



Judiciary and Courts (Scotland) Act 2008

2008 asp 6

PART 2

THE JUDICIARY

CHAPTER 3

JUDICIAL APPOINTMENTS

[^{F1}Other Court of Session judges

Textual Amendments

- F1** Ss. 20A-20G and preceding cross-heading substituted for ss. 21-23 (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), **ss. 123**, 138(2); S.S.I. 2015/77, art. 2(2)(3), Sch.

20A Qualification of certain individuals for appointment as Court of Session judge

- (1) An individual is qualified for appointment as a judge of the Court of Session if the individual—
- (a) immediately before the appointment—
 - (i) held the office of sheriff principal or sheriff, and
 - (ii) had held office as either sheriff principal or sheriff throughout the period of 5 years immediately preceding the appointment, or
 - (b) at the time of appointment—
 - (i) is a solicitor having a right of audience in the Court of Session or the High Court of Justiciary under section 25A of the Solicitors (Scotland) Act 1980 (rights of audience), and
 - (ii) has been such a solicitor throughout the period of 5 years immediately preceding the appointment.
- (2) Subsection (1) does not affect an individual's qualification for appointment as a judge of the Court of Session by virtue of article xix of the Union with England Act 1707.

Changes to legislation: There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008, Cross Heading: Other Court of Session judges. (See end of Document for details)

20B Temporary judges

- (1) The Scottish Ministers may appoint an individual to act as a judge of the Court of Session; and an individual so appointed is to be known as a “temporary judge”.
- (2) An individual appointed under subsection (1) may also, by virtue of the appointment, act as a judge of the High Court of Justiciary.
- (3) The Scottish Ministers may appoint an individual under subsection (1) only if—
 - (a) the individual is qualified for appointment as a judge of the Court of Session, and
 - (b) the Scottish Ministers have consulted the Lord President before making the appointment.
- (4) Subject to section 20C, an appointment as a temporary judge lasts for 5 years.
- (5) Subject to subsection (6), an individual appointed under subsection (1) is, while acting as a judge of the Court of Session or the High Court of Justiciary, to be treated for all purposes as a judge of that Court and may exercise the jurisdiction and powers that attach to that office.
- (6) Such an individual is not to be treated as a judge of the Court of Session for the purposes of any enactment or rule of law relating to—
 - (a) the appointment, tenure of office, retirement, removal or disqualification of judges of that Court (including, without limiting that generality, any enactment or rule of law relating to the number of judges who may be appointed),
 - (b) the remuneration, allowances or pensions of such a judge.
- (7) The appointment of an individual under subsection (1) does not affect—
 - (a) any appointment of the individual as a sheriff principal or sheriff, or
 - (b) the individual's continuing with any business or professional occupation not inconsistent with the individual acting as a judge.

20C Reappointment of temporary judges

- (1) A temporary judge whose appointment comes to an end by virtue of the expiry of the 5 year period mentioned in section 20B(4) is to be reappointed unless—
 - (a) the temporary judge declines reappointment,
 - (b) the Lord President has made a recommendation to the Scottish Ministers against the reappointment, or
 - (c) the temporary judge has sat for fewer than 50 days in total in that 5 year period.
- (2) Section 20B (apart from subsection (3)) applies to a reappointment under subsection (1) as it applies to an appointment.
- (3) A temporary judge whose appointment comes to an end by resignation under section 20D may be reappointed.
- (4) Section 20B applies to a reappointment under subsection (3) as it applies to an appointment.

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20D Cessation of appointment of temporary judges

- (1) A temporary judge may resign at any time by giving notice to that effect to the Scottish Ministers.
- (2) An individual's appointment as a temporary judge ends—
 - (a) when the individual resigns in accordance with subsection (1),
 - (b) when the individual retires from office, or
 - (c) if the individual is removed from office as such under section 39 (temporary judges: removal from office).

20E Re-employment of former Court of Session and Supreme Court judges

- (1) The Lord President may appoint a qualifying former judge to act as a judge of the Court of Session.
- (2) An individual appointed under subsection (1) may also, by virtue of the appointment, act as a judge of the High Court of Justiciary.
- (3) An individual so appointed may act as a judge only during such periods or on such occasions as the Lord President may determine.
- (4) The Lord President may make an appointment under subsection (1) only if it appears to the Lord President to be expedient as a temporary measure in order to facilitate the disposal of business in the Court of Session or the High Court of Justiciary.
- (5) A “qualifying former judge” is an individual who—
 - (a) has ceased to hold the office of—
 - (i) judge of the Court of Session other than by virtue of section 95(6) of the Scotland Act 1998, or
 - (ii) Justice of the Supreme Court or President or Deputy President of that Court and who, at the time of being appointed to the office in question, was eligible for appointment as a judge in the Court of Session, and
 - (b) has not reached the age of 75.

20F Re-employment of former judges: further provision

- (1) Subject to subsection (2), an individual's appointment under section 20E(1) lasts until recalled by the Lord President.
- (2) An individual's appointment under section 20E(1) ceases when the individual reaches the age of 75.
- (3) Despite the ending of an individual's appointment under section 20E(1)—
 - (a) the individual may continue to deal with, give judgment in or deal with an ancillary matter relating to, a case begun before the individual while acting under that appointment,
 - (b) so far as necessary for that purpose, and for the purpose of any subsequent proceedings arising out of the case or matter, the individual is to be treated as acting or, as the case may be, having acted under that appointment.
- (4) Subject to subsection (5), an individual appointed under section 20E(1) is, while acting as a judge of the Court of Session or the High Court of Justiciary, to be treated for all

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purposes as a judge of that Court and may exercise the jurisdiction and powers that attach to that office.

- (5) Such an individual is not to be treated as a judge of the Court of Session for the purposes of any enactment or rule of law relating to—
- (a) the appointment, tenure of office, retirement, removal or disqualification of judges of that Court (including, without limiting that generality, any enactment or rule of law relating to the number of judges who may be appointed),
 - (b) the oaths to be taken by such judges,
 - (c) the remuneration, allowances or pensions of such a judge.

20G Remuneration and expenses of temporary and former judges

- (1) The Scottish Courts and Tribunals Service (“the SCTS”) is to pay to an individual appointed under section 20B(1) or 20E(1) such remuneration [^{F2}and such allowances] as the Scottish Ministers may determine.
- (2) The Scottish Ministers may determine different amounts of remuneration [^{F3}and different amounts of allowances] for—
 - (a) different individuals so appointed, or
 - (b) different descriptions of individuals so appointed.
- (3) The SCTS may pay to an individual appointed under section 20B(1) or 20E(1) such sums as it may determine in respect of expenses reasonably incurred by the individual in the performance of, or in connection with, the individual's duties.
- (4) The SCTS may—
 - (a) determine the circumstances in which such sums may be paid, and
 - (b) determine different circumstances for different individuals.]

Textual Amendments

- F2** Words in s. 20G(1) inserted (10.3.2022 for specified purposes, 10.5.2022 in so far as not already in force) by [Public Service Pensions and Judicial Offices Act 2022 \(c. 7\)](#), s. 131(1)(4)(b)(ii), [Sch. 2 para. 20\(2\)](#)
- F3** Words in s. 20G(2) inserted (10.3.2022 for specified purposes, 10.5.2022 in so far as not already in force) by [Public Service Pensions and Judicial Offices Act 2022 \(c. 7\)](#), s. 131(1)(4)(b)(ii), [Sch. 2 para. 20\(3\)](#)

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