



Judiciary and Courts (Scotland) Act 2008

2008 asp 6

PART 4

THE SCOTTISH COURT SERVICE

Establishment

60 The Scottish Court Service

- (1) There is established a body corporate to be known as the Scottish Court Service (referred to in this Part as “the SCS”).
- (2) Schedule 3 makes further provision about the SCS.

Functions

61 Administrative support for the Scottish courts and judiciary

- (1) The SCS has the function of providing, or ensuring the provision of, the property, services, officers and other staff required for the purposes of—
 - (a) the Scottish courts, and
 - (b) the judiciary of those courts.
- (2) In carrying out that function, the SCS must—
 - (a) take account, in particular, of the needs of members of the public and those involved in proceedings in the Scottish courts, and
 - (b) so far as practicable and appropriate, co-operate and co-ordinate activity with any other person having functions in relation to the administration of justice.
- (3) In this Part, “the Scottish courts” has the meaning given by section 2(6).

62 Administrative support for other persons

- (1) The SCS has the function of providing, or ensuring the provision of, the property, services and staff required for the purposes of—
 - (a) the Lord President in the carrying out of—

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- (i) functions conferred on the Lord President as Head of the Scottish Judiciary, and
 - (ii) other non-judicial functions of the Lord President,
 - (b) any judicial office holder in the carrying out of functions delegated to the office holder by the Lord President,
 - (c) the sheriffs principal in the carrying out of their functions under sections 15 to 17 of the 1971 Act,
 - (d) the Public Guardian (established by section 6 of the Adults with Incapacity (Scotland) Act 2000 (asp 4)),
 - (e) the Court of Session Rules Council (being the Rules Council mentioned in section 8 of the Court of Session Act 1988 (c. 36)),
 - (f) the Criminal Courts Rules Council,
 - (g) the Sheriff Court Rules Council, and
 - (h) such other persons, or persons of such description, as the Scottish Ministers may by order specify.
- (2) Before making an order under subsection (1)(h), the Scottish Ministers must consult the Lord President.

63 Appointment etc. of office holders

- (1) The Scottish Ministers' functions in relation to the officers mentioned in subsection (2) are transferred to the SCS.
- (2) Those officers are the holders of the following offices—
- (a) Accountant of Court,
 - (b) Principal Clerk of Session,
 - (c) other Clerk or officer of the Court of Session,
 - (d) Principal Clerk of Justiciary,
 - (e) Depute, Assistant or other Clerk in the Justiciary Office of the High Court of Justiciary,
 - (f) Macer in the Court of Session and Macer in the High Court of Justiciary,
 - (g) sheriff clerk,
 - (h) sheriff clerk depute, and
 - (i) clerk or assistant clerk of a justice of the peace court.
- (3) Those officers are also members of the staff of the SCS and, accordingly, references in this Act to the staff of the SCS include, except where the context requires otherwise, reference to those officers.
- (4) Schedule 4 contains amendments of enactments consequential on this section.

64 Payment of remuneration etc. of certain judicial office holders

- (1) In section 11(8) (remuneration and allowances of temporary sheriffs principal) of the 1971 Act, for “Secretary of State” in the first place those words appear substitute “Scottish Court Service”.
- (2) In section 11A(8) (remuneration and allowances of part-time sheriffs) of the 1971 Act —
- (a) for “Scottish Ministers” substitute “Scottish Court Service”, and

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- (b) for “they” substitute “the Scottish Ministers”.
- (3) In section 22(5) (remuneration and allowances of re-employed retired judges) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)—
 - (a) for “Scottish Ministers” substitute “Scottish Court Service”, and
 - (b) for “they” substitute “the Scottish Ministers”.
- (4) In paragraph 10 (remuneration of temporary judges of the Court of Session) of Schedule 4 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)—
 - (a) for “Scottish Ministers” substitute “Scottish Court Service”, and
 - (b) for “they” substitute “the Scottish Ministers”.

Provision of advice etc. to the Scottish Ministers

65 Provision of advice etc. to the Scottish Ministers

- (1) The SCS may give information or advice, or make proposals, to the Scottish Ministers on matters relating to—
 - (a) the functions of the SCS, or
 - (b) the administration of justice in Scotland.
- (2) The Scottish Ministers must have regard to such information, advice or proposals.
- (3) This section is without prejudice to paragraph 15(2)(c) of schedule 3.

Plan and report

66 Corporate plan

- (1) The SCS must, before the beginning of each planning period, prepare and submit to the Scottish Ministers for approval a corporate plan describing how the SCS proposes to carry out its functions during the period.
- (2) The plan must—
 - (a) be prepared in such form,
 - (b) contain such information, and
 - (c) be submitted by such time,as the Scottish Ministers may direct.
- (3) The Scottish Ministers may approve the plan subject to such modifications as may be agreed between them and the SCS.
- (4) The SCS must, as soon as possible after the approval of a corporate plan—
 - (a) lay before the Scottish Parliament a copy of the plan as approved, and
 - (b) publish the plan in such manner as it thinks fit.
- (5) During the planning period to which a corporate plan relates, the SCS—
 - (a) may, or
 - (b) if the Scottish Ministers so direct, must,

review the plan and submit a revised corporate plan to the Scottish Ministers for approval.

- (6) In carrying out its functions in any planning period, the SCS must have regard to the corporate plan for the period.
- (7) Subsections (2) to (6) apply to a revised corporate plan as they apply to a corporate plan.
- (8) In this section, “planning period” means—
 - (a) the period beginning with the day on which section 61 comes into force and ending on a date specified by order made by the Scottish Ministers, and
 - (b) each subsequent period of 3 years.
- (9) The Scottish Ministers may by order substitute for the period specified in subsection (8)(b) such other period as they consider appropriate.

67 Annual report

- (1) As soon as practicable after the end of each financial year, the SCS must—
 - (a) prepare and publish a report on the carrying out of its functions during that year,
 - (b) send a copy of the report to the Scottish Ministers, and
 - (c) lay a copy of the report before the Scottish Parliament.
- (2) It is for the SCS to determine the form and content of each report and the manner in which it is to be published.
- (3) In subsection (1), “financial year” means—
 - (a) the period beginning with the establishment of the SCS and ending on 31 March next occurring, and
 - (b) each subsequent period of a year ending on 31 March.

Ministerial powers

68 Provision of information

The SCS must provide the Scottish Ministers with such information relating to the carrying out of its functions as the Scottish Ministers may require.

69 Guidance

The SCS must, in carrying out its functions, have regard to any guidance issued by the Scottish Ministers.

70 Default power

- (1) Subsection (2) applies if the Scottish Ministers consider—
 - (a) that the SCS is—
 - (i) failing to carry out its functions to such an extent that there is a significant risk to the efficient and effective functioning of the Scottish courts, or

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- (ii) is carrying them out in such a way that there is such a risk, and
 - (b) that in order to avoid or mitigate that risk it is necessary that the functions be carried out instead by them.
- (2) Where this subsection applies, the Scottish Ministers may by order provide for the functions of the SCS to be carried out instead by them.
- (3) So far as necessary for the purpose of the carrying out by the Scottish Ministers of the functions of the SCS by virtue of subsection (2)—
- (a) references in any enactment to the SCS are to be read as references to the Scottish Ministers,
 - (b) staff of the SCS are to be treated as if they were staff of the Scottish Ministers, and
 - (c) property and liabilities of the SCS are to be treated as property and liabilities of the Scottish Ministers.
- (4) Subsection (3) is subject to any provision made in an order under subsection (2).
- (5) A statutory instrument containing an order under subsection (2) (other than one to which subsection (7) applies)—
- (a) is to be laid before the Scottish Parliament after being made, and
 - (b) unless earlier revoked, ceases to have effect at the end of the period of 40 days beginning with the day on which it is made if it is not by then approved by resolution of the Parliament.
- (6) Subsection (7) applies to a statutory instrument containing an order under subsection (2) consisting only of—
- (a) provision revoking an earlier order under subsection (2), or
 - (b) such provision and provision made by virtue of section 71(2).
- (7) A statutory instrument to which this subsection applies is subject to annulment in pursuance of a resolution of the Parliament.
- (8) If an order under subsection (2) ceases to have effect by virtue of subsection (5)(b)—
- (a) that does not affect—
 - (i) the validity of anything done by or in relation to the Scottish Ministers by virtue of the order, or
 - (ii) the power to make a further order under subsection (2), and
 - (b) the Scottish Ministers may by order make such consequential provision as they consider necessary or expedient.
- (9) In calculating a period of 40 days for the purpose of subsection (5)(b), no account is to be taken of any time during which the Parliament is—
- (a) dissolved, or
 - (b) in recess for more than 4 days.