CHAPTER 43.

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. A.D. 1937.

[6th July 1937.]

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.

High Court and Court of Session records.

1.—(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.

A.D. 1937.

PART I. —*cont.*

Sheriff court records.

2.—(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."

Justice of the peace records.

3.—(1) It shall be lawful for the Lord President, on the application of the Keeper, to make an order directing that such of the justice of the peace records of any county 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) The clerk of the peace for any county shall have the custody, and be responsible for the proper care and preservation, of the justice of the peace records of that county 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, prepare and send to the Keeper a report 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.

PART II.

STATE, DEPARTMENTAL AND LOCAL AUTHORITY RECORDS.

Certain records to be transferred from the Public Record Office.

4. The documents specified in the First Schedule to this Act, which prior to the passing of this Act have been kept in the Public Record Office, shall, as soon as may be after the passing of this Act, be transmitted by the Master of the Rolls to the Keeper for custody.

A.D. 1937.

PART II. —*cont.*

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

5.—(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:

Provided that no record which is in the charge and superintendence or custody of the Master of the Rolls in pursuance of the Public Record Office Acts, 1838 to 1898, shall be so transmitted without the consent of the Master of the Rolls.

63 & 64 Vict. c. 49.

(2) Notwithstanding anything contained in section seventy-eight of the Town Councils (Scotland) Act, 1900, or in any other enactment it shall be lawful for the town council of any burgh in Scotland, or for any other local authority in Scotland, with the consent of the Keeper, to transmit any of their records to the Keeper for custody:

Provided that nothing in this subsection 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, 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. 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.

Records transmitted by the Master of the Rolls.

6. 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.

Advisory Council.

7.—(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 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: Provided that the Keeper shall be ex officio a member and chairman and convener of the Council.

(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.

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

Preservation, &c. of records.

8. 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.

Extracts from records.

9. 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.

Fees for inspection and search of records.

10. 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.

Catalogues, &c. of records.

11. The Keeper shall have power, with the consent of the Treasury, to purchase any catalogues, calendars and indexes of records transmitted to him in pursuance of

A.D. 1937.

PART III. —*cont.*

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.

Disposal of documents not to be preserved by the Keeper.

12.—(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 of any record of older date than the year eighteen hundred.

Provision for discharge of duties of Extractor of the Court of Session. 18 & 19 Geo. 5. c. 34.

13.—(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.

(2) The vacancies existing at the passing of this Act in the offices of Principal Extractor of the Acts and Decrees of the Court of Session and of his Assistant shall not be filled, and those offices shall cease to exist.

Interpretation.

14.—(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;

39 & 40 Vict. c. 11.

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 " justice of the peace records " includes all registers, minute books, processes, writs or documents relating to the transaction of their business by the justices of the peace, or to proceedings in the justice of the peace courts civil and criminal;

the expression " court records " includes the records of the High Court of Justiciary, the records of the Court of Session and sheriff court records and justice of the peace records.

(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 or is or is not a justice of the peace 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.

Repeal of obsolete provisions.

15. The following provisions of the Public Records (Scotland) Act, 1809, that is to say, sections one to three, section eight, section eleven (so far as not already repealed), and section thirteen, and the following

49 Geo. 3. c. 42.

A.D. 1937.

PART III. —*cont.*

55 Geo. 3. c. 70.

provisions of the Court of Session (Records) Act, 1815, that is to say, sections three and four, all of which provisions have, by lapse of time or otherwise, become unnecessary or obsolete, are hereby repealed.

Repeals.

16. The enactments mentioned in the Second Schedule to this Act shall be repealed to the extent specified in the third column of that Schedule.

Short title.

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

SCHEDULES.

FIRST SCHEDULE.

RECORDS IN THE PUBLIC RECORD OFFICE TO BE TRANSMITTED TO THE KEEPER. Section 4.

1. CHARTER by King Richard I restoring to William, King of Scots, the castles of Roxburgh and Berwick, and all the pactions concerning homage to the King of England which Henry his father had extorted by the capture of King William. Dated 5 December 1189.

2. CHARTER by King Richard I fixing the allowances to be made to Scottish kings visiting the Court in England, with entertainment and escort during the journey. Dated 17 April 1194.

3. BULL of Pope Honorius III affirming the independence of the Church in Scotland from any jurisdiction except that of the Roman pontiff or his legate *de latere*. Dated 21 November 1218.

4. BULL of Pope Innocent IV forbidding Scottish ecclesiastical causes to be tried outside Scotland, except in special cases at Carlisle or Durham. Dated 11 September 1245.

5. BULL of Pope Innocent IV addressed to the Crusaders of the Kingdom of Scotland providing that redemption of Crusaders' vows shall not be prejudged by any grant made to the King of England. Dated 4 September 1251.

6. MARRIAGE CONTRACT between Eric, King of Norway, and Margaret, daughter of Alexander III, King of Scots. Dated 25 July 1281.

7. MINUTE declaring that King Edward I restores the manor of Aldenstone in Cumberland to Nicholas, son and heir of Robert de Vipont, reserving the mine. Dated 28 January 1281–2.

8. INVENTORY of Papal Bulls, Charters and other Muniments in the Royal Treasury at Edinburgh Castle, made by the King's clerks. Dated 29 September 1282.

9. LETTERS PATENT by the Magnates of Scotland acknowledging Margaret, Princess of Norway, as heiress of Scotland failing issue of her grandfather and his late son. Dated 5 February 1283–4.

A.D. 1937.

Section 16.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
49 Geo. 3. c. 42.	The Public Records (Scotland) Act, 1809.	Sections ten, twelve and sixteen.
50 Geo. 3. c. 112.	The Court of Session Act, 1810.	Section twelve.
55 Geo. 3. c. 70.	The Court of Session (Records) Act, 1815.	Sections one and two.
1 & 2 Vict. c. 118.	The Court of Session (No. 2) Act, 1838.	Sections eighteen and twenty, so far as unrepealed.
39 & 40 Vict. c. 70.	The Sheriff Courts (Scotland) Act, 1876.	In section fifty-four the words " and the place or places and " manner in which the records, " books, documents, papers, " and things connected there- " with should be hereafter " kept ".
18 & 19 Geo. 5. c. 34.	The Reorganisation of Offices (Scotland) Act, 1928.	Section ten.
23 & 24 Geo. 5. c. 41.	The Administration of Justice (Scotland) Act, 1933.	Section twenty-five so far as relating to the Principal Extractor of the Acts and Decrees of the Court of Session.

Printed by EYRE AND SPOTTISWOODE LIMITED
FOR
SIR WILLIAM RICHARD CODLING, C.B., C.V.O., C.B.E., the King's Printer of Acts of Parliament

To be purchased directly from H.M. STATIONERY OFFICE at the following addresses:
Adastral House, Kingsway, London, W.C.2; 120 George Street, Edinburgh 2;
26 York Street, Manchester 1; 1 St. Andrew's Crescent, Cardiff;
80 Chichester Street, Belfast;
or through any bookseller

Price 2*d.* net.