

SECTION 4
SCOTTISH LEGISLATION 1980
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The General Election in 1979 interrupted the flow of "Scotland only" legislation. 1980 saw the return to more normal conditions. The process of consolidation has continued satisfactorily, with three major statutes.

The Bail etc. (Scotland) Act and the Criminal Justice (Scotland) Act implement in varying degrees a number of recent Reports. The latter's passage through parliament was not without widespread controversy especially in connection with the formalising of the powers of the police to detain a suspected person for a limited time.

The Law Reform (Miscellaneous Provisions) and the Married Women's Policies of Assurance (Scotland) Amendment Act contain many items of reform that were generally welcomed.

Although some aspects of the Tenants' Rights etc. Act, especially the sale of public sector houses, also raised much controversy, other matters, such as security of tenure, implement policies accepted by all parties in parliament. The controversies hit the headlines; non-controversial measures tend to be ignored by the media. That does not prevent them from being more durable in the long run, and therefore of greater significance in the everyday life of the nation.

The new series of Statutes in Force is now well under way towards completion. The consolidation referred to above will ease the work of the editors. Some of the Scottish statutes passed in 1980 are perhaps less immediately intelligible to the reader because of the marked increase of the use of textual amendments to earlier legislation. With this technique, the new provisions are slotted into the principal Act at the appropriate place. When they are picked up in the Statutes in Force, the intelligibility of the law will be considerably enhanced - to the greater convenience of the final user.

Chapter
Number

4 Bail etc (Scotland) Act

This Act implements some of the recommendations of the Second Report of the Thomson Committee (Cmnd 6218) published in 1975. It came into force on 31st March 1980.

Money bail is replaced by release on bail, subject to conditions imposed by the court or the Lord Advocate. Only if the special circumstances of the case make it appropriate will the accused or a cautioner be required to deposit money in court. The penalties for breach of conditions are a fine of up to £200, and imprisonment of up to 60 days by a district court or 3 months by a sheriff court or the High Court. Failure to appear for any diet under solemn procedure without reasonable cause may incur a fine and up to 2 years' imprisonment.

- 4 Where money bail has been deposited and the accused fails to appear, the court may order forfeiture of the deposit, but has discretion to order a refund of the money. Similarly, failure to comply with any other condition imposed on bail may lead to forfeiture.

Other provisions deal with interim liberation of an arrested person (including a child) by the police officer in charge of a police station, and relevant penalties for breach of any written undertakings given by the person liberated.

Sheriff courts and district courts are not required to sit on Saturdays, Sundays or on any of the 10 court holidays in a calendar year, prescribed by sheriff principals. But they may sit on any of these days for the disposal of criminal business.

13 Slaughter of Animals (Scotland) Act

This Act consolidates by repeal and re-enactment the surviving provisions of several statutes relating to slaughterhouses, knackers' yards and the slaughter of animals, in particular the Slaughter of Animals (Scotland) Acts 1928 to 1954, and the Slaughterhouses Act 1954 (2 & 3 Eliz 2, c.42).

19 Highlands and Islands Air Services (Scotland) Act

This Act repeals and re-enacts with modifications the provisions of section 21 of the Scottish Development Agency Act 1975 (c.69). In addition to authorising the Secretary of State to assist persons providing air services in the Highlands and Islands, for the purpose of maintaining and improving these services, the scope of the Act is extended to authorise assistance for the establishment of such services.

His power to acquire stocks or shares in a company for these purposes had never been exercised and is not re-enacted. Although the Act is expressed in general terms, the only operator to have received a subsidy has been Loganair, which as Lord Ross of Marnock astutely pointed out in the House of Lords is now owned by the Royal Bank of Scotland.

The Highlands and Islands are redefined to coincide with the area within which the Highlands and Islands Development Board may exercise its functions.

29 Concessionary Travel for Handicapped Persons (Scotland) Act

The repeal of section 29 of the National Assistance Act 1948 (11 & 12 Geo. 6, c.29) by the Social Work (Scotland) Act 1968 (c.49) prevented the Secretary of State from extending the right to concessionary travel to certain classes to whom it had been extended in England in 1974 by direction in a circular D/N 120/8, of 11th February 1974. This Act removes the anomaly, and gives regional and islands authorities the discretion (by arrangement, where relevant, with a passenger transport executive - effectively, Greater Glasgow Transport Executive) to provide concessionary schemes for handicapped persons. These are defined as persons suffering from mental

- 29 disorder, or who are deaf or dumb or otherwise substantially and permanently handicapped by illness, injury, defective hearing or sight, or congenital deformity. The Secretary of State may add to the list by regulation.

These provisions are without prejudice to the powers granted under the Travel Concessions Acts 1955 and 1964 (3 & 4 Eliz 2, c.26 and 1964 c.95) and the Transport Act 1968 (c.73), which relate to pensioners, the blind, and those with impaired ability to walk.

44 Education (Scotland) Act

Statute law relating to education in Scotland has already been consolidated twice since the war, by the Acts of 1946 (9 & 10 Geo 6, C.72) and 1962 (10 & 11 Eliz 2, c.47). This consolidation Act in turn repeals and re-enacts, with amendments recommended by the Scottish Law Commission to remove anomalies, enactments from 1962 to those sections of the Education Act 1980 (c.20) which apply to Scotland. The provisions of the Act of 1962 relating to employment of children are not included in the consolidation. Legislation concerning the General Teaching Council for Scotland (1965 c.19 and 1971 c.2) is not affected by this consolidation.

45 Water (Scotland) Act

This Act consolidates the legislation relating to water in Scotland from 1946 onwards. It is interesting to note that the Act of 1946 (9 & 10 Geo 6, C.42) itself repealed legislation spanning a period going back to 1847.

46 Solicitors (Scotland) Act

This Act consolidates by repeal and re-enactment the provisions of the Solicitors (Scotland) Acts from 1933 to 1976, together with Part II of the Legal Aid and Solicitors (Scotland) Act 1949 (12 & 13 Geo 6, c.63). It has already been textually amended by sections 24 and 25 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55), as to the powers and constitution of the Scottish Solicitors' Discipline Tribunal, and in order to authorise the lodging of clients' money with a building society or local authority, and to protect this money in the event of the bankruptcy of a solicitor.

52 Tenants' Rights, Etc (Scotland) Act

This Act has much in common with the English Housing Act 1980 (c.51). Except for Part IV it may be cited with the Housing (Scotland) Acts 1966 to 1978 as the Housing (Scotland) Acts 1966 to 1980; Part IV relates to private sector tenancies and is to be construed along with the Rent (Scotland) Acts 1971 to 1975, with which it may be cited as the Rent (Scotland) Acts 1971 to 1980.

Parts I to III constitute the "Tenants" Charter". Part I contains the controversial provisions giving public sector

52 tenants the right to purchase their homes at substantial discounts by reference to their length of occupation. If a house is specially designed or adapted for persons of pensionable age, then (under an amendment introduced by the Tenants' Rights, Etc (Scotland) Amendment Act 1980 (c.61)) in addition to the right of pre-emption that may be included in the conditions of sale by the selling authority under the earlier Act, the authority may now seek the authorisation of the Secretary of State to exclude such a house from the right to buy altogether. Following some controversy as to the meaning of the expression "heritable proprietor", it is also defined in an amendment, although Professor Halliday had advised one of the authorities concerned that the law was already clear. The amendment should however save unnecessary litigation.

The basis of the right to buy is a "secure tenancy", created under Part II, as proposed in "Scottish Housing: A Consultative Document" (Cmnd 6852), published in 1977. But Schedule I excludes from security of tenure certain tenancies such as long leases (over 20 years), service tenancies, certain temporary lettings and those where the dwelling-house is let with agricultural land over 2 acres (not metricated to 0.8. hectares!) or as part of shop, office or licensed premises. Although public sector tenants have had de facto security for the most part, probably because of the political delicacy of the situation, their tenancies were specifically excluded by section 5 of the Rent (Scotland) Act 1971 (c.28) from its protection. A secure tenancy may pass once, on the death of a tenant, to his spouse, a joint tenant, or a member of his family over the age of 16 who has made the house his only or principal home for 12 months immediately before the secure tenant's death. The right of a tenant to carry out alterations, improvements or enlargements, including the erection of a garage or shed, is considerably enhanced; such work will not affect the rent payable under the tenancy, and the relevant expenses may be reimbursed at the discretion of the landlord on the termination of the tenancy. Similar rights are given to private sector tenants under Part IV.

Part III contains miscellaneous matters relating to public sector housing authorities. In particular, in the interests of job mobility, it restricts the imposition of residential requirements in admitting people to a housing list and in allocating local authority housing. Housing authorities, the SSHA and the New Town Development Corporations must publish their rules as to admission to housing lists, allocation and exchange of dwelling-houses, and transfer of tenants to houses owned by other bodies.

For background, see "Allocating Council Houses", Scottish Housing Advisory Committee, HMSO, 1967: SDD Circular No. 63/1968; and "Scottish Housing: A Consultative Document"

52 (Cmnd 6852). Other provisions of Part III amend The Housing Rent and Subsidies (Scotland) Act 1975 (c.28), by abolishing the "non-profit" rule imposed by section 1(5) and the Secretary of State's powers to limit rents under section 2 of that Act, and also the rules under the Housing (Financial Provisions) (Scotland) Act 1968 (c.31) relating to local authority home loans which must now be at a variable rate of interest.

Part V makes several textual amendments to the provisions of the Housing (Scotland) Act 1974 (c.45), relating to improvement grants. Applicants may now include tenants in both the public and the private sectors, subject to the owner's consent. This Part abolishes the Scottish Housing Advisory Committee originally set up by the Housing (Scotland) Act 1935 (25 & 26 Geo 5, c.41), and also minor supervisory powers of the Secretary of State. The rent allowance scheme is extended to certain groups who were previously omitted from its benefits.

Part IV deals with private sector tenancies, introducing the new "short tenancy" with the aim of bringing new accommodation into the private rented sector. It also abolishes the phasing of rent increases and provides for orders to be made by the Secretary of State prescribing maximum annual increases. Tenancies managed by the Crown Estate Commissioners (which previously enjoyed the protection of the Rent Acts by administrative action) now have the protection of the Rent Acts statutorily extended to them. All remaining controlled tenancies become regulated tenancies. The dwindling functions of rent tribunals are transferred to rent assessment committees. Deposits of up to two months' rent in value, as security for payment of gas, electricity, telephone and repair bills, returnable at the end of the tenancy, are expressly states not to be regarded as premiums which are prohibited by Part VIII of the Rent (Scotland) Act 1971 (c.28).

55 Law Reform (Miscellaneous Provisions) (Scotland) Act

The length of the long title of this Act must be a record for a statute of fewer than 30 sections. Its most important provisions are the introduction, in the first three sections and a schedule, of a modernised code relating to jury service, derived mostly from the Second Report of the Thomson Committee on Criminal Procedure (Cmnd 6218) of 1975. Those qualified and liable to serve as jurors in both civil and criminal courts are persons registered as parliamentary or local government electors, aged between 18 and 65, who have been resident in the UK, Channel Islands or the Isle of Man for at least 5 years since attaining the age of 13, not included in the scheduled lists of those declared ineligible or disqualified. Briefly, the former are the judiciary, members of the legal professions, the police and others involved in the administration of justice and those suffering from mental disorder; the latter are persons in prison, or those not yet rehabilitated under the Rehabilitation of Offenders Act 1974 (c.53). Other categories, although neither

55 ineligible nor disqualified, are entitled to be excused from service. Those excusable as of right are members of either house of parliament and of the European parliament, the forces, the medical and similar professions (as listed), ministers of religion and persons living in religious communities, as well as those whose jury service would result in service more than once in 5 years and others excused by the direction of any court for a period that has not yet expired. Others may be excused by the clerk of court or by the court itself for "good reason". It appears that people such as nursing mothers or the physically disabled must apply to be excused under these last provisions. A suitable form of words might have been found to grant them exemption as of right.

To serve on a jury when ineligible, not qualified or disqualified does not invalidate the verdict, but if a person does so knowingly he is liable to substantial fines. Fines may also be imposed for non-attendance or for falsely claiming to be excusable as of right.

It is perhaps surprising that one need not have resided in the district or even in Scotland for any specified minimum period of time, and it is fascinating to contemplate immigrants to Aberdeen from Sark or Brixton coping with evidence delivered by a northeast farm tractor-driver in the Buchan dialect.

There are several mainly technical amendments to the law relating to trusts, judicial factors and the administration of estates of deceased persons.

A number of reforms recommended by the Report of the Grant Committee on the Sheriff Court in 1967 (Cmnd 3248) are enacted. These extend the powers of the Secretary of State to appoint a temporary sheriff principal or to authorise an existing one to perform duties in another sheriffdom. Civil jury trial in the sheriff court (already rare) is abolished. The grounds of jurisdiction in the sheriff court in bankruptcy proceedings are now made the same as those in the Court of Session, and the sheriff court is given jurisdiction concurrent with that of the Court of Session in appointing new trustees on a lapsed trust, in removing trustees, in relation to completion of title by the beneficiary of a lapsed trust, and in the appointment of judicial factors. Any of the parties to litigation in the sheriff court may now apply to the sheriff to remit the cause to the Court of Session.

If the state of business in the Court of Session permits, judges of that court may act as arbiters or oversmen in commercial arbitrations, their fees going to public funds. This provision is in addition to the summary trial provisions of the Administration of Justice (Scotland) Act 1933 (23 & 24 Geo 5, c.41).

The Marriage (Scotland) Act 1977 (c.15) is amended with retrospective effect, so that once a marriage at which both parties were present has been registered its validity cannot

55 be questioned in any legal proceedings on the ground of non-compliance with any requirement or restriction regarding the form of the marriage or its preliminaries imposed by that Act. Although defective marriages can be cured by the doctrine of habit and repute, this is a more economical remedy.

The Prescription and Limitation (Scotland) Act (c.52) is amended (to cover also cases where a final judgement had not been pronounced when the new provisions came into effect) to give the court a general power to waive, on grounds of equity, the time limit of three years from the date of injury within which actions arising from personal injury or death must be raised.

Provisions relating to solicitors have been discussed above under the Solicitors (Scotland) Act 1980 (c.46).

56 Married Women's Policies of Assurance (Scotland) (Amendment) Act

This Act amends the Act of 1880 (43 & 44 Vict, c.26), so that a policy of assurance may be effected under it by a man or a woman in trust for the benefit of his or her spouse or children or both, including a named future spouse, actual or future children, legitimate, illegitimate and adopted, but not those of the spouse and another person unless the assured has adopted them.

61 Tenants' Rights, Etc (Scotland) Amendment Act

The substance of this is included in the comment on the principal Act (c.52). Other amendments are mainly to correct printing errors.

62 Criminal Justice (Scotland) Act

Governments are frequently accused of appointing committees in order to avoid taking action, and of leaving the reports of these committees to gather dust for a quarter of a century before implementing them. This Act, on the contrary, implements several reports, and is a major landmark in Scottish legislation on criminal law, and certainly the most important on criminal procedure since the Act of 1887 (50 & 51 Vict. c.35)

Reports taken into consideration include those of the Thomson Committee on Criminal Procedure, of 1972, 1975 and 1977 (Cmnd 5039, 6218 and 7005); the Dunpark Committee on Reparation by the Offender to the Victim in Scotland, 1977 (Cmnd 6802); the Bryden Working Party on Identification Procedure, 1978 (Cmnd 7096); the Emslie Committee on Penalties for Homicide, 1972 (Cmnd 5137); the McElhone Working Group on Football Crowd Behaviour, 1977 (SED); the Report of the Scottish Council on Crime on Fines in 1974, and its Memorandum on Crime and the Prevention of Crime 1975, (SHHD).

This complex Act is divided into six parts. The first of these creates the controversial new status of detention, allowing the police to keep a suspected person for question-

62 ing for up to six hours, or until he is cleared or arrested, whichever is the sooner. A record of facts relating to detention must be kept. An arrested or detained person is entitled to have a solicitor and one other person notified without delay, or only with such delay as is necessary for investigation or prevention of crime, or for the apprehension of offenders. The police are given powers to stop, search and detain a person suspected of carrying an offensive weapon, analogous to the existing power with regard to firearms. A constable may take a drunken person to a place suitable for his care for detoxification, but without prejudice to liability of the person to be charged with any offence.

Part II runs to 34 sections and with schedules 1 to 4 contains substantial reforms of the law of criminal procedure and evidence, proposed by the Thomson Committee, mostly in the form of textual amendment to the Criminal Procedure (Scotland) Act 1975 (c.21).

It revives the moribund procedure of judicial examination, which had become almost wholly formal. A prisoner may have an opportunity to provide an explanation to exculpate himself and obtain a speedy dropping of charges. It is here that it would be appropriate to raise the defence of alibi. Questioning by the prosecutor takes place in the sheriff's chambers. The accused has the right to have a solicitor present, for consultation, before answering any question. The accused's right to silence is not impaired.

Pressure on sheriff courts will be alleviated by extending the jurisdiction of district courts to try statutory offences incurring maximum penalties of up to 60 days' imprisonment or £200 fine or both, and to try theft, fraud and other offences involving dishonesty where the amount involved is not over £200.

The accused may now apply to the sheriff to order an identification parade if the prosecutor has not held one or has refused to do so.

To prevent delay in trials, trials under solemn procedure (that is with judge and jury) must be started within 12 months of the accused's first appearance on petition; an accused person must not be held in custody for more than 80 days without an indictment's being served on him, nor for more than 110 days unless the trial begins within that period. Failing this, the accused must be liberated at once, and may not be charged with that offence again. Formerly the trial had to be completed within the 110 days. Marathon trials are not a feature of the administration of criminal justice in Scotland. Readers unfamiliar with Scots Law should remember that habeas corpus is unknown to that system.

In summary proceedings, the accused may not be detained for more than 40 days after the complaint is brought in court, unless the trial has already started. Here again, failure

62 leads to liberation.

As in England, at the close of evidence for the prosecution, the accused may now make the submission that he has "no case to answer". Under solemn procedure, this will be in the absence of the jury. If the court accepts this submission after hearing both parties, the accused is acquitted; otherwise the trial proceeds as usual.

A disruptive accused person may be removed from the court and his trial will continue in his absence, but his interests will be looked after by counsel or solicitor appointed by the court if he is not otherwise legally represented.

Under legislation dating from 1587, juries may sometimes have delivered their verdicts more in order to have an opportunity to assuage the pangs of hunger and thirst than because they have duly weighed the evidence presented to them. The judge is now empowered to give instructions for the provision of meals, refreshment and overnight accommodation for jurors, while maintaining their traditional seclusion.

Certificates proving certain routine matters in relation to offences mentioned in Schedule 1 will now be sufficient evidence of the matter contained in them.

The cherished doctrine of corroboration is dispensed with in relation to road traffic fixed penalty offences; so traffic wardens need no longer patrol hand in hand in search of illegally parked cars.

The reforms of appeals procedures are to be found mainly in Schedules 2 and 3. Innovations include the power of the High Court to set aside the verdict of the trial court and order a new trial in both solemn and summary procedure.

Where a person has been acquitted after trial by jury, the Lord Advocate may refer a point of law to the High Court for its opinion; this will not affect the acquittal in any way.

Wilful fireraising ("arson") can now be tried without a jury and treason will be tried under the same procedure and rules of evidence as murder.

Part III deals with penalties. Broadly speaking, the new provisions are designed to reduce the use of imprisonment, in line with the Community Service by Offenders (Scotland) Act 1978 (c.49) and the Bail etc. (Scotland) Act 1980 (c.4). Fine enforcement procedure in summary cases is to be applied to fines imposed on indictment, and the sheriff court will enforce High Court fines. The maximum period of imprisonment for non-payment of fines in summary proceedings is varied to take account of inflation, thereby reducing imprisonment in default. It is perhaps unfortunate that the Secretary of State has clung to the traditional periods of 30, 60 and 90 days, while longer periods are expressed in complete months, because someone is bound to make a mistake with months being of varying lengths. For many of the purposes of this part,

62 the UK or Great Britain are regarded as a single crime enforcement area.

Part IV enables a criminal court to make a compensation order requiring a convicted person to pay compensation to his victims for personal injury, loss or damage caused directly or indirectly by his offence. The principle was adopted in England in legislation that is now incorporated in the Powers of the Criminal Courts Act 1973 (c.62). A more complex scheme was recommended for Scotland by the Dunpark Committee. The matter is left entirely to the discretion of the court. The victim has no say at all - he does not have to apply for an order, and indeed has no right to do so. No limit is fixed to the amount that may be awarded where trial is by judge and jury; but in summary proceedings the award made by a sheriff or stipendiary magistrate is limited to the "prescribed sum" as laid down by section 289B of the Criminal Procedure (Scotland) Act 1975 (c.21) and by a district court to £200. In considering a convicted person's ability to pay, priority is to be given to compensation over fines, and payments are to be applied first to satisfying the compensation order. Damages awarded in later civil proceedings will be reduced by any compensation actually paid. Compensation orders will be enforced substantially in the same way as fines. An SHFD leaflet outlines the scheme for the benefit of the public.

Part V contains provisions for the control of alcohol at sports grounds and sporting events at these grounds, both of which will be designated by order of the Secretary of State, and on vehicles going to or from a designated sporting event. There are also criminal sanctions against taking bottles or cans of any kind that can be used offensively to any designated sporting event.

Part VI contains miscellaneous provisions. Vandalism becomes a crime in its own right, not to be concealed under euphemisms such as "malicious mischief" or the omnibus "breach of the peace". But wilful fire-raising is not vandalism in this context.

The law with regard to homosexual acts in private, between consenting parties over the age of 21, is now brought into line with that of England. Such acts cease to be offences. In effect, this amends the Sexual Offences (Scotland) Act 1976 (c.67), which was pure consolidation, with no change in the law.

This index should be used in conjunction with The 1981 Yearbook which summarizes each Act relating to Scotland passed 1970-1979. Statutes whose short titles include the words "Amendment" or "Reform" have been indexed under their substantive title only.

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