

These notes relate to the Judiciary and Courts (Scotland) Act 2008 (asp 6) which received Royal Assent on 29 October 2008

JUDICIARY AND COURTS (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT

Part 4 – the Scottish Court Service

Ministerial powers

Section 69 – Guidance

122. An example of the type of guidance that might be issued under this section is guidance on high level policies and priorities.

Section 70 – Default power

123. This section provides for the Scottish Ministers to take over the functions of the SCS in the event of serious failure. In that event all of the functions of the SCS would be taken over by the Scottish Ministers. Such action could be taken immediately by the Scottish Ministers and subsection (2) provides for this to be achieved by order. If not approved by Parliament it would cease to have effect. Subsection (8) provides that any action taken by the Scottish Ministers during a period in which they have taken over the running of the SCS by using this power remains valid where Parliament decides not to affirm the order. This subsection also enables the Scottish Ministers to make consequential provisions arising from Parliament's decision not to affirm such an order. For example this could be used to enable contracts entered into by the Scottish Ministers in the period they have taken over the running of the SCS to be assigned to the SCS.