



# Court of Session Act 1988

## 1988 CHAPTER 36

### PART I

#### CONSTITUTION AND ADMINISTRATION OF THE COURT

##### **1 Number of judges of Court.**

- (1) Subject to subsections (2), (3) [<sup>F1</sup>, (3A)] and (4) below, the maximum number of judges of the Court of Session (hereinafter in this Act referred to as “the Court”) shall be [<sup>F2</sup>34]
- (2) Her Majesty may by Order in Council from time to time amend subsection (1) above so as to increase or further increase the maximum number of persons who may be appointed as judges of the Court.
- (3) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless a draft of the Order has been laid before [<sup>F3</sup>and approved by resolution of the Scottish Parliament.]

[<sup>F4</sup>(3A) The Lord President must be consulted before any draft of an Order under this section is laid before the Parliament.]

- (4) No vacancy arising among the judges of the Court shall be filled unless the Secretary of State [<sup>F5</sup>... is satisfied that the state of business in the Court requires that the vacancy should be filled.
- (5) There shall be paid out of the Consolidated Fund any increase attributable to the provisions of this section in the sums which, under any other enactment, are payable out of that Fund.

#### **Subordinate Legislation Made**

**P1** [S. 1\(2\)](#): power exercised (19.12.1991) by [S.I. 1991/2884](#)

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### Textual Amendments

- F1** Words in s. 1(1) inserted (1.6.2009) by Judiciary and Courts (Scotland) Act 2008 (asp. 6), ss. 44(2), 76; S.S.I. 2008/192, art. 2, Sch.
- F2** Words in s. 1(1) substituted (18.11.2004) by The Maximum Number of Judges (Scotland) Order 2004 (S.S.I. 2004/499), art. 2
- F3** Words in s. 1(3) substituted (1.6.2009) by Judiciary and Courts (Scotland) Act 2008 (asp. 6), ss. 44(3), 76; S.S.I. 2008/192, art. 2, Sch.
- F4** S. 1(3A) inserted (1.6.2009) by Judiciary and Courts (Scotland) Act 2008 (asp. 6), ss. 44(4), 76; S.S.I. 2008/192, art. 2, Sch.
- F5** Words in s. 1(4) omitted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. 1 para. 89, Pt. IV

### Modifications etc. (not altering text)

- C1** S. 1(1) modified (27.9.1999) by 1999 c. 22, ss. 68(3)(c), 108(3)(b) (with Sch. 14 para. 7(2))
- C2** S. 1(1) modified (9.11.1998) by 1998 c. 42, ss. 18(4)(b), 22(2) (with ss. 7(8), 22(5))

## 2 Composition of Court.

The Court shall be composed of an Inner House and an Outer House constituted in accordance with the following provisions of this section.

- (2) Subject to subsection (3) below, the Inner House shall be composed of two Divisions, namely, the First Division comprising the Lord President and [<sup>F6</sup>five] senior judges of the Court, and the Second Division comprising the Lord Justice Clerk and [<sup>F7</sup>five] other senior judges of the Court.
- [<sup>F8</sup>(2A) The Scottish Ministers may [<sup>F9</sup>, after consulting the Lord President,] from time to time by order amend subsection (2) above so as to alter or further alter the number of senior judges in the two Divisions.
- <sup>F8</sup>( 2B ) The power conferred by subsection (2A) above may be exercised—
- (a) in relation only to one; or
  - (b) differently in relation to each,
- of the two Divisions.
- <sup>F8</sup>( 2C ) An order under this section shall be made by statutory instrument.
- <sup>F8</sup>( 2D ) No order shall be made under this section unless a draft of the instrument containing it has been laid before and approved by resolution of the Scottish Parliament.]
- [<sup>F10</sup>(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 to a Division of the Inner House shall be construed as including a reference to such an extra Division.]
- (4) [<sup>F11</sup>Subject to [<sup>F12</sup>an act of sederunt under section 103(1) of the Courts Reform (Scotland) Act 2014,]] the quorum for a Division of the Inner House shall be three judges.
- (5) The Outer House shall be composed of the judges of the Court (other than the judges of the Inner House while they are sitting in the Inner House) sitting singly, and any reference in this Act or in any other enactment to a Lord Ordinary shall be construed as a reference to a judge sitting singly in the Outer House.

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[<sup>F13</sup>(6) Subject to [<sup>F14</sup>subsections (7) and (8)]below, where a vacancy arises in a Division of the Inner House the Lord President and the Lord Justice Clerk, with the consent of the Secretary of State and after such consultation with judges as appears to them to be appropriate in the particular circumstances, shall appoint a Lord Ordinary to fill that vacancy.]

(7) Subsection (6) above shall not apply in the case of such a vacancy arising by reason of the death or resignation of the Lord President or the Lord Justice Clerk.

[<sup>F15</sup>(8) The Scottish Ministers shall not give their consent under subsection (6) above to an appointment filling a vacancy in one of the two Divisions of the Inner House unless they are satisfied that the state of business in the Inner House requires that the vacancy be filled.]

#### Textual Amendments

- F6** Word in s. 2(2) substituted (16.12.2010) by [The Number of Inner House Judges \(Variation\) Order 2010 \(S.S.I. 2010/449\)](#), arts. 1, 2
- F7** Word in s. 2(2) substituted (22.3.2007) by [The Number of Inner House Judges \(Variation\) Order 2007 \(S.S.I. 2007/258\)](#), arts. 1, 2
- F8** S. 2(2A)-(2D) inserted (9.8.2000) by [2000 asp 9](#), s. 5(a)
- F9** Words in s. 2(2A) inserted (1.6.2009) by [Judiciary and Courts \(Scotland\) Act 2008 \(asp. 6\)](#), ss. 45, 76; [S.S.I. 2008/192](#), art. 2, Sch.
- F10** S. 2(3) substituted (1.6.2009) by [Judiciary and Courts \(Scotland\) Act 2008 \(asp. 6\)](#), ss. 46(2)(a), 76; [S.S.I. 2008/192](#), art. 2, Sch.
- F11** Words in s. 2(4) inserted (1.6.2009) by [Judiciary and Courts \(Scotland\) Act 2008 \(asp. 6\)](#), ss. 46(2)(b), 76; [S.S.I. 2008/192](#), art. 2, Sch.
- F12** Words in s. 2(4) substituted (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 5 para. 30\(2\)](#); [S.S.I. 2015/77](#), art. 2(2)(3), Sch.
- F13** S. 2(6) substituted (*1.4.1991*) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 36:1\)](#), s. 35(2), [Sch. 4 para. 4\(2\)\(b\)](#); [S.I. 1991/822](#), art. 3, [Schedule](#)
- F14** Words in s. 2(6) substituted (9.8.2000) by [2000 asp 9](#), s. 5(b)
- F15** S. 2(8) inserted (9.2.2000) by [2000 asp 9](#), s. 5(c)

### 3 Exchequer causes.

One of the judges of the Court who usually sits as a Lord Ordinary shall be appointed by the [<sup>F16</sup>Lord President]to act as Lord Ordinary in exchequer causes, and no other judge shall so act unless and until such judge is appointed in his place:

Provided that, in the event of the absence or inability of the Lord Ordinary in exchequer causes for whatever reason, any of his duties may be performed by any other Lord Ordinary acting in his place.

#### Textual Amendments

- F16** Words in s. 3 substituted (*1.4.1991*)by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 36:1\)](#), s. 35(2), [Sch. 4 para. 4\(1\)\(3\)](#), [S.I. 1991/822](#), art. 3,[Schedule](#)

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#### **4 Power of judges to act in cases relating to rates and taxes.**

- (1) A judge of the Court shall not be incapable of acting as such in any proceedings by reason of being, as one of a class of ratepayers, taxpayers or persons of any other description, liable in common with others to pay, or contribute to, or benefit from, any rate or tax which may be increased, reduced or in any way affected by those proceedings.
- (2) In this section “rate or tax” means any rate, tax, duty or assessment, whether public, general or local, and includes—
  - (a) any fund formed from the proceeds of any such rate, tax, duty or assessment; and
  - (b) any fund applicable for purposes the same as, or similar to, those for which the proceeds of any such rate, tax, duty or assessment are or might be applied.

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