



# Judiciary and Courts (Scotland) Act 2008

2008 asp 6

## PART 2

### THE JUDICIARY

#### CHAPTER 4

##### JUDICIAL CONDUCT

###### *Judicial conduct*

### **28 Rules about investigations etc.**

- (1) The Lord President may by rules make provision for or in connection with—
- (a) the investigation and determination of any matter concerning the conduct of judicial office holders,
  - (b) reviews of any such determinations.
- (2) Rules under subsection (1) may in particular contain provision about—
- (a) circumstances in which an investigation must or may be undertaken,
  - (b) the making of complaints,
  - (c) steps to be taken by a complainant before a complaint is to be investigated,
  - (d) the conduct of an investigation (including in particular steps to be taken by the office holder under investigation or by a complainant or other person),
  - (e) time limits for taking any step and procedures for extending time limits,
  - (f) persons by whom an investigation or part of an investigation is to be conducted,
  - (g) matters to be determined by the person conducting an investigation (or part of an investigation), the Lord President or any other person,
  - (h) the making of recommendations by persons conducting investigations (or parts of investigations),
  - (i) the obtaining of information relating to complaints,
  - (j) the keeping of records of investigations,

- (k) confidentiality of communications or proceedings,
  - (l) the publication of information or its provision to any person.
- (3) Rules under subsection (1)—
- (a) may make different provision for different cases,
  - (b) are to be published in such manner as the Lord President may determine.

## **29 Powers of Lord President**

- (1) Where subsection (2) applies in relation to a judicial office holder, the Lord President may, for disciplinary purposes, give the judicial office holder—
- (a) formal advice,
  - (b) a formal warning, or
  - (c) a reprimand.
- (2) This subsection applies where—
- (a) an investigation has been carried out in accordance with rules under section 28(1), and
  - (b) the person carrying out the investigation has recommended that the Lord President exercise a power mentioned in subsection (1).
- (3) This section does not restrict what the Lord President may do—
- (a) informally,
  - (b) for other purposes, or
  - (c) where any advice or warning is not given to a particular judicial office holder.

### *Judicial Complaints Reviewer*

## **30 Judicial Complaints Reviewer**

- (1) The Scottish Ministers may, with the consent of the Lord President, appoint a person (to be known as the “Judicial Complaints Reviewer”) for the purpose of carrying out the functions mentioned in subsection (2).
- (2) Those functions are—
- (a) on the request of the complainant or the judicial office holder to whom an investigation carried out in pursuance of section 2(2)(e)(i) relates, to review the handling of the investigation to determine whether the investigation has been carried out in accordance with rules under section 28(1),
  - (b) in any case where the Reviewer considers that such an investigation has not been carried out in accordance with those rules, to refer the case to the Lord President,
  - (c) as directed by the Scottish Ministers, to prepare and publish reports on investigations carried out in pursuance of section 2(2)(e)(i), and
  - (d) to make written representations to the Lord President about procedures for handling the investigation of matters concerning the conduct of judicial office holders.
- (3) For the purposes of subsection (2)(a) “the complainant”, in relation to an investigation, means the person whose complaint led to the carrying out of the investigation.

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*Status: This is the original version (as it was originally enacted).*

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- (4) The Lord President must have regard to any written representations made under subsection (2)(d).
- (5) A person is disqualified from appointment, and from holding office, as the Judicial Complaints Reviewer if the person is or becomes—
  - (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a Minister of the Crown,
  - (e) a member of the Scottish Executive,
  - (f) a civil servant,
  - (g) a person who is, or has been, a judicial office holder, or
  - (h) a solicitor, advocate or barrister (in any case whether practising or not).

### **31 Judicial Complaints Reviewer: tenure etc.**

- (1) The Scottish Ministers are to determine with the consent of the Lord President—
  - (a) the period for which a person is appointed as the Judicial Complaints Reviewer, and
  - (b) subject to subsection (2), the other terms and conditions on which a person is so appointed.
- (2) The Scottish Ministers may pay to the Judicial Complaints Reviewer such fees and expenses as they may determine.
- (3) The Judicial Complaints Reviewer may resign office by giving notice in writing to the Scottish Ministers.
- (4) If—
  - (a) the Scottish Ministers are satisfied that subsection (5) applies, and
  - (b) the Lord President consents,the Scottish Ministers may, by notice in writing, remove the Judicial Complaints Reviewer from office.
- (5) This subsection applies if—
  - (a) the Judicial Complaints Reviewer has failed without reasonable excuse to carry out the functions of that office for a continuous period of 6 months,
  - (b) the Reviewer has been convicted of an offence,
  - (c) the Reviewer has become insolvent, or
  - (d) the Reviewer is otherwise unfit to be the Judicial Complaints Reviewer or unable for any reason to carry out the functions of that office.
- (6) For the purposes of subsection (5)(c), the Reviewer becomes insolvent on—
  - (a) the approval of a voluntary arrangement proposed by the Reviewer,
  - (b) being adjudged bankrupt,
  - (c) the Reviewer's estate's being sequestrated, or
  - (d) the Reviewer's granting a trust deed for creditors.
- (7) A person who is or has been the Judicial Complaints Reviewer may be reappointed for further periods.

- (8) A person holding office by virtue of subsection (7) may not hold office for periods (whether or not consecutive) totalling more than 5 years.

### **32 Guidance**

- (1) The Judicial Complaints Reviewer must comply with any guidance that the Scottish Ministers issue about the carrying out of the Reviewer's functions.
- (2) Before issuing any such guidance, the Scottish Ministers must consult the Lord President.
- (3) The Scottish Ministers must publish any guidance issued under subsection (1).

### **33 Lord President's powers on referral**

- (1) Subsection (2) applies where a case is referred to the Lord President by virtue of section 30(2)(b).
- (2) The Lord President may—
- (a) vary or revoke the determination made in the case (or part of the determination),
  - (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.

### *Suspension*

### **34 Suspension**

- (1) If the Lord President considers that it is necessary for the purpose of maintaining public confidence in the judiciary, the Lord President may suspend a judicial office holder—
- (a) from acting as a judge as mentioned in paragraph (b) or (c) of the definition of “judicial office holder” in subsection (1) of section 43, or
  - (b) from any of the judicial offices mentioned in subsection (2) of that section.
- (2) Such a suspension lasts for such period as the Lord President may specify when suspending the judicial office holder.
- (3) Nothing in subsection (1) affects any remuneration payable to, or in respect of, the judicial office holder.
- (4) The Lord President's functions under this section may be carried out—
- (a) where the Lord President is unavailable, by the Lord Justice Clerk,
  - (b) where both the Lord President and the Lord Justice Clerk are unavailable, by the senior judge of the Inner House.
- (5) In subsection (4)(b) the reference to the senior judge of the Inner House is to be construed by reference to seniority of appointment to a Division of the Inner House.