

JUDICIARY AND COURTS (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT

Part 2 – the Judiciary

Chapter 5 – Removal from office

Sheriffs

Section 40 – Consideration of fitness for, and removal from, shrieval office

84. This section substitutes sections 12A to 12F in place of the existing section 12 of the 1971 Act bringing the provisions into line with that proposed for judges in Part 2 Chapter 5. Section 12 of the 1971 Act provided for the removal of sheriffs from office. No provision is made in the Scotland Act 1998 for removal of sheriffs unlike the position with judges. Section 11C of the 1971 Act (removal of part-time sheriffs from office) is repealed by paragraph 4(3) of Schedule 5 to the Act as these new sections also cover part-time sheriffs.
85. New Section 12A 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 or in other such circumstances as he thinks fit. Subsection (2) of the new section 12A provides that sheriffs principal, sheriffs and part-time sheriffs are all subject to the jurisdiction of such tribunals. Subsection (3) of the new section 12A provides that a tribunal may only be constituted if the Lord President has been consulted. Subsections (4) to (8) provide that the tribunal is to consist of 1 judge who must be a member of the Judicial Committee of the Privy Council, 1 sheriff principal or sheriff, 1 advocate or solicitor of 10 years experience and 1 lay member; that the selection of members is to be made by the First Minister with the agreement of the Lord President and that the member of the JCPC is to chair the tribunal.
86. New section 12B provides for the suspension by the Lord President or the First Minister of the sheriff principal, sheriff or part-time sheriff who is being or is to be investigated. The Lord President has the power to suspend where he or she has requested the First Minister to set up a tribunal. The First Minister has the power to suspend where the tribunal recommends to him or her that the person should be suspended.
87. New section 12C makes the same provision to that for judges in section 37.
88. New section 12D makes the same provision to that for judges in section 38.
89. New section 12E provides that the First Minister may remove a sheriff principal, sheriff or part-time sheriff from office following a report from a tribunal to the First Minister that the person is unfit by reason of inability, neglect of duty or misbehaviour. That report must be laid before the Scottish Parliament. In addition, the First Minister may

*These notes relate to the Judiciary and Courts (Scotland) Act
2008 (asp 6) which received Royal Assent on 29 October 2008*

only remove a sheriff principal or sheriff from office by order made by statutory instrument.