

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

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 3 – the Courts**

##### **The Court of Session**

###### ***Section 44 – Maximum number of judges***

92. This section amends section 1 of the Court of Session Act 1988 (“the 1988 Act”) by inserting a new subsection (3A) which places a requirement on the Scottish Ministers to consult the Lord President before making an order increasing the number of judges in the Court of Session. Subsection (3) retains the affirmative resolution procedure and updates the terminology to refer to the Scottish Parliament.

###### ***Section 45 – Number of judges of the First and Second Division of the Inner House***

93. This section amends section 2 of the 1988 Act to require the Scottish Ministers to consult the Lord President before making an order under subsection (2A) altering the number of senior judges in the two Divisions.

###### ***Section 46 – Divisions of the Inner House***

94. This section provides for the quorum of a Division of the Inner House considering solely procedural matters to be set by act of sederunt. It does so by inserting a new act of sederunt making power regarding quorum in section 5(ba) of the 1988 Act. This is intended to provide the Court of Session with a flexible power to make provision for the quorum of judges where a Division is dealing only with procedural matters. For example, the quorum may be reduced to 1 judge when dealing with only procedural matters. There is a consequential amendment to section 2(3) of the 1988 Act to remove a reference to an extra Division being composed of 3 judges. In addition, provision regarding which judge should preside over an extra Division, and sign its judgments and interlocutors, has been shifted from section 2(3) to the new section 5(ba) power.