

EXECUTIVE NOTE

THE JUDICIARY AND COURTS (SCOTLAND) ACT 2008 (CONSEQUENTIAL MODIFICATIONS) ORDER 2009

SSI 2009/334

1 This Order has been drafted in exercise of the powers conferred by section 71(4)(b) of the Judiciary and Courts (Scotland) Act 2008 and by section 4(4) of the Rehabilitation of Offenders Act 1974. The Order is subject to the affirmative resolution procedure.

Policy Objectives and Background

2 The 2008 Act establishes the Lord President as head of the Scottish Judiciary and establishes the Scottish Court Service (“SCS”) as a body corporate with the Lord President as chair. (A separate order under section 104 of the Scotland Act 1998 will establish the SCS as a non-Ministerial Department within the Scottish Administration.) The provisions of the 2008 Act required amendments being made to other relevant Acts to reflect the change of responsibility from Scottish Ministers to the Lord President.

3 The Order, using the powers under section 71(4)(b) of the 2008 Act and section 4(4) of the 1974 Act, makes various consequential amendments to the Promissory Oaths Act 1871, the Sheriff Courts (Scotland) Act 1971 and the Rehabilitation of Offenders Act 1974.

Promissory Oaths

4. Section 27 of the 2008 Act amends the Promissory Oaths Act 1868 to add sheriffs and part-time sheriffs to the office of judicial holders required to take the oath of allegiance to the Queen and the judicial oath. This amendment on its own would require sheriffs and part-time sheriffs to take these oaths before a judge of the Court of Session. It is preferable and more administratively convenient for them to take the oath before a sheriff principal and the amendment to the 1971 Act achieves this effect.

Sheriff Courts (Scotland) Act 1971

5. The 2008 Act repeals section 11C (removal of part-time sheriffs from office) of the Sheriff Courts (Scotland) Act 1971. However, there is a reference to section 11C at section 11B(4) (limitations, termination etc of appointments for part-time sheriffs) an amendment substitutes the up-to-date cross-reference.

6. Section 19 of the 1971 Act empowers Scottish Ministers to pay travelling allowances for sheriffs principal. After commencement of section 61 of the 2008 Act Scottish Court Service will become responsible for providing administrative support for the Scottish courts and judiciary. As part of that responsibility SCS will, as a matter of

practice, make payment of travelling expenses for all sheriffs and sheriffs principal. Therefore the 1971 Act needs to be amended to transfer the power to pay travelling allowances of sheriffs principal to the SCS following the proposed commencement of section 61 of the 2008 Act currently planned for 1 April 2010.

**Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)
(Scotland) Order 2003**

7. Various kinds of employment, occupations and professions are exempted from the 1974 Act under the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003. To ensure adequate protection for the public exceptions have to be made so that information about 'spent' convictions may not be withheld in certain circumstances. In respect of those posts covered by the 2003 Order, an employer or authorised body is generally entitled to ask about all previous convictions both 'spent' and 'unspent' and to take them into account when addressing an individual's suitability for work.

8. There are 4 additions to this list of exceptions in the draft Order. Firstly, paragraph 2 of Schedule 3 to the 2008 Act specifies that the Scottish Court Service shall consist of judicial and non judicial members. The non judicial members will be an advocate, a solicitor, the Chief Executive of the SCS and three lay members. The advocate and solicitor members are already covered by the 2003 Order. The Chief Executive is not covered by the 2003 Order but is a senior civil servant. Lay members of the SCS are not already covered by the 2003 Order. In order to allow the Panel and the Lord President to fully consider potential candidates suitability for appointment as a lay member of SCS the draft Order adds lay members of the SCS to the list to permit them to be asked to disclose information about spent convictions.

9. The draft Order also adds the lay members of the Judicial Appointments Board and lay individuals involved in tribunals considering the fitness for judicial and shrieval office to the list of exclusions and exemptions for the same policy reasons given above.

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