

JUDICIARY AND COURTS (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT

Part 2 – the Judiciary

Chapter 1 - Head of the Scottish Judiciary

Section 2 – Head of the Scottish Judiciary

12. This section unifies the judiciary under the Lord President by establishing the Lord President as the head of the Scottish judiciary and placing a number of responsibilities on the Lord President. These responsibilities are: the efficient disposal of business in the Scottish courts; representation of the views of the Scottish judiciary to the Scottish Parliament and to the Scottish Ministers; the laying of written representations before Parliament on matters of importance relating to the Scottish judiciary or to the administration of justice in Scotland; the welfare, training, guidance of judicial office holders; and establishment and operation of a conduct scheme for the judiciary.
13. In order to facilitate the efficient disposal of business in the courts, subsection (3) gives the Lord President a power to give directions to sheriffs principal and places a duty on sheriffs principal to comply with such directions. These directions relate to administrative matters, so that the business of the courts may run efficiently. This power would not, for example, enable the Lord President to give a direction concerning a judicial decision. This power is mirrored in sections 44 and 55 which amend the [Sheriff Courts \(Scotland\) Act 1971 \(c.58\)](#) (“the 1971 Act”) and the [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#) (“the 2007 Act”) respectively to give the same power to sheriffs principal in relation to sheriffs, justices of the peace, stipendiary magistrates and staff of the SCS. This power of the sheriffs principal is subject to the Lord President’s overarching power of direction.
14. In making and maintaining appropriate arrangements for training as required by subsection (2)(d), subsection (4) places a duty on the Lord President to require judges to attend training.

Section 3 - Delegation of functions

15. This section enables the Lord President to delegate his or her functions as set out in section 2(2) to other judges (referred to as “judicial office holders” in the Act and defined in section 39). Subsection (2) places restrictions on this delegation, namely that the following functions cannot be delegated: the Lord President’s function of making and maintaining arrangements to secure the efficient disposal of business in sheriff courts and justice of the peace courts (“JP courts”); and the Lord President’s function of making rules for the judicial conduct scheme under section 28(1).