

These notes relate to the Bail, Judicial Appointments etc. (Scotland) Act 2000 (asp 9) which received Royal Assent on 9 August 2000

BAIL, JUDICIAL APPOINTMENTS ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 2 - Judicial Appointments

Chapter 3 - Justices of the Peace

27. This Chapter of the Act consists of three sections.

Section 8 (Appointment of justices)

28. **Section 8** amends section 9 of the 1975 Act. Paragraph (a) inserts new subsections (2A) and (2B). Subsection (2A) requires that, at the time of appointment of a justice, the instrument of appointment shall specify whether the appointment is as a full justice or as a signing justice. Subsection (2B) enables a signing justice to subsequently be appointed as a full justice. Paragraph (b) inserts new subsections (8A) to (8C) which require the Scottish Ministers to comply with such pre-appointment procedures and consultation as may be prescribed in Regulations made by statutory instrument. The Regulations must be made under the affirmative procedure of the Scottish Parliament. Paragraph (c) inserts a new subsection (12) which defines the terms “full justice” and “signing justice”. A full justice is 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. A signing justice is qualified only to undertake a limited number of signing tasks as set out in section 15(9) of the 1975 Act.

Section 9 (Removal, restriction of functions and suspension of justices)

29. **Section 9** of the Act has three subsections. Section 9(1) inserts a new section 9A into the 1975 Act.

30. Section 9A(1) places, on a tribunal to be constituted for the purpose, the responsibility for deciding whether a justice should be removed from office or be restricted to having the functions of a signing justice. This is subject to certain other provisions in the 1975 Act which affect a justice’s tenure. Section 9(4) of the 1975 Act, as read with subsections (6) and (7) of that section, has the effect of removing from office a justice who, as a result of the Scottish Ministers rescinding a direction made under subsection (4), no longer meets the residential requirements in subsection (3). In addition, where a full justice becomes a councillor, his or her functions are automatically restricted to those of a signing justice by virtue of section 12(2) of the 1975 Act (as inserted by section 10 of this Act). Finally, a full justice who reaches the age of 70 will become a signing justice by virtue of his or her name being entered in the supplemental list under section 15(1) of the 1975 Act.

31. Section 9A(2) sets out the criteria to which the tribunal must have regard as part of their investigations into the fitness of a justice for the office of justice or for performing a

justice's judicial functions. It also specifies that the tribunal may make an order only following an investigation carried out at the request of Scottish Ministers.

32. Section 9A(3) provides that the tribunal shall consist of three persons, to be appointed by the Lord President of the Court of Session. The tribunal is to be presided over by a sheriff principal and the other members are to be a solicitor or advocate of at least 10 years' standing and one other person. Section 9A(4) provides that the sheriff principal should be the sheriff principal of the sheriffdom which includes the commission area for which the justice of the peace was appointed unless section 9A(5) applies. Section 9A(5) provides for the circumstances in which the local sheriff principal shall not preside over the tribunal, namely where it appears to the Lord President to be inappropriate. This might be the unavailability of the local sheriff or such other links as would make his or her involvement undesirable. Section 9A(6) prohibits a temporary sheriff principal from presiding over the tribunal.
33. Section 9A(7) allows regulations made by the Scottish Ministers to specify that the tribunal may suspend a full justice from office or from performing functions of a judicial nature and gives authority to Ministers to include such further provisions in the regulations as they consider necessary or expedient, including provision as to the procedure to be followed by and before the tribunal.
34. Subsection (8) and (9) of section 9A provide that the tribunal regulations are to be made by statutory instrument subject to affirmative resolution procedure of the Scottish Parliament. Section 9A(10) provides that a justice removed from office shall be ineligible for re-appointment. It also prevents a justice, whose functions have been restricted to those of a signing justice, from being re-appointed as a full justice
35. Section 9A(11) provides that a justice whose functions have been restricted to those of a signing justice shall have his or her name entered in the supplemental list which is kept in accordance with section 15 of the 1975 Act. Section 9A(12) requires the Scottish Ministers to send a copy of any order made by the tribunal under section 9A(1) to the clerk of the peace for the relevant commission area.
36. [Section 9\(2\)](#) inserts a new subsection (2C) into section 9 of the 1975 Act to allow for the removal of signing justices by an instrument of removal in the name of Her Majesty under the hand of the Scottish Ministers.
37. Subsection (3) provides that the new provisions apply to justices appointed before the new powers of removal and suspension come into force as well as those justices appointed after the new provisions come into force.

Section 10 (Restriction of functions of justices who are councillors etc.)

38. [Section 10](#) replaces section 12 of the 1975 Act with a new provision.
39. New section 12 restricts the functions of justices who are councillors. Section 12(1) provides that a member of a local authority cannot be appointed as a full justice but may be appointed as a signing justice. Section 12(2) provides that any existing councillor justices will become signing justices on the coming into force of the new appointment provisions. It also provides for full justices automatically to become signing justices if they are appointed as councillors after being appointed as a full justice. Section 12(3) requires the names of justices who are signing justices by virtue of this section to be entered into the supplemental list.