

# Judiciary and Courts (Scotland) Act 2008

## 2008 asp 6

### PART 2

#### THE JUDICIARY

#### CHAPTER 1

#### HEAD OF THE SCOTTISH JUDICIARY

### 2 Head of the Scottish Judiciary

- (1) The Lord President is the Head of the Scottish Judiciary.
- (2) As Head of the Scottish Judiciary the Lord President is responsible—
  - (a) for making and maintaining arrangements for securing the efficient disposal of business in the Scottish courts,
  - (b) for representing the views of the Scottish judiciary to the Scottish Parliament and the Scottish Ministers,
  - (c) for laying before the Scottish Parliament written representations on matters that appear to the Head of the Scottish Judiciary to be matters of importance relating to—
    - (i) the Scottish judiciary, or
    - (ii) the administration of justice,
  - (d) for making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders, and
  - (e) for making and maintaining, in accordance with section 28, appropriate arrangements for—
    - (i) the investigation and determination of any matter concerning the conduct of judicial office holders, and
    - (ii) the review of such determinations.
- (3) If, in carrying out the responsibility mentioned in subsection (2)(a), the Lord President gives a direction of an administrative character to a sheriff principal, the sheriff principal must comply with the direction.

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- (4) In carrying out the responsibility for making and maintaining arrangements for training mentioned in subsection (2)(d) the Lord President must require any judicial office holder, or class of judicial office holder, to attend such training as the Lord President determines.
- (5) References in this section to the Scottish judiciary are references to the judiciary of any court established under the law of Scotland (other than the Supreme Court of the United Kingdom).
- (6) In this section, “the Scottish courts” means—
- (a) the Court of Session,
  - (b) the High Court of Justiciary,
  - (c) the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983 (c. 2),
  - (d) the election court in Scotland constituted under section 123 of that Act,
  - (e) the Lands Valuation Appeal Court,
  - (f) the sheriff courts,
  - (g) justice of the peace courts, and
  - (h) such other courts as the Scottish Ministers may by order specify.
- (7) Before making an order under subsection (6)(h), the Scottish Ministers must consult the Lord President.

### **3 Delegation of functions**

- (1) The Lord President may delegate to a judicial office holder any function mentioned in subsection (2) of section 2 other than the functions mentioned in subsection (2) below.
- (2) Those functions are—
- (a) so far as exercisable in relation to sheriff courts or justice of the peace courts, the function conferred by paragraph (a) of subsection (2) of that section,
  - (b) the function conferred by paragraph (e) of subsection (2) of that section.

## **CHAPTER 2**

### SENIOR JUDICIARY: VACANCY, INCAPACITY AND SUSPENSION

#### **4 Lord President**

- (1) This section applies during any period when—
- (a) the office of Lord President is vacant,
  - (b) the Lord President is incapacitated, or
  - (c) the Lord President is suspended.
- (2) During such a period—
- (a) any function of the Lord President is exercisable instead by the Lord Justice Clerk,
  - (b) anything that falls to be done in relation to the Lord President falls to be done instead in relation to the Lord Justice Clerk,

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- (c) any function of the Lord Justice Clerk is exercisable instead by the senior judge of the Inner House, and
  - (d) anything that falls to be done in relation to the Lord Justice Clerk falls to be done instead in relation to the senior judge of the Inner House.
- (3) For the purposes of this section—
- (a) the Lord President is to be regarded as incapacitated only if the First Minister has received a declaration in writing signed by a majority of the total number of judges of the Inner House declaring that they are satisfied that the Lord President is incapacitated,
  - (b) in such a case, the Lord President is to be regarded as incapacitated until the First Minister has received a declaration in writing signed by a majority of the total number of judges of the Inner House declaring that they are satisfied that the Lord President is no longer incapacitated.
- (4) The judges of the Inner House making a declaration for the purposes of subsection (3) (a) or (b) must include the Lord Justice Clerk.
- (5) The requirement in subsection (4)—
- (a) does not apply during any period when section 5 applies, and
  - (b) is subject to section 7(4).
- (6) The First Minister must send a copy of a declaration received under subsection (3)(a) or (b) to the Presiding Officer of the Scottish Parliament.
- (7) The reference in subsection (2)(a) to functions of the Lord President does not include the function of participating in a panel established under section 19(2) in connection with a vacancy, or an expected vacancy, in the office of Lord Justice Clerk.

## **5 Lord Justice Clerk**

- (1) This section applies during any period when—
- (a) the office of Lord Justice Clerk is vacant,
  - (b) the Lord Justice Clerk is incapacitated, or
  - (c) the Lord Justice Clerk is suspended.
- (2) During such a period—
- (a) any function of the Lord Justice Clerk is exercisable instead by the senior judge of the Inner House, and
  - (b) anything that falls to be done in relation to the Lord Justice Clerk falls to be done instead in relation to the senior judge of the Inner House.
- (3) For the purposes of this section—
- (a) the Lord Justice Clerk is to be regarded as incapacitated only if the First Minister has received a declaration in writing signed by a majority of the total number of judges of the Inner House declaring that they are satisfied that the Lord Justice Clerk is incapacitated,
  - (b) in such a case, the Lord Justice Clerk is to be regarded as incapacitated until the First Minister has received a declaration in writing signed by a majority of the total number of judges in the Inner House declaring that they are satisfied that the Lord Justice Clerk is no longer incapacitated.

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- (4) The judges of the Inner House making a declaration for the purposes of subsection (3) (a) or (b) must include the Lord President.
- (5) The requirement in subsection (4)—
  - (a) does not apply during any period when section 4 applies, and
  - (b) is subject to section 7(4).
- (6) The First Minister must send a copy of a declaration received under subsection (3)(a) or (b) to the Presiding Officer of the Scottish Parliament.

## **6 Periods when both sections 4 and 5 apply**

- (1) Subsection (2) applies during any period when both sections 4 and 5 apply.
- (2) During such a period, subsection (2) of each of those sections does not apply and instead—
  - (a) any function of the Lord President is exercisable instead by the senior judge of the Inner House,
  - (b) anything that falls to be done in relation to the Lord President falls to be done instead in relation to the senior judge of the Inner House,
  - (c) any function of the Lord Justice Clerk is exercisable instead by the second senior judge of the Inner House, and
  - (d) anything that falls to be done in relation to the Lord Justice Clerk falls to be done instead in relation to the second senior judge of the Inner House.

## **7 Supplementary**

- (1) Where—
  - (a) any function is exercisable by, or anything falls to be done in relation to, the senior judge of the Inner House by virtue of section 4, 5 or 6, and
  - (b) that judge is unavailable,
 the function is exercisable by, or the thing falls to be done in relation to, the second senior judge of the Inner House.
- (2) Where—
  - (a) any function is exercisable by, or anything falls to be done in relation to, the second senior judge of the Inner House by virtue of section 6 or subsection (1) above, and
  - (b) that judge is unavailable,
 the function is exercisable by, or the thing falls to be done in relation to, the next senior judge of the Inner House who is available.
- (3) In calculating the total number of judges of the Inner House for the purposes of section 4(3) or 5(3), the following are not to be counted—
  - (a) in the case of section 4(3)—
    - (i) the Lord President, and
    - (ii) during any period when section 5 applies, the Lord Justice Clerk,
  - (b) in the case of section 5(3)—
    - (i) the Lord Justice Clerk, and
    - (ii) during any period when section 4 applies, the Lord President, and

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- (c) in either case—
  - (i) any judge of the Inner House who is suspended from office, and
  - (ii) any office of judge of the Inner House which is vacant.
- (4) The requirements in sections 4(4) and 5(4) do not apply for the purpose of declarations under sections 4(3)(a) and 5(3)(a) respectively if—
  - (a) the judges making the declarations are satisfied that both the Lord President and the Lord Justice Clerk are incapacitated, and
  - (b) the declarations state that this subsection applies.
- (5) Nothing in this Chapter affects any remuneration payable to, or in respect of, the Lord President, the Lord Justice Clerk or any other judge of the Inner House.

## **8 Interpretation of Chapter 2**

- (1) In this Chapter—
  - “incapacitated”, in relation to the Lord President or the Lord Justice Clerk, means unable by reason of ill health to carry out the functions of the office concerned, and
  - “suspended” means suspended from office under section 36.
- (2) A reference in this Chapter to the senior judge, the second senior judge or the next senior judge of the Inner House is to be construed by reference to seniority of appointment to a Division of the Inner House.
- (3) A reference in this Chapter to—
  - (a) any function of the Lord President includes any function of the Lord Justice General,
  - (b) anything that falls to be done in relation to the Lord President includes anything that falls to be done in relation to the Lord Justice General,
  - (c) the functions of the office of Lord President includes the functions of the office of Lord Justice General.
- (4) Where any other enactment makes provision for the carrying out of any function of the Lord President by the Lord Justice Clerk, this Act does not affect the operation of that enactment except in relation to any period during which section 4 applies.

## **CHAPTER 3**

### **JUDICIAL APPOINTMENTS**

#### *Judicial Appointments Board for Scotland*

## **9 The Judicial Appointments Board for Scotland**

- (1) There is established a body to be known as the Judicial Appointments Board for Scotland (referred to in this Chapter as “the Board”).
- (2) The functions of the Board are—
  - (a) to recommend to members of the Scottish Executive individuals for appointment to judicial offices within the Board’s remit, and

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- (b) to provide advice to members of the Scottish Executive in connection with such appointments.
- (3) In carrying out its functions, the Board is not to be subject to the direction or control of any member of the Scottish Executive or any other person.
- (4) Schedule 1 makes further provision about the Board.

## **10 Judicial offices within the Board’s remit**

- (1) The judicial offices within the Board’s remit are—
  - (a) the office of judge of the Court of Session,
  - (b) the office of Chairman of the Scottish Land Court,
  - (c) the office of temporary judge (except in any case where the individual to be appointed to the office holds or has held one of the offices mentioned in subsection (2)),
  - (d) the office of sheriff principal,
  - (e) the office of sheriff,
  - (f) the office of part-time sheriff, and
  - (g) such other judicial offices (whether full-time, part-time or temporary) as the Scottish Ministers may by order specify.
- (2) The offices referred to in subsection (1)(c) are—
  - (a) the office of judge of the European Court,
  - (b) the office of judge of the European Court of Human Rights,
  - (c) the office of Chairman of the Scottish Land Court,
  - (d) the office of sheriff principal, and
  - (e) the office of sheriff.
- (3) The Scottish Ministers may specify a judicial office under subsection (1)(g) only if the First Minister has, or the Scottish Ministers have, the function of making appointments to the office, or of nominating or recommending individuals for appointment to the office.
- (4) In subsection (1)(g), “judicial office ” means—
  - (a) the office of judge of any court,
  - (b) the office of member of any tribunal, or
  - (c) any other office, or appointment, consisting of functions of a judicial nature.

## **11 Recommendations of the Board**

- (1) The relevant Minister may—
  - (a) appoint an individual to a judicial office within the Board’s remit, or
  - (b) nominate or recommend an individual for appointment to such an office, only if the Board has recommended the individual for appointment to the office.
- (2) Subsection (3) applies where—
  - (a) the Board has recommended an individual for appointment, and
  - (b) the relevant Minister has decided not to accept the recommendation.
- (3) The relevant Minister must give the Board notice of the decision.

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- (4) The notice must include the reasons for the decision.
- (5) On receipt of the notice, the Board must—
  - (a) reconsider its recommendation, and
  - (b) make a further recommendation (whether of the same or a different individual).
- (6) In this section references to the relevant Minister are—
  - (a) where the First Minister has the function of making appointments to the judicial office concerned, or nominating or recommending individuals for appointment to the office, references to the First Minister,
  - (b) where the Scottish Ministers have that function, references to the Scottish Ministers.

## **12 Selection criteria**

- (1) This section applies where the Board is selecting an individual to be recommended by it for appointment.
- (2) Selection must be solely on merit.
- (3) The Board may select an individual only if it is satisfied that the individual is of good character.

## **13 Assessment of legal knowledge, skills and competence**

- (1) Only the judicial and legal members of the Board may take part in any assessment by the Board of an individual's—
  - (a) knowledge of the law, or
  - (b) skills and competence in the interpretation and application of the law.
- (2) Subsection (1) does not prevent a member of the Board from taking part in a decision of the Board as to whether to recommend an individual for appointment to a judicial office.

## **14 Encouragement of diversity**

- (1) In carrying out its functions, the Board must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office.
- (2) Subsection (1) is subject to section 12.

## **15 Guidance**

- (1) The Scottish Ministers may issue guidance to the Board as to the procedures to be followed by it in the carrying out of its functions.
- (2) The Lord President may issue guidance to the Board as to the procedures to be followed by it in the carrying out of its functions.
- (3) Guidance issued under subsection (1) or (2) may, in particular, relate to the manner in which the Board is to publicise vacancies and identify candidates for any appointment.

- (4) In carrying out its functions, the Board must have regard to any guidance issued under this section.
- (5) The Scottish Ministers must publish any guidance issued under subsection (1).
- (6) The Lord President must publish any guidance issued under subsection (2).

## **16 Guidance: procedure**

- (1) Before issuing any guidance under section 15(1) or (2), the Scottish Ministers or, as the case may be, the Lord President must lay a draft of the proposed guidance before the Scottish Parliament.
- (2) The Scottish Ministers or, as the case may be, the Lord President must not issue the guidance before the expiry of the period of 21 days beginning with the day on which the draft of it is laid before the Parliament under subsection (1).
- (3) If, during that period, the Parliament by resolution makes any recommendations in relation to the draft guidance, the Scottish Ministers or, as the case may be, the Lord President must have regard to those recommendations.
- (4) The Scottish Ministers must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Lord President and the Board on the draft.
- (5) The Lord President must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Scottish Ministers and the Board on the draft.
- (6) In calculating a period of 21 days for the purposes of subsection (2), no account is to be taken of any time during which the Parliament is—
  - (a) dissolved, or
  - (b) in recess for more than 4 days.

## **17 Confidentiality of information**

- (1) A person (whether or not a member of the Board or its staff) who has provided or obtained confidential information in connection with the carrying out of the Board's functions must not disclose the information unless the disclosure is authorised.
- (2) Information is confidential for the purposes of subsection (1) if it relates to an identified or identifiable individual.
- (3) Disclosure of information is authorised for the purposes of subsection (1) only so far as it is—
  - (a) made with the consent of the individual to whom the information relates,
  - (b) necessary for the purposes of the carrying out by the Board of its functions,
  - (c) necessary for the purposes of the carrying out by a member of the Scottish Executive of a function of appointing an individual to a judicial office within the Board's remit, or nominating or recommending an individual for appointment to such an office, or
  - (d) required for the purposes of any legal proceedings, whether criminal or civil, (including for the purposes of the investigation of any offence or suspected offence).

- (4) For the purposes of this section, an opinion or other information given by one identified or identifiable individual about another is to be treated as information that relates to both individuals.
- (5) This section does not prevent the disclosure of information which is already, or has previously been, in the public domain.
- (6) Any disclosure of information in contravention of this section which causes loss or damage to the individual to whom the information relates is actionable at the instance of that individual.

## **18 Annual report**

- (1) As soon as practicable after the end of each year, the Board must—
  - (a) prepare and publish a report on the carrying out of its functions during that year, and
  - (b) send a copy of the report to the Scottish Ministers.
- (2) The Scottish Ministers must lay before the Scottish Parliament a copy of each report sent to them by the Board under subsection (1)(b).

*Lord President and Lord Justice Clerk*

## **19 Appointment**

- (1) This section applies where a vacancy arises, or is expected to arise, in the office of Lord President or the office of Lord Justice Clerk.
- (2) The First Minister must establish a panel in accordance with schedule 2.
- (3) The function of the panel is to recommend to the First Minister individuals who are suitable for appointment to fill the vacancy.
- (4) For the purposes of section 95(2) of the Scotland Act 1998 (c. 46), the First Minister must not nominate any individual for appointment to fill the vacancy until the panel has made its recommendation under subsection (3).
- (5) In deciding whom to nominate for the purposes of that section, the First Minister must have regard to the panel's recommendation.

## **20 Selection criteria**

- (1) This section applies where a panel established under section 19(2) is selecting an individual to be recommended by it as suitable for appointment.
- (2) Selection must be solely on merit.
- (3) The panel may select an individual only if it is satisfied that the individual is of good character.

*Other Court of Session judges***21 Eligibility of solicitors for appointment as judges**

In paragraph 1(b) (appointment of solicitors as judges of the Court of Session) of Schedule 4 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)—

- (a) for “both” substitute “either”, and
- (b) for “and” substitute “or”.

**22 Temporary judges: tenure**

- (1) Paragraph 5 (temporary judges) of Schedule 4 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) is amended as follows.
- (2) In sub-paragraph (1), the words from “for” in the second place it appears to the end are repealed.
- (3) For sub-paragraph (2) substitute—
  - “(2) A person’s appointment as a temporary judge lasts for 5 years, subject to the following provisions of this paragraph and paragraph 9 below.
  - (3) A person’s appointment as a temporary judge comes to an end on the date on which the person reaches the age of 70.
  - (4) Sub-paragraph (3) above is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (power to authorise continuance in office up to the age of 75).
  - (5) A person’s appointment as a temporary judge comes to an end if the person is removed from office under section 39 of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (temporary judges: removal from office).
  - (6) A person appointed as a temporary judge may resign at any time by giving notice to that effect to the Scottish Ministers.
  - (7) Where a person’s appointment as a temporary judge comes to an end by virtue of sub-paragraph (2) above, the person is to be reappointed under the said section 35(3), unless—
    - (a) the person has declined reappointment,
    - (b) the person has reached the age of 70,
    - (c) the person has sat as a temporary judge on fewer than 50 days during the period of appointment, or
    - (d) the Lord President has recommended to the Scottish Ministers that the person should not be reappointed.
  - (8) A person whose appointment as a temporary judge comes to an end by resignation under sub-paragraph (6) above may be reappointed under the said section 35(3).
  - (9) The provisions of this paragraph, and paragraphs 6 to 11 below, apply to a reappointment as they apply to an appointment.”.

## **23 Re-employment of retired judges**

In section 22(1) (re-employment of retired judges) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)—

- (a) the words “, with the consent of the Scottish Ministers,” are repealed, and
- (b) in paragraph (a), after “Session” insert “(and did not cease to hold that office by virtue of section 95(6) of the Scotland Act 1998 (c. 46))”.

*Sheriffs principal, sheriffs and part-time sheriffs*

## **24 Appointment of temporary sheriffs principal**

(1) Section 11 (appointment of temporary sheriffs principal) of the 1971 Act is amended as follows.

(2) In subsection (1), for the words from “Secretary of State” to “sheriffdom,” in the second place that word appears substitute “Scottish Ministers must, if the Lord President of the Court of Session so requests,”.

(3) After that subsection insert—

“(1ZA) The Lord President may request the appointment of a person to act as a sheriff principal under subsection (1) only if it appears to him expedient that such an appointment be made in order to avoid delay in the administration of justice in the sheriffdom concerned.”.

(4) In subsection (1A), for “Secretary of State may” substitute “Scottish Ministers must, if the Lord President so requests,”.

(5) In subsection (4), for “Secretary of State” substitute “Scottish Ministers, at the request of the Lord President”.

(6) After that subsection insert—

“(4ZA) The Scottish Ministers must comply with any request made by the Lord President under subsection (4) above.”.

(7) In subsection (5)—

- (a) for “Secretary of State” substitute “Scottish Ministers”, and
- (b) for “directs” substitute “direct”.

## **25 Re-employment of retired sheriffs principal and sheriffs**

After section 14 of the 1971 Act insert—

### **“14A Re-employment of retired sheriffs principal and sheriffs**

(1) A sheriff principal may, if it appears to him to be expedient as a temporary measure in order to facilitate the disposal of business in the sheriff courts of the sheriffdom, appoint a qualifying former sheriff principal or sheriff to act as a sheriff of that sheriffdom during such period or on such occasions as the sheriff principal thinks fit.

(2) A qualifying former sheriff principal is someone who—

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- (a) ceased to hold that office other than by virtue of an order under section 12E of this Act, and
  - (b) has not reached the age of 75 years.
- (3) A qualifying former sheriff is someone who—
- (a) ceased to hold that office other than by virtue of an order under section 12E of this Act or by being appointed as a sheriff principal, and
  - (b) has not reached the age of 75 years.
- (4) A person appointed under subsection (1) above is not to be treated as a sheriff for the purposes of any statutory provision or rule of law relating to—
- (a) the appointment, retirement, removal or disqualification of sheriffs,
  - (b) the tenure of office and oaths to be taken by sheriffs, or
  - (c) the remuneration, allowances or pensions of sheriffs.
- (5) But, otherwise, such a person is to be treated for all purposes as a sheriff of the sheriffdom for which the person is appointed (and so may perform any of the functions of a sheriff of that sheriffdom).
- (6) The Scottish Court Service may pay to, or in respect of, a person appointed under subsection (1) above such remuneration or allowances as the Scottish Ministers may determine.
- (7) Despite subsection (1), the period during which or an occasion on which a person appointed under that subsection may act under that appointment does not extend beyond, or (as the case may be) is not to be after, the date on which the person reaches the age of 75 years.
- (8) Despite the expiry (whether by virtue of subsection (7) above or otherwise) of any period for which a person is appointed under subsection (1) above—
- (a) the person may attend at a sheriff court for the purpose of continuing to deal with, giving judgment in, or dealing with any matter relating to, any case begun before the person while acting under that appointment, and
  - (b) for that purpose, and for the purpose of any proceedings arising out of any such case or matter, the person is to be treated as acting or, as the case may be, having acted under that appointment.
- (9) In this section—
- “sheriff principal”, where it first occurs in subsection (1), includes temporary sheriff principal, and
  - “sheriff” does not include part-time sheriff or honorary sheriff.”.

## 26 Appointment of part-time sheriffs

In subsection (3) of section 11A (appointment of part-time sheriffs: requirements) of the 1971 Act—

- (a) after “unless” insert—
  - “(a) the person is”, and
- (b) at the end of the subsection add “and
  - (b) the Scottish Ministers have consulted the Lord President of the Court of Session about the proposed appointment.”.

## **27 Sheriffs and part-time sheriffs: official oaths**

In the Promissory Oaths Act 1868 (c. 72), in the second part of the Schedule (persons to take oath of allegiance and judicial oath), after “sheriffdoms,” insert “sheriffs, part-time sheriffs”.

### **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.
- (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.

## **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,

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- (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—
- (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.

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- (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

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- (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.

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- (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.

### **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)—

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- (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
  - (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](#)).

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- (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.”.

### *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”.

## **CHAPTER 6**

### TRAINING AND APPRAISAL OF JUSTICES OF THE PEACE

#### **42 Training and appraisal of justices of the peace**

- (1) Section 69 (training and appraisal of justices of the peace) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 ([asp 6](#)) is amended as follows.
- (2) In subsection (1), for “Scottish Ministers” substitute “Lord President of the Court of Session”.
- (3) Subsections (2) and (4) are repealed.

## CHAPTER 7

### MEANING OF “JUDICIAL OFFICE HOLDER”

#### 43 Meaning of “judicial office holder”

- (1) In this Part “judicial office holder” means—
- (a) the holder of any of the judicial offices mentioned in subsection (2),
  - (b) a person acting as a judge by virtue of section 22(1) or (4) (re-employment of retired Court of Session judges) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), or
  - (c) a person acting as a sheriff by virtue of section 14A(1) or (8) (re-employment of retired sheriffs principal and sheriffs) of the 1971 Act.
- (2) Those judicial offices are—
- (a) the office of judge of the Court of Session,
  - (b) the office of Chairman of the Scottish Land Court,
  - (c) the office of temporary judge,
  - (d) the office of sheriff principal,
  - (e) the office of temporary sheriff principal,
  - (f) the office of sheriff,
  - (g) the office of part-time sheriff,
  - (h) the office of stipendiary magistrate,
  - (i) the office of justice of the peace,
  - (j) such other judicial offices (whether full-time, part-time or temporary) as the Scottish Ministers may by order specify.
- (3) Before making an order under subsection (2)(j), the Scottish Ministers must consult the Lord President.