

JUDICIARY AND COURTS (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT

Part 2 – the Judiciary

Chapter 4 – Judicial Conduct

Judicial Complaints Reviewer

Sections 30, 31, 32 and 33 – Judicial Complaints Reviewer, tenure, guidance and the Lord President’s powers on referral

71. [Section 30](#) provides for the appointment by the Scottish Ministers (with the consent of the Lord President) of a Judicial Complaints Reviewer (“the Reviewer”). Under subsection (5), certain categories of persons are disqualified from appointment as the Reviewer. This is to ensure the independence of the person appointed from political, ministerial or judicial influence. The functions of the Reviewer are: on request of the complainant or of the judicial office holder who has been the subject of the investigation, to review the handling of an investigation in terms of procedure; where the procedure has not been followed to refer such a case to the Lord President; to prepare and publish reports on investigations; and to make written representations to the Lord President about such procedures. The Reviewer role is only procedural. The Reviewer is not given the function of reviewing the merits.
72. [Section 31](#) sets out the details of the Reviewer’s appointment. Subsection (1) gives the Scottish Ministers the power to determine, with the consent of the Lord President, the period of tenure and the terms and conditions of appointment of the Reviewer. The circumstances in which the Reviewer may be removed from office are set out at subsection (5). Provision is made at subsection (4) for the Scottish Ministers to effect such a removal and for the consent of the Lord President to be obtained before a removal can take place. Whilst the Reviewer may be re-appointed (subsection (7)) a limit of 5 years is placed on their total, consecutive or otherwise, period of office by subsection (8).
73. [Section 32](#) provides that the Reviewer must comply with any guidance that the Scottish Ministers may issue about the carrying out of the Reviewer’s functions. Subsection (2) places a duty on the Scottish Ministers to consult the Lord President before issuing any such guidance.
74. [Section 33](#) provides for the end of the process. It provides that where the Reviewer refers a case to the Lord President under section 30(2)(b) the Lord President may vary or revoke the determination (or part thereof); cause a fresh investigation to be carried out; confirm the determination; or deal with the referral in such other way as the Lord President considers appropriate.