

*These notes relate to the Bail, Judicial Appointments etc. (Scotland) Act 2000 (asp 9) which received Royal Assent on 9 August 2000*

# **BAIL, JUDICIAL APPOINTMENTS ETC. (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 2 - Judicial Appointments**

##### *Chapter 2 - Temporary and Part-Time Sheriffs*

##### *Section 6 (Abolition of temporary sheriffs)*

19. **Section 6(1)** repeals section 11(2) of the 1971 Act and accordingly abolishes the office of temporary sheriff. Section 6(2) makes provision allowing temporary sheriffs to complete cases which had begun before them (in practice, before 11 November 1999, when the Scottish Ministers announced the suspension of the use of temporary sheriffs) but which were not concluded at the date of the office being abolished. The abolition follows a High Court judgement that a temporary sheriff was not an independent and impartial tribunal for the purposes of Article 6 of the European Convention on Human Rights.

##### *Section 7 (Creation of part-time sheriffs)*

20. **Section 7** amends the 1971 Act by inserting new sections 11A to 11D, containing detailed provisions on arrangements for the appointment of part-time sheriffs, their conditions of service and their removal from office.
21. Section 11A(1) gives power to the Scottish Ministers to appoint part-time sheriffs. Section 11A(2) requires Ministers to comply with any relevant requirements as to the procedure which should govern appointments and the need for consultation with other parties, which should take place before appointments are made. Any such requirements will be detailed in regulations (made by statutory instrument) requiring the approval of the Scottish Parliament (see references in new section 11D(1) and (2)). Section 11A(3) requires a part-time sheriff to have the same qualifications for office as are required of a permanent sheriff and section 11A(4) gives the part-time sheriff authority to act in any of Scotland's six sheriffdoms.
22. Section 11A(5) stipulates that the maximum number of persons holding appointment as part-time sheriffs at any one time must not exceed 60, unless the Scottish Ministers secure the agreement of the Scottish Parliament to an order which changes this number (see section 11D(1) and (2)). Section 11A(6) provides that it is the sheriff principal, and not Ministers, who directs the work of the part-time sheriff when he or she is sitting in that sheriff principal's sheriffdom. Section 11A(7) imposes on the sheriffs principal collectively the duty of having regard to the desirability of securing that each part-time sheriff has the opportunity of sitting for at least 20 days in each 12 month period and sits for no more than 100 days in each such period.

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23. Section 11A(8) gives the Scottish Ministers the authority to pay part-time sheriffs at a rate decided by Ministers.
24. Section 11B deals with terms of appointment of part-time sheriffs. Section 11B(1) sets the initial term as 5 years and section 11B(2) enables part-time sheriffs to resign from office. Section 11B(3) fixes a retirement age of 70, the same as that for all permanent sheriffs appointed since 1995. Section 11B(4) makes provision for the termination of a part-time sheriff's appointment where he or she is removed from office by virtue of section 11C. Section 11B(5) allows for re-appointment at the end of any 5-year term and clarifies that re-appointment will be automatic unless any of the circumstances described in section 11B(6) applies. Section 11B(7) permits an individual who may have resigned at any time to be re-appointed at some future date. Section 11B(8) makes clear that conditions governing the appointment of a part-time sheriff apply equally to a re-appointment. Section 11B(9) prevents any solicitor from sitting as a part-time sheriff in the sheriff court district where he or she has his or her main place of business as a solicitor.
25. Section 11C details the procedure for removal of a part-time sheriff from office. Section 11C(1) places the responsibility for deciding on removal from office on a tribunal to be constituted for this purpose. Section 11C(2) sets out the criteria for removal to which the tribunal must have regard as part of their investigations into fitness for office. Section 11C(3) provides that the tribunal shall consist of three persons, to be appointed by the Lord President of the Court of Session. The tribunal is to be presided over by a Court of Session judge or sheriff principal and the other members are to be a solicitor or advocate of at least 10 years' standing and one other person. Section 11C(4) allows regulations made by the Scottish Ministers to specify that the tribunal may suspend a part-time sheriff and gives authority to Ministers to include such further provisions in the regulations as they consider necessary or expedient.
26. Section 11D governs the making by the Scottish Ministers of regulations and orders under sections 11A and 11C and provides that they be made by way of statutory instrument made under the affirmative procedure of the Scottish Parliament.