



# Judiciary and Courts (Scotland) Act 2008

2008 asp 6

## PART 2

### THE JUDICIARY

#### CHAPTER 3

##### JUDICIAL APPOINTMENTS

###### *Judicial Appointments Board for Scotland*

#### **9 The Judicial Appointments Board for Scotland**

- (1) There is established a body to be known as the Judicial Appointments Board for Scotland (referred to in this Chapter as “the Board”).
- (2) The functions of the Board are—
  - (a) to recommend to members of the Scottish Executive individuals for appointment to judicial offices within the Board’s remit, and
  - (b) to provide advice to members of the Scottish Executive in connection with such appointments.
- (3) In carrying out its functions, the Board is not to be subject to the direction or control of any member of the Scottish Executive or any other person.
- (4) Schedule 1 makes further provision about the Board.

#### **10 Judicial offices within the Board’s remit**

- (1) The judicial offices within the Board’s remit are—
  - (a) the office of judge of the Court of Session,
  - (b) the office of Chairman of the Scottish Land Court,
  - (c) the office of temporary judge (except in any case where the individual to be appointed to the office holds or has held one of the offices mentioned in subsection (2)),

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- (d) the office of sheriff principal,
  - (e) the office of sheriff,
  - (f) the office of part-time sheriff, and
  - (g) such other judicial offices (whether full-time, part-time or temporary) as the Scottish Ministers may by order specify.
- (2) The offices referred to in subsection (1)(c) are—
- (a) the office of judge of the European Court,
  - (b) the office of judge of the European Court of Human Rights,
  - (c) the office of Chairman of the Scottish Land Court,
  - (d) the office of sheriff principal, and
  - (e) the office of sheriff.
- (3) The Scottish Ministers may specify a judicial office under subsection (1)(g) only if the First Minister has, or the Scottish Ministers have, the function of making appointments to the office, or of nominating or recommending individuals for appointment to the office.
- (4) In subsection (1)(g), “judicial office ”means—
- (a) the office of judge of any court,
  - (b) the office of member of any tribunal, or
  - (c) any other office, or appointment, consisting of functions of a judicial nature.

## **11 Recommendations of the Board**

- (1) The relevant Minister may—
- (a) appoint an individual to a judicial office within the Board’s remit, or
  - (b) nominate or recommend an individual for appointment to such an office, only if the Board has recommended the individual for appointment to the office.
- (2) Subsection (3) applies where—
- (a) the Board has recommended an individual for appointment, and
  - (b) the relevant Minister has decided not to accept the recommendation.
- (3) The relevant Minister must give the Board notice of the decision.
- (4) The notice must include the reasons for the decision.
- (5) On receipt of the notice, the Board must—
- (a) reconsider its recommendation, and
  - (b) make a further recommendation (whether of the same or a different individual).
- (6) In this section references to the relevant Minister are—
- (a) where the First Minister has the function of making appointments to the judicial office concerned, or nominating or recommending individuals for appointment to the office, references to the First Minister,
  - (b) where the Scottish Ministers have that function, references to the Scottish Ministers.

## **12 Selection criteria**

- (1) This section applies where the Board is selecting an individual to be recommended by it for appointment.
- (2) Selection must be solely on merit.
- (3) The Board may select an individual only if it is satisfied that the individual is of good character.

## **13 Assessment of legal knowledge, skills and competence**

- (1) Only the judicial and legal members of the Board may take part in any assessment by the Board of an individual's—
  - (a) knowledge of the law, or
  - (b) skills and competence in the interpretation and application of the law.
- (2) Subsection (1) does not prevent a member of the Board from taking part in a decision of the Board as to whether to recommend an individual for appointment to a judicial office.

## **14 Encouragement of diversity**

- (1) In carrying out its functions, the Board must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office.
- (2) Subsection (1) is subject to section 12.

## **15 Guidance**

- (1) The Scottish Ministers may issue guidance to the Board as to the procedures to be followed by it in the carrying out of its functions.
- (2) The Lord President may issue guidance to the Board as to the procedures to be followed by it in the carrying out of its functions.
- (3) Guidance issued under subsection (1) or (2) may, in particular, relate to the manner in which the Board is to publicise vacancies and identify candidates for any appointment.
- (4) In carrying out its functions, the Board must have regard to any guidance issued under this section.
- (5) The Scottish Ministers must publish any guidance issued under subsection (1).
- (6) The Lord President must publish any guidance issued under subsection (2).

## **16 Guidance: procedure**

- (1) Before issuing any guidance under section 15(1) or (2), the Scottish Ministers or, as the case may be, the Lord President must lay a draft of the proposed guidance before the Scottish Parliament.

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- (2) The Scottish Ministers or, as the case may be, the Lord President must not issue the guidance before the expiry of the period of 21 days beginning with the day on which the draft of it is laid before the Parliament under subsection (1).
- (3) If, during that period, the Parliament by resolution makes any recommendations in relation to the draft guidance, the Scottish Ministers or, as the case may be, the Lord President must have regard to those recommendations.
- (4) The Scottish Ministers must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Lord President and the Board on the draft.
- (5) The Lord President must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Scottish Ministers and the Board on the draft.
- (6) In calculating a period of 21 days for the purposes of subsection (2), no account is to be taken of any time during which the Parliament is—
  - (a) dissolved, or
  - (b) in recess for more than 4 days.

## **17 Confidentiality of information**

- (1) A person (whether or not a member of the Board or its staff) who has provided or obtained confidential information in connection with the carrying out of the Board's functions must not disclose the information unless the disclosure is authorised.
- (2) Information is confidential for the purposes of subsection (1) if it relates to an identified or identifiable individual.
- (3) Disclosure of information is authorised for the purposes of subsection (1) only so far as it is—
  - (a) made with the consent of the individual to whom the information relates,
  - (b) necessary for the purposes of the carrying out by the Board of its functions,
  - (c) necessary for the purposes of the carrying out by a member of the Scottish Executive of a function of appointing an individual to a judicial office within the Board's remit, or nominating or recommending an individual for appointment to such an office, or
  - (d) required for the purposes of any legal proceedings, whether criminal or civil, (including for the purposes of the investigation of any offence or suspected offence).
- (4) For the purposes of this section, an opinion or other information given by one identified or identifiable individual about another is to be treated as information that relates to both individuals.
- (5) This section does not prevent the disclosure of information which is already, or has previously been, in the public domain.
- (6) Any disclosure of information in contravention of this section which causes loss or damage to the individual to whom the information relates is actionable at the instance of that individual.

## **18 Annual report**

- (1) As soon as practicable after the end of each year, the Board must—
  - (a) prepare and publish a report on the carrying out of its functions during that year, and
  - (b) send a copy of the report to the Scottish Ministers.
- (2) The Scottish Ministers must lay before the Scottish Parliament a copy of each report sent to them by the Board under subsection (1)(b).

### *Lord President and Lord Justice Clerk*

## **19 Appointment**

- (1) This section applies where a vacancy arises, or is expected to arise, in the office of Lord President or the office of Lord Justice Clerk.
- (2) The First Minister must establish a panel in accordance with schedule 2.
- (3) The function of the panel is to recommend to the First Minister individuals who are suitable for appointment to fill the vacancy.
- (4) For the purposes of section 95(2) of the Scotland Act 1998 (c. 46), the First Minister must not nominate any individual for appointment to fill the vacancy until the panel has made its recommendation under subsection (3).
- (5) In deciding whom to nominate for the purposes of that section, the First Minister must have regard to the panel's recommendation.

## **20 Selection criteria**

- (1) This section applies where a panel established under section 19(2) is selecting an individual to be recommended by it as suitable for appointment.
- (2) Selection must be solely on merit.
- (3) The panel may select an individual only if it is satisfied that the individual is of good character.

### *Other Court of Session judges*

## **21 Eligibility of solicitors for appointment as judges**

In paragraph 1(b) (appointment of solicitors as judges of the Court of Session) of Schedule 4 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)—

- (a) for “both” substitute “either”, and
- (b) for “and” substitute “or”.

## **22 Temporary judges: tenure**

- (1) Paragraph 5 (temporary judges) of Schedule 4 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) is amended as follows.

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- (2) In sub-paragraph (1), the words from “for” in the second place it appears to the end are repealed.
- (3) For sub-paragraph (2) substitute—
- “(2) A person’s appointment as a temporary judge lasts for 5 years, subject to the following provisions of this paragraph and paragraph 9 below.
- (3) A person’s appointment as a temporary judge comes to an end on the date on which the person reaches the age of 70.
- (4) Sub-paragraph (3) above is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (power to authorise continuance in office up to the age of 75).
- (5) A person’s appointment as a temporary judge comes to an end if the person is removed from office under section 39 of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (temporary judges: removal from office).
- (6) A person appointed as a temporary judge may resign at any time by giving notice to that effect to the Scottish Ministers.
- (7) Where a person’s appointment as a temporary judge comes to an end by virtue of sub-paragraph (2) above, the person is to be reappointed under the said section 35(3), unless—
- (a) the person has declined reappointment,
  - (b) the person has reached the age of 70,
  - (c) the person has sat as a temporary judge on fewer than 50 days during the period of appointment, or
  - (d) the Lord President has recommended to the Scottish Ministers that the person should not be reappointed.
- (8) A person whose appointment as a temporary judge comes to an end by resignation under sub-paragraph (6) above may be reappointed under the said section 35(3).
- (9) The provisions of this paragraph, and paragraphs 6 to 11 below, apply to a reappointment as they apply to an appointment.”.

## 23 Re-employment of retired judges

In section 22(1) (re-employment of retired judges) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)—

- (a) the words “, with the consent of the Scottish Ministers,” are repealed, and
- (b) in paragraph (a), after “Session” insert “(and did not cease to hold that office by virtue of section 95(6) of the Scotland Act 1998 (c. 46))”.

*Sheriffs principal, sheriffs and part-time sheriffs*

## 24 Appointment of temporary sheriffs principal

- (1) Section 11 (appointment of temporary sheriffs principal) of the 1971 Act is amended as follows.

- (2) In subsection (1), for the words from “Secretary of State” to “sheriffdom,” in the second place that word appears substitute “Scottish Ministers must, if the Lord President of the Court of Session so requests,”.
- (3) After that subsection insert—
  - “(1ZA) The Lord President may request the appointment of a person to act as a sheriff principal under subsection (1) only if it appears to him expedient that such an appointment be made in order to avoid delay in the administration of justice in the sheriffdom concerned.”.
- (4) In subsection (1A), for “Secretary of State may” substitute “Scottish Ministers must, if the Lord President so requests,”.
- (5) In subsection (4), for “Secretary of State” substitute “Scottish Ministers, at the request of the Lord President”.
- (6) After that subsection insert—
  - “(4ZA) The Scottish Ministers must comply with any request made by the Lord President under subsection (4) above.”.
- (7) In subsection (5)—
  - (a) for “Secretary of State” substitute “Scottish Ministers”, and
  - (b) for “directs” substitute “direct”.

## **25 Re-employment of retired sheriffs principal and sheriffs**

After section 14 of the 1971 Act insert—

### **“14A Re-employment of retired sheriffs principal and sheriffs**

- (1) A sheriff principal may, if it appears to him to be expedient as a temporary measure in order to facilitate the disposal of business in the sheriff courts of the sheriffdom, appoint a qualifying former sheriff principal or sheriff to act as a sheriff of that sheriffdom during such period or on such occasions as the sheriff principal thinks fit.
- (2) A qualifying former sheriff principal is someone who—
  - (a) ceased to hold that office other than by virtue of an order under section 12E of this Act, and
  - (b) has not reached the age of 75 years.
- (3) A qualifying former sheriff is someone who—
  - (a) ceased to hold that office other than by virtue of an order under section 12E of this Act or by being appointed as a sheriff principal, and
  - (b) has not reached the age of 75 years.
- (4) A person appointed under subsection (1) above is not to be treated as a sheriff for the purposes of any statutory provision or rule of law relating to—
  - (a) the appointment, retirement, removal or disqualification of sheriffs,
  - (b) the tenure of office and oaths to be taken by sheriffs, or
  - (c) the remuneration, allowances or pensions of sheriffs.

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- (5) But, otherwise, such a person is to be treated for all purposes as a sheriff of the sheriffdom for which the person is appointed (and so may perform any of the functions of a sheriff of that sheriffdom).
- (6) The Scottish Court Service may pay to, or in respect of, a person appointed under subsection (1) above such remuneration or allowances as the Scottish Ministers may determine.
- (7) Despite subsection (1), the period during which or an occasion on which a person appointed under that subsection may act under that appointment does not extend beyond, or (as the case may be) is not to be after, the date on which the person reaches the age of 75 years.
- (8) Despite the expiry (whether by virtue of subsection (7) above or otherwise) of any period for which a person is appointed under subsection (1) above—
  - (a) the person may attend at a sheriff court for the purpose of continuing to deal with, giving judgment in, or dealing with any matter relating to, any case begun before the person while acting under that appointment, and
  - (b) for that purpose, and for the purpose of any proceedings arising out of any such case or matter, the person is to be treated as acting or, as the case may be, having acted under that appointment.
- (9) In this section—
  - “sheriff principal”, where it first occurs in subsection (1), includes temporary sheriff principal, and
  - “sheriff” does not include part-time sheriff or honorary sheriff.”.

## 26 Appointment of part-time sheriffs

In subsection (3) of section 11A (appointment of part-time sheriffs: requirements) of the 1971 Act—

- (a) after “unless” insert—
  - “(a) the person is”, and
- (b) at the end of the subsection add “and
  - (b) the Scottish Ministers have consulted the Lord President of the Court of Session about the proposed appointment.”.

## 27 Sheriffs and part-time sheriffs: official oaths

In the Promissory Oaths Act 1868 (c. 72), in the second part of the Schedule (persons to take oath of allegiance and judicial oath), after “sheriffdoms,” insert “sheriffs, part-time sheriffs”.