

JUDICIARY AND COURTS (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT

Part 4 – the Scottish Court Service

Establishment

Section 60 – The Scottish Court Service

114. **Part 4** of the Act establishes a body corporate known as the Scottish Court Service (“the SCS”) whose functions are to provide the administrative support for the Scottish courts, the judiciary of those courts and certain other specified persons. The existing Executive Agency of the Scottish Government, also known as the SCS, will be replaced by this new body. The new SCS will be part of the Scottish Administration but not part of the Scottish Government (see paragraph below as to the mechanism for achieving this). This is in contrast to the existing SCS which, as an Executive Agency, is part of the Scottish Government and therefore under Ministerial control. The new SCS will consist of 7 judicial members and 6 non-judicial members and will have its own staff of civil servants. It will not be under Ministerial control but it will have to agree a corporate plan with the Scottish Ministers. There is also a default power for the Scottish Ministers to take over the functions of the SCS.
115. Paragraph 1 of Schedule 3 to the Act (which makes further provision about the SCS) provides that the SCS is to be the holder of an office. That paragraph also provides that the SCS is to be the name of both the office-holder and the office itself. An order will be made at Westminster under section 104 of the Scotland Act 1998 (power to make provision consequential on legislation of, or scrutinised by, the Parliament) to include the office known as the SCS within the Scottish Administration.

Functions

Section 61– Administrative support for the Scottish courts and judiciary

116. This section provides for the SCS’s principal function of running the court service in Scotland. In doing so the section also provides that they must take into account, in particular, the needs of members of the public and those involved in proceedings in courts and that they must co-operate with others involved in the administration of justice. This latter requirement would cover, for example, cooperation with the Crown Office and Procurator Fiscal Service over the scheduling of criminal cases. The courts covered by this function are the Court of Session, the High Court of Justiciary, the Registration Appeals Court, the Election Court, the Lands Valuation Appeal Court, the sheriff courts, JP courts and such other courts as may be specified by the Scottish Ministers by order.

Section 62 - Administrative support for other persons

117. This section provides that the SCS also has the function of providing administrative support for various other persons. In particular subsection (1)(a) provides that the SCS has the function of providing administrative support for the functions conferred on the Lord President as head of the Scottish judiciary under section 2 of the Act and support for the Lord President's other non-judicial functions. The latter covers the functions carried out by the Lord President's Private Office in providing support to the Lord President in carrying out a range of statutory and other functions such as powers of appointment, removal and rule-making or rule approval in relation to tribunals and in respect of the Law Society of Scotland, the Scottish Legal Complaints Commission and university ordinances. Subsection (1)(b) provides that the SCS has the function of providing administrative support to the delegate where the Lord President has delegated one or more of his or her functions as head of the Scottish judiciary in section 2 under section 3. Subsection (1)(c) provides that the SCS has the function of providing administrative support to sheriffs principal in carrying out their functions of ensuring the efficient disposal of business in sheriff courts and of the timetabling of business in the sheriff courts in their sheriffdoms.

Section 63 – Appointment etc. of office holders

118. This section transfers the function of appointing various statutory office holders from the Scottish Ministers to the new SCS. Schedule 4 makes the necessary consequential modifications. These office holders are employed by the existing Executive Agency and will transfer to the new body corporate by virtue of paragraph 18 of schedule 3 to the Act.

Section 64 – Payment of remuneration etc. of certain judicial office holders

119. This section amends the 1971 Act, the 1985 Act and the 1990 Act to provide that the SCS will pay remuneration and allowances to temporary sheriffs principal, part-time sheriffs, re-employed retired judges and temporary judges, with the responsibility for determining the level of that remuneration and those allowances remaining with the Scottish Ministers. This is because budgetary responsibility for the use of temporary judges and sheriffs will rest with the SCS.

Provision of advice etc. to the Scottish Ministers

Section 65 – Provision of advice etc. to the Scottish Ministers

120. This section makes more specific provision to that more general provision in paragraph 15(2)(c) of schedule 3. That paragraph provides that the SCS may do anything it considers necessary or expedient for the purposes of or in connection with its functions including, in particular, providing information and advice. This section provides that the SCS may give information or advice, or make proposals, to the Scottish Ministers on matters relating to its functions or the administration of justice in Scotland. Furthermore this section provides that the Scottish Ministers must have regard to such information, advice or proposals.

Plans and reports

Section 66 – Corporate plans

121. This section places various requirements on the SCS in relation to business planning and gives a role to the Scottish Ministers in relation to the form and approval of such plans. The first plan will cover the period from the date the new SCS comes into being until a date to be specified by order. Thereafter plans will be for three year periods, or for such other period as the Scottish Ministers determine by order. Subsection (4)(b)

provides for publication of the approved plan (such publication could be on the SCS website).

Ministerial powers

Section 69 – Guidance

122. An example of the type of guidance that might be issued under this section is guidance on high level policies and priorities.

Section 70 – Default power

123. This section provides for the Scottish Ministers to take over the functions of the SCS in the event of serious failure. In that event all of the functions of the SCS would be taken over by the Scottish Ministers. Such action could be taken immediately by the Scottish Ministers and subsection (2) provides for this to be achieved by order. If not approved by Parliament it would cease to have effect. Subsection (8) provides that any action taken by the Scottish Ministers during a period in which they have taken over the running of the SCS by using this power remains valid where Parliament decides not to affirm the order. This subsection also enables the Scottish Ministers to make consequential provisions arising from Parliament's decision not to affirm such an order. For example this could be used to enable contracts entered into by the Scottish Ministers in the period they have taken over the running of the SCS to be assigned to the SCS.