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Courts Reform (Scotland) Act 2014

2014 asp 18

PART 1

SHERIFF COURTS

VALID FROM 12/03/2015

CHAPTER 2

JUDICIARY OF THE SHERIFFDOMS

VALID FROM 01/04/2015

Permanent and full-time judiciary

3 Sheriffs principal

- (1) For each sheriffdom, there is to continue to be a judicial officer to be known as the “sheriff principal” of the sheriffdom.
- (2) It is for Her Majesty to appoint an individual to the office of sheriff principal.
- (3) The First Minister may, under section 95(4) of the Scotland Act 1998, recommend to Her Majesty the appointment of an individual to the office of sheriff principal only if the individual is qualified for appointment (see section 14).
- (4) Subsection (3) does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008 (recommendation by the Judicial Appointments Board for Scotland).
- (5) In addition to the jurisdiction and powers that attach specifically to the office of sheriff principal, the sheriff principal of a sheriffdom may also exercise in the sheriffdom the jurisdiction and powers that attach to the office of sheriff.

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- (6) Subsection (5) is subject to any provision, express or implied, to the contrary in any other enactment.

4 Sheriffs

- (1) For each sheriffdom, there are to continue to be judicial officers each to be known as a “sheriff” of the sheriffdom.
- (2) It is for Her Majesty to appoint an individual to the office of sheriff.
- (3) The First Minister may, under section 95(4) of the Scotland Act 1998, recommend to Her Majesty the appointment of an individual to the office of sheriff only if the individual is qualified for appointment (see section 14).
- (4) Subsection (3) does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008 (recommendation by the Judicial Appointments Board for Scotland).

5 Summary sheriffs

- (1) For each sheriffdom, there are to be judicial officers each to be known as a “summary sheriff” of the sheriffdom.
- (2) It is for Her Majesty to appoint an individual to the office of summary sheriff.
- (3) Her Majesty may appoint an individual only if the individual has been recommended for appointment by the First Minister.
- (4) The First Minister may recommend to Her Majesty the appointment of an individual only if the individual is qualified for appointment (see section 14).
- (5) Before making a recommendation under subsection (3), the First Minister must consult the Lord President of the Court of Session.
- (6) Subsection (4) does not affect the operation of section 11 of the Judiciary and Courts (Scotland) Act 2008 (recommendation by the Judicial Appointments Board for Scotland).

VALID FROM 01/04/2015

Temporary and part-time judiciary

6 Temporary sheriff principal

- (1) Subsection (2) applies where, in relation to a sheriffdom—
- (a) a vacancy occurs in the office of sheriff principal,
 - (b) the Lord President of the Court of Session believes that the sheriff principal is unable to perform all or some of the functions of the office, or
 - (c) the sheriff principal rules that he or she is precluded from performing all or some of those functions.
- (2) If the Lord President so requests, the Scottish Ministers must appoint—

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- (a) a person holding the office of sheriff (whether of the same or another sheriffdom), or
 - (b) a qualifying former sheriff principal (whether of the same or another sheriffdom),
- to act as sheriff principal of the sheriffdom.
- (3) A “qualifying former sheriff principal” is an individual who—
- (a) ceased to hold that office other than by virtue of an order under section 25, and
 - (b) has not reached the age of 75.
- (4) The appointment may be made for the purposes of the exercise of—
- (a) all of the sheriff principal's functions, or
 - (b) only those functions that the sheriff principal is unable to perform or is precluded from performing.
- (5) An individual appointed under subsection (2) is to be known as a “temporary sheriff principal”.
- (6) The Lord President may request the appointment of a temporary sheriff principal for a sheriffdom in the circumstances specified in subsection (1)(a) only if the Lord President considers such an appointment to be necessary or expedient in order to avoid a delay in the administration of justice in the sheriffdom.

7 Temporary sheriff principal: further provision

- (1) Subject to subsection (3), an individual's appointment as a temporary sheriff principal lasts until recalled under subsection (2).
- (2) The Scottish Ministers must, if requested to do so by the Lord President of the Court of Session, recall the appointment of a temporary sheriff principal.
- (3) A sheriff's appointment as a temporary sheriff principal ceases if the sheriff—
- (a) ceases to hold office as sheriff, or
 - (b) is suspended from office as sheriff.
- (4) Subject to section 6(4)(b), a temporary sheriff principal of a sheriffdom may exercise the jurisdiction and powers that attach to the office of sheriff principal of the sheriffdom, and does not need a commission for that purpose.
- (5) The appointment of a sheriff as a temporary sheriff principal does not affect the sheriff's appointment as sheriff.
- (6) Where a sheriff of one sheriffdom (“sheriffdom A”) is appointed as temporary sheriff principal of another sheriffdom (“sheriffdom B”)—
- (a) the sheriff must not, while remaining temporary sheriff principal of sheriffdom B, act in the capacity of sheriff of sheriffdom A, but
 - (b) in addition to the jurisdiction and powers that attach specifically to the office of sheriff principal, the sheriff, by virtue of the appointment as temporary sheriff principal of sheriffdom B, may also exercise in that sheriffdom the jurisdiction and powers that attach to the office of sheriff of that sheriffdom.

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8 Part-time sheriffs

- (1) The Scottish Ministers may appoint individuals to act as sheriffs; and individuals so appointed are to be known as “part-time sheriffs”.
- (2) The Scottish Ministers may appoint an individual only if—
 - (a) the individual is qualified for appointment (see section 14), and
 - (b) the Scottish Ministers have consulted the Lord President of the Court of Session before making the appointment.
- (3) Subject to section 20, an appointment as a part-time sheriff lasts for 5 years.
- (4) A part-time sheriff may exercise the jurisdiction and powers that attach to the office of sheriff in every sheriffdom, and does not need a commission for that purpose.
- (5) A part-time sheriff is subject to such instructions, arrangements and other provisions as may be made under this Act by the sheriff principal of the sheriffdom in which the part-time sheriff is for the time being sitting.
- (6) In carrying out their functions under this Act, sheriffs principal must together have regard to the desirability of securing that every part-time sheriff—
 - (a) is given the opportunity of sitting on not fewer than 20 days in each successive period of 12 months beginning with the day of the part-time sheriff’s appointment, and
 - (b) does not sit for more than 100 days in each such successive period.

9 Reappointment of part-time sheriffs

- (1) A part-time sheriff whose appointment comes to an end by virtue of the expiry of the 5 year period mentioned in section 8(3) is to be reappointed unless—
 - (a) the part-time sheriff declines reappointment,
 - (b) a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment, or
 - (c) the part-time sheriff has sat for fewer than 50 days in total in that 5 year period.
- (2) Section 8 (apart from subsection (2)) applies to a reappointment under subsection (1) as it applies to an appointment.
- (3) A part-time sheriff whose appointment comes to an end by resignation under section 20 may be reappointed.
- (4) Section 8 applies to a reappointment under subsection (3) as it applies to an appointment.

10 Part-time summary sheriffs

- (1) The Scottish Ministers may appoint individuals to act as summary sheriffs; and individuals so appointed are to be known as “part-time summary sheriffs”.
- (2) The Scottish Ministers may appoint an individual only if—
 - (a) the individual is qualified for appointment (see section 14), and
 - (b) the Scottish Ministers have consulted the Lord President of the Court of Session before making the appointment.

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- (3) Subject to section 20, an appointment as a part-time summary sheriff lasts for 5 years.
- (4) A part-time summary sheriff may exercise the jurisdiction and powers that attach to the office of summary sheriff in every sheriffdom, and does not need a commission for that purpose.
- (5) A part-time summary sheriff is subject to such instructions, arrangements and other provisions as may be made under this Act by the sheriff principal of the sheriffdom in which the part-time summary sheriff is for the time being sitting.
- (6) In carrying out their functions under this Act, sheriffs principal must together have regard to the desirability of securing that every part-time summary sheriff—
 - (a) is given the opportunity of sitting on not fewer than 20 days in each successive period of 12 months beginning with the day of the part-time summary sheriff's appointment, and
 - (b) does not sit for more than 100 days in each such successive period.

11 Reappointment of part-time summary sheriffs

- (1) A part-time summary sheriff whose appointment comes to an end by virtue of the expiry of the 5 year period mentioned in section 10(3) is to be reappointed unless—
 - (a) the part-time summary sheriff declines reappointment,
 - (b) a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment, or
 - (c) the part-time summary sheriff has sat for fewer than 50 days in total in that 5 year period.
- (2) Section 10 (apart from subsection (2)) applies to a reappointment under subsection (1) as it applies to an appointment.
- (3) A part-time summary sheriff whose appointment comes to an end by resignation under section 20 may be reappointed.
- (4) Section 10 applies to a reappointment under subsection (3) as it applies to an appointment.

VALID FROM 01/04/2015

Re-employment of former holders of certain judicial offices

12 Re-employment of former judicial office holders

- (1) A sheriff principal of a sheriffdom may appoint—
 - (a) a qualifying former sheriff principal to act as a sheriff of the sheriffdom,
 - (b) a qualifying former sheriff to act as such a sheriff,
 - (c) a qualifying former part-time sheriff to act as such a sheriff,
 - (d) a qualifying former summary sheriff to act as a summary sheriff of the sheriffdom,

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- (e) a qualifying former part-time summary sheriff to act as such a summary sheriff.
- (2) An individual appointed to act as mentioned in any of paragraphs (a) to (e) of subsection (1) may so act only during such periods or on such occasions as the sheriff principal may determine.
- (3) A sheriff principal may make an appointment under subsection (1) only if it appears to the sheriff principal to be expedient as a temporary measure in order to facilitate the disposal of business in the sheriff courts of the sheriffdom.
- (4) A “qualifying former sheriff principal” is an individual who—
- (a) ceased to hold that office other than by virtue of an order under section 25, and
 - (b) has not reached the age of 75.
- (5) A “qualifying former sheriff” is an individual who—
- (a) ceased to hold that office other than—
 - (i) by virtue of an order under section 25, or
 - (ii) by being appointed as a sheriff principal, and
 - (b) has not reached the age of 75.
- (6) A “qualifying former part-time sheriff” is an individual who—
- (a) ceased to hold that office other than—
 - (i) by virtue of removal under section 25,
 - (ii) by virtue of not being reappointed to the office on either of the grounds mentioned in section 9(1)(b) and (c), or
 - (iii) by being appointed as a sheriff principal, and
 - (b) has not reached the age of 75.
- (7) A “qualifying former summary sheriff” is an individual who—
- (a) ceased to hold that office other than—
 - (i) by virtue of an order under section 25, or
 - (ii) by being appointed as a sheriff, and
 - (b) has not reached the age of 75.
- (8) A “qualifying former part-time summary sheriff” is an individual who—
- (a) ceased to hold that office other than—
 - (i) by virtue of removal under section 25,
 - (ii) by virtue of not being reappointed to the office on either of the grounds mentioned in section 11(1)(b) and (c), or
 - (iii) by being appointed as a sheriff, and
 - (b) has not reached the age of 75.

13 Re-employment of former judicial office holders: further provision

- (1) Subject to subsection (4), an individual's appointment under section 12(1) lasts until the sheriff principal by whom the individual was appointed (or a successor to that sheriff principal) recalls the individual's appointment.

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- (2) An individual appointed under section 12(1) to act as a sheriff of a sheriffdom may exercise in the sheriffdom the jurisdiction and powers that attach to the office of sheriff, and does not need a commission for that purpose.
- (3) An individual appointed under section 12(1) to act as a summary sheriff of a sheriffdom may exercise in the sheriffdom the jurisdiction and powers that attach to the office of summary sheriff, and does not need a commission for that purpose.
- (4) An individual's appointment under section 12(1) ceases when the individual reaches the age of 75.
- (5) Despite the ending (whether by virtue of subsection (4) or otherwise) of an individual's appointment under section 12(1)—
 - (a) the individual may continue to deal with, give judgment in or deal with an ancillary matter relating to, a case begun before the individual while acting under that appointment,
 - (b) so far as necessary for that purpose, and for the purpose of any subsequent proceedings arising out of the case or matter, the individual is to be treated as acting or, as the case may be, having acted under that appointment.

VALID FROM 01/04/2015

Qualification and disqualification

14 Qualification for appointment

- (1) An individual is qualified for appointment to a judicial office mentioned in subsection (2) if the individual—
 - (a) immediately before the appointment, held any other judicial office specified in that subsection, or
 - (b) at the time of appointment—
 - (i) is legally qualified, and
 - (ii) has been so qualified throughout the period of 10 years immediately preceding the appointment.
- (2) The judicial offices are—
 - (a) sheriff principal,
 - (b) sheriff,
 - (c) summary sheriff,
 - (d) part-time sheriff,
 - (e) part-time summary sheriff.
- (3) For the purposes of subsection (1), an individual is legally qualified if the individual is a solicitor or an advocate.

15 Disqualification from practice, etc.

- (1) An individual holding a judicial office mentioned in subsection (2) must not, for so long as the individual holds the office—

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- (a) engage, whether directly or indirectly, in practice as a solicitor or advocate or in any other business,
 - (b) be in partnership with, or employed by, a person so engaged, or
 - (c) act as agent for a person so engaged.
- (2) The judicial offices are—
- (a) sheriff principal,
 - (b) sheriff,
 - (c) summary sheriff.
- (3) A part-time sheriff, or a part-time summary sheriff, who is a solicitor in practice must not carry out any function as a part-time sheriff or, as the case may be, a part-time summary sheriff in a sheriff court district in which his or her place of business as such solicitor is situated.

VALID FROM 01/04/2015

Remuneration and expenses

16 Remuneration

- (1) Each sheriff principal and sheriff is to be paid such salary as the Treasury may determine.
- (2) Such salary is to be paid quarterly or otherwise in every year, as the Treasury may determine.
- (3) Each summary sheriff is to be paid such remuneration as the Scottish Ministers may determine.
- (4) The Scottish Ministers may determine different amounts of remuneration for—
 - (a) different summary sheriffs, or
 - (b) different descriptions of summary sheriff.
- (5) Each judicial officer mentioned in subsection (7) is to be paid such remuneration as the Scottish Ministers may determine.
- (6) The Scottish Ministers may determine different amounts of remuneration for—
 - (a) different judicial officers mentioned in subsection (7), or
 - (b) different descriptions of such judicial officers.
- (7) The judicial officers are—
 - (a) a part-time sheriff,
 - (b) a part-time summary sheriff,
 - (c) an individual appointed to act as a sheriff or summary sheriff under section 12(1).
- (8) Subsection (9) applies in relation to—
 - (a) a sheriff principal of a sheriffdom authorised under section 30 to perform the functions of a sheriff principal in another sheriffdom, and

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- (b) a sheriff of a sheriffdom (“sheriffdom A”) directed under section 31 to perform the functions of sheriff in another sheriffdom in addition to sheriffdom A.
- (9) The sheriff principal or sheriff is to be paid, in respect of the additional functions, such remuneration as appears to the Secretary of State, with the consent of the Treasury, to be reasonable in all the circumstances.
- (10) Subsection (11) applies in relation to a summary sheriff of a sheriffdom (“sheriffdom B”) directed under section 31 to perform the functions of a summary sheriff in another sheriffdom in addition to sheriffdom B.
- (11) The summary sheriff is to be paid, in respect of the additional functions, such remuneration as appears to the Scottish Ministers to be reasonable in all the circumstances.
- (12) Salaries and remuneration under subsections (1) to (11) are to be paid by the Scottish Courts and Tribunals Service.
- (13) Sums required by the Scottish Courts and Tribunals Service for the payment of a salary under subsection (1) or remuneration under subsection (3) are charged on the Scottish Consolidated Fund.

17 Expenses

- (1) The Scottish Courts and Tribunals Service may pay to a judicial officer mentioned in subsection (3) such sums as it may determine in respect of expenses reasonably incurred by the officer in the performance of, or in connection with, the officer's duties.
- (2) The Scottish Courts and Tribunals Service may—
 - (a) determine the circumstances in which such sums may be paid, and
 - (b) determine different circumstances for—
 - (i) different judicial officers, or
 - (ii) different descriptions of judicial officers.
- (3) The judicial officers are—
 - (a) a sheriff principal,
 - (b) a sheriff,
 - (c) a summary sheriff,
 - (d) a temporary sheriff principal,
 - (e) a part-time sheriff,
 - (f) a part-time summary sheriff,
 - (g) individuals appointed to act as a sheriff or summary sheriff under section 12(1).

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Leave of absence

18 Leave of absence

- (1) The Lord President of the Court of Session may, for any sheriff principal or temporary sheriff principal, approve leave of absence for recreational or other purposes.
- (2) The sheriff principal of a sheriffdom may, for any sheriff or summary sheriff of the sheriffdom, approve leave of absence for recreational or other purposes.
- (3) The amount of leave for recreational purposes approved under this section for any sheriff principal, temporary sheriff principal, sheriff or summary sheriff must not exceed 7 weeks in any year.
- (4) That limit may be exceeded in any case with the permission of the Lord President.
- (5) The Lord President may grant permission under subsection (4) only if there are special reasons in the particular case that justify exceeding the limit.
- (6) The Lord President may delegate to a judge of the Court of Session a function conferred on the Lord President by this section.
- (7) In subsections (1) and (2), the references to leave of absence for purposes other than recreational purposes include (but are not limited to) references to sick leave, compassionate leave and study leave.

VALID FROM 01/04/2015

Residence

19 Place of residence

- (1) The Lord President of the Court of Session may require a judicial officer mentioned in subsection (2) to reside ordinarily at such place as the Lord President may specify.
- (2) The judicial officers are—
 - (a) a sheriff principal,
 - (b) a sheriff,
 - (c) a summary sheriff.

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Cessation of appointment

20 Cessation of appointment of judicial officers

- (1) A judicial officer mentioned in subsection (3) may resign at any time by giving notice to that effect to the Scottish Ministers.
- (2) An individual's appointment as such a judicial officer ends—
 - (a) when the individual resigns in accordance with subsection (1),
 - (b) when the individual retires from office,
 - (c) if the individual is removed from office as such under section 25, or
 - (d) if the individual is appointed as another such judicial officer.
- (3) The judicial officers are—
 - (a) a sheriff principal,
 - (b) a sheriff,
 - (c) a summary sheriff,
 - (d) a part-time sheriff,
 - (e) a part-time summary sheriff.

Fitness for office

VALID FROM 01/04/2015

21 Tribunal to consider fitness for office

- (1) The First Minister must, if requested to do so by the Lord President of the Court of Session, constitute a tribunal to investigate and report on whether an individual holding a judicial office mentioned in subsection (3) is unfit to hold the office by reason of inability, neglect of duty or misbehaviour.
- (2) Subject to subsection (1), the First Minister may, in such circumstances as the First Minister thinks fit and after consulting the Lord President, constitute such a tribunal.
- (3) The judicial offices are—
 - (a) sheriff principal,
 - (b) sheriff,
 - (c) summary sheriff,
 - (d) part-time sheriff, and
 - (e) part-time summary sheriff.
- (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 judicial office,

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- (c) one individual who is, and has been for at least 10 years—
 - (i) an advocate, or
 - (ii) a solicitor, and
 - (d) one individual who—
 - (i) is not and never has been a qualifying member of the Judicial Committee of the Privy Council,
 - (ii) does not hold and never has held a judicial office mentioned in subsection (3), and
 - (iii) is not and never has been an advocate or solicitor.
- (5) In subsection (4)—
- “a qualifying member of the Judicial Committee of the Privy Council” means someone who is a member of that Committee by virtue of section 1(2)(a) of the Judicial Committee Act 1833 (that is, someone who holds or has held high judicial office),
- “the relevant judicial office” means—
- (a) in respect of an investigation into whether an individual is fit to hold the office of sheriff principal, that office,
 - (b) in respect of an investigation into whether an individual is fit to hold the office of sheriff or part-time sheriff, the office of sheriff,
 - (c) in respect of an investigation into whether an individual is fit to hold the office of summary sheriff or part-time summary sheriff, the office of summary sheriff.
- (6) It is for the First Minister, with the agreement of the Lord President, to select persons to be members of a tribunal constituted under this section.
- (7) The person who is an individual mentioned in subsection (4)(a) is to chair the tribunal and has a casting vote.

VALID FROM 01/04/2015

22 Tribunal investigations: suspension from office

- (1) Subsection (2) applies where the Lord President of the Court of Session has requested that the First Minister constitute a tribunal under section 21.
- (2) The Lord President may, at any time before the tribunal reports to the First Minister, suspend from office the individual who is, or is to be, the subject of the tribunal's investigation.
- (3) Such a suspension lasts until the Lord President orders otherwise.
- (4) A tribunal constituted under section 21 may, at any time before the tribunal reports to the First Minister, recommend in writing to the First Minister that the individual who is the subject of the tribunal's investigation be suspended from office.
- (5) On receiving such a recommendation, the First Minister may suspend the individual from office.
- (6) Such a suspension lasts until the First Minister orders otherwise.

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- (7) Suspension of an individual from the office of sheriff principal, sheriff or summary sheriff under this section does not affect any remuneration payable to, or in respect of, the individual in respect of the period of suspension.

23 Further provision about tribunals

- (1) A tribunal constituted under section 21 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—
- (a) to answer any question which the person would be entitled to refuse to answer in a court in Scotland,
 - (b) to produce any document which the person would be entitled to refuse to produce in such a court.
- (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, to answer any question while attending the tribunal proceedings to give evidence,
 - (c) deliberately alters, conceals or destroys any document that 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 a tribunal constituted under section 21.
- (6) The Scottish Ministers—
- (a) must pay such expenses as they consider are reasonably required to be incurred to enable a tribunal constituted under section 21 to carry out its functions, and
 - (b) may pay such remuneration to, and such expenses of, the members of such a tribunal as they think fit.

VALID FROM 01/04/2015

24 Tribunal report

- (1) The report of a tribunal constituted under section 21 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.

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25 Removal from office

- (1) The First Minister may remove an individual from the office of sheriff principal, sheriff, part-time sheriff, summary sheriff or part-time summary sheriff—
 - (a) if a tribunal constituted under section 21 reports to the First Minister that the individual is unfit to hold that office by reason of inability, neglect of duty or misbehaviour, and
 - (b) only after the First Minister has laid the report before the Scottish Parliament under section 24(2).
- (2) The First Minister may remove a sheriff principal, sheriff or summary sheriff under subsection (1) only by order.
- (3) Such an order is subject to the negative procedure.

PROSPECTIVE

Honorary sheriffs

26 Abolition of the office of honorary sheriff

The office of honorary sheriff is abolished.

Status:

Point in time view as at 02/02/2015. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation:

Courts Reform (Scotland) Act 2014, CHAPTER 2 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.