

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Part 1 - Sheriff Courts

Chapter 2 - Judiciary of the sheriffdoms

Permanent and full-time judiciary

Section 3 – Sheriffs principal

24. **Section 3** provides that there continues to be the office of sheriff principal, appointed by Her Majesty on the same basis as prior to the Act (that is, on the recommendation of the First Minister, after consulting the Lord President, in accordance with section 95(4)(b) of the Scotland Act 1998). The appointment procedure set out in section 3 does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008, the effect of which is that the First Minister may only recommend an individual who has been recommended for appointment by the Judicial Appointments Board for Scotland (subsection (4)).

Section 4 – Sheriffs

25. **Section 4** provides that there continues to be the office of sheriff, appointed by Her Majesty on the same basis as prior to the Act (that is, on the recommendation of the First Minister, after consulting the Lord President, in accordance with section 95(4)(b) of the Scotland Act 1998). The appointment procedure set out in section 4 does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008, the effect of which is that the First Minister may only recommend an individual who has been recommended for appointment by the Judicial Appointments Board for Scotland (subsection (4)).

Section 5 – Summary sheriffs

26. **Section 5** introduces a new office of summary sheriff who will be subject to the same appointment procedures as for sheriffs – that is, subject to the qualification requirements contained in section 14, and appointed by Her Majesty on the recommendation of the First Minister, after consulting the Lord President. The appointment procedure set out in section 5 does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008, the effect of which is that the First Minister may only recommend an individual who has been recommended for appointment by the Judicial Appointments Board for Scotland (subsection (4) – paragraph 9(3) of schedule 5 amends section 10 of the 2008 Act to bring the office of summary sheriff and part-time summary sheriff within the remit of the Judicial Appointments Board). Sections 44 and 45 and schedule 1 make provision about the competence and jurisdiction of summary sheriffs.

Temporary and part-time judiciary

Section 6 – Temporary sheriff principal

27. **Section 6** which effectively re-enacts, with amendments, section 11 of the Sheriff Courts (Scotland) Act 1971 makes provision for the appointment of a temporary sheriff principal in the circumstances set out in subsection (1). In these circumstances, and if the Lord President requests, the Scottish Ministers must appoint a temporary sheriff principal. Those eligible for appointment are a sheriff (subsection (2)(a)) or a “qualifying former sheriff principal” (subsection (2)(b)) defined in subsection (3) as an individual who ceased to hold office as sheriff principal other than by virtue of an order under section 25 (removal from office) and who has not reached the age of 75. Subsection (4) sets out that a temporary sheriff principal may be appointed to exercise either all of the sheriff principal’s functions or only those which the sheriff principal is unable to perform or is precluded from exercising. The Lord President may request the appointment of a temporary sheriff principal on the ground that a vacancy has occurred in the office of sheriff principal, but only if the Lord President considers such an appointment to be necessary or expedient in order to avoid a delay in the administration of justice in the sheriffdom (subsection (6)).

Section 7 – Temporary sheriff principal: further provision

28. **Section 7** makes further provision for the arrangements for a temporary sheriff principal. An appointment as a temporary sheriff principal ceases when it is recalled by the Scottish Ministers on the request of the Lord President (subsection (2)) or when the individual concerned ceases to be a sheriff or is suspended from that office (subsection (3)). (For suspension and removal of sheriffs, see section 22 and 25 respectively.) Except where the temporary sheriff principal is appointed to exercise only limited functions (in terms of section 6(4)(b)), he or she may exercise the jurisdiction and powers of sheriff principal of the sheriffdom (subsection (4)). A temporary sheriff principal retains his or her appointment as a sheriff (subsection (5)), but where the appointment is as a temporary sheriff principal of a sheriffdom other than that for which the person is a sheriff, he or she will only be able to act as a sheriff within the sheriffdom in which appointment as the temporary sheriff principal is held and not in his or her “home” sheriffdom (subsection (6)).

Section 8 – Part-time sheriffs

29. **Section 8**, which governs the appointment of part-time sheriffs, restates the majority of section 11A of the Sheriff Courts (Scotland) Act 1971 (sections 11A to 11D of which were inserted by the Bail, Judicial Appointments etc (Scotland) Act 2000). Subsection (1) provides for the Scottish Ministers to appoint individuals to “act as” sheriffs, and for individuals so appointed to be known as “part-time sheriffs”. The qualifications for appointment, set out in section 14, are the same as for sheriffs, and the Scottish Ministers may make an appointment only after consulting the Lord President (subsection (2)). In terms of subsection (3), an appointment as part-time sheriff lasts for five years, unless it ceases in accordance with section 20 (Cessation of appointment of judicial officers); but see section 9, which provides (with exceptions) for automatic re-appointment at the end of each five-year period. A part-time sheriff may exercise the powers and jurisdiction that attach to the office of sheriff in every sheriffdom (subsection (4)) and is subject to the administrative direction of the sheriff principal of the sheriffdom in which the part time sheriff is for the time being sitting (subsection (5)) (for the powers of sheriffs principal in this regard, see sections 27 and 28). Sheriffs principal are directed by subsection (6) to have regard to the desirability of ensuring that each part-time sheriff is given the opportunity of sitting for at least 20 days, and not more than 100 days, per year. Section 11A(5) of the 1971 Act, as amended by the [Maximum Number of Part-Time Sheriffs \(Scotland\) Order 2006 \(S.S.I 2006/257\)](#) imposed a limit of 80 upon the number of part-time sheriffs. Section 11A(5) is not re-enacted, and there is therefore no longer a limit on the number of part-time sheriffs.

Section 9 – Reappointment of part-time sheriffs

30. **Section 9** restates, with some amendments, section 11B of the Sheriff Courts (Scotland) Act 1971. The Act does not, however, re-enact the prohibition on those aged 69 from being reappointed. Retirement ages in general are not reproduced in the Act and are instead consolidated through amendments made to the Judicial Pensions and Retirement Act 1993 by schedule 5, paragraph 8. Section 11B(9), of the 1971 Act which prevented part-time sheriffs who were solicitors from acting as part-time sheriffs in the same sheriff court district as that individual's principal place of business, is substantially re-enacted in section 15(3).
31. The effect of section 9 is that, except where one of the conditions in subsection (1) (a)(c) is met, or the individual in question has reached the statutory retirement age of 70 contained in section 26(1) of the Judicial Pensions and Retirement Act 1993, that individual must be re-appointed at the expiry of each five-year appointment.

Section 10 – Part-time summary sheriffs

32. This section creates the office of part-time summary sheriff on terms identical to those applying to part-time sheriffs. Reference is made to the notes at paragraph 29.

Section 11 – Reappointment of part-time summary sheriffs

33. **Section 11** replicates the provisions of section 9 in respect of part-time summary sheriffs. Reference is made to the notes at paragraph 30.

Re-employment of former holders of certain judicial offices

Section 12 – Re-employment of former judicial office holders

34. **Section 12** substantially re-enacts section 14A of the Sheriff Courts (Scotland) Act 1971, as inserted by the Judiciary and Courts (Scotland) Act 2008. That section provided for the re-appointment of retired sheriffs principal and sheriffs; section 12 also allows for the re-appointment of former qualifying part-time sheriffs and summary sheriffs and part-time summary sheriffs. The section allows a sheriff principal to appoint a qualifying former sheriff principal, a qualifying former sheriff or a qualifying former part-time sheriff to act as a sheriff of the sheriffdom and a qualifying former summary sheriff or part-time summary sheriff to act as a summary sheriff of the sheriffdom. Such an appointment only permits the individual in question to act during such period or periods as the sheriff principal may determine (subsection (2)), and an appointment may only be made where it appears to the sheriff principal to be expedient as a temporary measure in order to facilitate the disposal of business in the sheriff courts of the sheriffdom (subsection (3)). So, for example, a former judicial office holder might be appointed to fill a temporary gap created by the appointment of one of the sheriffs of the sheriffdom as a temporary sheriff principal in terms of section 6. Subsections (4) to (8) define what is meant by a “qualifying” former judicial office holder: in order to be “qualifying”, the former office holder must not have been removed from office under section 25, nor have reached the age of 75. In the case of former part-time sheriffs and former part-time summary sheriffs, the former office holder must not have left office by virtue of the sheriff principal recommending against their reappointment (sections 9(1)(b) and 11(1)(b)), nor by virtue of not having sat for the minimum number of days in a 5-year period (sections 9(1)(c) and 11(1)(c)).

Section 13 – Re-employment of former judicial office holders: further provision

35. This section makes further provisions about the use of former judicial office holders. Subsection (1) provides that an appointment continues until recalled by the relevant sheriff principal. Subsections (2) and (3) provide that a re-appointed judicial officer may exercise the powers of a sheriff or, as the case may be, a summary sheriff of the sheriffdom. Subsection (4) provides that an appointment under section 12(1) comes to

an end when the individual reaches the age of 75. Subsection (5) permits an individual to continue to deal with ancillary matters relating to a case begun before the ending of his or her appointment under section 12(1) and providing that for that purpose the individual concerned is to be treated as acting under that appointment.

Qualification and disqualification

Section 14 – Qualification for appointment

36. **Section 14** sets out the qualification for appointment as a sheriff principal, sheriff, summary sheriff, part-time sheriff or part-time summary sheriff. It re-enacts the substance of section 5 of the Sheriff Courts (Scotland) Act 1971 by requiring that an individual must have been a solicitor or advocate during the 10 years immediately prior to appointment. Subsection (1)(a) makes it explicit that experience in a judicial office specified in subsection (2) immediately prior to appointment also qualifies an individual for appointment.

Section 15 – Disqualification from practice, etc.

37. Subsections (1) and (2) of section 15 prohibit sheriffs principal, sheriffs and summary sheriffs from engaging in practise as an advocate or a solicitor or in any other business, or being in partnership with or employed by or acting as agent for any person so engaged. In doing so, they substantially re-enact, and extend to summary sheriffs, section 6 of the Sheriff Courts (Scotland) Act 1971. The prohibition on private practice and business is intended to cover all private business as there would be an obvious potential for conflict of interest if a sheriff had outside business interests.
38. Subsection (3) makes it clear that part-time sheriffs and part-time summary sheriffs cannot act in the part-time judicial capacity in the sheriff court district in which their place of business as a solicitor is situated. This prohibition now extends to any place of business as a solicitor, not just the main place of business.

Remuneration and expenses

Section 16 – Remuneration

39. **Section 16** consolidates a number of provision of the Sheriff Courts (Scotland) Acts 1907 and 1971 dealing with the remuneration of sheriffs, sheriffs principal, part-time sheriffs and re-employed former judiciary and makes new provision for the remuneration of summary sheriffs and part-time summary sheriffs. The remuneration of sheriffs principal and sheriffs is a reserved matter under the Scotland Act 1998. Subsections (1) and (2) in providing for the determination of the remuneration of sheriffs and sheriffs principal by the Secretary of State with consent of the Treasury, re-enact section 14 of the 1907 Act. Subsections (3) and (4) provide for the remuneration of summary sheriffs to be determined and paid by the Scottish Ministers. Subsections (5), (6), and (7) deal with the remuneration of part-time and re-employed judiciary. Again the remuneration of these judiciary is determined by the Scottish Ministers. Subsections (8) and (9) restate section 10(4) of the 1971 Act in relation to payments to be made to sheriffs principal and sheriffs who are directed to perform the judicial functions of sheriffs principal and sheriffs in another sheriffdom. Subsections (10) and (11) make similar provision in relation to summary sheriffs who act in another sheriffdom; in contrast to sheriffs principal and sheriffs, in respect of whom the function of determining remuneration continues to rest with the Secretary of State with the consent of the Treasury, any additional remuneration of summary sheriffs is to be determined by the Scottish Ministers.
40. Subsection (12) makes it clear that salaries and remuneration for the judicial officers listed under subsections (1) to (11) will be paid by the SCTS. Subsection (13) provides

that the salaries of sheriffs principal and sheriffs and the remuneration due to summary sheriffs will be charged on the Scottish Consolidated Fund.

Section 17 – Expenses

41. There are a variety of provisions in the Sheriff Courts (Scotland) Act 1971 that make provision for the payment of expenses and allowances to holders of judicial offices in the sheriff court and which are distinct from remuneration provisions. These are section 10(4) (sheriff directed to perform duties in a sheriffdom other than that which he was appointed), section 11(8) (temporary sheriffs principal), section 11A(8) (part-time sheriffs), section 14A(6) (re-employment of retired sheriffs) and section 19 (travelling expenses for sheriffs principal). Section 17 consolidates these provisions and provides that the judicial officers listed in subsection (3) may be paid expenses by the SCTS if they were reasonably incurred in the performance of the officer's duties. There is now no provision for the payment of "allowances".

Leave of absence

Section 18 – Leave of absence

42. **Section 18** provides for leave of absence for sheriff court judiciary. In terms of subsection (1), it is for the Lord President to approve leave of absence for sheriffs principal and temporary sheriffs principal. In terms of subsection (2), it is for the sheriff principal to approve leave of absence for a sheriff or summary sheriff. The maximum amount of recreational leave which may be approved for any one judicial officer in a given year is seven weeks (subsection (3)), although this limit may be exceeded with the permission of the Lord President (subsection (4)), which the Lord President may give only if there are special reasons which justify exceeding the limit in the particular case (subsection (5)). There is no limit upon the amount of leave which may be approved for non-recreational purposes (defined in subsection (7) as including, without limitation, sick leave, compassionate leave, and study leave). Subsection (6) allows the Lord President to delegate to another judge of the Court of Session any of the functions conferred upon the Lord President by this section. (So far as leave of absence for sheriffs principal and sheriffs is concerned, the provision made by section 18 is substantially equivalent to that previously provided for in sections 13(2) and (3) and 16(2) and (2A) of the Sheriff Courts (Scotland) Act 1971.)

Residence

Section 19 – Place of residence

43. **Section 19** restates sections 13(1) and 14(2) of the Sheriff Courts (Scotland) Act 1971 to preserve, and extend to summary sheriffs, the existing power of the Lord President to require a judicial officer to have an ordinary residence at such place as the Lord President may require – which would normally be within reasonable travelling distance to the court or courts where that judicial officer sits.

Cessation of appointment

Section 20 – Cessation of appointment of judicial officers

44. **Section 20** sets out the grounds upon which the appointment of a sheriff principal, a sheriff, a summary sheriff, a part-time sheriff, or a part-time summary sheriff may come to an end. Subsection (1) allows for resignation at any time by giving notice to that effect to the Scottish Ministers. Subsection (2) provides that the appointment of that officer will end on giving such notice or resignation, upon retirement (under the Judicial Pensions and Retirement Act 1993), upon removal from office in accordance with section 25 or upon appointment as another judicial officer specified in subsection (3).

Fitness for office

45. **Sections 21 to 25** re-enact, and extend to summary sheriffs and part-time summary sheriffs, sections 12A to 12E of the Sheriff Courts (Scotland) Act 1971, as inserted by the Judiciary and Courts (Scotland) Act 2008. These provisions are consistent with those which apply to the senior judiciary by virtue of sections 35 to 39 of the latter Act.

Section 21 – Tribunal to consider fitness for office

46. **Section 21** provides that the First Minister must set up a tribunal to investigate and report on whether a person is unfit to hold judicial office by reason of inability, neglect of duty, or misbehaviour where requested to do so by the Lord President (subsection (1)). The First Minister may set up such a tribunal in other such circumstances as the First Minister thinks fit, having consulted the Lord President (subsection (2)). Subsection (3) provides that sheriffs principal, sheriffs, summary sheriffs, part-time sheriffs, and part-time summary sheriffs are all potentially subject to the jurisdiction of such tribunals. Subsection (4) provides that the tribunal is to consist of one judge who must be a qualifying member of the Judicial Committee of the Privy Council (and who will, by virtue of subsection (7), chair the tribunal and have a casting vote); one holder of the relevant judicial office; one individual who has been qualified for at least 10 years as a solicitor or advocate; and one individual who does not, and never has, fallen within any of the other categories. The terms “qualifying member of the Judicial Committee of the Privy Council” and “relevant judicial office” are defined in subsection (5). The membership of the tribunal is to be selected by the First Minister, with the agreement of the Lord President (subsection (6)).

Section 22 – Tribunal investigations: suspension from office

47. **Section 22** provides for the suspension from judicial office of the individual who is the subject of the tribunal’s investigation. This suspension may be effected by the Lord President, where the tribunal was constituted at the Lord President’s request (subsections (1) and (2)), or by the First Minister, on receiving a recommendation to that effect from the tribunal (subsections (4) and (5)). In each case, the suspension lasts until the person who made it orders otherwise (subsections (3) and (6)). Suspension does not affect the remuneration of the suspended judicial officer (subsection (7)).

Section 23 – Further provision about tribunals

48. **Section 23** provides that a tribunal may require any person to attend its proceedings to give evidence or may require any person to produce documents (subsection (1)). The limits upon the requirements which may be made are the same as those which apply to requirements made by a court (subsection (2)). Subsection (3) provides for the enforcement of these requirements by providing that if a person fails to comply with either or both of these requirements the tribunal may make an application to the Court of Session. The Court of Session may, in turn, make an order enforcing compliance or deal with the matter as if it were a contempt of the court (subsection (4)). Subsection (5) gives the Court of Session power, by act of sederunt, to make provision as to the procedure to be followed by and before a tribunal constituted under section 21 (subsection (5)). The expenses of a tribunal, and the payment of remuneration and expenses to its members are for the Scottish Ministers (subsection (6)).

Section 24 – Tribunal report

49. **Section 24** provides that the report of a tribunal must be in writing, contain the reasons for the tribunal’s decision, and be submitted to the First Minister (subsection (1)) who must then lay the report before the Parliament (subsection (2)).

Section 25 – Removal from office

50. **Section 25** provides for a judicial office holder's removal from office following the report of a tribunal constituted under section 21. Subsection (1) provides that the First Minister may remove an individual from the office of sheriff principal, sheriff, part-time sheriff, summary sheriff, or part-time summary sheriff if the tribunal has reported that the individual is unfit to hold that office and after that report has been laid before the Parliament. In the case of a sheriff principal, sheriff, or summary sheriff, such removal requires an order under the negative procedure (subsections (2) and (3)).

Section 26 – Abolition of the office of honorary sheriff

51. **Section 26** abolishes the office of honorary sheriff. Honorary sheriffs hold office under section 17 of the Sheriff Courts (Scotland) Act 1907 and have not been subject to the usual requirements for shrieval qualification in section 5 of the Sheriff Courts (Scotland) Act 1971 (which are re-enacted in section 14 of the Act). Therefore after all honorary sheriffs have left office all of the judiciary of a sheriffdom will be legally qualified.