

# **JUDICIARY AND COURTS (SCOTLAND) ACT 2008**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 2 – the Judiciary**

#### *Chapter 5 – Removal from office*

#### **Judges**

#### *Section 35 – Tribunal to consider fitness for judicial office*

77. This section provides that the First Minister must set up a tribunal to investigate and report on whether a person is unfit to hold judicial office by reason of inability, neglect of duty or misbehaviour where requested to do so by the Lord President or in other such circumstances as he thinks fit.
78. Section 95 of the Scotland Act 1998 provides for the removal of a judge of the Court of Session and the Chairman of the Scottish Land Court. Subsection (8) of that section provides that the Scottish Parliament may make provision by Act for a tribunal to investigate and report on whether such a judge is unfit for office by reason of inability, neglect of duty or misbehaviour and for the report to be laid before the Parliament. Subsection (9) of that section states what must be covered by such provision and subsection (11) provides that the tribunal must comprise of at least three persons. A temporary order was made in 1999, namely the [Scotland Act \(Transitory and Transitional Provisions\) \(Removal of Judges\) Order 1999 \(SI 1999/1017\)](#), pending the coming into force of an Act of the Scottish Parliament dealing with those matters. The provisions in this part of the Act are to replace those transitory provisions.
79. Subsections (4) to (7) of this section provide that the tribunal is to consist of two judge members (including one member of the Judicial Committee of the Privy Council and one judge or former judge of the Court of Session), one advocate or solicitor with at least 10 years experience and one lay person.