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STATUTORY INSTRUMENTS

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**1999 No. 1017**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND**

**The Scotland Act 1998 (Transitory and Transitional  
Provisions) (Removal of Judges) Order 1999**

*Made - - - - 24th March 1999*

*Laid before Parliament 31st March 1999*

*Coming into force in accordance with article 1(1)*

The Secretary of State, in exercise of the powers conferred on him by sections 112(1), 113 and 129(1) of the Scotland Act 1998<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Scotland Act 1998 (Transitory and Transitional Provisions) (Removal of Judges) Order 1999 and shall come into force on the principal appointed day<sup>(2)</sup>.

(2) In this Order—

“the Act” means the Scotland Act 1998;

“advocate” means a member of the Faculty of Advocates; and

“foreign lawyer” and “solicitor” have the same meanings as in section 65(1) of the Solicitors (Scotland) Act 1980<sup>(3)</sup>.

**Period of application**

2. This Order shall apply until whichever is the earlier of—

(a) the date of its revocation;

(b) the date of the coming into force of any provision made by or under an Act of the Scottish Parliament for the matters referred to in subsections (8) and (9) of section 95 of the Act.

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(1) 1998 c. 46.

(2) The principal appointed day is 1st July 1999 by virtue of article 3 of the Scotland Act 1998 (Commencement) Order 1998 (S.I.1998/3178).

(3) 1980 c. 46; the definition of “foreign lawyer” was inserted in section 65(1) by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, Part II, paragraph 29(15)(a).

### **Constitution of tribunal**

3. The First Minister shall—

- (a) when requested by the Lord President of the Court of Session to do so; or
- (b) in such other circumstances as the First Minister thinks fit,

constitute a tribunal to investigate and report on whether a judge of the Court of Session or the Chairman of the Scottish Land Court is unfit for office by reason of inability, neglect of duty or misbehaviour.

### **Membership of tribunal**

4.—(1) A tribunal constituted under article 3 shall consist of three persons appointed as members by the First Minister.

(2) One member shall be appointed to chair the tribunal and that person shall be a member of the Judicial Committee of the Privy Council who holds or has held any of the offices referred to in section 103(2) of the Act.

(3) The second member of the tribunal shall be a person who—

- (a) is, and has been for at least ten years, legally qualified; or
- (b) was but is no longer legally qualified, provided that when he was last an advocate or a solicitor he had been legally qualified for at least ten years.

(4) For the purposes of paragraph (3), a person shall be legally qualified if he is an advocate or a solicitor.

(5) The third member of the tribunal shall be a person who is not, and never has been—

- (a) an advocate;
- (b) a solicitor; or
- (c) a foreign lawyer.

### **Report by tribunal**

5. A tribunal constituted under article 3 shall make a written report to the First Minister and he shall lay this before the Parliament.

### **Suspension from office**

6.—(1) A tribunal constituted under article 3 may, on undertaking an investigation or at any time during the course of an investigation, recommend in writing to the First Minister that the person who is the subject of the investigation be suspended from office.

(2) On receiving a recommendation under paragraph (1), the First Minister may suspend from office the person to whom the recommendation relates.

(3) A person suspended under paragraph (2)—

- (a) shall remain so suspended until the First Minister otherwise directs;
- (b) shall continue to receive his salary during the period of his suspension.

### **Payments to tribunal members**

7. The Scottish Ministers—

- (a) may pay to any person appointed as a member of a tribunal constituted under article 3 such sums by way of remuneration and expenses as appear to them appropriate;

(b) shall pay such sums as may be required to enable such a tribunal to carry out its functions.

St Andrew's House,  
Edinburgh  
24th March 1999

*Henry McLeish*  
Minister of State, Scottish Office

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes transitional provision for the matters referred to in subsections (8) and (9) of section 95 of the Scotland Act 1998 (“the Act”), pending the coming into force of an Act of the Scottish Parliament dealing with those matters.

The Order requires or enables the First Minister in specified circumstances to constitute a tribunal to investigate and report on whether a judge of the Court of Session or the Chairman of the Scottish Land Court is unfit for office by reason of inability, neglect of duty or misbehaviour. If the report of the tribunal is to the effect that the person is unfit for office, section 95 of the Act empowers the First Minister to make a motion to the Scottish Parliament seeking a resolution that he should recommend to Her Majesty that that person be removed from office. The Order makes provision relative to the membership of the tribunal, laying its report before the Parliament, interim suspension from office, and payments to the tribunal members and of the tribunal’s costs.