

*Status: Point in time view as at 01/04/1991.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, SCHEDULE 4 is up to date with all changes known to be in force on or before 29 May 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. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 4

Section 35.

#### JUDICIAL APPOINTMENTS

##### *Appointments of sheriffs principal, sheriffs and solicitors as judges of the Court of Session*

- 1 The following categories of person shall, in accordance with this paragraph and paragraphs 2 and 3 below, be eligible to be appointed as judges of the Court of Session—
- (a) sheriffs principal and sheriffs who have held office as such for a continuous period of not less than 5 years; and
  - (b) solicitors who, by virtue of section 25A (rights of audience) of the <sup>M1</sup>Solicitors (Scotland) Act 1980, have for a continuous period of not less than 5 years had a right of audience in both the Court of Session and the High Court of Justiciary.

#### Commencement Information

**I1** Sch. 4 para. 1 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### Marginal Citations

**M1** 1980 c. 46.

- 2 Paragraph 1(a) above shall not confer any eligibility for appointment as a judge of the Court of Session on a temporary sheriff principal or sheriff appointed under section 11 (temporary sheriffs principal and sheriffs) of the <sup>M2</sup>Sheriff Courts (Scotland) Act 1971 who is not otherwise eligible for appointment as a judge of the Court of Session.

#### Commencement Information

**I2** Sch. 4 para. 2 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### Marginal Citations

**M2** 1971 c. 58.

- 3 Paragraphs 1 and 2 above are without prejudice to any eligibility to be appointed as a judge of the Court of Session conferred on any category of persons by any other enactment.

#### Commencement Information

**I3** Sch. 4 para. 3 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

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*Further provision as to Inner House and exchequer causes*

- 4 (1) The <sup>M3</sup>Court of Session Act 1988 shall be amended as follows.
- (2) In section 2 (composition of court)—
- (a) in subsection (3), for the words “the senior judge present shall preside and shall” there shall be substituted the words “ shall direct one of those judges to preside and to ”; and
- (b) for subsection (6) there shall be substituted the following subsection—
- “(6) Subject to subsection (7) below, where a vacancy arises in a Division of the Inner House the Lord President and the Lord Justice Clerk, with the consent of the Secretary of State and after such consultation with judges as appears to them to be appropriate in the particular circumstances, shall appoint a Lord Ordinary to fill that vacancy.”.
- (3) In section 3 (exchequer causes), for the words “Court by Act of Sederunt” there shall be substituted the words “ Lord President ”.

**Commencement Information**

**I4** Sch. 4 para. 4 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

**Marginal Citations**

**M3** 1988 c. 36.

*Temporary judges*

- 5 Any person who is eligible under—
- (a) paragraph 1 above; or
- (b) any other enactment,
- for appointment as a judge of the Court of Session may be appointed as a temporary judge under section 35(3) of this Act for such period as the Secretary of State may determine, but, subject to paragraph 9 below, no such appointment shall extend beyond the date on which the person reaches the age of 75 years.

**Commencement Information**

**I5** Sch. 4 para. 5 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 6 Subject to paragraph 7 below, a person appointed as a temporary judge under the said section 35(3) shall, while so acting, be treated for all purposes as, and accordingly may perform any of the functions of, a judge of the Court in which he is acting.

**Commencement Information**

**I6** Sch. 4 para. 6 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

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- 7 Subject to paragraph 8 below, a person shall not, by virtue of paragraph 6 above, be treated as a judge of the Court of Session for the purposes of any other enactment or rule of law relating to—
- (a) the appointment, tenure of office, retirement, removal or disqualification of judges of that Court, including, without prejudice to the generality of the foregoing, any enactment or rule of law relating to the number of judges who may be appointed; and
  - (b) the remuneration, allowances or pensions of such judges.

**Commencement Information**

**I7** Sch. 4 para. 7 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 8 A person appointed to be a temporary judge of the Court of Session shall, by virtue of such appointment, be a temporary Lord Commissioner of Justiciary in Scotland.

**Commencement Information**

**I8** Sch. 4 para. 8 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 9 Notwithstanding the expiry of any period for which a person is appointed under the said section 35(3) to act as a judge—
- (a) he may attend at the Court of Session or the High Court of Justiciary for the purpose of continuing to deal with, giving judgment in, or dealing with any matter relating to, any case begun before him while acting as a judge of either Court; and
  - (b) for that purpose, and for the purpose of any proceedings arising out of any such case or matter, he shall be treated as being or, as the case may be, having been, a judge of the relevant Court.

**Commencement Information**

**I9** Sch. 4 para. 9 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 10 The Secretary of State may pay to a person appointed under the said section 35(3) such remuneration as he may, with the consent of the Treasury, determine.

**Commencement Information**

**I10** Sch. 4 para. 10 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 11 The appointment of a person to act as a temporary judge under the said section 35(3) is without prejudice to—
- (a) any appointment held by him as a sheriff principal or sheriff; or
  - (b) his continuing with any business or professional occupation not inconsistent with his acting as a judge.

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#### Commencement Information

**I11** Sch. 4 para. 11 wholly in force at 1.4.1991 see s. 75(2) and S.I 1991/822, art. 3, Schedule

#### *Amendments to the Small Landholders (Scotland) Act 1911 (c.49)*

- 12 (1) The Small Landholders (Scotland) Act 1911 shall be amended as follows.
- (2) For subsection (2) of section 3 (constitution of Scottish Land Court) there shall be substituted the following subsections—
- “(2) The Chairman shall be a person who at the date of his appointment is—
- (a) an advocate of the Scottish Bar of not less than ten years’ standing; or
  - (b) without prejudice to paragraph (a) above, a sheriff principal or sheriff who has held office as such for a continuous period of not less than 10 years; or
  - (c) a solicitor who, by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980, has for a continuous period of not less than ten years had a right of audience in the Court of Session;
- and shall forthwith on his appointment have the same rank and tenure of office as if he had been appointed a judge of the Court of Session.
- (2A) Subsection (2)(b)
- above shall not confer any eligibility for appointment as Chairman on a temporary sheriff principal or sheriff appointed under section 11 (temporary sheriffs principal and sheriffs) of the Sheriff Courts (Scotland) Act 1971 who is not otherwise eligible for such appointment.”.
- (3) For subsection (5) of section 3 there shall be substituted the following subsections—
- “(5) The Secretary of State may appoint any person having the qualification required for holding the office of Chairman as a Deputy Chairman, who shall act in place of the Chairman for such periods as the Chairman may, with the consent of the Secretary of State, direct.
- (5A) Where there is a vacancy in the office of Chairman, or where the Chairman is, for whatever reason, unable to act, the Deputy Chairman shall act at the direction of the Secretary of State.
- (5B) A Deputy Chairman appointed under subsection (5)
- above shall, while he is acting as Chairman, have the same powers and perform the same duties as if he were the Chairman.”.

#### Commencement Information

**I12** Sch. 4 para. 12 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

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