



# Bail, Judicial Appointments etc. (Scotland) Act 2000

2000 asp 9

## PART 2

### JUDICIAL APPOINTMENTS

#### CHAPTER 1

##### VARIATION OF NUMBER OF INNER HOUSE JUDGES AND FILLING OF VACANCIES

#### **5 Variation of number of Inner House judges and filling of vacancies**

In section 2 (composition of court) of the Court of Session Act 1988 (c. 36)—

(a) after subsection (2) there is inserted—

“(2A) The Scottish Ministers may from time to time by order amend subsection (2) above so as to alter or further alter the number of senior judges in the two Divisions.

(2B) The power conferred by subsection (2A) above may be exercised—

- (a) in relation only to one; or
- (b) differently in relation to each,  
of the two Divisions.

(2C) An order under this section shall be made by statutory instrument.

(2D) No order shall be made under this section unless a draft of the instrument containing it has been laid before and approved by resolution of the Scottish Parliament.”;

(b) in subsection (6), for the words “subsection (7)” there is substituted “subsections (7) and (8)”; and

(c) after subsection (7), there is inserted—

“(8) The Scottish Ministers shall not give their consent under subsection (6) above to an appointment filling a vacancy in one of the two Divisions

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of the Inner House unless they are satisfied that the state of business in the Inner House requires that the vacancy be filled.”.

## CHAPTER 2

### TEMPORARY AND PART-TIME SHERIFFS

#### 6 Abolition of temporary sheriffs

- (1) In section 11 (appointment of temporary sheriffs principal and sheriffs) of the Sheriff Courts (Scotland) Act 1971 (c. 58) (the “1971 Act”), subsection (2) is repealed.
- (2) Notwithstanding the coming into force of that repeal—
  - (a) a temporary sheriff may continue to exercise the jurisdiction and powers of a sheriff for the purposes of any proceedings commenced or other matter which began before such coming into force; and
  - (b) a temporary sheriff shall, for those purposes and for the purposes of any further proceedings arising out of the proceedings or other matter referred to in paragraph (a) above, be treated as continuing to be a temporary sheriff.

#### 7 Creation of part-time sheriffs

After section 11 of the 1971 Act there is inserted—

##### “11A Appointment of part-time sheriffs

- (1) The Scottish Ministers may, under this section, appoint persons to act as sheriffs, and persons so appointed shall be known as “part-time sheriffs”.
- (2) In making those appointments, the Scottish Ministers shall comply with such requirements as to procedure and consultation as may be prescribed by regulations made by them.
- (3) A person shall not be appointed a part-time sheriff unless qualified under section 5(1) of this Act to be appointed to the office of sheriff.
- (4) A part-time sheriff shall, without the necessity of receiving a commission in that behalf, be entitled to exercise in every sheriffdom the jurisdiction and powers attaching to the office of sheriff.
- (5) The number of persons holding appointments as part-time sheriffs shall not, at any one time, exceed 60 or such other number as may be fixed in substitution by order made by the Scottish Ministers.
- (6) A part-time sheriff shall be subject to such instructions, arrangements and other provisions as fall to be made under this Act by the sheriff principal of the sheriffdom in which the part-time sheriff is sitting.
- (7) In the performance of their functions under this Act, sheriffs principal shall together have regard to the desirability of securing that every part-time sheriff—
  - (a) is given the opportunity of sitting on not fewer than 20 days; and
  - (b) does not sit for more than 100 days,

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in each successive period of 12 months beginning with the day of the part-time sheriff's appointment as such.

- (8) The Scottish Ministers shall pay to part-time sheriffs such remuneration and allowances as they determine.

### **11B Limitation, termination etc. of appointment of part-time sheriffs**

- (1) An appointment as a part-time sheriff shall, subject to subsections (2) to (4) below, last for 5 years.
- (2) A part-time sheriff may resign at any time by giving notice to that effect to the Scottish Ministers.
- (3) An appointment of a person as a part-time sheriff shall not extend beyond the day when the person reaches the age of 70.
- (4) A part-time sheriff's appointment shall come to an end upon the part-time sheriff's being removed from office under section 11C of this Act.
- (5) A part-time sheriff whose appointment comes to an end by operation of subsection (1) above may be reappointed and, except in the circumstances set out in subsection (6) below, shall be reappointed.
- (6) The circumstances mentioned in subsection (5) above are that—
- (a) the part-time sheriff has declined that reappointment;
  - (b) the part-time sheriff is aged 69 or over;
  - (c) a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment;
  - (d) the part-time sheriff has not sat for a total of 50 or more days in the preceding five year period; or
  - (e) the Scottish Ministers have, since the part-time sheriff was last appointed, made an order under section 11A(5) of this Act reducing the number of persons who may hold appointment as part-time sheriffs.
- (7) A part-time sheriff whose appointment comes to an end by resignation under subsection (2) above may be reappointed.
- (8) The provisions of section 11A and this section of this Act apply to a reappointment under subsections (5) and (7) above as they apply to an appointment.
- (9) A part-time sheriff who is a solicitor in practice shall not carry out any function as a part-time sheriff in a sheriff court district in which his or her main place of business as such solicitor is situated.

### **11C Removal of part-time sheriffs from office**

- (1) A part-time sheriff may be removed from office by and only by order of the tribunal constituted by and under subsection (3) below ("the tribunal").
- (2) The tribunal may order the removal from office of a part-time sheriff only if, after investigation carried out at the request of the Scottish Ministers, it finds that the part-time sheriff is unfit for office by reason of inability, neglect of duty or misbehaviour.

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- (3) The tribunal shall consist of the following three members, who shall be appointed by the Lord President of the Court of Session—
- (a) either a Senator of the College of Justice or a sheriff principal (who shall preside);
  - (b) a person who is, and has been for at least ten years, legally qualified within the meaning of section 5(1) of this Act; and
  - (c) one other person.
- (4) Regulations, made by the Scottish Ministers—
- (a) may make provision enabling the tribunal, at any time during an investigation, to suspend a part-time sheriff from office and providing as to the effect and duration of such suspension; and
  - (b) shall make such further provision as respects the tribunal as the Scottish Ministers consider necessary or expedient, including provision for the procedure to be followed by and before it.

#### **11D Regulations and orders under sections 11A and 11C**

- (1) Regulations under section 11A or section 11C and orders under section 11A of this Act shall be made by statutory instrument.
- (2) No such regulations or order shall be made unless laid in draft before, and approved by a resolution of, the Scottish Parliament.”.

### **CHAPTER 3**

#### JUSTICES OF THE PEACE

#### **8 Appointment of justices**

In section 9 (appointment and removal of justices) of the District Courts (Scotland) Act 1975 (c. 20) (the “1975 Act”)—

- (a) after subsection (2), there is inserted—
  - “(2A) That instrument shall specify whether the appointment is as a full justice or as a signing justice, and the name of any signing justice so appointed shall be entered in the supplemental list.
  - (2B) A signing justice may, subject to sections 9A, 12 and 15(1) of this Act, be appointed under subsection (2) above as a full justice.”;
- (b) after subsection (8), there is inserted—
  - “(8A) In making appointments of justices of the peace, the Scottish Ministers shall comply with such requirements as to procedure and consultation as may be prescribed by regulations made by them.
  - (8B) Regulations under subsection (8A) above shall be made by statutory instrument.
  - (8C) No such regulations shall be made unless laid in draft before, and approved by resolution of, the Scottish Parliament.”; and
- (c) after subsection (11), there is inserted—

“(12) In this section—

a “full justice” means a justice of the peace who is qualified as a justice to do any act (including any function of a judicial nature) or to be a member of any committee or other body; and

a “signing justice” means a justice of the peace who is qualified only to do all or any of the acts as a justice set out in section 15(9) of this Act.”.

## **9 Removal, restriction of functions and suspension of justices**

(1) After section 9 of the 1975 Act there is inserted—

### **“9A Removal and restriction of functions of justices**

- (1) A full justice may be removed from office or be restricted to having the functions of a signing justice by, and only by, order of the tribunal constituted by and under subsection (3) below (the “tribunal”); but this subsection is without prejudice to sections 9(4) (as read with (6)) and (7), 12(2) and 15(1) of this Act.
- (2) The tribunal may make an order under subsection (1) above only if, after investigation carried out at the request of the Scottish Ministers, it finds that the full justice is, by reason of inability, neglect of duty or misbehaviour—
  - (a) unfit for office as such; or, as the case may be,
  - (b) unfit for performing functions of a judicial nature.
- (3) The tribunal shall consist of the following three members, who shall be appointed by the Lord President of the Court of Session—
  - (a) a sheriff principal (who shall preside);
  - (b) a person who is, and has been for at least ten years, legally qualified within the meaning of section 5(2) of this Act; and
  - (c) one other person.
- (4) Except in a case to which subsection (5) below applies, the sheriff principal shall be the sheriff principal for the sheriffdom which includes the commission area for which the justice who is the subject of the investigation was appointed.
- (5) This subsection applies where it appears to the Lord President of the Court of Session to be inappropriate for that sheriff principal to be a member of the tribunal.
- (6) The sheriff principal referred to in subsection (3)(a) above shall not be a temporary sheriff principal.
- (7) Regulations, made by the Scottish Ministers—
  - (a) may make provision enabling the tribunal, at any time during an investigation, to suspend a full justice from office or from performing functions of a judicial nature and providing as to the effect and duration of such suspension;
  - (b) shall make such further provision as respects the tribunal as the Scottish Ministers consider necessary or expedient, including provision for the procedure to be followed by and before it.

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- (8) Regulations under subsection (7) above shall be made by statutory instrument.
  - (9) No such regulations shall be made unless laid in draft before, and approved by resolution of, the Scottish Parliament.
  - (10) A person who has been removed under subsection (1) above from the office of justice shall be ineligible for re appointment; and a justice whose functions have been restricted under that subsection to those of a signing justice shall be ineligible for re appointment as a full justice.
  - (11) The name of a person who is the subject of an order under subsection (1) above, restricting that person's functions to those of a signing justice, shall be entered in the supplemental list.
  - (12) The Scottish Ministers shall send a copy of each order under subsection (1) above to the clerk of the peace for the commission area for which the justice who is the subject of the order was appointed.
  - (13) In this section, "full justice" and "signing justice" have the same meanings as in section 9 of this Act."
- (2) In section 9 of the 1975 Act, after subsection (2), there is inserted—
- “(2C) A signing justice may, in the name of Her Majesty and by instrument under the hand of the Scottish Ministers, be removed from office.”.
- (3) The modifications made by this section and paragraph 2(1) of the schedule to this Act have effect as respects justices appointed before this section comes into force (as well as those appointed thereafter).

## **10 Restriction of functions of justices who are councillors etc**

For section 12 (disqualification in certain cases of justices who are members of local authorities) of the 1975 Act there is substituted—

### **“12 Restriction of functions of justices who are councillors etc**

- (1) A member of a local authority—
    - (a) shall not be appointed to hold office as a full justice;
    - (b) may be appointed as a signing justice.
  - (2) A full justice who—
    - (a) at the coming into force of section 9 of the Bail, Judicial Appointments etc. (Scotland) Act 2000 (asp 9) is; or
    - (b) at any time thereafter becomes,
- (1) a member of a local authority, shall thereupon become a signing justice.
- (3) The name of a person—
    - (a) appointed as a justice under subsection (1)(b) above;
    - (b) who becomes a signing justice by virtue of the operation of subsection (2) above,
 shall be entered in the supplemental list.
  - (4) In subsection (1) above—

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“local authority” includes the Service Authority for the National Criminal Intelligence Service;

“full justice” and “signing justice” have the same meanings as in section 9 of this Act.”.