

## SCHEDULE 8

*(introduced by section 36)*

### CONDUCT AND FITNESS ETC.

#### PART 1

##### CONDUCT AND DISCIPLINE

###### *Application of Part*

- 1 (1) This schedule Part applies in relation to the ordinary members and legal members of the Scottish Tribunals (but not the judicial members of the Tribunals).
- (2) The references in this schedule Part to a member of the Scottish Tribunals are to be read accordingly.

###### *Conduct rules*

- 2 The Lord President is responsible for making and maintaining appropriate arrangements for the things for which rules under paragraph 3(1) may make provision.
- 3 (1) The Lord President may make rules for the purposes of or in connection with—
  - (a) the investigation and determination of any matter concerning the conduct of members of the Scottish Tribunals,
  - (b) the review of any such determination.
- (2) Rules under sub-paragraph (1) may include provision about (in particular)—
  - (a) the circumstances in which an investigation must or may be undertaken,
  - (b) the making of a complaint by any person,
  - (c) the steps that are to be taken by a person making a complaint before it is to be investigated,
  - (d) the carrying out of an investigation (including any steps to be taken by the member whom it concerns or by any other person),
  - (e) the time limits for taking steps and procedures for extending such time limits,
  - (f) the person by whom an investigation (or part of an investigation) is to be carried out,
  - (g) the matters to be determined by the person carrying out an investigation (or part of an investigation), the Lord President or any other person,
  - (h) the making of recommendations by the person carrying out an investigation (or part of one),
  - (i) the obtaining of information relating to a complaint,
  - (j) the keeping of a record of an investigation,
  - (k) the confidentiality of communications or proceedings,
  - (l) the publication of information or its supply to any person.
- 4 Rules under paragraph 3(1)—
  - (a) may make different provision for different purposes,
  - (b) are to be published in such manner as the Lord President may determine.

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*Reprimand etc.*

- 5 (1) Where the condition in sub-paragraph (2) is met in relation to a member of the Scottish Tribunals, the Lord President may, for disciplinary purposes, give the member—
- (a) formal advice,
  - (b) a formal warning, or
  - (c) a reprimand.
- (2) The condition is that—
- (a) an investigation has been carried out with respect to the member in accordance with rules made under paragraph 3(1), and
  - (b) the person carrying out the investigation has recommended that the Lord President exercise the power conferred by sub-paragraph (1).
- 6 Paragraph 5 does not limit what the Lord President may do—
- (a) informally,
  - (b) for other purposes, or
  - (c) where no advice or warning is given in a particular case.

*Suspension of membership*

- 7 (1) If the Lord President considers that it is necessary for the purpose of maintaining public confidence in the Scottish Tribunals, the Lord President may suspend a member of the Tribunals.
- (2) Suspension under sub-paragraph (1)—
- (a) is for such period as the Lord President may specify when suspending the member,
  - (b) may be revoked or extended subsequently by the Lord President.
- 8 Suspension under paragraph 7(1) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

*Judicial Complaints Reviewer*

- 9 (1) The Judicial Complaints Reviewer has the functions mentioned in sub-paragraph (2).
- (2) The functions are—
- (a) on the request of a relevant person, to review the handling of an investigation carried out in accordance with rules made under paragraph 3(1) to consider whether the investigation has been carried out in accordance with the rules,
  - (b) in any case where the Reviewer considers that such an investigation has not been carried out in accordance with such rules, to refer the case to the Lord President,
  - (c) as directed by the Scottish Ministers, to prepare and publish reports on the investigations carried out in pursuance of such rules,
  - (d) to make written representations to the Lord President about procedures for handling the investigation of matters concerning the conduct of members of the Scottish Tribunals.
- (3) The Lord President is to have regard to any written representations made under sub-paragraph (2)(d).

- (4) In sub-paragraph (2)(a), “relevant person” means—
- (a) person whose complaint led to the carrying out of the investigation, or
  - (b) member of the Scottish Tribunals with respect to whom the investigation has been carried out.
- 10 (1) Sub-paragraph (2) applies where a case is referred to the Lord President by virtue of paragraph 9(2)(b).
- (2) The Lord President may—
- (a) vary or revoke (wholly or partly) the determination made in the case to which the investigation relates,
  - (b) cause a fresh investigation to be carried out,
  - (c) confirm the determination in the case, or
  - (d) deal with the referral in such other way as the Lord President considers appropriate.

## **PART 2**

### **FITNESS AND REMOVAL**

#### *Application of Part*

- 11 (1) This schedule Part applies in relation to the ordinary members and legal members of the Scottish Tribunals (but not the judicial members of the Tribunals).
- (2) The references in this schedule Part to a member of or position in the Scottish Tribunals are to be read accordingly.
- 12 In this schedule Part, the references to unfitness to hold the position of member of the Scottish Tribunals are to unfitness by reason of inability, neglect of duty or misbehaviour.

#### *Constitution and procedure*

- 13 (1) The First Minister must constitute a fitness assessment tribunal when requested to do so by the Lord President.
- (2) The First Minister may constitute a fitness assessment tribunal—
- (a) in such other circumstances as the First Minister thinks fit, and
  - (b) following consultation with the Lord President.
- (3) The function of a fitness assessment tribunal is to investigate and report on whether a member of the Scottish Tribunals is unfit to hold the position of member of the Tribunals.
- 14 The Court of Session may by act of sederunt make provision as to the procedure to be followed in proceedings at a fitness assessment tribunal.

#### *Composition and remuneration*

- 15 (1) A fitness assessment tribunal is to consist of—
- (a) one person who is, or has been—

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- (i) a judge of the Court of Session (except a temporary judge), or
      - (ii) a sheriff (except a part-time sheriff),
    - (b) one person who is—
      - (i) where the member under investigation is an ordinary member, another ordinary member, or
      - (ii) where the member under investigation is a legal member, another legal member, and
    - (c) one person who does not fall (and has never fallen) within a category of person who may be a member of the tribunal by virtue of sub-paragraph (a) or (b).
  - (2) The selection of persons to be members of the tribunal is to be made by the First Minister with the agreement of the Lord President.
- 16 (1) The Scottish Ministers—
- (a) must pay such expenses as they consider are reasonably required to be incurred to enable a fitness assessment tribunal to carry out its functions,
  - (b) may pay such remuneration to, and expenses of, any member of such a tribunal as they think fit.
- (2) Sub-paragraph (1)(b) does not apply in relation to such a member if the member is a sheriff or a judge of the Court of Session.

*Proceedings before tribunal*

- 17 (1) A fitness assessment tribunal may require any person—
- (a) to attend its proceedings for the purpose of giving evidence,
  - (b) to produce documents in the person's custody or under the person's control.
- (2) A person on whom such a requirement is imposed is not obliged to answer any question or produce any document which the person would be entitled to refuse to answer or produce in a court of law in Scotland.
- 18 (1) Sub-paragraph (2) applies where a person on whom a requirement has been imposed under paragraph 17(1)—
- (a) refuses or fails, without reasonable excuse—
    - (i) to comply with the requirement,
    - (ii) while attending the tribunal proceedings to give evidence, to answer any question,
  - (b) deliberately alters, conceals or destroys any document which the person is required to produce.
- (2) The Court of Session may, on an application made to it by the tribunal—
- (a) make such order for enforcing compliance or otherwise as it thinks fit, or
  - (b) deal with the matter as if it were a contempt of the Court.

*Suspension during investigation*

- 19 (1) Sub-paragraph (2) applies if the Lord President requests the First Minister to constitute a fitness assessment tribunal to investigate whether a member of the Scottish Tribunals is unfit to hold the position of member of the Tribunals.

- (2) The Lord President may suspend the member from the position at any time before the tribunal submits its report as required by paragraph 22(2).
  - (3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
    - (a) the Lord President revokes it, or
    - (b) the report is laid as required by paragraph 22(3).
- 20 (1) Sub-paragraph (2) applies if a fitness assessment tribunal—
  - (a) recommends that a member of the Scottish Tribunals who is subject to its investigation should be suspended from the position as member of the Tribunals, and
  - (b) does so in writing at any time before the tribunal submits its report as required by paragraph 22(2).
- (2) The First Minister may suspend the member from the position at any time before laying the report as required by paragraph 22(3).
  - (3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
    - (a) the First Minister revokes it, or
    - (b) the report is laid as required by paragraph 22(3).
- 21 Suspension under paragraph 19(2) or 20(2) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

#### *Report and removal*

- 22 (1) A report by a fitness assessment tribunal must—
  - (a) be in writing, and
  - (b) contain reasons for its conclusions.
- (2) As soon as reasonably practicable after it is completed, such a report must be submitted by the tribunal to—
    - (a) the First Minister, and
    - (b) the Lord President.
  - (3) The First Minister must lay before the Scottish Parliament each report submitted under sub-paragraph (2).
- 23 (1) If the relevant condition is met, the First Minister may remove a member of the Scottish Tribunals from the position of member of the Tribunals.
- (2) The relevant condition is that a fitness assessment tribunal has submitted a report under paragraph 22(2) concluding that the member is unfit to hold the position of member of the Scottish Tribunals.