



# Judiciary and Courts (Scotland) Act 2008

## 2008 asp 6

### PART 2

#### THE JUDICIARY

### CHAPTER 5

#### REMOVAL FROM OFFICE

##### *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.
- (3) The First Minister may constitute a tribunal under subsection (1)(b) above only if the Lord President has been consulted.

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*Status: This is the original version (as it was originally enacted).*

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- (4) A tribunal constituted under this section is to consist of—
- (a) one individual who is a qualifying member of the Judicial Committee of the Privy Council,
  - (b) one individual who holds the relevant shrieval office,
  - (c) one individual who is, and has been for at least 10 years, an advocate or a solicitor, and
  - (d) one individual who is not (and never has been) a qualifying member of the Judicial Committee of the Privy Council, who does not hold (and never has held) a shrieval office to which this section applies and who is not (and never has been) an advocate or solicitor.
- (5) A qualifying member of the Judicial Committee of the Privy Council is someone who is a member of that Committee by virtue of section 1(2)(a) of the Judicial Committee Act 1833 (c. 41) (that is, someone who is a member of the Privy Council who holds, or has held, high judicial office).
- (6) The relevant shrieval office is—
- (a) where the investigation is to be of a person’s fitness to hold the office of sheriff principal, that office,
  - (b) where the investigation is to be of a person’s fitness to hold the office of sheriff or part-time sheriff, the office of sheriff.
- (7) The selection of persons to be members of a tribunal under this section is to be made by the First Minister, with the agreement of the Lord President of the Court of Session.
- (8) The person mentioned in subsection (4)(a) is to chair the tribunal and has a casting vote.

### **12B Suspension during investigation**

- (1) Where the Lord President of the Court of Session has requested that the First Minister constitute a tribunal under section 12A, the Lord President may, at any time before the tribunal reports to the First Minister, suspend the person who is to be, or is, the subject of the investigation, from office.
- (2) Such a suspension lasts until the Lord President orders otherwise.
- (3) A tribunal constituted under section 12A 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 sheriff principal or sheriff does not affect remuneration payable to, or in respect of, the office in respect of the period of suspension.

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### **12C Further provision about tribunals**

- (1) A tribunal constituted under section 12A 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 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—
  - (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

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- (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.”.