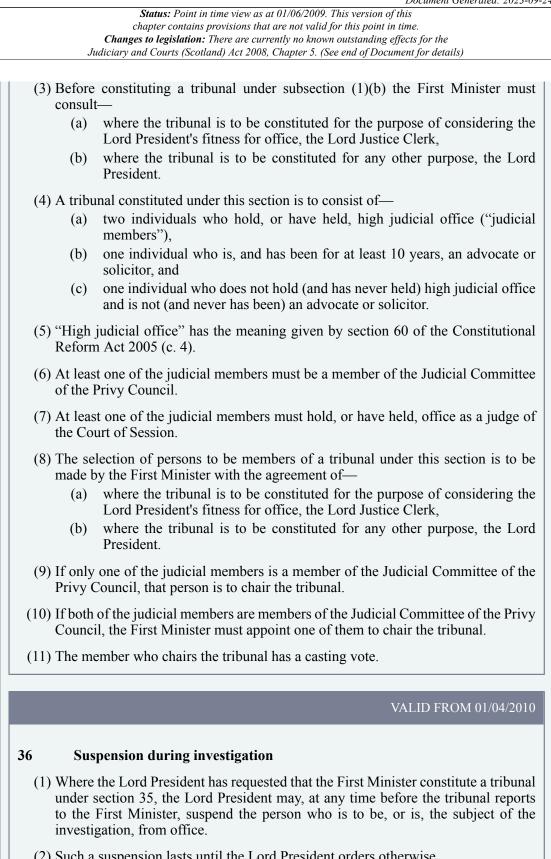


# Judiciary and Courts (Scotland) Act 2008 2008 asp 6

## PART 2

## THE JUDICIARY

	VALID FROM 20/02/2010
Chapter 5 Removal from office Judges	
	VALID FROM 01/04/2010
<ul> <li>35 Tribunal to consider fitness for judicial office</li> <li>(1) The First Minister— <ul> <li>(a) must, when requested to do so by the Lord President, and</li> <li>(b) may, in such other circumstances as the First Minister thinks fit,</li> <li>constitute a tribunal to investigate and report on whether a person holding a judicial office to which this section applies is unfit to hold the office by reason of inability, neglect of duty or misbehaviour.</li> </ul> </li> </ul>	
(2) The ju (a) (b) (c) (d) (e)	dicial offices to which this section applies are— the office of Lord President, the office of Lord Justice Clerk, the office of judge of the Court of Session, the office of Chairman of the Scottish Land Court, and the office of temporary judge.



(2) Such a suspension lasts until the Lord President orders otherwise.

Status: Point in time view as at 01/06/2009. This version of this chapter contains provisions that are not valid for this point in time. Changes to legislation: There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008, Chapter 5. (See end of Document for details)

- (3) A tribunal constituted under section 35 may, at any time before the tribunal reports to the First Minister, recommend to the First Minister that the person who is the subject of the tribunal's investigation be suspended from office.
- (4) Such a recommendation must be in writing.
- (5) The First Minister on receiving such a recommendation may suspend the person from office.
- (6) Such a suspension lasts until the First Minister orders otherwise.
- (7) Suspension under this section from the office of Lord President, Lord Justice Clerk, judge of the Court of Session or Chairman of the Scottish Land Court does not affect any remuneration payable to, or in respect of, the office in respect of the period of suspension.

## **37** Further provision about tribunals

- (1) A tribunal constituted under section 35 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 in Scotland.
- (3) Subsection (4) applies where a person on whom a requirement has been imposed under subsection (1)—
  - (a) refuses or fails, without reasonable excuse, to comply with the requirement,
  - (b) refuses or fails, without reasonable excuse, while attending the tribunal proceedings to give evidence, to answer any question, or
  - (c) deliberately alters, conceals or destroys any document which the person is required to produce.
- (4) The Court of Session may, on an application made to it by the tribunal—
  - (a) make such order for enforcing compliance as it sees fit, or
  - (b) deal with the matter as if it were a contempt of the Court.
- (5) The Court of Session may by act of sederunt make provision as to the procedure to be followed by and before tribunals constituted under section 35.
- (6) The Scottish Ministers may pay such remuneration to, and expenses of, members of tribunals constituted under section 35 as they think fit.
- (7) The Scottish Ministers must pay such expenses as they consider are reasonably required to be incurred to enable a tribunal constituted under section 35 to carry out its functions.

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Judiciary and Courts (Scotland) Act 2008, Chapter 5. (See end of Document for details)

#### VALID FROM 01/04/2010

## 38 Report of tribunal

(1) The report of a tribunal constituted under section 35 must—

- (a) be in writing,
- (b) contain reasons for its conclusion, and
- (c) be submitted to the First Minister.

(2) The First Minister must lay the report before the Scottish Parliament.

#### VALID FROM 01/04/2010

## **39** Temporary judges: removal from office

- (1) Where subsection (2) applies, a person may be removed from office as a temporary judge by the First Minister.
- (2) This subsection applies if—
  - (a) a tribunal constituted under section 35 has reported to the First Minister that the person is unfit to hold that office by reason of inability, neglect of duty or misbehaviour, and
  - (b) the First Minister has laid the report before the Scottish Parliament.

### Sheriffs

## 40 Consideration of fitness for, and removal from, shrieval office

For section 12 of the 1971 Act substitute—

"Consideration of fitness for, and removal from, shrieval office

## 12A Tribunal to consider fitness for shrieval office

(1) The First Minister—

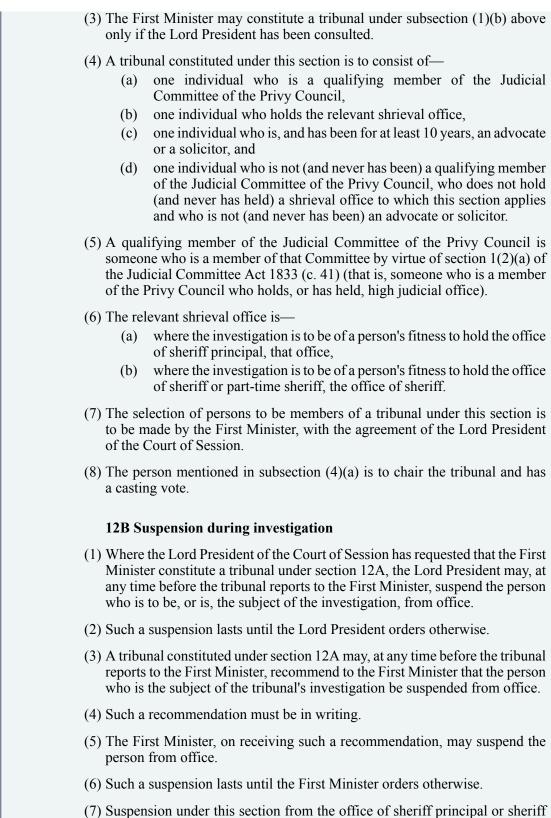
- (a) must, when requested to do so by the Lord President of the Court of Session, and
- (b) may, in such other circumstances as the First Minister thinks fit,

constitute a tribunal to investigate and report on whether a person holding a shrieval office to which this section applies is unfit to hold the office by reason of inability, neglect of duty or misbehaviour.

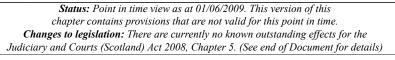
(2) The shrieval offices to which this section applies are—

- (a) the office of sheriff principal,
- (b) the office of sheriff, and
- (c) the office of part-time sheriff.

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(7) Suspension under this section from the office of sheriff principal or sheriff does not affect remuneration payable to, or in respect of, the office in respect of the period of suspension.



## 12C Further provision about tribunals (1) A tribunal constituted under section 12A may require any person to attend its proceedings for the purpose of giving evidence, (a) to produce documents in the person's custody or under the person's (b) 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 in Scotland. (3) Subsection (4) applies where a person on whom a requirement has been imposed under subsection (1)refuses or fails, without reasonable excuse, to comply with the (a) requirement, (b) refuses or fails, without reasonable excuse, while attending the tribunal proceedings to give evidence, to answer any question, or (c) deliberately alters, conceals or destroys any document which the person is required to produce. (4) The Court of Session may, on an application made to it by the tribunal— (a) make such order for enforcing compliance as it sees fit, or (b) deal with the matter as if it were a contempt of the Court. (5) The Court of Session may by act of sederunt make provision as to the procedure to be followed by and before tribunals constituted under section 12A. (6) The Scottish Ministers may pay such remuneration to, and expenses of, members of tribunals constituted under section 12A as they think fit. (7) The Scottish Ministers must pay such expenses as they consider are reasonably required to be incurred to enable a tribunal constituted under section 12A to carry out its functions.

#### **12D Report of tribunal**

- (1) The report of a tribunal constituted under section 12A must—
  - (a) be in writing,
  - (b) contain reasons for its conclusion, and
  - (c) be submitted to the First Minister.
- (2) The First Minister must lay the report before the Scottish Parliament.

#### **12E Removal from office**

- (1) Where subsection (2) applies, the First Minister may remove a person from the office of sheriff principal, sheriff or part-time sheriff.
- (2) This subsection applies if—

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- (a) a tribunal constituted under section 12A has reported to the First Minister that the person is unfit to hold that office by reason of inability, neglect of duty or misbehaviour, and
- (b) the First Minister has laid the report before the Scottish Parliament.
- (3) The First Minister may remove a sheriff principal or sheriff under subsection (1) only by order made by statutory instrument.
- (4) Such a statutory instrument—
  - (a) is to be subject to annulment in pursuance of a resolution of the Scottish Parliament,
  - (b) is not to be made so as to come into effect before the expiry, in relation to the instrument, of the period of 40 days mentioned in article 11 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096).
- (5) Article 10 of that Order applies to such an instrument subject to the following modifications—
  - (a) the reference to the period of 21 days in paragraph (2) is to be read as a reference to 40 days, and
  - (b) paragraph (3) does not apply.

### 12F Interpretation of sections 12A to 12E

- (1) In sections 12A to 12E "office of part-time sheriff" means an appointment (or reappointment) as a part-time sheriff; and references to removal or suspension from that office are to be construed accordingly.
- (2) In those sections—
  - (a) a reference to the office of sheriff principal does not include a reference to an appointment as a temporary sheriff principal,
  - (b) a reference to the office of sheriff does not include a reference to the office of honorary sheriff.".

VALID FROM 01/04/2010

#### *Justices of the peace*

# 41 Provision relating to tribunal considering fitness for office of justices of the peace

- (1) Section 71 (removal of justices of the peace) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) is amended as follows.
- (2) In subsection (7), for "Scottish Ministers may by order", substitute " Court of Session may by act of sederunt ".
- (3) In subsection (8), for "order" substitute " act of sederunt ".

## Status:

Point in time view as at 01/06/2009. This version of this chapter contains provisions that are not valid for this point in time.

## **Changes to legislation:**

There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008, Chapter 5.