



# Judiciary and Courts (Scotland) Act 2008

## 2008 asp 6

### PART 3

#### THE COURTS

##### *The Court of Session*

#### **44 Maximum number of judges**

- (1) Section 1 (number of judges of the Court) of the Court of Session Act 1988 (c. 36) is amended as follows.
- (2) In subsection (1), after “(3)” insert “, (3A)”.
- (3) In subsection (3), for the words from “Parliament” in the first place it appears to the end substitute “ and approved by resolution of the Scottish Parliament. ”.
- (4) After subsection (3) insert—

“(3A) The Lord President must be consulted before any draft of an Order under this section is laid before the Parliament.”.

#### **45 Number of judges of the First and Second Divisions of the Inner House**

In section 2(2A) (composition of the Court) of the Court of Session Act 1988 (c. 36), after “may” insert “, after consulting the Lord President, ”.

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

- (1) The Court of Session Act 1988 (c. 36) is amended as follows.
- (2) In section 2 (composition of the Court)—
  - (a) for subsection (3) substitute—

“(3) The Lord President may from time to time constitute, from among the judges of the Court, an extra Division of the Inner House for the purpose of hearing and disposing of causes pending before the Inner House; and any reference in this Act or in any other enactment

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to a Division of the Inner House shall be construed as including a reference to such an extra Division.”, and

(b) in subsection (4), at beginning, insert “ Subject to section 5(ba) below, ” .

(3) In section 5 (power to regulate procedure etc. in the Court of Session by act of sederunt), after paragraph (b) insert—

“(ba) to make provision as to the quorum for a Division of the Inner House considering solely procedural matters, and, in the case of an extra Division, to make provision as to which judge is to preside and to sign any judgment or interlocutor pronounced by the extra Division;”.

### *Sheriff courts*

#### **47 Sheriff principal's responsibility**

(1) The 1971 Act is amended as follows.

(2) For section 15 substitute—

#### **“15 Efficient disposal of business in sheriff courts**

(1) The sheriff principal of each sheriffdom is responsible for securing the efficient disposal of business in the sheriff courts of that sheriffdom.

(2) If, in carrying out that responsibility, the sheriff principal gives a direction of an administrative character to a person mentioned in subsection (3), the person must comply with the direction.

(3) Those persons are—

(a) a sheriff authorised by virtue of any enactment to act in that sheriffdom,

(b) a member of staff of the Scottish Court Service.

(4) Subsections (1) and (2) are subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”.

(3) In section 16 (powers exercisable by sheriff principal in pursuance of responsibility imposed by section 15)—

(a) in subsection (1)—

(i) for the words from “securing” to “sheriffdom”, in the second place it appears, substitute “ carrying out the responsibility imposed by section 15(1) of this Act ”, and

(ii) in paragraph (a), for the words from the beginning of the paragraph to “aforesaid” substitute “ provide for the division of business in the sheriff courts of that sheriffdom ”, and

(b) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for

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securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”.

- (4) In section 17 (sheriff principal's power to fix sittings and business of sheriff courts), after subsection (4) insert—

“(4A) Subsections (1) to (4) are subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”.

- (5) In section 20(Lord Advocate's instructions to procurators fiscal), the words “speedy and” are repealed.

#### Commencement Information

**II** S. 47 in force at 1.4.2010 by S.S.I. 2010/39, art. 2(b), Sch.

## 48 Repeal of certain responsibilities of Scottish Ministers

Sections 1 and 9 of the 1971 Act (which respectively impose responsibility on the Scottish Ministers in relation to the organisation of sheriff courts and enable them to give directions) are repealed.

#### Commencement Information

**I2** S. 48 in force at 1.4.2010 by S.S.I. 2010/39, art. 2(b), Sch. (with art. 6)

## 49 Lord President's default power

- (1) The 1971 Act is amended as follows.  
(2) After section 17 insert—

### “17A Lord President's power to exercise functions in sections 15 to 17

- (1) Subsection (2) applies where in any case the Lord President considers that the exercise by the sheriff principal of a sheriffdom of a function conferred by any of sections 15 to 17 of this Act—
- (a) is prejudicial to the efficient disposal of business in the sheriff courts of that sheriffdom,
  - (b) is prejudicial to the efficient organisation or administration of those sheriff courts, or
  - (c) is otherwise against the interests of the public.
- (2) The Lord President may in that case—
- (a) rescind the sheriff principal's exercise of the function, and
  - (b) exercise the function.

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- (3) Subsection (2)(b) applies where in any case the Lord President considers that the failure of the sheriff principal of a sheriffdom to exercise a function conferred by any of sections 15 to 17 of this Act—
- (a) is prejudicial to the efficient disposal of business in the sheriff courts of that sheriffdom,
  - (b) is prejudicial to the efficient organisation or administration of those sheriff courts, or
  - (c) is otherwise against the interests of the public.
- (4) The exercise of a function by the Lord President by virtue of subsection (2)(b) is to be treated as if it were the exercise of the function by the sheriff principal.”.

(3) Section 18 (Scottish Ministers' default power) is repealed.

#### Commencement Information

**I3** S. 49 in force at 1.4.2010 by S.S.I. 2010/39, art. 2(b), Sch.

## 50 Alteration of boundaries of sheriffdoms

- (1) Section 2 (power to alter boundaries of sheriffdoms) of the 1971 Act is amended as follows.
- (2) In subsection (2), after paragraph (a) insert—
- “(aa) provision of the kind that may be made by an order under section 3(2) of this Act;”.
- (3) After subsection (2) insert—
- “(2A) An order under subsection (1) above may be made only with the consent of—
- (a) the Lord President of the Court of Session, and
  - (b) where the order includes provision such as is mentioned in subsection (2)(a) or (aa) above, the Scottish Court Service.
- (2B) Before consenting to the making of such an order, the Scottish Court Service must consult such persons as it considers appropriate.”.
- (4) In subsection (3)(b), for the words “Secretary of State” in the first place those words appear substitute “ Scottish Court Service ”.
- (5) In subsection (4), the words from “, but” to the end are repealed.
- (6) After subsection (4) add—
- “(5) A statutory instrument containing an order under subsection (1) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

#### Commencement Information

**I4** S. 50 in force at 1.4.2010 by S.S.I. 2010/39, art. 2(b), Sch.

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## 51 Sheriff court districts and places where sheriff courts are to be held

- (1) Section 3 (sheriff court districts and places where sheriff courts are to be held) of the 1971 Act is amended as follows.
- (2) After subsection (2) insert—
  - “(2A) An order under subsection (2) above may be made only with the consent of—
    - (a) the Lord President of the Court of Session, and
    - (b) the Scottish Court Service.
  - (2B) Before consenting to the making of such an order, the Scottish Court Service must consult such persons as it considers appropriate.”.
- (3) In subsection (4), for “Secretary of State” in the first place those words appear substitute “ Scottish Court Service ”.
- (4) After subsection (5) insert—
  - “(5A) A statutory instrument containing an order under subsection (2) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

### Commencement Information

**I5** [S. 51](#) in force at 1.4.2010 by [S.S.I. 2010/39](#), [art. 2\(b\)](#), [Sch.](#)

## 52 Repeal of power to appoint sheriff to assist Scottish Ministers

Section 8(power to appoint sheriff to assist Scottish Ministers) of the 1971 Act is repealed.

### Commencement Information

**I6** [S. 52](#) in force at 1.4.2010 by [S.S.I. 2010/39](#), [art. 2\(b\)](#), [Sch.](#)

## 53 Sheriffs principal and sheriffs acting in other sheriffdoms

- (1) Section 10 (ministerial powers to authorise sheriff principal or direct sheriff to act in another sheriffdom) of the 1971 Act is amended as follows.
- (2) In subsection (1)—
  - (a) for “Scottish Ministers” in the first place those words appear substitute “ Lord President of the Court of Session ”,
  - (b) the words “to them” are repealed, and
  - (c) for “Scottish Ministers otherwise decide” substitute “ Lord President otherwise decides ”.
- (3) In subsection (1A)—
  - (a) for “Scottish Ministers” in the first place those words appear substitute “ Lord President ”, and
  - (b) for “Scottish Ministers otherwise decide” substitute “ Lord President otherwise decides ”.

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- (4) In subsection (2), for “Scottish Ministers”, in each place those words appear, substitute “ Lord President ”.

**Commencement Information**

**I7** S. 53 in force at 1.4.2010 by S.S.I. 2010/39, art. 2(b), Sch. (with art. 7)

**54 Residence and leave of absence of sheriffs principal**

- (1) Section 13 (ministerial functions in relation to residence and leave of absence of sheriffs principal) of the 1971 Act is amended as follows.

- (2) In subsection (1)—

- (a) for “Secretary of State” in the first place those words appear substitute “ Lord President of the Court of Session ”, and
- (b) for “Secretary of State” in the second place those words appear substitute “ Lord President ”.

- (3) In subsection (2)—

- (a) for “Secretary of State” in each place those words appear substitute “ Lord President ”,
- (b) after “absence” insert “ for the purpose of holidays ”, and
- (c) the words from “(other” to “ill-health)” are repealed.

- (4) After subsection (2) add—

“(3) The Lord President may approve such leave of absence for any other purpose for any sheriff principal (being a sheriff principal who is restricted by the terms of his appointment from engaging in private practice or to whom section 6(1) of this Act applies) as appears to the Lord President to be proper.”.

**Commencement Information**

**I8** S. 54 in force at 1.4.2010 by S.S.I. 2010/39, art. 2(b), Sch.

**55 Number, residence and deployment of sheriffs**

- (1) Section 14 (number, residence and place of duties of sheriffs) of the 1971 Act is amended as follows.

- (2) Subsection (1) is repealed.

- (3) In subsection (2)—

- (a) for “Secretary of State” in the first place those words appear substitute “ Lord President of the Court of Session ”, and
- (b) for “Secretary of State” in the second place those words appear substitute “ Lord President ”.

- (4) In subsection (3), for “Secretary of State” substitute “ Lord President ”.

- (5) In subsection (4)—

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- (a) for the words “and after consultation with the Lord President of the Court of Session, the Secretary of State” substitute “ the Lord President ”, and
- (b) for “Secretary of State” in the second place those words appear substitute “ Lord President ”.

**Commencement Information**

**I9** S. 55 in force at 1.4.2010 by S.S.I. 2010/39, art. 2(b), Sch. (with art. 8)

**56 Leave of absence of sheriffs**

- (1) Section 16 (functions of sheriff principal with respect to duties and leave of absence of sheriffs) of the 1971 Act is amended as follows.
- (2) In subsection (2)—
  - (a) after “absence” insert “ for the purpose of holidays ”,
  - (b) the words from “(other” to “ill-health)” are repealed, and
  - (c) for “Secretary of State” substitute “ Lord President of the Court of Session ”.
- (3) After subsection (2) insert—

“(2A) The sheriff principal of any sheriffdom may approve such leave of absence for any other purpose for any sheriff appointed for that sheriffdom as appears to the sheriff principal to be proper.”.
- (4) In subsection (3), for “subsection (2)” substitute “ subsections (2) and (2A) ”.

**Commencement Information**

**I10** S. 56 in force at 1.4.2010 by S.S.I. 2010/39, art. 2(b), Sch.

*Justice of the peace courts*

**57 Establishment, constitution etc.**

- (1) The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) is amended as follows.
- (2) In section 59 (establishing justice of the peace courts)—
  - (a) subsection (1) is repealed,
  - (b) in subsection (4), for “Scottish Ministers determine” substitute “ Lord President of the Court of Session determines ”,
  - (c) in subsection (5), for “Scottish Ministers” substitute “ Lord President ”, and
  - (d) for subsection (7) substitute—

“(7) The Scottish Ministers may make an order under subsection (2) or (6) only with the consent of—
    - (a) the Lord President, and
    - (b) the Scottish Court Service.
- (7A) Before consenting to the making of such an order—

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- (a) the Lord President must consult the sheriff principal for the sheriffdom in which the JP court is, or is to be, located, and
  - (b) the Scottish Court Service must consult such persons as it considers appropriate.”.
- (3) In section 63 (constitution and powers etc. of justice of the peace courts)—
- (a) after subsection (2) insert—
    - “(2A) The Scottish Ministers may make an order under subsection (2) only on the recommendation of the Lord President of the Court of Session.”, and
  - (b) in subsection (5)(b), for “Scottish Ministers” substitute “ Lord President ”.

#### Commencement Information

**I11** S. 57 in force at 1.4.2010 by S.S.I. 2010/39, art. 2(b), Sch.

## 58 Sheriff principal's responsibility

- (1) The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) is amended as follows.
- (2) For section 61 substitute—

### “61 Efficient disposal of business in JP courts

- (1) The sheriff principal of each sheriffdom is responsible for securing the efficient disposal of business in JP courts in that sheriffdom.
  - (2) If, in carrying out that responsibility, the sheriff principal gives a direction of an administrative character to a person mentioned in subsection (3), the person must comply with the direction.
  - (3) Those persons are—
    - (a) a justice of the peace, or stipendiary magistrate, appointed for the sheriffdom,
    - (b) a member of staff of the Scottish Court Service.
  - (4) Subsections (1) and (2) are subject to section 2(2)(a) and (3) of the Judiciary and Courts (Scotland) Act 2008 (asp 6) (which make the Head of the Scottish Judiciary responsible for maintaining arrangements for securing the efficient disposal of business in the Scottish courts and require compliance with directions given in pursuance of that responsibility).”.
- (3) In section 74(3) (pre-condition for appointment of stipendiary magistrate), for the words “administration of” substitute “ disposal of business in ”.

#### Commencement Information

**I12** S. 58 in force at 1.4.2010 by S.S.I. 2010/39, art. 2(b), Sch.



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### *Court holidays*

#### **59 Court holidays in sheriff courts and justice of the peace courts**

- (1) Section 8 (sittings of sheriff and justice of the peace courts) of the Criminal Procedure (Scotland) Act 1995 (c. 46) is amended as follows.
- (2) In subsections (2) and (3), for “10” substitute “ 11 ”.

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**Changes to legislation:**

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