

Draft Order laid before the Scottish Parliament under section 10(2) of the Rehabilitation of Offenders Act 1974 and section 71(4)(b) of the Judiciary and Courts (Scotland) Act 2008, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

JUDICIAL APPOINTMENTS AND DISCIPLINE

REHABILITATION OF OFFENDERS

SCOTTISH COURT SERVICE

SHERIFF COURT

**The Judiciary and Courts (Scotland) Act 2008 (Consequential
Modifications) Order 2009**

Made - - - -

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 4(4) of the Rehabilitation of Offenders Act 1974(a), section 74 of the Judiciary and Courts (Scotland) Act 2008(b) and all other powers enabling them to do so.

In accordance with sections 10(2) of the 1974 Act and 71(4)(b) of the 2008 Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation, interpretation and commencement

1.—(1) This Order may be cited as the Judiciary and Courts (Scotland) Act 2008 (Consequential Modifications) Order 2009.

(2) References to “the Act” mean the Judiciary and Courts (Scotland) Act 2008.

(3) Article 2 comes into force on the day that section 27 of the Act comes into force.

(4) Article 3(1) comes into force on the day that section 40 of and paragraph 2 of Schedule 5 to the Act come into force.

(5) Article 3(2) comes into force on the day that section 61 of the Act comes into force.

(6) Article 4 comes into force on 1st October 2009.

(a) 1974 c.53. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) and the Scotland Act 1998 (Transfer of Functions of the Scottish Ministers etc.) Order 2003 (S.I. 2003/415). Article 4 of this Order is made under section 4(4) of the 1974 Act.

(b) 2008 asp 6.

Modification of the Promissory Oaths Act 1871

2. In section 2 of the Promissory Oaths Act 1871(a) (persons before whom oaths to be taken) in the third paragraph (relating to Scotland) after the words “acts as justice” insert “or sheriff, or, for a part-time sheriff, in open court before any sheriff principal”.

Modification of the Sheriff Courts (Scotland) Act 1971

3.—(1) In section 11B(4) of the Sheriff Courts (Scotland) Act 1971(b) (limitation, termination etc of appointment of part-time sheriffs), for “section 11C” substitute “section 12E”.

(2) In section 19 for the words from “The Secretary of State” to “Treasury” substitute “The Scottish Court Service may pay to any sheriff principal such allowances as it”.

Modification of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003

4. In Part 2 of Schedule 4 to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 (excepted offices and employments), after paragraph 27 insert—

“29. Members mentioned in section 35(4)(c) of the Judiciary and Courts (Scotland) Act 2008 of a tribunal constituted under section 35(1) of that Act to consider the fitness for judicial office of a person holding a judicial office mentioned in section 35(2) of that Act.

30. Members mentioned in section 12A(4)(d) of the Sheriff Court (Scotland) Act 1971(c) of a tribunal constituted under section 12A(1) of that Act to consider the fitness for shrieval office of a person holding a shrieval office mentioned in section 12A(2) of that Act.

31. Lay members of the Judicial Appointments Board for Scotland appointed by the Scottish Ministers under paragraph 2 of schedule 1 to the Judiciary and Courts (Scotland) Act 2008.

32. Non-judicial members of the Scottish Court Service mentioned in paragraph 2(3)(d) of schedule 3 to the Judiciary and Courts (Scotland) Act 2008.”.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh

2009

(a) 1871 c.48 (34 and 35 Vict.)

(b) 1971 c.58, section 11B was inserted by section 7 of the Bail, Judicial Appointments etc. (Scotland) Act 2000, asp 9.

(c) 1971 c.58, section 12A was inserted by section 40 of the Judiciary and Courts (Scotland) Act 2008, asp 6.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is in consequence of the Judiciary and Courts (Scotland) Act 2008 (“the Act”).

Section 27 of the Act amends Part 2 of the Schedule to the Promissory Oaths Act 1868 to require sheriffs and part-time sheriffs to take the oath of allegiance to the Queen and the judicial oath on appointment. Article 2 amends section 2 of the Promissory Oaths Act 1871 to provide that this oath is to be taken by a sheriff before the sheriff principal for his or her sheriffdom and by a part-time sheriff before any sheriff principal, reflecting the fact that a part-time sheriff is not allocated to a particular sheriffdom. Justices of the peace (referred to in section 2 of the 1871 Act as “justices”) are required to take the oath of allegiance and judicial oath before the sheriff principal and judges and sheriffs principal are required to take those oaths before a judge or judges of the Court of Session.

Section 40 of the Act substitutes new sections 12A to 12F for section 12 of the Sheriff Courts (Scotland) Act 1971 (“the 1971 Act”) and subparagraph 2(3) of Schedule 5 to the Act repeals section 11C of the 1971 Act. Article 3(1) amends the cross reference in section 11B(4) of the 1971 Act to refer to the new section 12E.

Section 61 of the Act provides that the Scottish Court Service has the function of providing administrative support for the Scottish courts and judiciary. Article 3(2) amends section 19 of the 1971 Act to provide that the Scottish Court Service rather than Scottish Ministers is responsible for paying the travelling allowances of sheriffs principal.

Article 4 inserts four new entries into part 2 of schedule 4 to the Rehabilitation of Offenders Act 1974 (Exclusions and Exemptions) (Scotland) Order 2003. The effect of this is to provide that the lay member of a tribunal constituted to consider the fitness for judicial office of a judge or a sheriff and lay members of the Scottish Court Service and of the Judicial Appointments Board for Scotland may be asked to disclose information about spent convictions.

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