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Changes to legislation: There are currently no known outstanding effects for the Sheriff Courts (Scotland) Act 1971, Cross Heading: Functions of the Secretary of State in relation to sheriffs principal, sheriffs, etc.. (See end of Document for details)



Sheriff Courts (Scotland) Act 1971

1971 CHAPTER 58

PART I

CONSTITUTION, ORGANISATION AND ADMINISTRATION

Functions of the Secretary of State in relation to sheriffs principal, sheriffs, etc.

9 Power of Secretary of State to give administrative directions.

For the purpose of securing the efficient organisation and administration of the sheriff courts and, in particular, the speedy and efficient disposal of business in those courts, the Secretary of State may give such directions of an administrative nature as appear to him to be necessary or expedient, and any sheriff principal or sheriff, and any officer or servant engaged in the administration of the sheriff courts, to whom a direction is given under this section shall, subject to the provisions of this Act, give effect to that direction.

10 Secretary of State may authorise sheriff principal or direct sheriff to act in another sheriffdom.

[^{F1}(1) Where a vacancy occurs in the office of sheriff principal of any sheriffdom the Secretary of State may, if it appears to him expedient so to do in order to avoid delay in the administration of justice in that sheriffdom, authorise the sheriff principal of any other sheriffdom to perform the duties of sheriff principal in the first-mentioned sheriffdom (in addition to his own duties) until the Secretary of State otherwise decides.

(1A) Where the sheriff principal of any sheriffdom is unable to perform, or rules that he is precluded from performing, all of, or some part of, his duties as sheriff principal the Secretary of State may authorise the sheriff principal of any other sheriffdom to perform the duties of sheriff principal, or as the case may be that part of those duties, in the first-mentioned sheriffdom (in addition to his own duties) until the Secretary of State otherwise decides.]

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- (2) Where as regards any sheriffdom—
- (a) a sheriff is by reason of illness or otherwise unable to perform his duties as sheriff, or
 - (b) a vacancy occurs in the office of sheriff, or
 - (c) for any other reason it appears to the Secretary of State expedient so to do in order to avoid delay in the administration of justice in that sheriffdom,
- the Secretary of State may direct a sheriff appointed for any other sheriffdom to perform, in accordance with the terms of the direction, the duties of sheriff in the first-mentioned sheriffdom (in addition to or in place of his own duties) until otherwise directed by the Secretary of State, and any sheriff to whom a direction is given under this subsection shall give effect to that direction.
- (3) A sheriff principal authorised, or a sheriff directed, under this section to perform duties in any sheriffdom shall for that purpose, without the necessity of his receiving a commission in that behalf, have and be entitled to exercise the jurisdiction and powers attaching to the office of sheriff principal or, as the case may be, sheriff in that sheriffdom.
- (4) The Secretary of State may, with the approval of the Treasury, pay to a sheriff principal or a sheriff, in respect of any duties performed by that sheriff principal or sheriff (in addition to his own duties) in pursuance of an authority or direction under this section, such remuneration and allowances as may appear to the Secretary of State to be reasonable in all the circumstances.
- (5) In this section “sheriff” does not include an honorary sheriff.

Textual Amendments

F1 S. 10(1)(1A) substituted for subsection (1) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), s. 10(a)

11 Secretary of State may appoint temporary sheriffs principal and sheriffs.

- [^{F2}(1) Where a vacancy occurs in the office of sheriff principal of any sheriffdom the Secretary of State may, if it appears to him expedient so to do in order to avoid delay in the administration of justice in that sheriffdom, appoint a person to act as sheriff principal of the sheriffdom.
- (1A) Where the sheriff principal of any sheriffdom is unable to perform, or rules that he is precluded from performing, all of, or some part of, his duties as sheriff principal the Secretary of State may appoint a person to act as sheriff principal of the sheriffdom, or as the case may be to perform that part of the duties of the sheriff principal.
- (1B) A person appointed under subsection (1) or (1A) above shall be known as a temporary sheriff principal.]
- (2) Where as regards any sheriffdom—
- (a) a sheriff is by reason of illness or otherwise unable to perform his duties as sheriff, or
 - (b) a vacancy occurs in the office of sheriff, or
 - (c) for any other reason it appears to the Secretary of State expedient so to do in order to avoid delay in the administration of justice in that sheriffdom,

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the Secretary of State may appoint a person (to be known as a temporary sheriff) to act as a sheriff for the sheriffdom.

- (3) A person shall not be appointed to be a temporary sheriff principal or a temporary sheriff unless he is legally qualified, and has been so qualified—
- (a) in the case of an appointment as a temporary sheriff principal, for at least ten years;
 - (b) in the case of an appointment as a temporary sheriff, for at least five years.

For the purposes of this subsection, a person shall be legally qualified if he is an advocate or a solicitor.

- (4) The appointment of a temporary sheriff principal or of a temporary sheriff shall subsist until recalled by the Secretary of State.

[^{F3}(4A) No appointment under this section of a person to be a temporary sheriff principal or temporary sheriff shall extend beyond the day on which the person reaches the age of 70.

(4B) Subsection (4A) above is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).]

- (5) If the Secretary of State, on appointing any person to be a temporary sheriff principal or a temporary sheriff, so directs, the provisions of section 6(1) of this Act shall apply in relation to that person as they apply in relation to a person holding the office of sheriff.
- (6) A person appointed to be temporary sheriff principal of, or a temporary sheriff for, any sheriffdom shall for the purposes of his appointment, without the necessity of his receiving a commission in that behalf, have and be entitled to exercise the jurisdiction and powers attaching to the office of sheriff principal or, as the case may be, sheriff in that sheriffdom.
- (7) The appointment of any person holding the office of sheriff to be a temporary sheriff principal shall not affect the commission held by that person as sheriff, but he shall not, while his appointment as a temporary sheriff principal subsists, perform any duties by virtue of the said commission.
- (8) The Secretary of State may pay to any person appointed to be a temporary sheriff principal or a temporary sheriff such remuneration and allowances as the Treasury, on the recommendation of the Secretary of State, may determine.

Textual Amendments

- F2** S. 11(1)(1A)(1B) substituted for subsection (1) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), [s. 10\(b\)](#)
- F3** S. 11(4A)(4B) inserted (31.3.1995) by [1993 c. 8, s. 26](#), [Sch. 6 para.11](#); [S.I. 1995/631, art. 2](#)

Modifications etc. (not altering text)

- C1** S. 11(1) modified (9.11.1998) by [1998 c. 42, ss. 18\(5\), 22\(2\)](#) (with [ss. 7\(8\), 22\(5\)](#))
- S. 11(1) modified (27.9.1999) by [1999 c. 22, s. 68\(4\)](#) (with [Sch. 14 para. 7\(2\)](#))

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VALID FROM 09/08/2000

[^{F4}11A Appointment of part-time sheriffs

- (1) The Scottish Ministers may, under this section, appoint persons to act as sheriffs, and persons so appointed shall be known as “part-time sheriffs”.
- (2) In making those appointments, the Scottish Ministers shall comply with such requirements as to procedure and consultation as may be prescribed by regulations made by them.
- (3) A person shall not be appointed a part-time sheriff unless qualified under section 5(1) of this Act to be appointed to the office of sheriff.
- (4) A part-time sheriff shall, without the necessity of receiving a commission in that behalf, be entitled to exercise in every sheriffdom the jurisdiction and powers attaching to the office of sheriff.
- (5) The number of persons holding appointments as part-time sheriffs shall not, at any one time, exceed 60 or such other number as may be fixed in substitution by order made by the Scottish Ministers.
- (6) A part-time sheriff shall be subject to such instructions, arrangements and other provisions as fall to be made under this Act by the sheriff principal of the sheriffdom in which the part-time sheriff is sitting.
- (7) In the performance of their functions under this Act, sheriffs principal shall 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; and
 - (b) does not sit for more than 100 days,
 in each successive period of 12 months beginning with the day of the part-time sheriff’s appointment as such.
- (8) The Scottish Ministers shall pay to part-time sheriffs such remuneration and allowances as they determine.]

Textual Amendments

F4 Ss. 11A-11D inserted (9.8.2000) by 2000 asp 9, s. 7

VALID FROM 09/08/2000

[^{F5}11B Limitation, termination etc. of appointment of part-time sheriffs

- (1) An appointment as a part-time sheriff shall, subject to subsections (2) to (4) below, last for 5 years.
- (2) A part-time sheriff may resign at any time by giving notice to that effect to the Scottish Ministers.

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- (3) An appointment of a person as a part-time sheriff shall not extend beyond the day when the person reaches the age of 70.
- (4) A part-time sheriff's appointment shall come to an end upon the part-time sheriff's being removed from office under section 11C of this Act.
- (5) A part-time sheriff whose appointment comes to an end by operation of subsection (1) above may be reappointed and, except in the circumstances set out in subsection (6) below, shall be reappointed.
- (6) The circumstances mentioned in subsection (5) above are that—
 - (a) the part-time sheriff has declined that reappointment;
 - (b) the part-time sheriff is aged 69 or over;
 - (c) a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment;
 - (d) the part-time sheriff has not sat for a total of 50 or more days in the preceding five year period; or
 - (e) the Scottish Ministers have, since the part-time sheriff was last appointed, made an order under section 11A(5) of this Act reducing the number of persons who may hold appointment as part-time sheriffs.
- (7) A part-time sheriff whose appointment comes to an end by resignation under subsection (2) above may be reappointed.
- (8) The provisions of section 11A and this section of this Act apply to a reappointment under subsections (5) and (7) above as they apply to an appointment.
- (9) A part-time sheriff who is a solicitor in practice shall not carry out any function as a part-time sheriff in a sheriff court district in which his or her main place of business as such solicitor is situated.

Textual Amendments

F5 Ss. 11A-11D inserted (9.8.2000) by 2000 asp 9, s. 7

VALID FROM 09/08/2000

^{F6}11C Removal of part-time sheriffs from office

- (1) A part-time sheriff may be removed from office by and only by order of the tribunal constituted by and under subsection (3) below (“the tribunal”).
- (2) The tribunal may order the removal from office of a part-time sheriff only if, after investigation carried out at the request of the Scottish Ministers, it finds that the part-time sheriff is unfit for office by reason of inability, neglect of duty or misbehaviour.
- (3) The tribunal shall consist of the following three members, who shall be appointed by the Lord President of the Court of Session—
 - (a) either a Senator of the College of Justice or a sheriff principal (who shall preside);

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- (b) a person who is, and has been for at least ten years, legally qualified within the meaning of section 5(1) of this Act; and
 - (c) one other person.
- (4) Regulations, made by the Scottish Ministers—
- (a) may make provision enabling the tribunal, at any time during an investigation, to suspend a part-time sheriff from office and providing as to the effect and duration of such suspension; and
 - (b) shall make such further provision as respects the tribunal as the Scottish Ministers consider necessary or expedient, including provision for the procedure to be followed by and before it.

Textual Amendments

F6 Ss. 11A-11D inserted (9.8.2000) by 2000 asp 9, s. 7

VALID FROM 09/08/2000

F7 11D Regulations and orders under sections 11A and 11C

- (1) Regulations under section 11A or section 11C and orders under section 11A of this Act shall be made by statutory instrument.
- (2) No such regulations or order shall be made unless laid in draft before, and approved by a resolution of, the Scottish Parliament.

Textual Amendments

F7 Ss. 11A-11D inserted (9.8.2000) by 2000 asp 9, s. 7

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 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.

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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, and in subsections (1) and (4) above does not include a temporary sheriff.

12 Removal from office, and suspension, of sheriff principal or sheriff.

- (1) The Lord President of the Court of Session and the Lord Justice Clerk may of their own accord and shall, if they are requested so to do by the Secretary of State, undertake jointly an investigation into the fitness for office of any sheriff principal or sheriff and, as soon as practicable after completing that investigation, shall report in writing to the Secretary of State either—
 - (a) that the sheriff principal or sheriff is fit for office, or
 - (b) that the sheriff principal or sheriff is unfit for office by reason of inability, neglect of duty or misbehaviour,and shall in either case include in their report a statement of their reasons for so reporting.
- (2) The Secretary of State may, if a report is made to him under subsection (1) above to the effect that any sheriff principal or sheriff is unfit for office by reason of inability, neglect of duty or misbehaviour, make an order removing that sheriff principal or sheriff from office.
- (3) An order under subsection (2) above—

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- (a) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament,
 - (b) shall not be made so as to come into operation before the expiry, in relation to the order, of the period of forty days mentioned in section 5(1) of the ^{M1}Statutory Instruments Act 1946.
- (4) The Lord President of the Court of Session and the Lord Justice Clerk may, on undertaking an investigation under subsection (1) above or at any time during the course of such an investigation, if they think it proper so to do, recommend in writing to the Secretary of State that the sheriff principal or sheriff who is the subject of the investigation be suspended from office, and the Secretary of State may, on receiving such a recommendation as aforesaid, suspend that sheriff principal or sheriff from office.
- (5) A sheriff principal or a sheriff suspended from office under subsection (4) above shall remain so suspended until the Secretary of State otherwise directs.
- (6) The suspension from office of a sheriff principal or a sheriff under subsection (4) above shall not affect the payment to him of his salary in respect of the period of his suspension.
- (7) In this section “sheriff principal” does not include a temporary sheriff principal and “sheriff” does not include a temporary sheriff or an honorary sheriff.

Modifications etc. (not altering text)

C2 S. 12 extended by [District Courts \(Scotland\) Act 1975 \(c. 20\), s. 5\(8\)](#)

Marginal Citations

M1 1946 c. 36.

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 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.

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- (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, and in subsections (1) and (4) above does not include a temporary sheriff.

VALID FROM 01/06/2009

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

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(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.

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