

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 1 - Variation of Number of Inner House Judges and Filling of Vacancies

17. This Chapter of the Act consists of one section.

Section 5 (Variation of number of Inner House judges and filling of vacancies)

18. **Section 5** amends section 2 of the Court of Session Act 1988 to allow the Scottish Ministers, by Order, to vary the number of senior judges in the Inner House of the Court of Session. Previously the number of judges in each Division of the Inner House was fixed by statute in primary legislation. The power to vary the number of judges allows Ministers to respond to circumstances in which it is thought desirable to increase, or reduce, the number of senior judges in the Inner House to reflect the volume of business at that level. Any Order must be made under the affirmative procedure of the Scottish Parliament. In addition, section 5 adds a provision to section 2 (new subsection (8)) which provides that the Scottish Ministers may consent to the filling of a vacancy that is created in either Division of the Inner House only if they are satisfied that the state of business in the Inner House justifies that vacancy being filled.

Chapter 2 - Temporary and Part-Time Sheriffs

Section 6 (Abolition of temporary sheriffs)

19. **Section 6(1)** repeals section 11(2) of the 1971 Act and accordingly abolishes the office of temporary sheriff. Section 6(2) makes provision allowing temporary sheriffs to complete cases which had begun before them (in practice, before 11 November 1999, when the Scottish Ministers announced the suspension of the use of temporary sheriffs) but which were not concluded at the date of the office being abolished. The abolition follows a High Court judgement that a temporary sheriff was not an independent and impartial tribunal for the purposes of Article 6 of the European Convention on Human Rights.

Section 7 (Creation of part-time sheriffs)

20. **Section 7** amends the 1971 Act by inserting new sections 11A to 11D, containing detailed provisions on arrangements for the appointment of part-time sheriffs, their conditions of service and their removal from office.

21. Section 11A(1) gives power to the Scottish Ministers to appoint part-time sheriffs. Section 11A(2) requires Ministers to comply with any relevant requirements as to the procedure which should govern appointments and the need for consultation with other

parties, which should take place before appointments are made. Any such requirements will be detailed in regulations (made by statutory instrument) requiring the approval of the Scottish Parliament (see references in new section 11D(1) and (2)). Section 11A(3) requires a part-time sheriff to have the same qualifications for office as are required of a permanent sheriff and section 11A(4) gives the part-time sheriff authority to act in any of Scotland's six sheriffdoms.

22. Section 11A(5) stipulates that the maximum number of persons holding appointment as part-time sheriffs at any one time must not exceed 60, unless the Scottish Ministers secure the agreement of the Scottish Parliament to an order which changes this number (see section 11D(1) and (2)). Section 11A(6) provides that it is the sheriff principal, and not Ministers, who directs the work of the part-time sheriff when he or she is sitting in that sheriff principal's sheriffdom. Section 11A(7) imposes on the sheriffs principal collectively the duty of having regard to the desirability of securing that each part-time sheriff has the opportunity of sitting for at least 20 days in each 12 month period and sits for no more than 100 days in each such period.
23. Section 11A(8) gives the Scottish Ministers the authority to pay part-time sheriffs at a rate decided by Ministers.
24. Section 11B deals with terms of appointment of part-time sheriffs. Section 11B(1) sets the initial term as 5 years and section 11B(2) enables part-time sheriffs to resign from office. Section 11B(3) fixes a retirement age of 70, the same as that for all permanent sheriffs appointed since 1995. Section 11B(4) makes provision for the termination of a part-time sheriff's appointment where he or she is removed from office by virtue of section 11C. Section 11B(5) allows for re-appointment at the end of any 5-year term and clarifies that re-appointment will be automatic unless any of the circumstances described in section 11B(6) applies. Section 11B(7) permits an individual who may have resigned at any time to be re-appointed at some future date. Section 11B(8) makes clear that conditions governing the appointment of a part-time sheriff apply equally to a re-appointment. Section 11B(9) prevents any solicitor from sitting as a part-time sheriff in the sheriff court district where he or she has his or her main place of business as a solicitor.
25. Section 11C details the procedure for removal of a part-time sheriff from office. Section 11C(1) places the responsibility for deciding on removal from office on a tribunal to be constituted for this purpose. Section 11C(2) sets out the criteria for removal to which the tribunal must have regard as part of their investigations into fitness for office. Section 11C(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 Court of Session judge or sheriff principal and the other members are to be a solicitor or advocate of at least 10 years' standing and one other person. Section 11C(4) allows regulations made by the Scottish Ministers to specify that the tribunal may suspend a part-time sheriff and gives authority to Ministers to include such further provisions in the regulations as they consider necessary or expedient.
26. Section 11D governs the making by the Scottish Ministers of regulations and orders under sections 11A and 11C and provides that they be made by way of statutory instrument made under the affirmative procedure of the Scottish Parliament.

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

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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.