



Sheriff Courts (Scotland) Act 1971

1971 CHAPTER 58

PART I

CONSTITUTION, ORGANISATION AND ADMINISTRATION

[^{F1}Consideration of fitness for, and removal from, shrieval office

Textual Amendments

- F1** Ss. 12A-12F and cross-heading substituted (20.2.2010 for the insertion of s. 12C(5) and 1.4.2010 otherwise) for s. 12 by [Judiciary and Courts \(Scotland\) Act 2008 \(asp 6\)](#), **ss. 40, 76**; [S.S.I. 2010/39](#), **art. 2, Sch.** (with art. 3)

VALID FROM 01/04/2010

12A Tribunal to consider fitness for shrieval office

- (1) The First Minister—
- (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.

Status: Point in time view as at 20/02/2010.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

Changes to legislation: *There are currently no known outstanding effects for the Sheriff Courts (Scotland) Act 1971, Cross Heading: Consideration of fitness for, and removal from, shrieval office. (See end of Document for details)*

- (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.

VALID FROM 01/04/2010

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.
- (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.

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- (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.

VALID FROM 01/04/2010

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
 - (c) be submitted to the First Minister.
- (2) The First Minister must lay the report before the Scottish Parliament.

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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.

VALID FROM 01/04/2010

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.

13 Functions of Secretary of State with respect to residence and leave of absence of sheriffs principal.

- (1) The Secretary of State may require any sheriff principal (being a sheriff principal who is restricted by the terms of his appointment from engaging in private practice

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or to whom section 6(1) of this Act applies) to reside ordinarily at such place as the Secretary of State may specify.

- (2) The Secretary of State may approve such leave of absence 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 Secretary of State to be proper, but the amount of leave so approved (other than leave granted on account of ill-health) shall not, unless the Secretary of State for special reasons otherwise permits, exceed seven weeks in any year.

14 Functions of Secretary of State with respect to number, residence and place of duties of sheriffs.

- (1) The Secretary of State may, with the approval of the Treasury, by order prescribe the number of sheriffs to be appointed for each sheriffdom.
- (2) The Secretary of State may require any sheriff to reside ordinarily at such place as the Secretary of State may specify.
- (3) The Secretary of State—
- (a) shall, on the appointment of a person to hold the office of sheriff for any sheriffdom,
 - (b) may, at any subsequent time while the said person holds that office,
- give to that person a direction designating the sheriff court district or districts in which he is to perform his duties as sheriff:

Provided that a direction given to a sheriff under this subsection shall be subject to any instruction given to that sheriff under section 15 of this Act by the sheriff principal of the sheriffdom, being an instruction given for the purpose of giving effect to any special provision made by the sheriff principal under section 16(1)(b) of this Act.

- (4) If for the purpose of securing the efficient organisation and administration of the sheriff courts, and after consultation with the Lord President of the Court of Session, the Secretary of State by order so directs, a person holding the office of sheriff for any sheriffdom shall, on such date as may be specified in the order, cease to hold that office and shall, on and after that date, without the necessity of his receiving a commission in that behalf, hold instead the office of sheriff for such other sheriffdom as may be so specified; and on making an order under this subsection with respect to any person the Secretary of State shall give to that person a direction under subsection (3) above designating the sheriff court district or districts in which he is to perform his duties as sheriff.
- (5) In this section “sheriff” does not include an honorary sheriff ^{F2}or a part-time]sheriff.

Textual Amendments

F2 Words in s. 14(5) substituted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 1(9)

^{F3}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,

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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).
- (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.]]

Textual Amendments

F3 S. 14A inserted (1.6.2009) by [Judiciary and Courts \(Scotland\) Act 2008 \(asp 6\)](#), **ss. 25, 76**; [S.S.I. 2009/192](#), **art. 2**, Sch.

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