
EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes provision as to the procedure to be followed by tribunals constituted under section 12A(1) of the Sheriff Courts (Scotland) Act 1971 or section 35(1) of the Judiciary and Courts (Scotland) Act 2008 to investigate and report on a judicial office holder's fitness for office.

Rule 3 provides for the clerk to the tribunal (a person nominated by the Principal Clerk of Session and Justiciary) to notify the judicial office holder that the First Minister has constituted a tribunal, and of its membership.

Rule 4 sets out the investigation process, including the appointment by the chairing member of an investigating officer from a list of persons nominated by the Lord President (or the Lord Justice Clerk, if the tribunal is constituted in respect of the Lord President). It specifies the powers and duties of the investigating officer. Once the investigation is complete, it is for the investigating officer to recommend to the tribunal either that no further procedure is required, or to make a recommendation as to further procedure. The investigating officer must give reasons in either case. The clerk to the tribunal must then give the judicial office holder a copy of the recommendation, the reasons for it and any supporting documents.

Rule 5 enables the judicial office holder to apply to the tribunal for further specification of the information contained in the statement of reasons. Such an application must be made within 21 days of notice being given. If the tribunal grants the application, it must direct the investigating officer to provide further specification within 21 days. If it is refused, the tribunal must notify the judicial office holder within 21 days, and give reasons.

Rule 6 provides for the judicial office holder to lodge a written response to the statement of reasons within 28 days of the statement being provided, the refusal of an application for further specification, or the provision of further specification, whichever of these dates is latest. The tribunal may allow a supplementary written response to be lodged.

Rule 7 provides for the tribunal to consider the investigating officer's recommendation and statement of reasons and any written response by the judicial office holder. It must then determine that the investigation should proceed to a hearing, or that no further procedure is required, and give reasons for that determination.

Rule 8 relates to representation at hearings. The tribunal case is to be presented by a presenting officer appointed by the chairing member from a list of persons nominated by the Lord President (or the Lord Justice Clerk, if the tribunal is constituted in respect of the Lord President). The judicial office holder may be represented by a solicitor, an advocate or any other person authorised by the tribunal.

Rule 9 requires the presenting officer and the investigating officer to disclose previously undisclosed information to the judicial office holder if it is likely to be placed before the tribunal, might materially strengthen the judicial office holder's position or materially weaken the presenting officer's position. This duty subsists until the tribunal reports to the First Minister.

Rule 10 provides for the holding of a preliminary hearing, at which the tribunal may confirm the facts in dispute, determine preliminary matters, make case management directions and fix a hearing under rule 11. A hearing under rule 11 may be fixed to hear legal submissions only, or the leading of evidence may be permitted.

Rule 12 provides for the conduct of hearings. In particular, it specifies that hearings of the tribunal are to be held in private, unless the judicial office holder requests that a hearing is held in public

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or the tribunal considers that the circumstances would make holding it in private inappropriate. All hearings must also be recorded, and the tribunal is to deliberate in the absence of any other person.

Rule 13 sets out the powers of the tribunal to regulate its own procedure. In addition to a general power to regulate procedure, it has specific powers to extend or shorten the time for complying with any rule, or any direction that it gives, to permit amendment of documents, to adjourn or postpone a hearing, and to sist proceedings.

Rule 14 specifies the ways in which proceedings may be brought to an end. Where the presenting officer considers that it cannot be established that the judicial office holder is unfit for office, the presenting officer must make a recommendation to the tribunal to that effect, and give reasons. The tribunal may, at any stage, determine that it cannot be established that the judicial office holder is unfit for office. This may be on the recommendation of the investigating officer or the presenting officer, on a submission by the judicial office holder, or on its own motion. Where the tribunal makes such a determination, it must report in those terms to the First Minister. In addition, proceedings come to an end if the judicial office holder ceases to hold office.

Rule 15 makes provision about the tribunal's report. Where the tribunal proposes to make findings of fact on disputed issues, it must give the judicial office holder and the presenting office holder a draft of its findings and invite comments. The tribunal must have regard to any such draft, but need not give the parties a further opportunity to comment on an amended draft. In addition to reporting to the First Minister, the tribunal must send a copy of its report to the judicial office holder and the Lord President (or the Lord Justice Clerk, if the tribunal is constituted in respect of the Lord President).

Rule 16 revokes the Act of Sederunt (Fitness for Judicial Office Tribunal Rules) 2014, which are due to come into force on 20th May 2014.

This Act of Sederunt applies to tribunals constituted by the First Minister on or after 1st June 2014.