedule 4, page 89, line 12, at end insert—

<Court of Session Act 1988

- (1) The Court of Session Act 1988 is amended in accordance with this paragraph.
- (2) In section 2(4) (composition of the Court), for “section 5(ba) below,” substitute “an act of sederunt under section 96(1) of the Courts Reform (Scotland) Act 2014.”.
- (3) Sections 5 (power to regulate procedure etc. by act of sederunt) and 5A (rules for lay representation) are repealed.
- (4) In section 6 (allocation of business etc. by act of sederunt), for “section 5 of this Act” substitute “section 96(1) of the Courts Reform (Scotland) Act 2014”.
- (5) In section 26(3) (summary trials), for “this Act” substitute “section 96(1) of the Courts Reform (Scotland) Act 2014”.>

Kenny MacAskill

- 120 In schedule 4, page 89, line 12, at end insert—

<Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

- (1) The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 is amended in accordance with this paragraph.
- (2) In section 2 (functions of the Council)—
 - (a) in subsection (1)(c), after sub-paragraph (i) insert—

“(ia) draft fees rules,”
 - (b) after subsection (6), insert—

“(6A) For the purposes of this Part, “draft fees rules” means drafts of such provision as the Court of Session may make by act of sederunt under section 98 or 99 of the Courts Reform (Scotland) Act 2014 (powers to regulate court fees),”.
- (3) In section 4 (Court of Session to consider rules)—
 - (a) in subsection (1), after “rules” where it first occurs insert “, draft fees rules”,
 - (b) in subsection (2), after “rules” where it first occurs insert “, draft fees rules”,
 - (c) in subsection (3)—
 - (i) the words from “which” to “section 2(5)” become paragraph (a), and
 - (ii) after that paragraph insert—

“(b) under section 98 or 99 of the Courts Reform (Scotland) Act 2014.”.>

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Procedure and fees

Kenny MacAskill

- 74 Move section 96 to after section 102

Kenny MacAskill

- 75 Move section 97 to after section 102

Kenny MacAskill

- 80 Move section 98 to after section 102

Kenny MacAskill

- 81 Move section 99 to after section 102

Kenny MacAskill

- 91 After section 102, insert—

<Court fees

Power to provide for fees for SCTS, court clerks and other officers

- (1) The Scottish Ministers may by order make provision for the charging of fees in respect of the carrying out of the functions of the Scottish Courts and Tribunals Service (“the SCTS”) or a relevant officer in connection with—
 - (a) proceedings in the Scottish Courts, or
 - (b) any other matter dealt with by a relevant officer.
- (2) An order under subsection (1) may—
 - (a) in particular include provision—
 - (i) specifying, or for determining, the amount of fees,
 - (ii) specifying, or for determining, the persons or types of person who are to pay the fees,
 - (iii) specifying the times when, places where and persons to whom the fees are to be paid,
 - (iv) for exemptions from the requirement to pay fees,
 - (v) for the remission of fees,
 - (vi) for modification of fees,
 - (b) make different provision for different purposes or circumstances including, in particular, different provision for—
 - (i) different Scottish Courts,
 - (ii) different relevant officers,
 - (iii) different proceedings or types of proceedings.
- (3) In this section—

“relevant officer” means—

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- (a) a clerk, deputy clerk or assistant clerk of any of the Scottish Courts,
- (b) the Accountant of Court,
- (c) the Auditor of the Court of Session,
- (d) the auditor of a sheriff court,
- (e) any other officer who is a member of the staff of the SCTS,

“Scottish Courts” means—

- (a) the Court of Session,
- (b) the High Court of Justiciary,
- (c) the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983,
- (d) the election court in Scotland constituted under section 123 of that Act,
- (e) the Lands Valuation Appeal Court,
- (f) the Sheriff Appeal Court,
- (g) sheriff courts,
- (h) justice of the peace courts.

- (4) The Scottish Ministers may by order modify (either or both of) the definitions of “relevant officer” and “Scottish Courts” in subsection (3).>

Kenny MacAskill

- 108** In schedule 4, page 84, line 20, leave out paragraph 10

Kenny MacAskill

- 118** In schedule 4, page 89, line 2, at end insert—

<Courts of Law Fees (Scotland) Act 1895

In the Courts of Law Fees (Scotland) Act 1895, section 2 (power of Scottish Ministers to regulate court fees) is repealed.>

Kenny MacAskill

- 124** In section 122, page 69, line 13, after <77(1)> insert <, (*Power to provide for fees for SCTS, court clerks and other officers*)(4)>

Regulation of civil court procedure: just conduct of proceedings

Graeme Pearson

- 126** After section 97, insert—

<Regulation of procedure

- (1) The power to regulate procedure by act of sederunt under sections 96 and 97 is to be exercised with a view to enabling the Court to conduct proceedings justly.
- (2) Acts of sederunt made under sections 96 and 97 are to be interpreted by the Court with a view to enabling the Court to conduct proceedings justly.

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- (2) For the purpose of subsections (1) and (2), conducting proceedings justly, includes, so far as possible—
- (a) ensuring equitable treatment of parties to the proceedings,
 - (b) being mindful of the expense of the proceedings,
 - (c) conducting the proceedings in a manner proportionate to the—
 - (i) the value of orders sought in the proceedings,
 - (ii) nature and complexity of the proceedings,
 - (iii) financial position of the parties to the proceedings,
 - (d) ensuring that the proceedings are conducted fairly and timeously,
 - (e) ensuring that the proceedings are conducted in a manner which is mindful of—
 - (i) the resources available to the Court,
 - (ii) other proceedings progressing through the courts.>

Graeme Pearson

127 After section 97, insert—

<Regulation of procedure

- (1) The power to regulate procedure by act of sederunt under sections 96 and 97 is to be exercised with a view to enabling the Court to conduct proceedings justly.
- (2) For the purposes of subsection (1), it is a matter for the Scottish Judicial Council to determine how “justly” is to be understood in the making and interpreting of acts of sederunt.>

Sanction for counsel

John Pentland

45 After section 99, insert—

<Sanction for counsel

Sanction for counsel

- (1) This section applies to relevant proceedings before a sheriff whose jurisdiction has been extended territorially throughout Scotland by an order under section 41(1).
- (2) In such proceedings the sheriff must be presumed, for the purposes of any provision made in an act of sederunt under section 97 or 99, to have sanctioned the employment of counsel in relation to—
 - (a) appearance at any hearing in the proceedings, and
 - (b) the preparation of any document to be lodged in the proceedings.
- (3) The presumption referred to in subsection (2) is not rebuttable.
- (4) In this section “relevant proceedings” means—
 - (a) proceedings in which damages claimed consist of or include damages for personal injuries sustained by a person who has died of those injuries,

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- (b) all work-related personal injury proceedings, and
 - (c) other personal injury proceedings in which the damages claimed, exclusive of interest and expenses, exceed £20,000.
- (5) The Scottish Ministers may by order modify subsection (4).
- (6) An order under subsection (5) may, in particular, substitute another sum for the sum for the time being specified in subsection (4)(c).
- (7) This section does not affect any power which the parties have, apart from this section, to apply to the sheriff to sanction the employment of counsel in any case.>

John Pentland

141 After section 99, insert—

<Sanction for counsel

Sanction for counsel: presumption in certain circumstances

- (1) This section applies to relevant proceedings before a sheriff whose jurisdiction has been extended territorially throughout Scotland by an order under section 41(1).
- (2) Subject to subsection (3), in such proceedings the sheriff will be presumed, for the purposes of any provision in an act of sederunt made under section 97 or 99, to have sanctioned the employment of counsel in relation to—
 - (a) appearance at any hearing in the proceedings, and
 - (b) the preparation of any document to be lodged in the proceedings.
- (3) The sheriff may, on the motion or incidental application of a party to the proceedings, or of the sheriff's own accord, direct that the circumstances of a case are such that it would not be appropriate that subsection (2) applies either at all or to such extent as the sheriff may direct.
- (4) A direction may only be made under subsection (3) where the sheriff is satisfied that special cause has been shown to establish that the action—
 - (a) is straightforward,
 - (b) involves settled law,
 - (c) involves a small number of witnesses whose witness evidence is not expected to be of a complex nature.
- (5) In this section, “relevant proceedings” means—
 - (a) any proceedings in which damages claimed consist of or include damages for personal injuries sustained by a person who has died in consequence of those injuries,
 - (b) all work related personal injury proceedings, or
 - (c) any other personal injury proceedings in which the damages claimed, exclusive of interest and expenses, exceeds £20,000.
- (6) The Scottish Ministers may by order modify subsection (5) or substitute other amounts for the amounts for the time being specified in subsection (5)(c).
- (7) This section does not affect any power which the parties have, apart from this section, to apply to the sheriff to sanction the employment of counsel in any case.>

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John Finnie

142 After section 102, insert—

<Sanction for counsel

Sanction for counsel in the sheriff court and Sheriff Appeal Court

- (1) This section applies in civil proceedings in the sheriff court or the Sheriff Appeal Court where the court is deciding, for the purposes of any relevant expenses rule, whether to sanction the employment of counsel by a party for the purposes of the proceedings.
- (2) The court must sanction the employment of counsel if the court considers, in all the circumstances of the case, that it is reasonable to do so.
- (3) In considering that matter, the court must have regard to—
 - (a) whether the proceedings are such as to merit the employment of counsel, having particular regard to—
 - (i) the difficulty or complexity, or likely difficulty or complexity, of the proceedings,
 - (ii) the importance or value of any claim in the proceedings, and
 - (b) the desirability of ensuring that no party gains an unfair advantage by virtue of the employment of counsel.
- (4) The court may have regard to such other matters as it considers appropriate.
- (5) References in this section to proceedings include references to any part or aspect of the proceedings.
- (6) In this section—

“counsel” means—

 - (a) an advocate,
 - (b) a solicitor having a right of audience in the Court of Session under section 25A of the Solicitors (Scotland) Act 1980,

“court”, in relation to proceedings in the sheriff court, means the sheriff,

“relevant expenses rule” means, in relation to any proceedings mentioned in subsection (1), any provision of an act of sederunt requiring, or having the effect of requiring, that the employment of counsel by a party for the purposes of the proceedings be sanctioned by the court before the fees of counsel are allowable as expenses that may be awarded to the party.
- (7) This section is subject to an act of sederunt under section 97 or 99.>

John Pentland

47 In section 122, page 69, line 13, after <77(1)> insert <, (*Sanction for counsel*)(5)>

John Pentland

144 In section 122, page 69, line 13, after <77(1)> insert <, (*Sanction for counsel: presumption in certain circumstances*)(6)>

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Vexatious proceedings: meaning of “court”

Kenny MacAskill

- 82 In section 101, page 54, line 12, leave out from first <the> to end of line 13 and insert <“the court” means—

- (a) the court which is dealing with the proceedings,
- (b) in the case of proceedings in the sheriff court, the sheriff.>

Kenny MacAskill

- 83 In section 102, page 54, line 18, leave out <court> and insert <Court of Session, sheriff or, as the case may be, Sheriff Appeal Court>

Kenny MacAskill

- 84 In section 102, page 54, line 20, leave out second <the> and insert <a>

Kenny MacAskill

- 85 In section 102, page 54, line 20, after <court> insert <or a judge of any court>

Kenny MacAskill

- 86 In section 102, page 54, line 22, leave out from second <in> to second <court> in line 23 and insert <or not those proceedings are before the Court of Session, sheriff or, as the case may be, Sheriff Appeal Court>

Kenny MacAskill

- 87 In section 102, page 54, line 32, leave out <court’s> and insert <Court’s or, as the case may be, sheriff’s>

Kenny MacAskill

- 88 In section 102, page 54, line 33, leave out <court> and insert <Court or sheriff>

Kenny MacAskill

- 89 In section 102, page 54, line 35, leave out <court> and insert <Court or sheriff>

Kenny MacAskill

- 90 In section 102, page 55, line 8, leave out subsection (7)

THIS IS NOT THE MARSHALLED LIST

Appeals from all-Scotland sheriff court in personal injury cases

Elaine Murray

128 In section 104, page 56, line 8, at end insert—

- <() This section does not apply to an appeal against any decision of a sheriff constituting final judgement in proceedings including a claim for damages in respect of personal injury, where the jurisdiction of the sheriff has been extended territorially throughout Scotland by an order under section 41(1).>

Elaine Murray

129 After section 107, insert—

<Appeal from sheriff to the Court of Session in certain cases

- (1) This section applies to an appeal against any decision of a sheriff constituting final judgement in proceedings including a claim for damages in respect of personal injury, where the jurisdiction of the sheriff has been extended territorially throughout Scotland by an order under section 41(1).
- (2) An appeal may be taken to the Court of Session on the application of a party to the proceedings, without the need for permission, against any decision of the sheriff.
- (3) In determining an appeal under this section, the Court of Session has power to—
 - (a) grant such disposal as the Court sees fit, including by (in whole or in part)—
 - (i) adhering to the decision that is subject to the appeal,
 - (ii) recalling the decision,
 - (iii) varying the decision,
 - (iv) remitting the case back to the sheriff,
 - (v) dismissing the appeal,
 - (b) make such incidental or interim orders as may be necessary, and
 - (c) determine any incidental or other issue that needs to be determined for the purpose of doing justice in the appeal.
- (4) This section does not affect any other right of appeal against any decision of a sheriff to the Court of Session under any other enactment.
- (5) This section is subject to any provision of any other enactment that restricts or excludes a right of appeal from a sheriff to the Court of Session.>

Elaine Murray

130 In section 110, page 59, line 3, after <107> insert <, (*Appeal from sheriff to the Court of Session in certain cases*)>

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Appeals to the Court of Session and to the Supreme Court

Kenny MacAskill

- 92 In section 110, page 59, line 4, leave out <of the decisions pronounced in the original proceedings> and insert <prior decisions in the proceedings (whether made at first instance or at any stage of appeal)>

Kenny MacAskill

- 93 In section 110, page 59, line 6, leave out <original>

Kenny MacAskill

- 94 In section 110, page 59, line 14, leave out subsection (5)

Kenny MacAskill

- 95 In section 111, page 60, line 11, after second <proceedings> insert <(whether made at first instance or at any stage of appeal)>

Kenny MacAskill

- 96 In section 111, page 61, line 3, leave out <arguable points of law that are> and insert <an arguable point of law>

Kenny MacAskill

- 97 In section 111, page 61, line 5, after <Court> insert <at that time>

Appeals from Sheriff Appeal Court to High Court: grounds to extend period for application for permission

John Pentland

- 46 In section 113, page 61, line 36, leave out <exceptional circumstances> and insert <special cause>

Remuneration and expenses of Senators of the College of Justice

Kenny MacAskill

- 98 After section 116, insert—

<PART

REMUNERATION AND EXPENSES OF SENATORS OF THE COLLEGE OF JUSTICE

Payment of the salaries of judges of the Court of Session

- (1) The salaries of judges of the Court of Session determined under section 9 of the Administration of Justice Act 1973 (judicial salaries) are to be paid by the Scottish Courts and Tribunals Service.
- (2) Sums required by the Scottish Courts and Tribunals Service for the payment of such salaries are charged on the Scottish Consolidated Fund.>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

99 After section 116, insert—

<Expenses

- (1) The Scottish Courts and Tribunals Service may pay to a Senator of the College of Justice such sums as it may determine in respect of expenses reasonably incurred by the Senator in the performance of, or in connection with, the Senator's duties.
- (2) The Scottish Courts and Tribunals Service may—
 - (a) determine the circumstances in which sums may be paid, and
 - (b) determine different circumstances for—
 - (i) different Senators,
 - (ii) different descriptions of Senators,
 - (iii) the different duties of Senators.>

Kenny MacAskill

121 In schedule 4, page 89, line 25, at end insert—

<PART

REMUNERATION AND EXPENSES OF SENATORS OF THE COLLEGE OF JUSTICE

Administration of Justice Act 1973

In section 9 of the Administration of Justice Act 1973 (judicial salaries), subsection (5) is repealed.>

Kenny MacAskill

122 In schedule 4, page 91, line 5, at end insert—

<Judicial Offices (Salaries, &c.) Act 1952

The Judicial Offices (Salaries, &c.) Act 1952 is repealed.>

Court closure orders: parliamentary procedure

Kenny MacAskill

100 In section 117, page 67, line 10, leave out <this section> and insert <subsections (2) and (3)>

Kenny MacAskill

101 In section 117, page 67, line 25, at end insert—

<() In section 81(3)(a) of that Act (orders under the Act that are subject to affirmative procedure), after “56” insert “, 59(2) or (6)”.>

Kenny MacAskill

123 In section 122, page 69, line 13, after <section> insert <2(1),>

THIS IS NOT THE MARSHALLED LIST

Judicial Appointments Board: assistants

Kenny MacAskill

104 After section 120, insert—

<PART

THE JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

Assistants to the Judicial Appointments Board for Scotland

- (1) In schedule 1 to the Judiciary and Courts (Scotland) Act 2008 (the Judicial Appointments Board for Scotland)—

(a) after paragraph 13 insert—

“Appointment of persons to assist the Board

- 13A(1) The Board may appoint persons (other than Board members) to assist the Board with the carrying out of its functions.
- (2) The Board may appoint persons under sub-paragraph (1) as—
- (a) legal assistants, or
- (b) lay assistants.
- (3) A person may be appointed as a legal assistant if the person is a solicitor or advocate practising as such in Scotland.
- (4) A person may be appointed as a lay assistant if the person is eligible for appointment as a lay member of the Board.
- (5) It is for the Board to determine the number of persons who may be appointed under this paragraph.
- (6) A person who is disqualified from membership of the Board by virtue of paragraph 5 is also disqualified from being a legal assistant or a lay assistant.
- (7) Persons appointed under this paragraph are to be appointed for such period of not more than 3 years as the Board may determine.
- (8) At the end of a period of appointment, a person may be reappointed.
- (9) A person appointed under this paragraph may resign by giving notice in writing to the Board.
- (10) The Chairing Member may, by notice in writing, rescind a person’s appointment under this paragraph if satisfied that the person—
- (a) has been convicted of any offence,
- (b) has become insolvent, or
- (c) is otherwise unfit to be a legal assistant or, as the case may be, a lay assistant or unable for any reason to discharge the functions of such an assistant.
- (11) Each person appointed under this paragraph is entitled to such fees and expenses, if any, as the Scottish Ministers may determine.
- (12) It is for the Scottish Ministers to pay those fees and expenses.

THIS IS NOT THE MARSHALLED LIST

Powers and conduct of persons appointed to assist the Board

- 13B(1) A person appointed under paragraph 13A(1) as a legal assistant may, so far as authorised by the Board, do anything that a legal member of the Board may do, other than take part in a decision of the Board to recommend an individual for appointment.
- (2) A person appointed under paragraph 13A(1) as a lay assistant may, so far as authorised by the Board, do anything that a lay member of the Board may do, other than take part in a decision of the Board to recommend an individual for appointment.
- (3) The Board must issue (and may from time to time revise) a code of conduct for persons appointed under paragraph 13A(1).
- (4) Persons appointed under paragraph 13A(1) must have regard to the provisions of the code of conduct while assisting the Board in the carrying out of its functions.”,
- (b) in paragraph 16A (proceedings relating to the Scottish Tribunals), after sub-paragraph (6) insert—
- “(6A) Sub-paragraph (6B) applies if—
- (a) the Board is exercising any function under this Act in connection with a position mentioned in section 10(2A),
- (b) the Board authorises a person appointed under paragraph 13A(1) to assist it in relation to any proceedings relating to the function, and
- (c) the person authorised to assist the Board in relation to the proceedings is a member of the Scottish Tribunals.
- (6B) The member of the Scottish Tribunals selected under sub-paragraph (3) may elect not to take part in the proceedings in respect of which the assistant is authorised to assist.”.
- (2) In paragraph 10(1)(b) of schedule 9 to the Tribunals (Scotland) Act 2014, (transitional provision: making appointments), for “and (3)” substitute “, (3), (6A) and (6B)”.>

Judicial retirement ages

Kenny MacAskill

- 105 In schedule 4, page 83, leave out lines 7 to 9

Kenny MacAskill

- 106 In schedule 4, page 83, line 10, after <5> insert <to the Judicial Pensions and Retirement Act 1993>

Kenny MacAskill

- 107 In schedule 4, page 83, line 12, leave out from <and> to end of line 14 and insert—
- <() after the entry for “Part-time sheriff in Scotland”, insert—
- “Part-time summary sheriff in Scotland”, and
- () the entry for “Stipendiary magistrate in Scotland” is repealed.>

THIS IS NOT THE MARSHALLED LIST

Sheriff Appeal Court: legal aid

Kenny MacAskill

109 In schedule 4, page 86, line 2, at end insert—

<() In section 25 (legal aid in appeals)—

(a) in subsection (2)(b)—

(i) for “or 175(2)” substitute “, 175(2) or 194ZB(1)”,

(ii) after “leave” insert “or permission”,

(b) in subsection (2A), after “High Court” insert “or, in the case of an appeal to the Sheriff Appeal Court, that Court”,

(c) in subsection (2B), after “High Court” insert “or, in the case of an appeal to the Sheriff Appeal Court, that Court”,

(d) in subsection (5)—

(i) for “or 187” substitute “, 187, 194ZD or 194ZE”,

(ii) after “leave” in each place where it occurs insert “or permission”.>

Sheriff Appeal Court: sentencing guidelines

Kenny MacAskill

110 In schedule 4, page 86, line 26, at end insert—

<*Criminal Justice and Licensing (Scotland) Act 2010*

(1) The Criminal Justice and Licensing (Scotland) Act 2010 is amended in accordance with this paragraph.

(2) In section 6 (effect of sentencing guidelines)—

(a) for subsection (4), substitute—

“(4) Subsection (5) applies where, on an appeal in any case—

(a) the High Court of Justiciary passes another sentence under one of the following provisions of the 1995 Act—

(i) section 118(3),

(ii) section 118(4)(b),

(iii) section 118(4A)(b),

(iv) section 118(4A)(c)(ii), or

(b) the Sheriff Appeal Court or the High Court passes another sentence under section 189(1)(b) of that Act.”,

(b) in subsection (5), after “Court” insert “or, as the case may be, the Sheriff Appeal Court”.

(3) After section 8, insert—

THIS IS NOT THE MARSHALLED LIST

“8A Sheriff Appeal Court’s power to require preparation or review of sentencing guidelines

- (1) Where the Sheriff Appeal Court pronounces an opinion under section 189(7) of the 1995 Act, the Court may require the Council to—
 - (a) prepare, for the approval of the High Court of Justiciary, sentencing guidelines on any matter, or
 - (b) review any sentencing guidelines published by the Council on any matter.
- (2) On making a requirement under subsection (1), the Sheriff Appeal Court must state its reasons for doing so.
- (3) The Council must comply with a requirement made under subsection (1) and, in doing so, must have regard to the Sheriff Appeal Court’s reasons for making the requirement.”.
- (4) In section 9 (publication of High Court guideline judgments)—
 - (a) in subsection (1), for “or 189(7) of the 1995 Act” substitute “of the 1995 Act and opinions of the Sheriff Appeal Court or the High Court pronounced under section 189(7) of that Act”,
 - (b) in subsection (2), after “High Court” insert “or the Sheriff Appeal Court”,
 - (c) the title of the section becomes “**Publication of High Court and Sheriff Appeal Court guideline judgments**”.
- (5) In section 13 (annual report of the Scottish Sentencing Council), in subsection (3)—
 - (a) the word “and” immediately following paragraph (d) is repealed,
 - (b) after paragraph (e) insert “, and
 - “(f) requirements made by the Sheriff Appeal Court under section 8A and of the Council’s response to them.”.>

Exclusive competence and simple procedure: commencement

Elaine Murray

- 131** In section 122, page 69, line 16, at end insert <, or
- (d) an order appointing a day for section 39 or 70 to come into force.>

Elaine Murray

- 132** In section 122, page 69, line 19, after <127(2)> insert <, except an order referred to in subsection (2)(d)>

Elaine Murray

- 134** In section 127, page 71, line 38, at end insert—
- <(2A) A draft of an order under subsection (2) appointing a day for the coming into force of section 39 or 70 is not to be laid before the Parliament unless the conditions in subsections (2B) and (2C) are met.

THIS IS NOT THE MARSHALLED LIST

- (2B) The condition is that the Scottish Ministers have prepared, and laid before the Parliament, a report showing that sufficient provision has been made for staffing, resources, technology, court room space and judicial appointments to ensure that users of the Scottish Courts will enjoy at least the same level of access to justice after the coming into force of those sections as they did prior to their coming into force.
- (2C) The condition is that—
- (a) a draft of an order under section 41(1) has been approved by the Parliament, and
 - (b) the report referred to in subsection (2B) includes information showing that sufficient provision has been made for staffing, resources, technology, court room space and judicial appointments in relation to proceedings in the specified sheriff court where a sheriff is sitting whose jurisdiction has been extended territorially throughout Scotland by virtue of an order under section 41(1).
- (2D) In subsection (2B), “Scottish Courts” has the meaning given in section (*Annual report*).>

Annual report

Elaine Murray

133 After section 126, insert—

<Annual report

- (1) As soon as reasonably practicable after 31 March in each year, the Scottish Ministers must prepare an annual report setting out in relation to the year covered by the report—
 - (a) how the Scottish Courts have carried out their functions under this Act,
 - (b) the number and types of cases dealt with in the year by the Scottish Courts and the average length of time taken to dispose of each type of case,
 - (c) the provision made for staffing, resources, technology, court room space and judicial appointments to cater for the demand for court services, and
 - (d) such other information as the Scottish Ministers think fit.
- (2) A report prepared under this section must be laid before the Parliament.
- (3) In this section, “Scottish Courts” means—
 - (a) the Court of Session,
 - (b) the High Court of Justiciary,
 - (c) the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983,
 - (d) the election court in Scotland constituted under section 123 of that Act,
 - (e) the Lands Valuation Appeal Court,
 - (f) the Sheriff Appeal Court,
 - (g) sheriff courts,
 - (h) justice of the peace courts.

THIS IS NOT THE MARSHALLED LIST

- (4) The Scottish Ministers may by order modify the definition of “Scottish Courts” in subsection (3).>