

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Part 1 - Sheriff Courts

Chapter 2 - Judiciary of the sheriffdoms

Fitness for office

45. Sections 21 to 25 re-enact, and extend to summary sheriffs and part-time summary sheriffs, sections 12A to 12E of the Sheriff Courts (Scotland) Act 1971, as inserted by the Judiciary and Courts (Scotland) Act 2008. These provisions are consistent with those which apply to the senior judiciary by virtue of sections 35 to 39 of the latter Act.

Section 21 – Tribunal to consider fitness for office

46. Section 21 provides that the First Minister must set up a tribunal to investigate and report on whether a person is unfit to hold judicial office by reason of inability, neglect of duty, or misbehaviour where requested to do so by the Lord President (subsection (1)). The First Minister may set up such a tribunal in other such circumstances as the First Minister thinks fit, having consulted the Lord President (subsection (2)). Subsection (3) provides that sheriffs principal, sheriffs, summary sheriffs, part-time sheriffs, and part-time summary sheriffs are all potentially subject to the jurisdiction of such tribunals. Subsection (4) provides that the tribunal is to consist of one judge who must be a qualifying member of the Judicial Committee of the Privy Council (and who will, by virtue of subsection (7), chair the tribunal and have a casting vote); one holder of the relevant judicial office; one individual who has been qualified for at least 10 years as a solicitor or advocate; and one individual who does not, and never has, fallen within any of the other categories. The terms “qualifying member of the Judicial Committee of the Privy Council” and “relevant judicial office” are defined in subsection (5). The membership of the tribunal is to be selected by the First Minister, with the agreement of the Lord President (subsection (6)).

Section 22 – Tribunal investigations: suspension from office

47. Section 22 provides for the suspension from judicial office of the individual who is the subject of the tribunal’s investigation. This suspension may be effected by the Lord President, where the tribunal was constituted at the Lord President’s request (subsections (1) and (2)), or by the First Minister, on receiving a recommendation to that effect from the tribunal (subsections (4) and (5)). In each case, the suspension lasts until the person who made it orders otherwise (subsections (3) and (6)). Suspension does not affect the remuneration of the suspended judicial officer (subsection (7)).

Section 23 – Further provision about tribunals

48. Section 23 provides that a tribunal may require any person to attend its proceedings to give evidence or may require any person to produce documents (subsection (1)).

The limits upon the requirements which may be made are the same as those which apply to requirements made by a court (subsection (2)). Subsection (3) provides for the enforcement of these requirements by providing that if a person fails to comply with either or both of these requirements the tribunal may make an application to the Court of Session. The Court of Session may, in turn, make an order enforcing compliance or deal with the matter as if it were a contempt of the court (subsection (4)). Subsection (5) gives the Court of Session power, by act of sederunt, to make provision as to the procedure to be followed by and before a tribunal constituted under section 21 (subsection (5)). The expenses of a tribunal, and the payment of remuneration and expenses to its members are for the Scottish Ministers (subsection (6)).

Section 24 – Tribunal report

49. **Section 24** provides that the report of a tribunal must be in writing, contain the reasons for the tribunal's decision, and be submitted to the First Minister (subsection (1)) who must then lay the report before the Parliament (subsection (2)).

Section 25 – Removal from office

50. **Section 25** provides for a judicial office holder's removal from office following the report of a tribunal constituted under section 21. Subsection (1) provides that the First Minister may remove an individual from the office of sheriff principal, sheriff, part-time sheriff, summary sheriff, or part-time summary sheriff if the tribunal has reported that the individual is unfit to hold that office and after that report has been laid before the Parliament. In the case of a sheriff principal, sheriff, or summary sheriff, such removal requires an order under the negative procedure (subsections (2) and (3)).

Section 26 – Abolition of the office of honorary sheriff

51. **Section 26** abolishes the office of honorary sheriff. Honorary sheriffs hold office under section 17 of the Sheriff Courts (Scotland) Act 1907 and have not been subject to the usual requirements for shrieval qualification in section 5 of the Sheriff Courts (Scotland) Act 1971 (which are re-enacted in section 14 of the Act). Therefore after all honorary sheriffs have left office all of the judiciary of a sheriffdom will be legally qualified.