

## SCHEDULE 8 CONDUCT AND FITNESS ETC.

### PART 2

#### FITNESS AND REMOVAL

##### *Application of Part*

- 11 (1) This schedule Part applies in relation to the ordinary members and legal members of the Scottish Tribunals (but not the judicial members of the Tribunals).
- (2) The references in this schedule Part to a member of or position in the Scottish Tribunals are to be read accordingly.
- 12 In this schedule Part, the references to unfitness to hold the position of member of the Scottish Tribunals are to unfitness by reason of inability, neglect of duty or misbehaviour.

##### *Constitution and procedure*

- 13 (1) The First Minister must constitute a fitness assessment tribunal when requested to do so by the Lord President.
- (2) The First Minister may constitute a fitness assessment tribunal—
- (a) in such other circumstances as the First Minister thinks fit, and
  - (b) following consultation with the Lord President.
- (3) The function of a fitness assessment tribunal is to investigate and report on whether a member of the Scottish Tribunals is unfit to hold the position of member of the Tribunals.
- 14 The Court of Session may by act of sederunt make provision as to the procedure to be followed in proceedings at a fitness assessment tribunal.

##### *Composition and remuneration*

- 15 (1) A fitness assessment tribunal is to consist of—
- (a) one person who is, or has been—
    - (i) a judge of the Court of Session (except a temporary judge), or
    - (ii) a sheriff (except a part-time sheriff),
  - (b) one person who is—
    - (i) where the member under investigation is an ordinary member, another ordinary member, or
    - (ii) where the member under investigation is a legal member, another legal member, and
  - (c) one person who does not fall (and has never fallen) within a category of person who may be a member of the tribunal by virtue of sub-paragraph (a) or (b).
- (2) The selection of persons to be members of the tribunal is to be made by the First Minister with the agreement of the Lord President.

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*Status: This is the original version (as it was originally enacted).*

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- 16 (1) The Scottish Ministers—
- (a) must pay such expenses as they consider are reasonably required to be incurred to enable a fitness assessment tribunal to carry out its functions,
  - (b) may pay such remuneration to, and expenses of, any member of such a tribunal as they think fit.
- (2) Sub-paragraph (1)(b) does not apply in relation to such a member if the member is a sheriff or a judge of the Court of Session.

*Proceedings before tribunal*

- 17 (1) A fitness assessment tribunal 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 of law in Scotland.
- 18 (1) Sub-paragraph (2) applies where a person on whom a requirement has been imposed under paragraph 17(1)—
- (a) refuses or fails, without reasonable excuse—
    - (i) to comply with the requirement,
    - (ii) while attending the tribunal proceedings to give evidence, to answer any question,
  - (b) deliberately alters, conceals or destroys any document which the person is required to produce.
- (2) The Court of Session may, on an application made to it by the tribunal—
- (a) make such order for enforcing compliance or otherwise as it thinks fit, or
  - (b) deal with the matter as if it were a contempt of the Court.

*Suspension during investigation*

- 19 (1) Sub-paragraph (2) applies if the Lord President requests the First Minister to constitute a fitness assessment tribunal to investigate whether a member of the Scottish Tribunals is unfit to hold the position of member of the Tribunals.
- (2) The Lord President may suspend the member from the position at any time before the tribunal submits its report as required by paragraph 22(2).
- (3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
- (a) the Lord President revokes it, or
  - (b) the report is laid as required by paragraph 22(3).
- 20 (1) Sub-paragraph (2) applies if a fitness assessment tribunal—
- (a) recommends that a member of the Scottish Tribunals who is subject to its investigation should be suspended from the position as member of the Tribunals, and
  - (b) does so in writing at any time before the tribunal submits its report as required by paragraph 22(2).

- (2) The First Minister may suspend the member from the position at any time before laying the report as required by paragraph 22(3).
  - (3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
    - (a) the First Minister revokes it, or
    - (b) the report is laid as required by paragraph 22(3).
- 21 Suspension under paragraph 19(2) or 20(2) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

*Report and removal*

- 22 (1) A report by a fitness assessment tribunal must—
  - (a) be in writing, and
  - (b) contain reasons for its conclusions.
- (2) As soon as reasonably practicable after it is completed, such a report must be submitted by the tribunal to—
  - (a) the First Minister, and
  - (b) the Lord President.
- (3) The First Minister must lay before the Scottish Parliament each report submitted under sub-paragraph (2).
- 23 (1) If the relevant condition is met, the First Minister may remove a member of the Scottish Tribunals from the position of member of the Tribunals.
- (2) The relevant condition is that a fitness assessment tribunal has submitted a report under paragraph 22(2) concluding that the member is unfit to hold the position of member of the Scottish Tribunals.