



# Judiciary and Courts (Scotland) Act 2008

## 2008 asp 6

### PART 2

#### THE JUDICIARY

### CHAPTER 5

#### REMOVAL FROM OFFICE

##### *Judges*

#### **35 Tribunal to consider fitness for judicial office**

- (1) The First Minister—
- (a) must, when requested to do so by the Lord President, 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 judicial office to which this section applies is unfit to hold the office by reason of inability, neglect of duty or misbehaviour.
- (2) The judicial offices to which this section applies are—
- (a) the office of Lord President,
  - (b) the office of Lord Justice Clerk,
  - (c) the office of judge of the Court of Session,
  - (d) the office of Chairman of the Scottish Land Court, and
  - (e) the office of temporary judge.
- (3) Before constituting a tribunal under subsection (1)(b) the First Minister must consult—
- (a) where the tribunal is to be constituted for the purpose of considering the Lord President's fitness for office, the Lord Justice Clerk,
  - (b) where the tribunal is to be constituted for any other purpose, the Lord President.
- (4) A tribunal constituted under this section is to consist of—

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- (a) two individuals who hold, or have held, high judicial office (“judicial members”),
  - (b) one individual who is, and has been for at least 10 years, an advocate or solicitor, and
  - (c) one individual who does not hold (and has never held) high judicial office and is not (and never has been) an advocate or solicitor.
- (5) “High judicial office” has the meaning given by section 60 of the Constitutional Reform Act 2005 (c. 4).
- (6) At least one of the judicial members must be a member of the Judicial Committee of the Privy Council.
- (7) At least one of the judicial members must hold, or have held, office as a judge of the Court of Session.
- (8) 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—
- (a) where the tribunal is to be constituted for the purpose of considering the Lord President’s fitness for office, the Lord Justice Clerk,
  - (b) where the tribunal is to be constituted for any other purpose, the Lord President.
- (9) If only one of the judicial members is a member of the Judicial Committee of the Privy Council, that person is to chair the tribunal.
- (10) If both of the judicial members are members of the Judicial Committee of the Privy Council, the First Minister must appoint one of them to chair the tribunal.
- (11) The member who chairs the tribunal has a casting vote.

### **36 Suspension during investigation**

- (1) Where the Lord President has requested that the First Minister constitute a tribunal under section 35, 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 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.

### **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.

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

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

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- (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.

### **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.

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- (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
  - (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—

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- (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.”.

*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”.