



# Judiciary and Courts (Scotland) Act 2008

## 2008 asp 6

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 25th September 2008 and received Royal Assent on 29 October 2008**

An Act of the Scottish Parliament to make provision about the judiciary and the courts; to establish the Scottish Court Service; and for connected purposes.

### Extent Information

**E1** Pt. 2 ch. 2 extended to E.W.N.I. (14.9.2009) by [S.I. 2009/2231](#), **art. 4**

## PART 1

### JUDICIAL INDEPENDENCE

#### 1 Guarantee of continued judicial independence

- (1) The following persons must uphold the continued independence of the judiciary—
  - (a) the First Minister,
  - (b) the Lord Advocate,
  - (c) the Scottish Ministers,
  - (d) members of the Scottish Parliament, and
  - (e) all other persons with responsibility for matters relating to—
    - (i) the judiciary, or
    - (ii) the administration of justice,where that responsibility is to be discharged only in or as regards Scotland.
- (2) In particular, the First Minister, the Lord Advocate and the Scottish Ministers—
  - (a) must not seek to influence particular judicial decisions through any special access to the judiciary, and
  - (b) must have regard to the need for the judiciary to have the support necessary to enable them to carry out their functions.
- (3) In this section “the judiciary” means the judiciary of—
  - (a) the Supreme Court of the United Kingdom,

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- (b) any other court established under the law of Scotland, and
  - (c) any international court.
- (4) In subsection (3)(c) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—
- (a) an agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is a party, or
  - (b) a resolution of the Security Council or General Assembly of the United Nations.

## PART 2

### THE JUDICIARY

#### CHAPTER 1

##### HEAD OF THE SCOTTISH JUDICIARY

## 2 Head of the Scottish Judiciary

- (1) The Lord President is the Head of the Scottish Judiciary.
- (2) As Head of the Scottish Judiciary the Lord President is responsible—
- (a) for making and maintaining arrangements for securing the efficient disposal of business in the Scottish courts,
  - (b) for representing the views of the Scottish judiciary to the Scottish Parliament and the Scottish Ministers,
  - (c) for laying before the Scottish Parliament written representations on matters that appear to the Head of the Scottish Judiciary to be matters of importance relating to—
    - (i) the Scottish judiciary, or
    - (ii) the administration of justice,
  - (d) for making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders, and
  - (e) for making and maintaining, in accordance with section 28, appropriate arrangements for—
    - (i) the investigation and determination of any matter concerning the conduct of judicial office holders, and
    - (ii) the review of such determinations.
- (3) If, in carrying out the responsibility mentioned in subsection (2)(a), the Lord President gives a direction of an administrative character to a sheriff principal, the sheriff principal must comply with the direction.
- (4) In carrying out the responsibility for making and maintaining arrangements for training mentioned in subsection (2)(d) the Lord President must require any judicial office holder, or class of judicial office holder, to attend such training as the Lord President determines.

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- (5) References in this section to the Scottish judiciary are references to the judiciary of any court established under the law of Scotland (other than the Supreme Court of the United Kingdom).
- (6) In this section, “the Scottish courts” means—
- (a) the Court of Session,
  - (b) the High Court of Justiciary,
  - (c) the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983 (c. 2),
  - (d) the election court in Scotland constituted under section 123 of that Act,
  - (e) the Lands Valuation Appeal Court,
  - (f) the sheriff courts,
  - (g) justice of the peace courts, and
  - (h) such other courts as the Scottish Ministers may by order specify.
- (7) Before making an order under subsection (6)(h), the Scottish Ministers must consult the Lord President.

#### Commencement Information

- II** S. 2 partly in force; s. 2 not in force at Royal Assent see s. 76; s. 2(1)(5)(6) in force for specified purposes and s. 2(2)(b)(c) in force at 1.6.2009 by S.S.I. 2009/192, art. 2, Sch.

VALID FROM 01/04/2010

### 3 Delegation of functions

- (1) The Lord President may delegate to a judicial office holder any function mentioned in subsection (2) of section 2 other than the functions mentioned in subsection (2) below.
- (2) Those functions are—
- (a) so far as exercisable in relation to sheriff courts or justice of the peace courts, the function conferred by paragraph (a) of subsection (2) of that section,
  - (b) the function conferred by paragraph (e) of subsection (2) of that section.

## CHAPTER 2

### SENIOR JUDICIARY: VACANCY, INCAPACITY AND SUSPENSION

#### Extent Information

- E2** Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by S.I. 2009/2231, art. 4

### 4 Lord President

- (1) This section applies during any period when—

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- (a) the office of Lord President is vacant,
  - (b) the Lord President is incapacitated, or
  - (c) the Lord President is suspended.
- (2) During such a period—
- (a) any function of the Lord President is exercisable instead by the Lord Justice Clerk,
  - (b) anything that falls to be done in relation to the Lord President falls to be done instead in relation to the Lord Justice Clerk,
  - (c) any function of the Lord Justice Clerk is exercisable instead by the senior judge of the Inner House, and
  - (d) anything that falls to be done in relation to the Lord Justice Clerk falls to be done instead in relation to the senior judge of the Inner House.
- (3) For the purposes of this section—
- (a) the Lord President is to be regarded as incapacitated only if the First Minister has received a declaration in writing signed by a majority of the total number of judges of the Inner House declaring that they are satisfied that the Lord President is incapacitated,
  - (b) in such a case, the Lord President is to be regarded as incapacitated until the First Minister has received a declaration in writing signed by a majority of the total number of judges of the Inner House declaring that they are satisfied that the Lord President is no longer incapacitated.
- (4) The judges of the Inner House making a declaration for the purposes of subsection (3) (a) or (b) must include the Lord Justice Clerk.
- (5) The requirement in subsection (4)—
- (a) does not apply during any period when section 5 applies, and
  - (b) is subject to section 7(4).
- (6) The First Minister must send a copy of a declaration received under subsection (3)(a) or (b) to the Presiding Officer of the Scottish Parliament.
- (7) The reference in subsection (2)(a) to functions of the Lord President does not include the function of participating in a panel established under section 19(2) in connection with a vacancy, or an expected vacancy, in the office of Lord Justice Clerk.

#### Extent Information

**E3** Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by S.I. 2009/2231, art. 4

## 5 Lord Justice Clerk

- (1) This section applies during any period when—
- (a) the office of Lord Justice Clerk is vacant,
  - (b) the Lord Justice Clerk is incapacitated, or
  - (c) the Lord Justice Clerk is suspended.
- (2) During such a period—
- (a) any function of the Lord Justice Clerk is exercisable instead by the senior judge of the Inner House, and

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- (b) anything that falls to be done in relation to the Lord Justice Clerk falls to be done instead in relation to the senior judge of the Inner House.
- (3) For the purposes of this section—
  - (a) the Lord Justice Clerk is to be regarded as incapacitated only if the First Minister has received a declaration in writing signed by a majority of the total number of judges of the Inner House declaring that they are satisfied that the Lord Justice Clerk is incapacitated,
  - (b) in such a case, the Lord Justice Clerk is to be regarded as incapacitated until the First Minister has received a declaration in writing signed by a majority of the total number of judges in the Inner House declaring that they are satisfied that the Lord Justice Clerk is no longer incapacitated.
- (4) The judges of the Inner House making a declaration for the purposes of subsection (3) (a) or (b) must include the Lord President.
- (5) The requirement in subsection (4)—
  - (a) does not apply during any period when section 4 applies, and
  - (b) is subject to section 7(4).
- (6) The First Minister must send a copy of a declaration received under subsection (3)(a) or (b) to the Presiding Officer of the Scottish Parliament.

#### Extent Information

**E4** Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by [S.I. 2009/2231](#), [art. 4](#)

## 6 Periods when both sections 4 and 5 apply

- (1) Subsection (2) applies during any period when both sections 4 and 5 apply.
- (2) During such a period, subsection (2) of each of those sections does not apply and instead—
  - (a) any function of the Lord President is exercisable instead by the senior judge of the Inner House,
  - (b) anything that falls to be done in relation to the Lord President falls to be done instead in relation to the senior judge of the Inner House,
  - (c) any function of the Lord Justice Clerk is exercisable instead by the second senior judge of the Inner House, and
  - (d) anything that falls to be done in relation to the Lord Justice Clerk falls to be done instead in relation to the second senior judge of the Inner House.

#### Extent Information

**E5** Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by [S.I. 2009/2231](#), [art. 4](#)

## 7 Supplementary

- (1) Where—
  - (a) any function is exercisable by, or anything falls to be done in relation to, the senior judge of the Inner House by virtue of section 4, 5 or 6, and

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- (b) that judge is unavailable,  
the function is exercisable by, or the thing falls to be done in relation to, the second senior judge of the Inner House.
- (2) Where—
- (a) any function is exercisable by, or anything falls to be done in relation to, the second senior judge of the Inner House by virtue of section 6 or subsection (1) above, and
- (b) that judge is unavailable,  
the function is exercisable by, or the thing falls to be done in relation to, the next senior judge of the Inner House who is available.
- (3) In calculating the total number of judges of the Inner House for the purposes of section 4(3) or 5(3), the following are not to be counted—
- (a) in the case of section 4(3)—
- (i) the Lord President, and
  - (ii) during any period when section 5 applies, the Lord Justice Clerk,
- (b) in the case of section 5(3)—
- (i) the Lord Justice Clerk, and
  - (ii) during any period when section 4 applies, the Lord President, and
- (c) in either case—
- (i) any judge of the Inner House who is suspended from office, and
  - (ii) any office of judge of the Inner House which is vacant.
- (4) The requirements in sections 4(4) and 5(4) do not apply for the purpose of declarations under sections 4(3)(a) and 5(3)(a) respectively if—
- (a) the judges making the declarations are satisfied that both the Lord President and the Lord Justice Clerk are incapacitated, and
  - (b) the declarations state that this subsection applies.
- (5) Nothing in this Chapter affects any remuneration payable to, or in respect of, the Lord President, the Lord Justice Clerk or any other judge of the Inner House.

#### **Extent Information**

E6 Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by S.I. 2009/2231, art. 4

## **8 Interpretation of Chapter 2**

- (1) In this Chapter—
- “incapacitated”, in relation to the Lord President or the Lord Justice Clerk, means unable by reason of ill health to carry out the functions of the office concerned, and
- “suspended” means suspended from office under section 36.
- (2) A reference in this Chapter to the senior judge, the second senior judge or the next senior judge of the Inner House is to be construed by reference to seniority of appointment to a Division of the Inner House.
- (3) A reference in this Chapter to—

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- (a) any function of the Lord President includes any function of the Lord Justice General,
  - (b) anything that falls to be done in relation to the Lord President includes anything that falls to be done in relation to the Lord Justice General,
  - (c) the functions of the office of Lord President includes the functions of the office of Lord Justice General.
- (4) Where any other enactment makes provision for the carrying out of any function of the Lord President by the Lord Justice Clerk, this Act does not affect the operation of that enactment except in relation to any period during which section 4 applies.

#### Extent Information

E7 Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by S.I. 2009/2231, art. 4

## CHAPTER 3

### JUDICIAL APPOINTMENTS

#### *Judicial Appointments Board for Scotland*

#### **9 The Judicial Appointments Board for Scotland**

- (1) There is established a body to be known as the Judicial Appointments Board for Scotland (referred to in this Chapter as “the Board”).
- (2) The functions of the Board are—
- (a) to recommend to members of the Scottish Executive individuals for appointment to judicial offices within the Board's remit, and
  - (b) to provide advice to members of the Scottish Executive in connection with such appointments.
- (3) In carrying out its functions, the Board is not to be subject to the direction or control of any member of the Scottish Executive or any other person.
- (4) Schedule 1 makes further provision about the Board.

#### **10 Judicial offices within the Board's remit**

- (1) The judicial offices within the Board's remit are—
- (a) the office of judge of the Court of Session,
  - (b) the office of Chairman of the Scottish Land Court,
  - (c) the office of temporary judge (except in any case where the individual to be appointed to the office holds or has held one of the offices mentioned in subsection (2)),
  - (d) the office of sheriff principal,
  - (e) the office of sheriff,
  - (f) the office of part-time sheriff, and

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- (g) such other judicial offices (whether full-time, part-time or temporary) as the Scottish Ministers may by order specify.
- (2) The offices referred to in subsection (1)(c) are—
- (a) the office of judge of the European Court,
  - (b) the office of judge of the European Court of Human Rights,
  - (c) the office of Chairman of the Scottish Land Court,
  - (d) the office of sheriff principal, and
  - (e) the office of sheriff.
- (3) The Scottish Ministers may specify a judicial office under subsection (1)(g) only if the First Minister has, or the Scottish Ministers have, the function of making appointments to the office, or of nominating or recommending individuals for appointment to the office.
- (4) In subsection (1)(g), “judicial office ”means—
- (a) the office of judge of any court,
  - (b) the office of member of any tribunal, or
  - (c) any other office, or appointment, consisting of functions of a judicial nature.

## 11 Recommendations of the Board

- (1) The relevant Minister may—
- (a) appoint an individual to a judicial office within the Board's remit, or
  - (b) nominate or recommend an individual for appointment to such an office, only if the Board has recommended the individual for appointment to the office.
- (2) Subsection (3) applies where—
- (a) the Board has recommended an individual for appointment, and
  - (b) the relevant Minister has decided not to accept the recommendation.
- (3) The relevant Minister must give the Board notice of the decision.
- (4) The notice must include the reasons for the decision.
- (5) On receipt of the notice, the Board must—
- (a) reconsider its recommendation, and
  - (b) make a further recommendation (whether of the same or a different individual).
- (6) In this section references to the relevant Minister are—
- (a) where the First Minister has the function of making appointments to the judicial office concerned, or nominating or recommending individuals for appointment to the office, references to the First Minister,
  - (b) where the Scottish Ministers have that function, references to the Scottish Ministers.

## 12 Selection criteria

- (1) This section applies where the Board is selecting an individual to be recommended by it for appointment.



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- (2) Selection must be solely on merit.
- (3) The Board may select an individual only if it is satisfied that the individual is of good character.

### **13 Assessment of legal knowledge, skills and competence**

- (1) Only the judicial and legal members of the Board may take part in any assessment by the Board of an individual's—
  - (a) knowledge of the law, or
  - (b) skills and competence in the interpretation and application of the law.
- (2) Subsection (1) does not prevent a member of the Board from taking part in a decision of the Board as to whether to recommend an individual for appointment to a judicial office.

### **14 Encouragement of diversity**

- (1) In carrying out its functions, the Board must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office.
- (2) Subsection (1) is subject to section 12.

### **15 Guidance**

- (1) The Scottish Ministers may issue guidance to the Board as to the procedures to be followed by it in the carrying out of its functions.
- (2) The Lord President may issue guidance to the Board as to the procedures to be followed by it in the carrying out of its functions.
- (3) Guidance issued under subsection (1) or (2) may, in particular, relate to the manner in which the Board is to publicise vacancies and identify candidates for any appointment.
- (4) In carrying out its functions, the Board must have regard to any guidance issued under this section.
- (5) The Scottish Ministers must publish any guidance issued under subsection (1).
- (6) The Lord President must publish any guidance issued under subsection (2).

### **16 Guidance: procedure**

- (1) Before issuing any guidance under section 15(1) or (2), the Scottish Ministers or, as the case may be, the Lord President must lay a draft of the proposed guidance before the Scottish Parliament.
- (2) The Scottish Ministers or, as the case may be, the Lord President must not issue the guidance before the expiry of the period of 21 days beginning with the day on which the draft of it is laid before the Parliament under subsection (1).

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- (3) If, during that period, the Parliament by resolution makes any recommendations in relation to the draft guidance, the Scottish Ministers or, as the case may be, the Lord President must have regard to those recommendations.
- (4) The Scottish Ministers must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Lord President and the Board on the draft.
- (5) The Lord President must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Scottish Ministers and the Board on the draft.
- (6) In calculating a period of 21 days for the purposes of subsection (2), no account is to be taken of any time during which the Parliament is—
  - (a) dissolved, or
  - (b) in recess for more than 4 days.

## **17 Confidentiality of information**

- (1) A person (whether or not a member of the Board or its staff) who has provided or obtained confidential information in connection with the carrying out of the Board's functions must not disclose the information unless the disclosure is authorised.
- (2) Information is confidential for the purposes of subsection (1) if it relates to an identified or identifiable individual.
- (3) Disclosure of information is authorised for the purposes of subsection (1) only so far as it is—
  - (a) made with the consent of the individual to whom the information relates,
  - (b) necessary for the purposes of the carrying out by the Board of its functions,
  - (c) necessary for the purposes of the carrying out by a member of the Scottish Executive of a function of appointing an individual to a judicial office within the Board's remit, or nominating or recommending an individual for appointment to such an office, or
  - (d) required for the purposes of any legal proceedings, whether criminal or civil, (including for the purposes of the investigation of any offence or suspected offence).
- (4) For the purposes of this section, an opinion or other information given by one identified or identifiable individual about another is to be treated as information that relates to both individuals.
- (5) This section does not prevent the disclosure of information which is already, or has previously been, in the public domain.
- (6) Any disclosure of information in contravention of this section which causes loss or damage to the individual to whom the information relates is actionable at the instance of that individual.

## **18 Annual report**

- (1) As soon as practicable after the end of each year, the Board must—
  - (a) prepare and publish a report on the carrying out of its functions during that year, and

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(b) send a copy of the report to the Scottish Ministers.

- (2) The Scottish Ministers must lay before the Scottish Parliament a copy of each report sent to them by the Board under subsection (1)(b).

#### *Lord President and Lord Justice Clerk*

### **19 Appointment**

- (1) This section applies where a vacancy arises, or is expected to arise, in the office of Lord President or the office of Lord Justice Clerk.
- (2) The First Minister must establish a panel in accordance with schedule 2.
- (3) The function of the panel is to recommend to the First Minister individuals who are suitable for appointment to fill the vacancy.
- (4) For the purposes of section 95(2) of the Scotland Act 1998 (c. 46), the First Minister must not nominate any individual for appointment to fill the vacancy until the panel has made its recommendation under subsection (3).
- (5) In deciding whom to nominate for the purposes of that section, the First Minister must have regard to the panel's recommendation.

### **20 Selection criteria**

- (1) This section applies where a panel established under section 19(2) is selecting an individual to be recommended by it as suitable for appointment.
- (2) Selection must be solely on merit.
- (3) The panel may select an individual only if it is satisfied that the individual is of good character.

#### *Other Court of Session judges*

### **21 Eligibility of solicitors for appointment as judges**

In paragraph 1(b) (appointment of solicitors as judges of the Court of Session) of Schedule 4 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)

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- (a) for “both” substitute “ either ”, and
- (b) for “and” substitute “ or ”.

### **22 Temporary judges: tenure**

- (1) Paragraph 5 (temporary judges) of Schedule 4 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) is amended as follows.
- (2) In sub-paragraph (1), the words from “for” in the second place it appears to the end are repealed.
- (3) For sub-paragraph (2) substitute—

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- “(2) A person's appointment as a temporary judge lasts for 5 years, subject to the following provisions of this paragraph and paragraph 9 below.
- (3) A person's appointment as a temporary judge comes to an end on the date on which the person reaches the age of 70.
- (4) Sub-paragraph (3) above is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (power to authorise continuance in office up to the age of 75).
- (5) A person's appointment as a temporary judge comes to an end if the person is removed from office under section 39 of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (temporary judges: removal from office).
- (6) A person appointed as a temporary judge may resign at any time by giving notice to that effect to the Scottish Ministers.
- (7) Where a person's appointment as a temporary judge comes to an end by virtue of sub-paragraph (2) above, the person is to be reappointed under the said section 35(3), unless—
- (a) the person has declined reappointment,
  - (b) the person has reached the age of 70,
  - (c) the person has sat as a temporary judge on fewer than 50 days during the period of appointment, or
  - (d) the Lord President has recommended to the Scottish Ministers that the person should not be reappointed.
- (8) A person whose appointment as a temporary judge comes to an end by resignation under sub-paragraph (6) above may be reappointed under the said section 35(3).
- (9) The provisions of this paragraph, and paragraphs 6 to 11 below, apply to a reappointment as they apply to an appointment.”

### 23 Re-employment of retired judges

In section 22(1) (re-employment of retired judges) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)—

- (a) the words “, with the consent of the Scottish Ministers,” are repealed, and
- (b) in paragraph (a), after “Session” insert “ (and did not cease to hold that office by virtue of section 95(6) of the Scotland Act 1998 (c. 46)) ”.

*Sheriffs principal, sheriffs and part-time sheriffs*

### 24 Appointment of temporary sheriffs principal

- (1) Section 11 (appointment of temporary sheriffs principal) of the 1971 Act is amended as follows.
- (2) In subsection (1), for the words from “Secretary of State” to “sheriffdom,” in the second place that word appears substitute “ Scottish Ministers must, if the Lord President of the Court of Session so requests, ”.

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(3) After that subsection insert—

“(1ZA) The Lord President may request the appointment of a person to act as a sheriff principal under subsection (1) only if it appears to him expedient that such an appointment be made in order to avoid delay in the administration of justice in the sheriffdom concerned.”.

(4) In subsection (1A), for “Secretary of State may” substitute “ Scottish Ministers must, if the Lord President so requests, ”.

(5) In subsection (4), for “Secretary of State” substitute “ Scottish Ministers, at the request of the Lord President ”.

(6) After that subsection insert—

“(4ZA) The Scottish Ministers must comply with any request made by the Lord President under subsection (4) above.”.

(7) In subsection (5)—

(a) for “Secretary of State” substitute “ Scottish Ministers ”, and

(b) for “directs” substitute “ direct ”.

## 25 Re-employment of retired sheriffs principal and sheriffs

After section 14 of the 1971 Act insert—

### “14A Re-employment of retired sheriffs principal and sheriffs

(1) A sheriff principal may, if it appears to him to be expedient as a temporary measure in order to facilitate the disposal of business in the sheriff courts of the sheriffdom, appoint a qualifying former sheriff principal or sheriff to act as a sheriff of that sheriffdom during such period or on such occasions as the sheriff principal thinks fit.

(2) A qualifying former sheriff principal is someone who—

(a) ceased to hold that office other than by virtue of an order under section 12E of this Act, and

(b) has not reached the age of 75 years.

(3) A qualifying former sheriff is someone who—

(a) ceased to hold that office other than by virtue of an order under section 12E of this Act or by being appointed as a sheriff principal, and

(b) has not reached the age of 75 years.

(4) A person appointed under subsection (1) above is not to be treated as a sheriff for the purposes of any statutory provision or rule of law relating to—

(a) the appointment, retirement, removal or disqualification of sheriffs,

(b) the tenure of office and oaths to be taken by sheriffs, or

(c) the remuneration, allowances or pensions of sheriffs.

(5) But, otherwise, such a person is to be treated for all purposes as a sheriff of the sheriffdom for which the person is appointed (and so may perform any of the functions of a sheriff of that sheriffdom).

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**Status:** Point in time view as at 20/02/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

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- (6) The Scottish Court Service may pay to, or in respect of, a person appointed under subsection (1) above such remuneration or allowances as the Scottish Ministers may determine.
- (7) Despite subsection (1), the period during which or an occasion on which a person appointed under that subsection may act under that appointment does not extend beyond, or (as the case may be) is not to be after, the date on which the person reaches the age of 75 years.
- (8) Despite the expiry (whether by virtue of subsection (7) above or otherwise) of any period for which a person is appointed under subsection (1) above—
  - (a) the person may attend at a sheriff court for the purpose of continuing to deal with, giving judgment in, or dealing with any matter relating to, any case begun before the person while acting under that appointment, and
  - (b) for that purpose, and for the purpose of any proceedings arising out of any such case or matter, the person is to be treated as acting or, as the case may be, having acted under that appointment.
- (9) In this section—
  - “sheriff principal”, where it first occurs in subsection (1), includes temporary sheriff principal, and
  - “sheriff” does not include part-time sheriff or honorary sheriff.”.

## 26 Appointment of part-time sheriffs

In subsection (3) of section 11A (appointment of part-time sheriffs: requirements) of the 1971 Act—

- (a) after “unless” insert—
  - “(a) the person is”, and
- (b) at the end of the subsection add “and
  - (b) the Scottish Ministers have consulted the Lord President of the Court of Session about the proposed appointment.”.

## 27 Sheriffs and part-time sheriffs: official oaths

In the Promissory Oaths Act 1868 (c. 72), in the second part of the Schedule (persons to take oath of allegiance and judicial oath), after “sheriffdoms,” insert “ sheriffs, part-time sheriffs ”.

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**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

VALID FROM 01/04/2010

## CHAPTER 4

### JUDICIAL CONDUCT

#### *Judicial conduct*

#### **28 Rules about investigations etc.**

- (1) The Lord President may by rules make provision for or in connection with—
  - (a) the investigation and determination of any matter concerning the conduct of judicial office holders,
  - (b) reviews of any such determinations.
- (2) Rules under subsection (1) may in particular contain provision about—
  - (a) circumstances in which an investigation must or may be undertaken,
  - (b) the making of complaints,
  - (c) steps to be taken by a complainant before a complaint is to be investigated,
  - (d) the conduct of an investigation (including in particular steps to be taken by the office holder under investigation or by a complainant or other person),
  - (e) time limits for taking any step and procedures for extending time limits,
  - (f) persons by whom an investigation or part of an investigation is to be conducted,
  - (g) matters to be determined by the person conducting an investigation (or part of an investigation), the Lord President or any other person,
  - (h) the making of recommendations by persons conducting investigations (or parts of investigations),
  - (i) the obtaining of information relating to complaints,
  - (j) the keeping of records of investigations,
  - (k) confidentiality of communications or proceedings,
  - (l) the publication of information or its provision to any person.
- (3) Rules under subsection (1)—
  - (a) may make different provision for different cases,
  - (b) are to be published in such manner as the Lord President may determine.

#### **29 Powers of Lord President**

- (1) Where subsection (2) applies in relation to a judicial office holder, the Lord President may, for disciplinary purposes, give the judicial office holder—
  - (a) formal advice,
  - (b) a formal warning, or
  - (c) a reprimand.
- (2) This subsection applies where—
  - (a) an investigation has been carried out in accordance with rules under section 28(1), and

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- (b) the person carrying out the investigation has recommended that the Lord President exercise a power mentioned in subsection (1).
- (3) This section does not restrict what the Lord President may do—
  - (a) informally,
  - (b) for other purposes, or
  - (c) where any advice or warning is not given to a particular judicial office holder.

### *Judicial Complaints Reviewer*

## **30 Judicial Complaints Reviewer**

- (1) The Scottish Ministers may, with the consent of the Lord President, appoint a person (to be known as the “Judicial Complaints Reviewer”) for the purpose of carrying out the functions mentioned in subsection (2).
- (2) Those functions are—
  - (a) on the request of the complainant or the judicial office holder to whom an investigation carried out in pursuance of section 2(2)(e)(i) relates, to review the handling of the investigation to determine whether the investigation has been carried out in accordance with rules under section 28(1),
  - (b) in any case where the Reviewer considers that such an investigation has not been carried out in accordance with those rules, to refer the case to the Lord President,
  - (c) as directed by the Scottish Ministers, to prepare and publish reports on investigations carried out in pursuance of section 2(2)(e)(i), and
  - (d) to make written representations to the Lord President about procedures for handling the investigation of matters concerning the conduct of judicial office holders.
- (3) For the purposes of subsection (2)(a) “the complainant”, in relation to an investigation, means the person whose complaint led to the carrying out of the investigation.
- (4) The Lord President must have regard to any written representations made under subsection (2)(d).
- (5) A person is disqualified from appointment, and from holding office, as the Judicial Complaints Reviewer if the person is or becomes—
  - (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a Minister of the Crown,
  - (e) a member of the Scottish Executive,
  - (f) a civil servant,
  - (g) a person who is, or has been, a judicial office holder, or
  - (h) a solicitor, advocate or barrister (in any case whether practising or not).

## **31 Judicial Complaints Reviewer: tenure etc.**

- (1) The Scottish Ministers are to determine with the consent of the Lord President—



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- (a) the period for which a person is appointed as the Judicial Complaints Reviewer, and
  - (b) subject to subsection (2), the other terms and conditions on which a person is so appointed.
- (2) The Scottish Ministers may pay to the Judicial Complaints Reviewer such fees and expenses as they may determine.
- (3) The Judicial Complaints Reviewer may resign office by giving notice in writing to the Scottish Ministers.
- (4) If—
  - (a) the Scottish Ministers are satisfied that subsection (5) applies, and
  - (b) the Lord President consents,the Scottish Ministers may, by notice in writing, remove the Judicial Complaints Reviewer from office.
- (5) This subsection applies if—
  - (a) the Judicial Complaints Reviewer has failed without reasonable excuse to carry out the functions of that office for a continuous period of 6 months,
  - (b) the Reviewer has been convicted of an offence,
  - (c) the Reviewer has become insolvent, or
  - (d) the Reviewer is otherwise unfit to be the Judicial Complaints Reviewer or unable for any reason to carry out the functions of that office.
- (6) For the purposes of subsection (5)(c), the Reviewer becomes insolvent on—
  - (a) the approval of a voluntary arrangement proposed by the Reviewer,
  - (b) being adjudged bankrupt,
  - (c) the Reviewer's estate's being sequestrated, or
  - (d) the Reviewer's granting a trust deed for creditors.
- (7) A person who is or has been the Judicial Complaints Reviewer may be reappointed for further periods.
- (8) A person holding office by virtue of subsection (7) may not hold office for periods (whether or not consecutive) totalling more than 5 years.

## **32 Guidance**

- (1) The Judicial Complaints Reviewer must comply with any guidance that the Scottish Ministers issue about the carrying out of the Reviewer's functions.
- (2) Before issuing any such guidance, the Scottish Ministers must consult the Lord President.
- (3) The Scottish Ministers must publish any guidance issued under subsection (1).

## **33 Lord President's powers on referral**

- (1) Subsection (2) applies where a case is referred to the Lord President by virtue of section 30(2)(b).
- (2) The Lord President may—

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- (a) vary or revoke the determination made in the case (or part of the determination),
- (b) cause a fresh investigation to be carried out,
- (c) confirm the determination in the case, or
- (d) deal with the referral in such other way as the Lord President considers appropriate.

### *Suspension*

#### **34 Suspension**

- (1) If the Lord President considers that it is necessary for the purpose of maintaining public confidence in the judiciary, the Lord President may suspend a judicial office holder—
  - (a) from acting as a judge as mentioned in paragraph (b) or (c) of the definition of “judicial office holder” in subsection (1) of section 43, or
  - (b) from any of the judicial offices mentioned in subsection (2) of that section.
- (2) Such a suspension lasts for such period as the Lord President may specify when suspending the judicial office holder.
- (3) Nothing in subsection (1) affects any remuneration payable to, or in respect of, the judicial office holder.
- (4) The Lord President's functions under this section may be carried out—
  - (a) where the Lord President is unavailable, by the Lord Justice Clerk,
  - (b) where both the Lord President and the Lord Justice Clerk are unavailable, by the senior judge of the Inner House.
- (5) In subsection (4)(b) the reference to the senior judge of the Inner House is to be construed by reference to seniority of appointment to a Division of the Inner House.

## **CHAPTER 5**

### REMOVAL FROM OFFICE

#### *Judges*

VALID FROM 01/04/2010

#### **35 Tribunal to consider fitness for judicial office**

- (1) The First Minister—
  - (a) must, when requested to do so by the Lord President, and
  - (b) may, in such other circumstances as the First Minister thinks fit,
 constitute a tribunal to investigate and report on whether a person holding a judicial office to which this section applies is unfit to hold the office by reason of inability, neglect of duty or misbehaviour.

**Status:** Point in time view as at 20/02/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

- (2) The judicial offices to which this section applies are—
  - (a) the office of Lord President,
  - (b) the office of Lord Justice Clerk,
  - (c) the office of judge of the Court of Session,
  - (d) the office of Chairman of the Scottish Land Court, and
  - (e) the office of temporary judge.
- (3) Before constituting a tribunal under subsection (1)(b) the First Minister must consult—
  - (a) where the tribunal is to be constituted for the purpose of considering the Lord President's fitness for office, the Lord Justice Clerk,
  - (b) where the tribunal is to be constituted for any other purpose, the Lord President.
- (4) A tribunal constituted under this section is to consist of—
  - (a) two individuals who hold, or have held, high judicial office (“judicial members”),
  - (b) one individual who is, and has been for at least 10 years, an advocate or solicitor, and
  - (c) one individual who does not hold (and has never held) high judicial office and is not (and never has been) an advocate or solicitor.
- (5) “High judicial office” has the meaning given by section 60 of the Constitutional Reform Act 2005 (c. 4).
- (6) At least one of the judicial members must be a member of the Judicial Committee of the Privy Council.
- (7) At least one of the judicial members must hold, or have held, office as a judge of the Court of Session.
- (8) The selection of persons to be members of a tribunal under this section is to be made by the First Minister with the agreement of—
  - (a) where the tribunal is to be constituted for the purpose of considering the Lord President's fitness for office, the Lord Justice Clerk,
  - (b) where the tribunal is to be constituted for any other purpose, the Lord President.
- (9) If only one of the judicial members is a member of the Judicial Committee of the Privy Council, that person is to chair the tribunal.
- (10) If both of the judicial members are members of the Judicial Committee of the Privy Council, the First Minister must appoint one of them to chair the tribunal.
- (11) The member who chairs the tribunal has a casting vote.

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*Changes to legislation: There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)*

VALID FROM 01/04/2010

### **36 Suspension during investigation**

- (1) Where the Lord President has requested that the First Minister constitute a tribunal under section 35, the Lord President may, at any time before the tribunal reports to the First Minister, suspend the person who is to be, or is, the subject of the investigation, from office.
- (2) Such a suspension lasts until the Lord President orders otherwise.
- (3) A tribunal constituted under section 35 may, at any time before the tribunal reports to the First Minister, recommend to the First Minister that the person who is the subject of the tribunal's investigation be suspended from office.
- (4) Such a recommendation must be in writing.
- (5) The First Minister on receiving such a recommendation may suspend the person from office.
- (6) Such a suspension lasts until the First Minister orders otherwise.
- (7) Suspension under this section from the office of Lord President, Lord Justice Clerk, judge of the Court of Session or Chairman of the Scottish Land Court does not affect any remuneration payable to, or in respect of, the office in respect of the period of suspension.

### **37 Further provision about tribunals**

- (1) A tribunal constituted under section 35 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 in Scotland.
- (3) Subsection (4) applies where a person on whom a requirement has been imposed under subsection (1)—
  - (a) refuses or fails, without reasonable excuse, to comply with the requirement,
  - (b) refuses or fails, without reasonable excuse, while attending the tribunal proceedings to give evidence, to answer any question, or
  - (c) deliberately alters, conceals or destroys any document which the person is required to produce.
- (4) The Court of Session may, on an application made to it by the tribunal—
  - (a) make such order for enforcing compliance as it sees fit, or
  - (b) deal with the matter as if it were a contempt of the Court.
- (5) The Court of Session may by act of sederunt make provision as to the procedure to be followed by and before tribunals constituted under section 35.

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- (6) The Scottish Ministers may pay such remuneration to, and expenses of, members of tribunals constituted under section 35 as they think fit.
- (7) The Scottish Ministers must pay such expenses as they consider are reasonably required to be incurred to enable a tribunal constituted under section 35 to carry out its functions.

#### Commencement Information

**I2** S. 37(5) in force at 20.2.2010 by S.S.I. 2010/39, art. 2(a)

VALID FROM 01/04/2010

#### **38 Report of tribunal**

- (1) The report of a tribunal constituted under section 35 must—
- (a) be in writing,
  - (b) contain reasons for its conclusion, and
  - (c) be submitted to the First Minister.
- (2) The First Minister must lay the report before the Scottish Parliament.

VALID FROM 01/04/2010

#### **39 Temporary judges: removal from office**

- (1) Where subsection (2) applies, a person may be removed from office as a temporary judge by the First Minister.
- (2) This subsection applies if—
- (a) a tribunal constituted under section 35 has reported to the First Minister that the person is unfit to hold that office by reason of inability, neglect of duty or misbehaviour, and
  - (b) the First Minister has laid the report before the Scottish Parliament.

### *Sheriffs*

#### **40 Consideration of fitness for, and removal from, shrieval office**

For section 12 of the 1971 Act substitute—

*“Consideration of fitness for, and removal from, shrieval office*

##### **12A Tribunal to consider fitness for shrieval office**

- (1) The First Minister—

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- (a) must, when requested to do so by the Lord President of the Court of Session, and
  - (b) may, in such other circumstances as the First Minister thinks fit, constitute a tribunal to investigate and report on whether a person holding a shrieval office to which this section applies is unfit to hold the office by reason of inability, neglect of duty or misbehaviour.
- (2) The shrieval offices to which this section applies are—
- (a) the office of sheriff principal,
  - (b) the office of sheriff, and
  - (c) the office of part-time sheriff.
- (3) The First Minister may constitute a tribunal under subsection (1)(b) above only if the Lord President has been consulted.
- (4) A tribunal constituted under this section is to consist of—
- (a) one individual who is a qualifying member of the Judicial Committee of the Privy Council,
  - (b) one individual who holds the relevant shrieval office,
  - (c) one individual who is, and has been for at least 10 years, an advocate or a solicitor, and
  - (d) one individual who is not (and never has been) a qualifying member of the Judicial Committee of the Privy Council, who does not hold (and never has held) a shrieval office to which this section applies and who is not (and never has been) an advocate or solicitor.
- (5) A qualifying member of the Judicial Committee of the Privy Council is someone who is a member of that Committee by virtue of section 1(2)(a) of the Judicial Committee Act 1833 (c. 41) (that is, someone who is a member of the Privy Council who holds, or has held, high judicial office).
- (6) The relevant shrieval office is—
- (a) where the investigation is to be of a person's fitness to hold the office of sheriff principal, that office,
  - (b) where the investigation is to be of a person's fitness to hold the office of sheriff or part-time sheriff, the office of sheriff.
- (7) The selection of persons to be members of a tribunal under this section is to be made by the First Minister, with the agreement of the Lord President of the Court of Session.
- (8) The person mentioned in subsection (4)(a) is to chair the tribunal and has a casting vote.

### **12B Suspension during investigation**

- (1) Where the Lord President of the Court of Session has requested that the First Minister constitute a tribunal under section 12A, the Lord President may, at any time before the tribunal reports to the First Minister, suspend the person who is to be, or is, the subject of the investigation, from office.
- (2) Such a suspension lasts until the Lord President orders otherwise.

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- (3) A tribunal constituted under section 12A may, at any time before the tribunal reports to the First Minister, recommend to the First Minister that the person who is the subject of the tribunal's investigation be suspended from office.
- (4) Such a recommendation must be in writing.
- (5) The First Minister, on receiving such a recommendation, may suspend the person from office.
- (6) Such a suspension lasts until the First Minister orders otherwise.
- (7) Suspension under this section from the office of sheriff principal or sheriff does not affect remuneration payable to, or in respect of, the office in respect of the period of suspension.

### **12C Further provision about tribunals**

- (1) A tribunal constituted under section 12A 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 in Scotland.
- (3) Subsection (4) applies where a person on whom a requirement has been imposed under subsection (1)—
  - (a) refuses or fails, without reasonable excuse, to comply with the requirement,
  - (b) refuses or fails, without reasonable excuse, while attending the tribunal proceedings to give evidence, to answer any question, or
  - (c) deliberately alters, conceals or destroys any document which the person is required to produce.
- (4) The Court of Session may, on an application made to it by the tribunal—
  - (a) make such order for enforcing compliance as it sees fit, or
  - (b) deal with the matter as if it were a contempt of the Court.
- (5) The Court of Session may by act of sederunt make provision as to the procedure to be followed by and before tribunals constituted under section 12A.
- (6) The Scottish Ministers may pay such remuneration to, and expenses of, members of tribunals constituted under section 12A as they think fit.
- (7) The Scottish Ministers must pay such expenses as they consider are reasonably required to be incurred to enable a tribunal constituted under section 12A to carry out its functions.

### **12D Report of tribunal**

- (1) The report of a tribunal constituted under section 12A must—
  - (a) be in writing,
  - (b) contain reasons for its conclusion, and

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(c) be submitted to the First Minister.

(2) The First Minister must lay the report before the Scottish Parliament.

### **12E Removal from office**

(1) Where subsection (2) applies, the First Minister may remove a person from the office of sheriff principal, sheriff or part-time sheriff.

(2) This subsection applies if—

(a) a tribunal constituted under section 12A has reported to the First Minister that the person is unfit to hold that office by reason of inability, neglect of duty or misbehaviour, and

(b) the First Minister has laid the report before the Scottish Parliament.

(3) The First Minister may remove a sheriff principal or sheriff under subsection (1) only by order made by statutory instrument.

(4) Such a statutory instrument—

(a) is to be subject to annulment in pursuance of a resolution of the Scottish Parliament,

(b) is not to be made so as to come into effect before the expiry, in relation to the instrument, of the period of 40 days mentioned in article 11 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096).

(5) Article 10 of that Order applies to such an instrument subject to the following modifications—

(a) the reference to the period of 21 days in paragraph (2) is to be read as a reference to 40 days, and

(b) paragraph (3) does not apply.

### **12F Interpretation of sections 12A to 12E**

(1) In sections 12A to 12E “office of part-time sheriff” means an appointment (or reappointment) as a part-time sheriff; and references to removal or suspension from that office are to be construed accordingly.

(2) In those sections—

(a) a reference to the office of sheriff principal does not include a reference to an appointment as a temporary sheriff principal,

(b) a reference to the office of sheriff does not include a reference to the office of honorary sheriff.”.

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#### **Commencement Information**

**I3** S. 40 in force at 20.2.2010 for specified purposes by S.S.I. 2010/39, art. 2(a)



**Status:** Point in time view as at 20/02/2010. This version of this Act contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

VALID FROM 01/04/2010

*Justices of the peace*

**41 Provision relating to tribunal considering fitness for office of justices of the peace**

- (1) Section 71 (removal of justices of the peace) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) is amended as follows.
- (2) In subsection (7), for “Scottish Ministers may by order”, substitute “ Court of Session may by act of sederunt ”.
- (3) In subsection (8), for “order” substitute “ act of sederunt ”.

VALID FROM 01/04/2010

**CHAPTER 6**

TRAINING AND APPRAISAL OF JUSTICES OF THE PEACE

**42 Training and appraisal of justices of the peace**

- (1) Section 69 (training and appraisal of justices of the peace) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) is amended is follows.
- (2) In subsection (1), for “Scottish Ministers” substitute “ Lord President of the Court of Session ”.
- (3) Subsections (2) and (4) are repealed.

VALID FROM 01/04/2010

**CHAPTER 7**

MEANING OF “JUDICIAL OFFICE HOLDER”

**43 Meaning of “judicial office holder”**

- (1) In this Part “judicial office holder” means—
  - (a) the holder of any of the judicial offices mentioned in subsection (2),
  - (b) a person acting as a judge by virtue of section 22(1) or (4) (re-employment of retired Court of Session judges) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), or
  - (c) a person acting as a sheriff by virtue of section 14A(1) or (8) (re-employment of retired sheriffs principal and sheriffs) of the 1971 Act.

**Status:** Point in time view as at 20/02/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

- (2) Those judicial offices are—
- (a) the office of judge of the Court of Session,
  - (b) the office of Chairman of the Scottish Land Court,
  - (c) the office of temporary judge,
  - (d) the office of sheriff principal,
  - (e) the office of temporary sheriff principal,
  - (f) the office of sheriff,
  - (g) the office of part-time sheriff,
  - (h) the office of stipendiary magistrate,
  - (i) the office of justice of the peace,
  - (j) such other judicial offices (whether full-time, part-time or temporary) as the Scottish Ministers may by order specify.
- (3) Before making an order under subsection (2)(j), the Scottish Ministers must consult the Lord President.

### PART 3

#### THE COURTS

##### *The Court of Session*

#### 44 Maximum number of judges

- (1) Section 1 (number of judges of the Court) of the Court of Session Act 1988 (c. 36) is amended as follows.
- (2) In subsection (1), after “(3)” insert “, (3A)”.
- (3) In subsection (3), for the words from “Parliament” in the first place it appears to the end substitute “ and approved by resolution of the Scottish Parliament. ”.
- (4) After subsection (3) insert—
- “(3A) The Lord President must be consulted before any draft of an Order under this section is laid before the Parliament.”.

#### 45 Number of judges of the First and Second Divisions of the Inner House

In section 2(2A) (composition of the Court) of the Court of Session Act 1988 (c. 36), after “may” insert “, after consulting the Lord President, ”.

#### 46 Divisions of the Inner House

- (1) The Court of Session Act 1988 (c. 36) is amended as follows.
- (2) In section 2 (composition of the Court)—
- (a) for subsection (3) substitute—

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- “(3) The Lord President may from time to time constitute, from among the judges of the Court, an extra Division of the Inner House for the purpose of hearing and disposing of causes pending before the Inner House; and any reference in this Act or in any other enactment to a Division of the Inner House shall be construed as including a reference to such an extra Division.”, and
- (b) in subsection (4), at beginning, insert “ Subject to section 5(ba) below, ” .
- (3) In section 5 (power to regulate procedure etc. in the Court of Session by act of sederunt), after paragraph (b) insert—
- “(ba) to make provision as to the quorum for a Division of the Inner House considering solely procedural matters, and, in the case of an extra Division, to make provision as to which judge is to preside and to sign any judgment or interlocutor pronounced by the extra Division;”.

VALID FROM 01/04/2010

### *Sheriff courts*

#### **47 Sheriff principal's responsibility**

- (1) The 1971 Act is amended as follows.
- (2) For section 15 substitute—

#### **“15 Efficient disposal of business in sheriff courts**

- (1) The sheriff principal of each sheriffdom is responsible for securing the efficient disposal of business in the sheriff courts of that sheriffdom.
- (2) If, in carrying out that responsibility, the sheriff principal gives a direction of an administrative character to a person mentioned in subsection (3), the person must comply with the direction.
- (3) Those persons are—
- (a) a sheriff authorised by virtue of any enactment to act in that sheriffdom,
- (b) a member of staff of the Scottish Court Service.
- (4) Subsections (1) and (2) are subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”.
- (3) In section 16 (powers exercisable by sheriff principal in pursuance of responsibility imposed by section 15)—
- (a) in subsection (1)—
- (i) for the words from “securing” to “sheriffdom”, in the second place it appears, substitute “ carrying out the responsibility imposed by section 15(1) of this Act ”, and

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(ii) in paragraph (a), for the words from the beginning of the paragraph to “aforesaid” substitute “provide for the division of business in the sheriff courts of that sheriffdom”, and

(b) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”.

(4) In section 17 (sheriff principal's power to fix sittings and business of sheriff courts), after subsection (4) insert—

“(4A) Subsections (1) to (4) are subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”.

(5) In section 20(Lord Advocate's instructions to procurators fiscal), the words “speedy and” are repealed.

#### **48 Repeal of certain responsibilities of Scottish Ministers**

Sections 1 and 9 of the 1971 Act (which respectively impose responsibility on the Scottish Ministers in relation to the organisation of sheriff courts and enable them to give directions) are repealed.

#### **49 Lord President's default power**

(1) The 1971 Act is amended as follows.

(2) After section 17 insert—

##### **“17A Lord President's power to exercise functions in sections 15 to 17**

(1) Subsection (2) applies where in any case the Lord President considers that the exercise by the sheriff principal of a sheriffdom of a function conferred by any of sections 15 to 17 of this Act—

- (a) is prejudicial to the efficient disposal of business in the sheriff courts of that sheriffdom,
- (b) is prejudicial to the efficient organisation or administration of those sheriff courts, or
- (c) is otherwise against the interests of the public.

(2) The Lord President may in that case—

- (a) rescind the sheriff principal's exercise of the function, and
- (b) exercise the function.

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(3) Subsection (2)(b) applies where in any case the Lord President considers that the failure of the sheriff principal of a sheriffdom to exercise a function conferred by any of sections 15 to 17 of this Act—

- (a) is prejudicial to the efficient disposal of business in the sheriff courts of that sheriffdom,
- (b) is prejudicial to the efficient organisation or administration of those sheriff courts, or
- (c) is otherwise against the interests of the public.

(4) The exercise of a function by the Lord President by virtue of subsection (2)(b) is to be treated as if it were the exercise of the function by the sheriff principal.”.

(3) Section 18 (Scottish Ministers' default power) is repealed.

## **50 Alteration of boundaries of sheriffdoms**

(1) Section 2 (power to alter boundaries of sheriffdoms) of the 1971 Act is amended as follows.

(2) In subsection (2), after paragraph (a) insert—

“(aa) provision of the kind that may be made by an order under section 3(2) of this Act;”.

(3) After subsection (2) insert—

“(2A) An order under subsection (1) above may be made only with the consent of—

- (a) the Lord President of the Court of Session, and
- (b) where the order includes provision such as is mentioned in subsection (2)(a) or (aa) above, the Scottish Court Service.

(2B) Before consenting to the making of such an order, the Scottish Court Service must consult such persons as it considers appropriate.”.

(4) In subsection (3)(b), for the words “Secretary of State” in the first place those words appear substitute “ Scottish Court Service ”.

(5) In subsection (4), the words from “, but” to the end are repealed.

(6) After subsection (4) add—

“(5) A statutory instrument containing an order under subsection (1) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

## **51 Sheriff court districts and places where sheriff courts are to be held**

(1) Section 3 (sheriff court districts and places where sheriff courts are to be held) of the 1971 Act is amended as follows.

(2) After subsection (2) insert—

“(2A) An order under subsection (2) above may be made only with the consent of—

- (a) the Lord President of the Court of Session, and

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(b) the Scottish Court Service.

(2B) Before consenting to the making of such an order, the Scottish Court Service must consult such persons as it considers appropriate.”.

(3) In subsection (4), for “Secretary of State” in the first place those words appear substitute “ Scottish Court Service ”.

(4) After subsection (5) insert—

“(5A) A statutory instrument containing an order under subsection (2) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

## **52 Repeal of power to appoint sheriff to assist Scottish Ministers**

Section 8(power to appoint sheriff to assist Scottish Ministers) of the 1971 Act is repealed.

## **53 Sheriffs principal and sheriffs acting in other sheriffdoms**

(1) Section 10 (ministerial powers to authorise sheriff principal or direct sheriff to act in another sheriffdom) of the 1971 Act is amended as follows.

(2) In subsection (1)—

- (a) for “Scottish Ministers” in the first place those words appear substitute “ Lord President of the Court of Session ”,
- (b) the words “to them” are repealed, and
- (c) for “Scottish Ministers otherwise decide” substitute “ Lord President otherwise decides ”.

(3) In subsection (1A)—

- (a) for “Scottish Ministers” in the first place those words appear substitute “ Lord President ”, and
- (b) for “Scottish Ministers otherwise decide” substitute “ Lord President otherwise decides ”.

(4) In subsection (2), for “Scottish Ministers”, in each place those words appear, substitute “ Lord President ”.

## **54 Residence and leave of absence of sheriffs principal**

(1) Section 13 (ministerial functions in relation to residence and leave of absence of sheriffs principal) of the 1971 Act is amended as follows.

(2) In subsection (1)—

- (a) for “Secretary of State” in the first place those words appear substitute “ Lord President of the Court of Session ”, and
- (b) for “Secretary of State” in the second place those words appear substitute “ Lord President ”.

(3) In subsection (2)—

- (a) for “Secretary of State” in each place those words appear substitute “ Lord President ”,

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- (b) after “absence” insert “ for the purpose of holidays ”, and
- (c) the words from “(other” to “ill-health)” are repealed.

(4) After subsection (2) add—

“(3) The Lord President may approve such leave of absence for any other purpose for any sheriff principal (being a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or to whom section 6(1) of this Act applies) as appears to the Lord President to be proper.”.

## **55 Number, residence and deployment of sheriffs**

(1) Section 14 (number, residence and place of duties of sheriffs) of the 1971 Act is amended as follows.

(2) Subsection (1) is repealed.

(3) In subsection (2)—

- (a) for “Secretary of State” in the first place those words appear substitute “ Lord President of the Court of Session ”, and
- (b) for “Secretary of State” in the second place those words appear substitute “ Lord President ”.

(4) In subsection (3), for “Secretary of State” substitute “ Lord President ”.

(5) In subsection (4)—

- (a) for the words “and after consultation with the Lord President of the Court of Session, the Secretary of State” substitute “ the Lord President ”, and
- (b) for “Secretary of State” in the second place those words appear substitute “ Lord President ”.

## **56 Leave of absence of sheriffs**

(1) Section 16 (functions of sheriff principal with respect to duties and leave of absence of sheriffs) of the 1971 Act is amended as follows.

(2) In subsection (2)—

- (a) after “absence” insert “ for the purpose of holidays ”,
- (b) the words from “(other” to “ill-health)” are repealed, and
- (c) for “Secretary of State” substitute “ Lord President of the Court of Session ”.

(3) After subsection (2) insert—

“(2A) The sheriff principal of any sheriffdom may approve such leave of absence for any other purpose for any sheriff appointed for that sheriffdom as appears to the sheriff principal to be proper.”.

(4) In subsection (3), for “subsection (2)” substitute “ subsections (2) and (2A) ”.

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**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

VALID FROM 01/04/2010

### *Justice of the peace courts*

#### **57 Establishment, constitution etc.**

(1) The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) is amended as follows.

(2) In section 59 (establishing justice of the peace courts)—

- (a) subsection (1) is repealed,
- (b) in subsection (4), for “Scottish Ministers determine” substitute “ Lord President of the Court of Session determines ”,
- (c) in subsection (5), for “Scottish Ministers” substitute “ Lord President ”, and
- (d) for subsection (7) substitute—

“(7) The Scottish Ministers may make an order under subsection (2) or (6) only with the consent of—

- (a) the Lord President, and
- (b) the Scottish Court Service.

(7A) Before consenting to the making of such an order—

- (a) the Lord President must consult the sheriff principal for the sheriffdom in which the JP court is, or is to be, located, and
- (b) the Scottish Court Service must consult such persons as it considers appropriate.”.

(3) In section 63 (constitution and powers etc. of justice of the peace courts)—

(a) after subsection (2) insert—

“(2A) The Scottish Ministers may make an order under subsection (2) only on the recommendation of the Lord President of the Court of Session.”, and

(b) in subsection (5)(b), for “Scottish Ministers” substitute “ Lord President ”.

#### **58 Sheriff principal's responsibility**

(1) The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) is amended as follows.

(2) For section 61 substitute—

##### **“61 Efficient disposal of business in JP courts**

(1) The sheriff principal of each sheriffdom is responsible for securing the efficient disposal of business in JP courts in that sheriffdom.

(2) If, in carrying out that responsibility, the sheriff principal gives a direction of an administrative character to a person mentioned in subsection (3), the person must comply with the direction.

(3) Those persons are—



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- (a) a justice of the peace, or stipendiary magistrate, appointed for the sheriffdom,
  - (b) a member of staff of the Scottish Court Service.
- (4) Subsections (1) and (2) are subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”
- (3) In section 74(3) (pre-condition for appointment of stipendiary magistrate), for the words “administration of” substitute “disposal of business in”.

### *Court holidays*

#### **59 Court holidays in sheriff courts and justice of the peace courts**

- (1) Section 8 (sittings of sheriff and justice of the peace courts) of the Criminal Procedure (Scotland) Act 1995 (c. 46) is amended as follows.
- (2) In subsections (2) and (3), for “10” substitute “ 11 ”.

## **PART 4**

### THE SCOTTISH COURT SERVICE

#### *Establishment*

#### **60 The Scottish Court Service**

- (1) There is established a body corporate to be known as the Scottish Court Service (referred to in this Part as “the SCS”).
- (2) Schedule 3 makes further provision about the SCS.

#### **Commencement Information**

- I4** S. 60 partly in force; s. 60 not in force at Royal Assent see s. 76; s. 60(2) in force for specified purposes at 16.3.2009 by [S.S.I. 2009/83](#), [art. 2](#); s. 60(2) in force for further specified purposes at 1.6.2009 by [S.S.I. 2009/192](#), [art. 2](#), [Sch.](#); s. 60(1) in force and s. 60(2) in force for further specified purposes at 1.10.2009 by [S.S.I. 2009/318](#), [art. 2](#), [Sch.](#)

**Status:** Point in time view as at 20/02/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

VALID FROM 01/04/2010

### *Functions*

#### **61 Administrative support for the Scottish courts and judiciary**

- (1) The SCS has the function of providing, or ensuring the provision of, the property, services, officers and other staff required for the purposes of—
  - (a) the Scottish courts, and
  - (b) the judiciary of those courts.
- (2) In carrying out that function, the SCS must—
  - (a) take account, in particular, of the needs of members of the public and those involved in proceedings in the Scottish courts, and
  - (b) so far as practicable and appropriate, co-operate and co-ordinate activity with any other person having functions in relation to the administration of justice.
- (3) In this Part, “the Scottish courts” has the meaning given by section 2(6).

#### **62 Administrative support for other persons**

- (1) The SCS has the function of providing, or ensuring the provision of, the property, services and staff required for the purposes of—
  - (a) the Lord President in the carrying out of—
    - (i) functions conferred on the Lord President as Head of the Scottish Judiciary, and
    - (ii) other non-judicial functions of the Lord President,
  - (b) any judicial office holder in the carrying out of functions delegated to the office holder by the Lord President,
  - (c) the sheriffs principal in the carrying out of their functions under sections 15 to 17 of the 1971 Act,
  - (d) the Public Guardian (established by section 6 of the Adults with Incapacity (Scotland) Act 2000 (asp 4)),
  - (e) the Court of Session Rules Council (being the Rules Council mentioned in section 8 of the Court of Session Act 1988 (c. 36)),
  - (f) the Criminal Courts Rules Council,
  - (g) the Sheriff Court Rules Council, and
  - (h) such other persons, or persons of such description, as the Scottish Ministers may by order specify.
- (2) Before making an order under subsection (1)(h), the Scottish Ministers must consult the Lord President.

#### **63 Appointment etc. of office holders**

- (1) The Scottish Ministers' functions in relation to the officers mentioned in subsection (2) are transferred to the SCS.
- (2) Those officers are the holders of the following offices—
  - (a) Accountant of Court,

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- (b) Principal Clerk of Session,
  - (c) other Clerk or officer of the Court of Session,
  - (d) Principal Clerk of Justiciary,
  - (e) Depute, Assistant or other Clerk in the Justiciary Office of the High Court of Justiciary,
  - (f) Macer in the Court of Session and Macer in the High Court of Justiciary,
  - (g) sheriff clerk,
  - (h) sheriff clerk depute, and
  - (i) clerk or assistant clerk of a justice of the peace court.
- (3) Those officers are also members of the staff of the SCS and, accordingly, references in this Act to the staff of the SCS include, except where the context requires otherwise, reference to those officers.
- (4) Schedule 4 contains amendments of enactments consequential on this section.

#### **64 Payment of remuneration etc. of certain judicial office holders**

- (1) In section 11(8) (remuneration and allowances of temporary sheriffs principal) of the 1971 Act, for “Secretary of State” in the first place those words appear substitute “Scottish Court Service”.
- (2) In section 11A(8) (remuneration and allowances of part-time sheriffs) of the 1971 Act—
- (a) for “Scottish Ministers” substitute “Scottish Court Service”, and
  - (b) for “they” substitute “the Scottish Ministers”.
- (3) In section 22(5) (remuneration and allowances of re-employed retired judges) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)—
- (a) for “Scottish Ministers” substitute “Scottish Court Service”, and
  - (b) for “they” substitute “the Scottish Ministers”.
- (4) In paragraph 10 (remuneration of temporary judges of the Court of Session) of Schedule 4 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)—
- (a) for “Scottish Ministers” substitute “Scottish Court Service”, and
  - (b) for “they” substitute “the Scottish Ministers”.

VALID FROM 01/04/2010

#### *Provision of advice etc. to the Scottish Ministers*

#### **65 Provision of advice etc. to the Scottish Ministers**

- (1) The SCS may give information or advice, or make proposals, to the Scottish Ministers on matters relating to—
- (a) the functions of the SCS, or
  - (b) the administration of justice in Scotland.
- (2) The Scottish Ministers must have regard to such information, advice or proposals.

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(3) This section is without prejudice to paragraph 15(2)(c) of schedule 3.

### *Plan and report*

## **66 Corporate plan**

- (1) The SCS must, before the beginning of each planning period, prepare and submit to the Scottish Ministers for approval a corporate plan describing how the SCS proposes to carry out its functions during the period.
- (2) The plan must—
  - (a) be prepared in such form,
  - (b) contain such information, and
  - (c) be submitted by such time,
 as the Scottish Ministers may direct.
- (3) The Scottish Ministers may approve the plan subject to such modifications as may be agreed between them and the SCS.
- (4) The SCS must, as soon as possible after the approval of a corporate plan—
  - (a) lay before the Scottish Parliament a copy of the plan as approved, and
  - (b) publish the plan in such manner as it thinks fit.
- (5) During the planning period to which a corporate plan relates, the SCS—
  - (a) may, or
  - (b) if the Scottish Ministers so direct, must,
 review the plan and submit a revised corporate plan to the Scottish Ministers for approval.
- (6) In carrying out its functions in any planning period, the SCS must have regard to the corporate plan for the period.
- (7) Subsections (2) to (6) apply to a revised corporate plan as they apply to a corporate plan.
- (8) In this section, “planning period” means—
  - (a) the period beginning with the day on which section 61 comes into force and ending on a date specified by order made by the Scottish Ministers, and
  - (b) each subsequent period of 3 years.
- (9) The Scottish Ministers may by order substitute for the period specified in subsection (8)(b) such other period as they consider appropriate.

VALID FROM 01/04/2010

## **67 Annual report**

- (1) As soon as practicable after the end of each financial year, the SCS must—
  - (a) prepare and publish a report on the carrying out of its functions during that year,

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- (b) send a copy of the report to the Scottish Ministers, and
  - (c) lay a copy of the report before the Scottish Parliament.
- (2) It is for the SCS to determine the form and content of each report and the manner in which it is to be published.
- (3) In subsection (1), “financial year” means—
- (a) the period beginning with the establishment of the SCS and ending on 31 March next occurring, and
  - (b) each subsequent period of a year ending on 31 March.

VALID FROM 01/04/2010

### *Ministerial powers*

#### **68 Provision of information**

The SCS must provide the Scottish Ministers with such information relating to the carrying out of its functions as the Scottish Ministers may require.

#### **69 Guidance**

The SCS must, in carrying out its functions, have regard to any guidance issued by the Scottish Ministers.

#### **70 Default power**

- (1) Subsection (2) applies if the Scottish Ministers consider—
- (a) that the SCS is—
    - (i) failing to carry out its functions to such an extent that there is a significant risk to the efficient and effective functioning of the Scottish courts, or
    - (ii) is carrying them out in such a way that there is such a risk, and
  - (b) that in order to avoid or mitigate that risk it is necessary that the functions be carried out instead by them.
- (2) Where this subsection applies, the Scottish Ministers may by order provide for the functions of the SCS to be carried out instead by them.
- (3) So far as necessary for the purpose of the carrying out by the Scottish Ministers of the functions of the SCS by virtue of subsection (2)—
- (a) references in any enactment to the SCS are to be read as references to the Scottish Ministers,
  - (b) staff of the SCS are to be treated as if they were staff of the Scottish Ministers, and
  - (c) property and liabilities of the SCS are to be treated as property and liabilities of the Scottish Ministers.
- (4) Subsection (3) is subject to any provision made in an order under subsection (2).

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- (5) A statutory instrument containing an order under subsection (2) (other than one to which subsection (7) applies)—
  - (a) is to be laid before the Scottish Parliament after being made, and
  - (b) unless earlier revoked, ceases to have effect at the end of the period of 40 days beginning with the day on which it is made if it is not by then approved by resolution of the Parliament.
- (6) Subsection (7) applies to a statutory instrument containing an order under subsection (2) consisting only of—
  - (a) provision revoking an earlier order under subsection (2), or
  - (b) such provision and provision made by virtue of section 71(2).
- (7) A statutory instrument to which this subsection applies is subject to annulment in pursuance of a resolution of the Parliament.
- (8) If an order under subsection (2) ceases to have effect by virtue of subsection (5)(b)—
  - (a) that does not affect—
    - (i) the validity of anything done by or in relation to the Scottish Ministers by virtue of the order, or
    - (ii) the power to make a further order under subsection (2), and
  - (b) the Scottish Ministers may by order make such consequential provision as they consider necessary or expedient.
- (9) In calculating a period of 40 days for the purpose of subsection (5)(b), no account is to be taken of any time during which the Parliament is—
  - (a) dissolved, or
  - (b) in recess for more than 4 days.

## PART 5

### GENERAL

#### 71 Orders and regulations

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes.
- (3) A statutory instrument containing an order or regulations under this Act except—
  - (a) an order under section 70(2), 76(1) or paragraph 2(5) of schedule 3, and
  - (b) where subsection (4) applies, an order under section 74(1),
 is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) No—
  - (a) order under paragraph 2(5) of schedule 3, or

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(b) order under section 74(1) containing provisions which add to, replace or omit any part of the text of an Act,  
is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

## 72 Interpretation

In this Act—

“the 1971 Act” means the Sheriff Courts (Scotland) Act 1971 (c. 58),  
“the Inner House” means the Inner House of the Court of Session,  
“the Lord President” means the Lord President of the Court of Session,  
“office of part-time sheriff” means an appointment under section 11A, or a reappointment under section 11B(5) or (7), of the 1971 Act, and references to suspension from that office are to be construed accordingly,  
“office of temporary judge” means an appointment under section 35(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), and references to removal or suspension from that office are to be construed accordingly,  
“office of temporary sheriff principal” means an appointment under section 11(1) or (1A) of the 1971 Act, and references to suspension from that office are to be construed accordingly.

## 73 Consequential amendments and repeals

Schedule 5, which contains consequential amendments and repeals of enactments, has effect.

### Commencement Information

**I5** S. 73 partly in force; s. 73 not in force at Royal Assent see s. 76; s. 73 in force for specified purposes at 1.6.2009 by S.S.I. 2009/192, art. 2, Sch.

## 74 Ancillary provision

- (1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).

## 75 Transitional provision etc.

- (1) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).

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## 76 Commencement and short title

- (1) The provisions of this Act, other than this section and sections 71, 72, 74 and 75, come into force in accordance with provision made by order by the Scottish Ministers.
- (2) This Act may be cited as the Judiciary and Courts (Scotland) Act 2008.

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### Subordinate Legislation Made

- P1** [S. 76\(1\)](#) power partly exercised; 16.3.2009 appointed for specified provisions and purposes by [S.S.I. 2009/83](#), [art. 2](#); 1.6.2009 appointed for specified provisions and purposes by [S.S.I. 2009/192](#), [art. 2](#), [Sch.](#) ; 1.10.2009 appointed for specified provisions and purposes by [S.S.I. 2009/318](#), [art. 2](#), [Sch.](#)



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## SCHEDULE 1

(introduced by section 9(4))

### THE JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

#### *Status of the Board*

- 1 The Board is not a servant of the Crown and has no status, immunity or privilege of the Crown.

#### *Membership*

- 2 The Board consists of—
- (a) judicial members appointed by the Lord President,
  - (b) legal members appointed by the Scottish Ministers, and
  - (c) lay members appointed by the Scottish Ministers.

#### *The judicial and legal members*

- 3 (1) The judicial members comprise—
- (a) one person holding the office of judge of the Court of Session (other than the Lord President and the Lord Justice Clerk),
  - (b) one person holding the office of sheriff principal, and
  - (c) one person holding the office of sheriff.
- (2) The legal members comprise—
- (a) one advocate practising as such in Scotland, and
  - (b) one solicitor practising as such in Scotland.
- (3) Each of the descriptions of members mentioned—
- (a) in sub-paragraph (1) is referred to in this schedule as a “judicial membership category”, and
  - (b) in sub-paragraph (2) is referred to in this schedule as a “legal membership category”.
- (4) The Scottish Ministers may by order modify sub-paragraph (1) or (2).
- (5) However, an order under sub-paragraph (4) may not remove any judicial or legal membership category other than one added by such an order.

#### *The lay members*

- 4 (1) The number of lay members is to be equal to the total number of judicial and legal members.
- (2) Each lay member is to be an individual who—
- (a) is resident in Scotland,
  - (b) is not a solicitor or advocate practising as such in Scotland, and
  - (c) does not hold and has not held any judicial office within the Board's remit.

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### *Persons disqualified from membership*

- 5 A person is disqualified from appointment, and from holding office, as a member if the person is or becomes—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a Minister of the Crown,
  - (e) a member of the Scottish Executive, or
  - (f) a civil servant.

### *Term of office*

- 6 (1) A member holds office for such period of not more than 4 years as—
- (a) the Lord President in the case of a judicial member, or
  - (b) the Scottish Ministers in the case of a legal or lay member,
- at the time of appointment, may determine.
- (2) A person who is or has been a member may be reappointed (whether in the same or a different capacity) for further periods.
- (3) However, a person may not hold office as a member for periods (whether or not consecutive) totalling more than 8 years.
- (4) A member's appointment ceases—
- (a) on expiry of the member's period of appointment,
  - (b) on the member's becoming disqualified from holding office as a member,
  - (c) in the case of a judicial or legal member, on the member's ceasing to fall within the judicial or legal membership category under which the member was appointed, or
  - (d) in the case of a lay member, on the member's ceasing to be qualified for appointment as a lay member.
- (5) However, despite the occurrence (or likely occurrence) of an event mentioned in sub-paragraph (4) in relation to a member—
- (a) the Lord President in the case of a judicial member, or
  - (b) the Scottish Ministers in the case of a legal or lay member,
- may direct that the member is to continue to hold office for such period, not exceeding 6 months, as the Lord President or the Scottish Ministers, as the case may be, may direct.
- (6) Such a direction may be given in relation to a member before or after the occurrence of an event mentioned in sub-paragraph (4).
- (7) A person whose appointment as a member ceases by virtue of sub-paragraph (4) or (5) may nonetheless continue to act as a member so far as that is necessary for the purposes of concluding consideration of a judicial appointment which the Board is in the course of considering at the time the person's appointment ceases.

### *Resignation of members*

- 7 (1) A member may resign office by giving notice in writing—

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- (a) in the case of a judicial member, to the Lord President, and
  - (b) in the case of a legal or lay member, to the Scottish Ministers.
- (2) A member giving notice—
- (a) under sub-paragraph (1)(a) must send a copy of the notice to the Scottish Ministers,
  - (b) under sub-paragraph (1)(b) must send a copy of the notice to the Lord President.
- (3) Notice under sub-paragraph (1) must be given at least 6 months before the proposed date of resignation unless a shorter period is agreed with the person to whom notice is to be given under that sub-paragraph.

#### *Removal of members*

- 8
- (1) The Lord President may, by notice in writing, remove a judicial member from office if satisfied, after consulting the Chairing Member and the Scottish Ministers, that sub-paragraph (4) applies in relation to the member.
  - (2) The Scottish Ministers may, by notice in writing, remove a legal or lay member from office if satisfied, after consulting the Chairing Member (unless that is the member concerned) and the Lord President, that sub-paragraph (4) applies in relation to the member.
  - (3) A member may not be removed from office under sub-paragraph (1) or (2) without the member being afforded an opportunity to be heard by the Lord President or, as the case may be, the Scottish Ministers.
  - (4) This sub-paragraph applies if the member—
    - (a) has failed without reasonable excuse to discharge the functions of a member for a continuous period of 6 months,
    - (b) has been convicted of any offence,
    - (c) has become insolvent, or
    - (d) is otherwise unfit to be a member or unable for any reason to discharge the functions of a member.
  - (5) For the purposes of sub-paragraph (4)(c), a member becomes insolvent on—
    - (a) the approval of a voluntary arrangement proposed by the member,
    - (b) being adjudged bankrupt,
    - (c) the member's estate's being sequestrated, or
    - (d) the member's granting a trust deed for creditors.

#### *Chairing Member: appointment and tenure*

- 9
- (1) The Scottish Ministers must appoint one of the lay members to chair the Board.
  - (2) That member is referred to in this Act as the “Chairing Member”.
  - (3) The Chairing Member holds office as such for such period of not more than 4 years as the Scottish Ministers, at the time of appointment, may determine.
  - (4) The Chairing Member's appointment as such ceases on the Chairing Member's ceasing to be a member of the Board.

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- (5) A member who is or has been the Chairing Member may be reappointed for further periods.

*Chairing Member: resignation, removal, vacancy etc.*

- 10 (1) The Chairing Member may resign office as such by giving notice in writing to the Scottish Ministers.
- (2) The Scottish Ministers may, by notice in writing, remove the Chairing Member from office if, after consulting the Lord President, they are satisfied that the member—
- (a) has failed without reasonable excuse to discharge the functions of the Chairing Member for a continuous period of 6 months, or
  - (b) is otherwise unfit to be the Chairing Member or unable for any reason to carry out the functions of the Chairing Member.
- (3) During any period when there is a vacancy in the office of the Chairing Member, the functions of the Chairing Member may be carried out by another lay member nominated by the Board.
- (4) During any period when the Chairing Member is for any reason unable to act, the functions of the Chairing Member may be carried out by another lay member nominated—
- (a) by the Chairing Member, or
  - (b) if the Chairing Member is unable to make such a nomination, by the Board.
- (5) Sub-paragraphs (1), (2) and (4) apply to a member carrying out functions by virtue of sub-paragraph (3) or (4) as they apply to the Chairing Member.

*Temporary members*

- 11 (1) Where the Chairing Member is satisfied that a member of the Board (“the absent member”) is likely to be unable to discharge the functions of a member for a period of time not exceeding 6 months (“the period of absence”), the Chairing Member may—
- (a) where the absent member is a judicial member, request that the Lord President appoint an individual to be a temporary member of the Board,
  - (b) where the absent member is a legal or lay member, request that the Scottish Ministers appoint an individual to be a temporary member of the Board.
- (2) On receipt of a request under sub-paragraph (1), the Lord President or, as the case may be, the Scottish Ministers may, if satisfied that it is necessary for the carrying out by the Board of its functions during the period of absence, appoint an individual to be a temporary member in place of the absent member during that period.
- (3) An individual appointed by the Lord President under sub-paragraph (2) must fall within the same judicial membership category as that under which the absent member was appointed.
- (4) An individual appointed by the Scottish Ministers under sub-paragraph (2)—
- (a) where the absent member is a legal member, must fall within the same legal membership category as that under which the absent member was appointed,
  - (b) where the absent member is a lay member, must be qualified for appointment as a lay member.

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- (5) Before appointing a temporary member, the Lord President or, as the case may be, the Scottish Ministers must consult the Chairing Member.
- (6) A temporary member takes the place of the absent member and, accordingly, the absent member is not to be counted as a member while the temporary member holds office.
- (7) A temporary member's appointment ceases on—
  - (a) the period of absence coming to an end, or
  - (b) the expiry of the period of 6 months from the date of appointment, (whichever occurs first).
- (8) A person whose appointment as a temporary member ceases may nonetheless continue to act as a member so far as that is necessary for the purpose of concluding consideration of a judicial appointment which the Board is in the course of considering at the time the person's appointment ceases.
- (9) Otherwise, the provisions of this schedule apply to a temporary member as they apply to any other member, and references in this schedule to a member of the Board are to be read accordingly.

#### *Conflicts of interest*

- 12 (1) Sub-paragraph (2) applies where the Chairing Member is satisfied that a member of the Board (“the ineligible member”) is unable by reason of a conflict of interest to take part in the Board's consideration of a particular appointment (“the appointment concerned”).
- (2) The Chairing Member may—
  - (a) where the ineligible member is a judicial member, request that the Lord President appoint an individual to be a substitute member of the Board,
  - (b) where the ineligible member is a legal or lay member, request that the Scottish Ministers appoint an individual to be a substitute member of the Board.
- (3) On receipt of a request under sub-paragraph (2), the Lord President or, as the case may be, the Scottish Ministers may, if satisfied that it is necessary for the carrying out by the Board of its functions in relation to the appointment concerned, appoint an individual to be a substitute member to take the place of the ineligible member for the purposes of that appointment.
- (4) An individual appointed by the Lord President under sub-paragraph (3) must fall within the same judicial membership category as that under which the ineligible member was appointed.
- (5) An individual appointed by the Scottish Ministers under sub-paragraph (3)—
  - (a) where the ineligible member is a legal member, must fall within the same legal membership category as that under which the substituted member was appointed,
  - (b) where the ineligible member is a lay member, must be qualified for appointment as a lay member.

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- (6) The appointment of a substitute member under sub-paragraph (3) in relation to the appointment concerned does not prevent the ineligible member from taking part in the Board's consideration of any other appointment.
- (7) A substitute member is not to be counted as a member for the purposes of paragraph 4(1).
- (8) A substitute member's appointment ceases on the conclusion of the Board's consideration of the appointment concerned.
- (9) Otherwise, the provisions of this schedule apply to a substitute member as they apply to any other member, and references in this schedule to a member of the Board are to be read accordingly.

#### *Fees and expenses*

- 13 (1) Each member of the Board is entitled to such fees and expenses, if any, as the Scottish Ministers may determine.
- (2) It is for the Scottish Ministers to pay those fees and expenses.
- (3) The Scottish Ministers may determine different fees and expenses for different members.

#### *Administrative support*

- 14 (1) The Scottish Ministers must provide, or ensure the provision of, such staff, property and services as they consider the Board requires for the purpose of carrying out its functions.
- (2) Reference to “services” in sub-paragraph (1) includes, in particular, the appointment of a person—
  - (a) as an independent observer of the Board's procedures, or
  - (b) to provide the Board with advice.
- (3) The Scottish Ministers must consult the Board as to the staff, property and services it requires for the purpose of carrying out its functions.

#### *Procedure*

- 15 (1) The Board may determine its own procedure (including the number of members required to constitute a quorum).
- (2) However, the Chairing Member is not to have a casting vote.

#### *Committees and delegation*

- 16 (1) The Board may establish committees and may delegate the carrying out of any of its functions to a committee.
- (2) Sub-paragraph (1) does not affect the Board's responsibility for the carrying out of its functions.

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### *Validity of proceedings*

- 17 The validity of any proceedings or actings of the Board is not affected by—
- (a) any vacancy in the membership of the Board,
  - (b) any defect in the appointment of a member of the Board, or
  - (c) disqualification of any person from holding office as a member of the Board.

### *Board to fall within remit of Commissioner for Public Appointments in Scotland*

- 18 (1) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (which lists the authorities appointments to which are subject to the remit of the Commissioner for Public Appointments in Scotland), under the heading “Advisory bodies”, insert, at the appropriate place in alphabetical order— “Judicial Appointments Board for Scotland”.
- (2) If the code of practice published under section 2 of that Act contains provision of the kind described in sub-paragraph (3), that provision does not apply in relation to the making by the Scottish Ministers of an appointment to the Board.
- (3) That is provision which has the effect of requiring that there be included among the members of any selection panel constituted for the purpose of considering candidates for the appointment a person falling within any of sub-paragraphs (a) to (f) of paragraph 5 of this schedule.

### *Code of conduct for members*

- 19 In the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), in schedule 3 (which lists the devolved public bodies required to produce a code of conduct for their members under that Act), insert, at the appropriate place in alphabetical order— “The Judicial Appointments Board for Scotland”.

### *Maladministration*

- 20 (1) In the Scottish Public Services Ombudsman Act 2002 (asp 11), in schedule 2 (which lists the authorities subject to investigation under that Act), in Part 2 (entries amendable by Order in Council), after paragraph 25 insert—
- “25A The Judicial Appointments Board for Scotland.”.
- (2) The Board must make such arrangements as it considers appropriate for the investigation by it of any complaints of maladministration made to it by an individual concerning the manner in which the Board has carried out its functions in relation to the individual.
- (3) The Board must take reasonable steps to ensure that any individuals in relation to whom it carries out functions are made aware of the arrangements made under sub-paragraph (2).

### *Freedom of information*

- 21 In the Freedom of Information (Scotland) Act 2002 (asp 13), in schedule 1 (which lists the Scottish public authorities subject to that Act), in Part 7 (other authorities), before paragraph 69 insert—
- “68A The Judicial Appointments Board for Scotland”.

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*Transitional provision: constitution of the first Board*

- 22 (1) The first members of the Board are to be those persons who are members of the existing Judicial Appointments Board on the coming into force of this schedule.
- (2) The first Chairing Member of the Board is to be the person who chairs the existing Judicial Appointments Board on the coming into force of this schedule.
- (3) In sub-paragraphs (1) and (2), “the existing Judicial Appointments Board” means the administrative body established by the Scottish Ministers known as the Judicial Appointments Board for Scotland.

SCHEDULE 2

*(introduced by section 19(2))*

PANELS ESTABLISHED UNDER SECTION 19(2)

*Constitution of panel*

- 1 (1) A panel established under section 19(2) in connection with a vacancy, or an expected vacancy, in the office of Lord President is to comprise—
- (a) the Chairing Member of the Judicial Appointments Board for Scotland (“the Board”),
  - (b) one of the other lay members of the Board nominated by the Chairing Member, and
  - (c) two qualifying judges (on which see paragraph 3) nominated by the First Minister.
- (2) A panel established under section 19(2) in connection with a vacancy, or an expected vacancy, in the office of Lord Justice Clerk is to comprise—
- (a) the Chairing Member of the Board,
  - (b) one of the other lay members of the Board nominated by the Chairing Member,
  - (c) the Lord President, and
  - (d) one qualifying judge nominated by the First Minister.
- (3) This paragraph is subject to paragraph 2.

*Vacancies etc.*

- 2 (1) If the Chairing Member of the Board is unable for good reason to participate in a panel, that Member's place on the panel is to be taken by a lay member of the Board nominated by the Chairing Member.
- (2) If the office of the Chairing Member is vacant, or if that Member is unable for any reason to make a nomination for the purposes of sub-paragraph (1), that Member's place on the panel is to be taken by another lay member of the Board nominated by the Board.
- (3) If the Lord President is unable for good reason to participate in a panel, the Lord President's place is to be taken by a qualifying judge nominated by the Lord President.



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- (4) During any period when section 4 applies, or if the Lord President is unable for any reason to make a nomination for the purposes of sub-paragraph (3), the Lord President's place on the panel is to be taken by a qualifying judge nominated by the First Minister.

#### *Qualifying judges*

- 3 (1) The qualifying judges are—
- (a) those judges of the Supreme Court of the United Kingdom who have held office as judges of the Court of Session, and
  - (b) the judges of the Court of Session (other than the Lord President).
- (2) The Lord Justice Clerk is not a qualifying judge in relation to a panel to be established in connection with an expected vacancy in that office.
- (3) A judge is a qualifying judge in relation to a panel only if the judge has given to the First Minister notice that the judge is not willing to be appointed to the vacancy in connection with which the panel is to be established.

#### *Fees and expenses*

- 4 (1) Each member of a panel is entitled to such fees and expenses, if any, as the Scottish Ministers may determine.
- (2) It is for the Scottish Ministers to pay those fees and expenses.
- (3) The Scottish Ministers may determine different fees and expenses for different members.

### SCHEDULE 3

*(introduced by section 60(2))*

#### THE SCOTTISH COURT SERVICE

PROSPECTIVE

#### *Status of [F1SCTS]*

##### **Textual Amendments**

- F1** Word in Act substituted (2.2.2015 for specified purposes, 1.4.2015 in so far as not already in force) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 4 para. 1(2)**; S.S.I. 2015/12, art. 2; S.S.I. 2015/77, art. 2(2)(3), Sch.

F2<sup>1</sup>

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### Textual Amendments

- F2** Sch. 3 para. 1 repealed (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 4 para. 1\(7\)](#); S.S.I. 2015/77, art. 2(2)(3), Sch.

### *Membership*

- 2 (1) The SCS consists of judicial members and non-judicial members.
- (2) The judicial members comprise—
- (a) the Lord President,
  - (b) the Lord Justice Clerk,
  - (c) one other person holding the office of judge of the Court of Session,
  - (d) one person holding the office of sheriff principal,
  - (e) two persons holding the office of sheriff, and
  - (f) one person holding the office of justice of the peace.
- (3) The non-judicial members comprise—
- (a) an advocate practising as such in Scotland,
  - (b) a solicitor practising as such in Scotland,
  - (c) the Chief Executive (appointed under paragraph 14(1)), and
  - (d) three other individuals none of whom is qualified for appointment as a judicial member or for appointment under any of the preceding paragraphs.
- (4) Each of the descriptions of members mentioned in sub-paragraphs (2) and (3) is referred to in this schedule as a “category of membership”.
- (5) Subject to sub-paragraph (6), the Scottish Ministers may, with the consent of the Lord President, by order modify sub-paragraph (2) or (3).
- (6) The Scottish Ministers must not make an order under sub-paragraph (5) if its effect would be that the total number of judicial members would no longer exceed the total number of non-judicial members.

### *Procedure for appointment of members*

- 3 (1) It is for the Lord President to appoint the members of the SCS (other than the Lord Justice Clerk and the Chief Executive).
- (2) The Lord President may appoint a person to be a member only if the person has been nominated, or otherwise selected for appointment, in accordance with such procedure as the Scottish Ministers may by regulations prescribe.
- (3) Regulations under sub-paragraph (2) may—
- (a) in particular, make provision for or in connection with enabling persons to nominate or select persons suitable for appointment,
  - (b) prescribe different procedures for different categories of membership.
- (4) The Scottish Ministers must consult the Lord President before making regulations under sub-paragraph (2).

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#### Commencement Information

- 16** Sch. 3 para. 3 wholly in force at 1.6.2009; Sch. 3 para. 3 not in force at Royal Assent see s. 76; Sch. 3 para. 3(2)(3)(4) in force at 16.3.2009 by S.S.I. 2009/83, art. 2; Sch. 3 para. 3(1) in force at 1.6.2009 by S.S.I. 2009/192, art. 2, Sch.

#### *Persons disqualified from membership*

- 4 A person is disqualified from appointment, and from holding office, as a member of the SCS if the person is or becomes—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a councillor of any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
  - (e) a Minister of the Crown, or
  - (f) a member of the Scottish Executive.

#### *Term of office*

- 5 (1) This paragraph applies to a member of the SCS appointed by the Lord President.
- (2) The member holds office for such period not exceeding 4 years as the Lord President may, at the time of appointment, determine.
- (3) The member ceases to hold office—
- (a) on becoming disqualified from holding office as a member,
  - (b) on ceasing to fall within the category of membership under which the member was appointed.

#### *Reappointment*

- 6 A person who is, or has been, a member of the SCS appointed by the Lord President may be reappointed (whether under the same or a different category of membership) for further periods.

#### *Resignation and removal of members*

- 7 (1) This paragraph applies to a member of the SCS appointed by the Lord President.
- (2) The member may resign office by giving notice in writing to the Lord President.
- (3) The Lord President may, by notice in writing, remove the member if satisfied that the member is unfit to be a member by reason of inability, neglect of duty or misbehaviour.

#### *Suspension of judicial members*

- 8 A judicial member is suspended from acting as such during any period in which the member is suspended from the judicial office which the member holds.

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### *Chairing of the SCS*

- 9 (1) The Lord President is to chair meetings of the SCS.
- (2) The Lord Justice Clerk may deputise for the Lord President in chairing meetings.
- (3) Where the Lord President and the Lord Justice Clerk are for any reason unable to attend a meeting the remaining members may elect a member to chair the meeting.

### *Committees*

- 10 (1) The SCS may establish committees.
- (2) A person who is not a member of the SCS may be appointed to be a member of any committee established by it.

### *Proceedings*

- 11 The SCS may determine—
- (a) its own procedure (including the number of members required to constitute a quorum), and
  - (b) the procedure (including the number of members required to constitute a quorum) of any committees established by it.

### *Validity of actings*

- 12 The validity of any proceedings or actings of the SCS is not affected by—
- (a) any vacancy in the membership of the SCS,
  - (b) any defect in the appointment of a member of the SCS, or
  - (c) disqualification of any person from holding office as a member of the SCS.

### *Remuneration and expenses*

- 13 (1) The SCS may pay to—
- (a) its members, and
  - (b) the members of any committee established by it,
- such sums as it may determine by way of reimbursement of expenses in respect of the carrying out of their functions as members.
- (2) The SCS may pay to—
- (a) the judicial member who is a justice of the peace,
  - (b) the non-judicial members, and
  - (c) the members of any committee established by it,
- such other remuneration, if any, as it may determine.

### *Chief Executive and other staff*

- 14 (1) The SCS must appoint a Chief Executive.
- (2) The SCS may appoint such other staff as it considers appropriate.

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VALID FROM 01/04/2010

*Ancillary powers*

- 15 (1) The SCS may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.
- (2) In particular, the SCS may—
- (a) acquire and dispose of land and other property,
  - (b) enter into contracts,
  - (c) provide information and advice.

VALID FROM 01/04/2010

*Power to use local authority premises*

- 16 (1) The SCS may, where it considers it necessary for the purposes of carrying out its functions under section 61 or 62, require a local authority to—
- (a) let (or sub-let) premises controlled by the local authority to the SCS, or
  - (b) make such premises available for use for the purposes of the SCS.
- (2) A requirement under sub-paragraph (1)(a) is subject to agreement—
- (a) between the SCS and the local authority as to the rent payable under, and as to the other terms of, the lease (or sub-lease), and
  - (b) with any third party who has an interest in the premises.
- (3) Where a requirement is made under sub-paragraph (1)(b)—
- (a) the SCS is to reimburse the authority for any reasonable expenses incurred by the authority in respect of heating, lighting and cleaning in relation to the use of the premises for the purposes of the SCS, and
  - (b) the SCS is to allow the premises to continue to be used for any business normally conducted there, or for any business for which it may be used under a local enactment (whether a local Act or otherwise), without adversely affecting that business.
- (4) The SCS may allow any premises let, sub-let or used under sub-paragraph (1) to be used by other persons subject to—
- (a) such conditions as the SCS may impose, and
  - (b) sub-paragraph (3)(b).
- (5) Any dispute arising from the operation of this paragraph which the parties are unable to resolve is to be determined by an arbiter appointed—
- (a) by agreement of the parties, or
  - (b) in the absence of such agreement, by the Scottish Ministers on the application of a party.

*Status: Point in time view as at 20/02/2010. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)*

VALID FROM 01/04/2010

*Delegation*

- 17 (1) Any function of the SCS may be carried out on its behalf by—
- (a) a member of the SCS,
  - (b) a committee,
  - (c) a member of its staff, or
  - (d) any other person,
- authorised (whether specifically or generally) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the SCS from exercising any function delegated under that sub-paragraph.

*Freedom of information*

- 18 In the Freedom of Information (Scotland) Act 2002 (asp 13), in schedule 1 (which lists the Scottish public authorities subject to that Act), in Part 2 (non ministerial office holders in the Scottish Administration), after paragraph 18 insert—
- “18A The Scottish Court Service.”.

VALID FROM 01/04/2010

*Transfer of staff*

- 19 (1) Sub-paragraph (2) applies to persons who, on the coming into force of this paragraph—
- (a) hold any of the offices mentioned in section 63(2), or
  - (b) are members of the staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as the Scottish Court Service Agency (referred to in this paragraph as “the Agency”), other than excepted staff.
- (2) On the coming into force of this paragraph, those officers and staff transfer to, and become members of the staff of, the SCS (as well as, in the case of the holders of the offices referred in sub-paragraph (1)(a), continuing to hold those offices).
- (3) The excepted staff are—
- (a) the Chief Executive of the Agency, and
  - (b) staff on secondment or loan to the Agency from another part of the Scottish Administration.
- (4) The contract of employment of a person who becomes a member of the staff of the SCS by virtue of sub-paragraph (2)—
- (a) is not terminated by the transfer, and
  - (b) has effect from the date this paragraph comes into force as if originally made between the person and the SCS.
- (5) Without prejudice to sub-paragraph (4)—

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**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

- (a) all the rights, powers, duties and liabilities of the Scottish Ministers under or in connection with the person's contract of employment are by virtue of this sub-paragraph transferred to the SCS on the date on which this paragraph comes into force, and
  - (b) anything done before that date by or in relation to the Scottish Ministers in respect of that contract of employment or that person is to be treated from that date as having been done by or in relation to the SCS.
- (6) This paragraph does not prejudice any right of any person to terminate that person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but such a change is not to be taken to have occurred by reason only that the identity of the person's employer changes by virtue of this paragraph.
- (7) The Scottish Ministers must appoint, on such terms and conditions as they may determine, a person to act as the Chief Executive of the SCS until the first Chief Executive is appointed by the SCS under paragraph 14(1).
- (8) A determination by the Scottish Ministers that any member of their staff is—
- (a) employed as mentioned in sub-paragraph (1)(b), or
  - (b) excepted staff by virtue of sub-paragraph (3),
- is conclusive of that fact for the purposes of this paragraph.

#### *Transfer of property and liabilities*

- 20 (1) The Scottish Ministers may by order provide for the transfer to the SCS of any property or liabilities to which sub-paragraph (2) applies.
- (2) This sub-paragraph applies to—
- (a) property of the Scottish Ministers which is held or used by them for or in connection with—
    - (i) the purposes of the Scottish courts or the judiciary of those courts,
    - (ii) the purposes referred to in section 62(1), and
  - (b) liabilities of the Scottish Ministers incurred in connection with those purposes.
- (3) An order under sub-paragraph (1) may in particular—
- (a) provide for the creation of rights or interests, or the imposition of liabilities or conditions, in relation to property transferred, or rights or interests acquired, by virtue of the order,
  - (b) provide for any property, liabilities or conditions to be determined under the order.
- (4) An order under sub-paragraph (1) has effect in relation to any property or liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.
- (5) A right of pre-emption, right of irritancy, right of return or other similar right does not operate or become exercisable as a result of any transfer of property by virtue of an order under sub-paragraph (1).

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**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

- (6) Any such right has effect in the case of any such transfer as if the SCS were the same person in law as the Scottish Ministers and as if no transfer of the property had taken place.
- (7) Such compensation as is just is to be paid to any person in respect of any such right which—
- (a) would, apart from sub-paragraph (5), have operated in favour of, or become exercisable by, that person, but
  - (b) in consequence of the operation of that sub-paragraph, cannot subsequently operate in the person's favour or (as the case may be) become exercisable by the person.
- (8) Any compensation payable by virtue of sub-paragraph (7) is to be paid by the Scottish Ministers or by the SCS or by both.
- (9) An order under sub-paragraph (1) may provide for the determination of any disputes as to—
- (a) whether and, if so, how much, compensation is payable by virtue of sub-paragraph (7), and
  - (b) the person to whom or by whom it is to be paid.
- (10) Sub-paragraphs (4) to (9) apply in relation to the creation of rights or interests, or the doing of anything else, in relation to property as they apply in relation to a transfer of property.
- (11) A certificate issued by the Scottish Ministers that any property or liability has, or has not, been transferred by virtue of an order under sub-paragraph (1) is conclusive evidence of the transfer or (as the case may be) the fact that there has not been a transfer.
- (12) In this paragraph, “right of return” means any right under a provision for the return or reversion of property in specified circumstances.

VALID FROM 01/04/2010

#### SCHEDULE 4

*(introduced by section 63(4))*

#### APPOINTMENT ETC. OF OFFICE HOLDERS: CONSEQUENTIAL AMENDMENTS

##### *The Administration of Justice (Scotland) Act 1933 (c. 41)*

- 1 (1) The Administration of Justice (Scotland) Act 1933 is amended as follows.
- (2) In section 23(1) (appointment of clerks in the Court of Justiciary), for “Scottish Ministers and shall be exercised after consultation with the Lord Justice General” substitute “ Scottish Court Service ”.
- (3) In section 24 (appointment of officers of the Court of Session)—
- (a) in subsection (1)—



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**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

- (i) for “Scottish Ministers shall, after consultation with the Lord President,”, substitute “ Scottish Court Service shall ”, and
- (ii) for “they” substitute “ it ”, and
- (b) in subsection (7)—
  - (i) for “Scottish Ministers”, in both places those words appear, substitute “ Scottish Court Service ”, and
  - (ii) for “them”, substitute “ it ”.

(4) For section 25 substitute—

**“25 Appointment of Principal Clerk of Justiciary etc.**

- (1) The right of appointing to the offices of Principal Clerk of Justiciary and Accountant of Court shall be vested in the Scottish Court Service.
- (2) The right of appointing to the office of Auditor of the Court of Session shall be vested in the Scottish Ministers.”.
- (5) In section 27 (remuneration of officers of High Court of Justiciary and Court of Session)—
  - (a) after subsection (1) insert—
    - “(1A) The remuneration of the persons appointed to any office in pursuance of the powers vested in the Scottish Court Service by this Part of this Act, shall be of such amounts as the Scottish Court Service may determine.”, and
  - (b) in subsection (2)—
    - (i) the words “(other than the office of Auditor of the Court of Session)” are repealed, and
    - (ii) for “Scottish Ministers” substitute “ Scottish Court Service ”.

*The Sheriff Courts and Legal Officers (Scotland) Act 1927 (c. 35)*

- 2
- (1) The Sheriff Courts and Legal Officers (Scotland) Act 1927 is amended as follows.
  - (2) In section 1 (appointment of sheriff clerk and procurator fiscal)—
    - (a) in subsection (1)—
      - (i) for “one of His Majesty's Principal Secretaries of State” substitute “ the Scottish Court Service ”,
      - (ii) for “Secretary of State” substitute “ Scottish Court Service ”, and
      - (iii) for “him” substitute “ it ”, and
    - (b) in subsection (4), for “Secretary of State”, in both places those words appear, substitute “ Scottish Court Service ”.
  - (3) In section 2 (appointment of sheriff clerk and procurator fiscal deposes), for “Secretary of State” substitute “ Scottish Court Service ”.
  - (4) In section 3 (whole-time sheriff clerks and procurators fiscal and deposes), for “Secretary of State”, in both places those words appear, substitute “ Scottish Court Service ”.
  - (5) In section 4 (vacancy in office of sheriff clerk, procurator fiscal or deposes), for “Secretary of State” substitute “ Scottish Court Service ”.

**Status:** Point in time view as at 20/02/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

- (6) In section 5 (whole-time clerks)—
  - (a) in subsection (1), for “Secretary of State” substitute “ Scottish Court Service ”, and
  - (b) in subsection (2)—
    - (i) for “Scottish Ministers” substitute “ Scottish Court Service ”, and
    - (ii) for “they consider” substitute “ it considers ”.
- (7) In section 8 (power to issue instructions, etc.)—
  - (a) in subsection (1), for “Secretary of State” substitute “ Scottish Court Service ”, and
  - (b) in subsection (2)—
    - (i) for “Secretary of State” substitute “ Scottish Ministers ”, and
    - (ii) for “him” substitute “ the Scottish Court Service ”.
- (8) In section 9 (deputation by sheriff clerk or procurator fiscal), for “Secretary of State” substitute “ Scottish Court Service ”.

## SCHEDULE 5

*(introduced by section 73)*

### CONSEQUENTIAL AMENDMENTS AND REPEALS

VALID FROM 01/04/2010

#### *The Courts of Law Fees (Scotland) Act 1895 (c. 14)*

- 1 In the Courts of Law Fees (Scotland) Act 1895, in section 2(1)(a), the words from “the expenses” to “Scottish Ministers” are repealed.

VALID FROM 01/04/2010

#### *The Sheriff Courts (Scotland) Act 1971 (c. 58)*

- 2 (1) The 1971 Act is amended as follows.
- (2) Section 11A(2) is repealed.
  - (3) Section 11C is repealed.
  - (4) In section 11D (regulations and orders under sections 11A and 11C)—
    - (a) in subsection (1), for the words “Regulations under section 11A or section 11C and orders” substitute “ Orders ”, and
    - (b) in subsection (2), the words “regulations or” are repealed.
  - (5) Part 2 (court houses, buildings and offices) is repealed.

**Status:** Point in time view as at 20/02/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008. (See end of Document for details)

(6) In section 33 (Sheriff Court Rules Council), in subsection (4), the words from “and” to the end are repealed.

VALID FROM 01/04/2010

*The Scotland Act 1998 (Transitory and Transitional Provisions) (Removal of Judges) Order 1999 (S.I. 1999/1017)*

3 The Scotland Act 1998 (Transitory and Transitional Provisions) (Removal of Judges) Order 1999 is revoked.

*The Senior Judiciary (Vacancies and Incapacity) (Scotland) Act 2006 (asp 9)*

4 The Senior Judiciary (Vacancies and Incapacity) (Scotland) Act 2006 is repealed.

VALID FROM 01/04/2010

*The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)*

5 (1) The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 is amended as follows.

(2) In section 81 (orders)—

- (a) in subsection (1), after “Ministers” insert “ or the Lord President of the Court of Session ”, and
- (b) in subsection (2)(a), after “consider” insert “ or (as the case may be) the Lord President considers ”.

(3) The following provisions are repealed—

- (a) in section 59(8) (establishing JP courts), paragraph (a) and the word “and” which immediately follows it,
- (b) section 60 (provision for justice of the peace courts), and
- (c) section 63(6) (staffing of justice of the peace courts)

**Status:**

Point in time view as at 20/02/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008.