

Changes to legislation: There are currently no known outstanding effects for the Tribunals (Scotland) Act 2014, PART 2. (See end of Document for details)

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.

Commencement Information

I1 Sch. 8 para. 11 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

- 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.

Commencement Information

I2 Sch. 8 para. 12 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

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.

Commencement Information

I3 Sch. 8 para. 13 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

- 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.

Commencement Information

I4 Sch. 8 para. 14 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

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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.

Commencement Information

I5 Sch. 8 para. 15 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

- 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.

Commencement Information

I6 Sch. 8 para. 16 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

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.

Commencement Information

I7 Sch. 8 para. 17 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

- 18 (1) Sub-paragraph (2) applies where a person on whom a requirement has been imposed under paragraph 17(1)—

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- (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.

Commencement Information

18 Sch. 8 para. 18 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

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).

Commencement Information

19 Sch. 8 para. 19 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

- 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).

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110 Sch. 8 para. 20 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

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- 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.

Commencement Information

I11 Sch. 8 para. 21 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

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).

Commencement Information

I12 Sch. 8 para. 22 in force at 1.4.2015 by S.S.I. 2015/116, art. 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.

Commencement Information

I13 Sch. 8 para. 23 in force at 1.4.2015 by S.S.I. 2015/116, art. 2

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