

Public Records – Scotland- Act, 1937

1937 (1 Edw. 8 & 1 Geo. 6.) CHAPTER 43.

[6th July 1937.]

An Act to make better provision for the preservation, care and custody of the Public Records of Scotland, and for the discharge of the duties of Principal Extractor of the Court of Session.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I COURT RECORDS;

1. High Court and Court of Session records.

(1) The records of the High Court of Justiciary and of the Court of Session shall be transmitted to the Keeper of the Registers and Records of Scotland (hereinafter referred to as the Keeper) at such times, and subject to such conditions, as may respectively be prescribed by Act of Adjournal or Act of Sederunt.

(2) An Act of Adjournal or an Act of Sederunt under the foregoing subsection may fix different times and conditions of transmission for different classes of records and may make provision for re-transmission of records to the Court when such re-transmission is necessary for the purpose of any proceedings before the Court, and for the return to the Keeper of records so re-transmitted as soon as may be after they have ceased to be required for such purpose.

2. Sheriff court records.

(1) It shall be lawful for the Lord President of the Court of Session (hereinafter referred to as the Lord President) on the application of the Keeper and after consultation with the sheriff of any sheriffdom, to make an order directing that such of the sheriff court records of that sheriffdom as may be specified in the order shall be transmitted to the Keeper on or before a date specified therein not being earlier than three months from the date of the order:

Provided that no such order shall apply to any record which is of more recent date than twenty-five years before the date of the order, unless the Lord President is satisfied that adequate provision as regards care, indexing, and availability for consultation cannot otherwise be made.

(2) Where any record transmitted in pursuance of the foregoing subsection to the Keeper is required for the purpose of any proceedings in the High Court of Justiciary, the Court of Session or any sheriff court, the Keeper shall re-transmit such record to the clerk of such court on any order of a judge of the said High Court or Court of Session or of the sheriff as the case may be, and any record so re-transmitted shall be returned by such clerk to the Keeper as soon as may be after it has ceased to be required for the said purpose.

(3) The sheriff of each sheriffdom shall be responsible for the proper care and preservation of the sheriff court records of that sheriffdom which have not been transmitted under subsection (1) of this section to the Keeper and shall, in compliance with any request which the Keeper, with the consent of the Lord President, may from time to time make, cause a report to be prepared and sent by the sheriff clerk to the Keeper, giving such information as may be specified in the request, regarding—

(a) the nature, situation and condition of all buildings in which any such records are kept;

(b) the age and condition of such records;

(c) the arrangements made for their care and preservation, and for indexing them and rendering them available for inspection by the public; and

(d) any other matters connected with the care and preservation of such records.

(4) In subsections (1) and (3) of this section, the expression "sheriff" does not include "sheriff substitute."

(Sections 3 and 4 have been repealed).

PART II

STATE, DEPARTMENTAL AND LOCAL AUTHORITY RECORDS.

5. Provision for transfer of departmental and local authority records to the Keeper.

(1) It shall be lawful for any Government Department, board of trustees, or other body or person having the custody of any records belonging to His Majesty and relating exclusively or mainly to Scotland (other than the documents specified in section four of this Act) to transmit such records to the Keeper:

(2) Notwithstanding anything contained in any enactment, it shall be lawful for any local authority or any statutory body corporate in Scotland, with the consent of the Keeper, to transmit such of their records as relate exclusively or mainly to Scotland to the Keeper for custody.

(2A) For the purposes of this section, "statutory body corporate" means any body corporate established by or under a statute relating to Scotland other than such bodies, or such classes of such bodies, as may be specified by the Secretary of State in an order made by statutory instrument.

(2B) Nothing in subsection (2) above shall apply to any burgh register of sasines or to any book or public record relating thereto.

(3) Any document transmitted under this section to the Keeper shall be re-transmitted by him to the Department, local authority, body or person from whom it was received, or to any part of the Scottish Administration, on application to that effect made on the ground that such re-transmission is necessary for the purposes of such Department, local authority, body or person or of such part of the Scottish Administration. Any record so re-transmitted shall

be returned to the Keeper as soon as may be after it has ceased to be required for the purposes for which it was re-transmitted.

6 Records transmitted by the Master of the Rolls.

Any record or document which is, under either of the last two foregoing sections, transmitted to the Keeper by or with the consent of the Master of the Rolls shall cease to be under the charge and superintendence of the Master of the Rolls.

PART III GENERAL.

7. Advisory Council.

(1) There shall be constituted a Council to be called the Scottish Records Advisory Council, consisting of not more than twelve members, who shall be persons, or representatives of public bodies or societies, interested in the public records of Scotland.

(2) The members of the aforesaid Council, including the chairman, shall be appointed by the Secretary of State, shall hold office for three years from the date of their appointment, and shall be eligible for reappointment on expiry of that period:

(3) The aforesaid Council may submit proposals or make representations to the Secretary of State, the Lord Justice General, or the Lord President on questions relating to the public records of Scotland, and in particular to the custody, preservation, indexing, and cataloguing of those records, and to facilities for access to and examination of them by members of the public.

(3A) The matters on which the aforesaid Council may advise the Scottish Ministers include matters relating to the application of the Freedom of Information (Scotland) Act 2002 (asp 13) to information contained in records held by the Keeper.

(4) The Council may make rules regarding their procedure and may by such rules prescribe their quorum.

8. Preservation, &c. of records.

The Keeper shall take such steps as may seem to him necessary for the cleaning, preserving, repairing and arranging of any records transmitted to him in pursuance of this Act or otherwise, and for the making of calendars, indexes and catalogues thereof.

9. Extracts from records.

The Keeper shall have power to issue extracts or certified copies of any records transmitted to him in pursuance of this Act or otherwise, and any such extract or copy shall be of the like force and effect in all respects and for all purposes as if it had been an extract or copy issued in accordance with the law and practice existing immediately prior to the passing of this Act.

10. Fees for inspection and search of records.

The Court of Session may from time to time, with the approval of the Treasury, prescribe by Act of Sederunt a table of fees to be charged for inspection, search, and making copies of any records transmitted to the Keeper in pursuance of this Act or otherwise. Provision may be made, in prescribing any such table, for the remission of fees for the inspection of records for historical or literary purposes.

11. Catalogues, &c. of records.

The Keeper shall have power to purchase any catalogues, calendars and indexes of records transmitted to him in pursuance of this Act or otherwise, which may have been prepared by any person or body, and to arrange for the sale of copies of any catalogue, calendar or index whether prepared by him or by any other person or body.

11A Powers of Keeper.

Without prejudice to any other power he may have under this or any other enactment, the Keeper may--

- (a) accept responsibility for the safe keeping of records other than public records; and
- (b) acquire records and accept gifts and loans of records.

12. Disposal of documents not to be preserved by the Keeper.

(1) The Lord Justice General, as regards records of the High Court of Justiciary, the Lord President, as regards other court records, and the Secretary of State, as regards any other records to which this Act applies, may make regulations regarding the disposal by destruction or otherwise of records which have been transmitted to the Keeper in pursuance of this Act or otherwise, and which are of insufficient value to justify their preservation or which would more appropriately be in the custody of any person, body or institution other than the Keeper.

(2) Regulations under this section shall not be made until a draft thereof has lain before each House of Parliament for a period of thirty days during the Session of Parliament, and if, before the expiration of that period, an address is presented to His Majesty by either House against the draft, no further proceedings shall be taken thereon, without prejudice however to the making of any new draft regulations:

Provided that in reckoning any such period of thirty days as aforesaid no account shall be taken of any time during which both Houses are adjourned for more than four days.

(3) No regulations made under this section shall authorise—

- (a) the disposal of records relating to a Government department or belonging to a local authority without the consent of that department or authority; or
- (b) the disposal by destruction of any records of older date than the year 1707.

12A Duty to afford facilities for inspection etc. of certain records

It shall be the duty of the Keeper to arrange that reasonable facilities are available to the public for--

- (a) inspecting; and
- (b) obtaining copies of,

such records held by the Keeper as either fall to be disclosed in accordance with the Freedom of Information (Scotland) Act 2002 (asp 13) or comprise information which is exempt information (within the meaning of that Act) by virtue of section 25(2)(b)(ii) of that Act.

13. Provision for discharge of duties of Extractor of the Court of Session.

(1) The Keeper shall exercise and perform the powers and duties conferred or imposed on the Principal Extractor of the Acts and Decrees of the Court of Session by any order made in pursuance of section seven of the Reorganisation of Offices (Scotland) Act, 1928, and the other powers and duties of such Principal Extractor and of his Assistant shall be exercised and performed by such clerks and officers of the Court of Session as the Principal Clerk of Session may, subject to the directions of the Lord President, from time to time appoint.

14. Interpretation.

(1) In this Act, unless the context otherwise requires—

the expressions "records of the Court of Session" and "records of the High Court of Justiciary" mean the registers, minute books, processes, writs or documents belonging to or in the custody of the Court of Session (including the Court of Teinds as defined in the United Parishes (Scotland) Act, 1876) and the High Court of Justiciary respectively;

the expression "sheriff court records" includes the registers, minute books, processes, writs or documents belonging to or in the custody of sheriff courts or sheriff clerks;

the expression "court records" includes the records of the High Court of Justiciary, the records of the Court of Session and sheriff court records;

the expression "local authority" means an authority constituted under section 2 of the Local Government etc. (Scotland) Act 1994, and includes a joint board and a joint committee;

the expression "statutory body corporate" shall be construed in accordance with section 5(2A) above.

(2) Any question as to whether any document is or is not a record of the High Court of Justiciary or of the Court of Session or is or is not a sheriff court record shall be determined by the Lord Justice General, in the case of the said High Court, and in any other case by the Lord President.

15. Repeal of obsolete provisions.

(repealed)

16. Repeals.

(repealed)

17. Short title.

This Act may be cited as the Public Records (Scotland) Act, 1937.