



Judiciary and Courts (Scotland) Act 2008

2008 asp 6

PART 4

THE SCOTTISH COURT SERVICE

Ministerial powers

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
 - (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

Status: This is the original version (as it was originally enacted).

- (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.