



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*Status: This is the original version (as it was originally enacted).*

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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.