



The Scottish Parliament
Pàrlamaid na h-Alba

Published 26 October 2026
SP Paper 27
2nd Report, 2026 (Session 7)

Equalities, Human Rights and Civil Justice Committee

Maximum Number of Judges (Scotland) Order 2026 [draft]



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Equalities, Human Rights and Civil Justice Committee

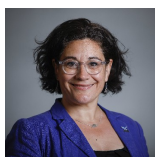
To consider and report on the following —

- a. matters relating to equal opportunities, and upon the observance of equal opportunities within the Parliament;
- b. matters relating to human rights;
- c. matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice.

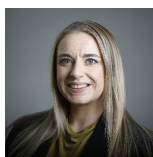


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Committee Membership



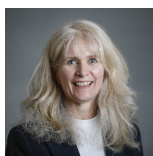
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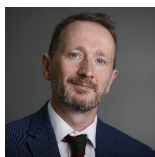
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Introduction

1. This report concerns the Maximum Number of Judges (Scotland) Order 2026 [draft], laid before the Parliament by the Scottish Government on 7 September 2026. The instrument, which was laid in draft, is subject to the affirmative procedure – which means it cannot be made unless it has been approved by a resolution of the Parliament.
2. It is for the Equalities, Human Rights and Civil Justice Committee, as lead committee, to decide whether or not to recommend approval.

About the instrument

3. The accompanying [Policy Note](#) explains that the purpose of the instrument “is to increase the maximum number of persons who may be appointed judges of the Court of Session from the current 36 to 40.”
4. The Policy Note further explains that this increase “is required in part due to Lord Colbeck being appointed as Chair of the Sheku Bayoh Inquiry, following the resignation of the previous Chair.” It notes that three other senatorsⁱ are currently engaged in other Inquiries whilst two others are currently serving as Presidents of the Employment Appeal Tribunal and the Upper Tribunal Administrative Appeals Chamber respectively. As such, they have limited capacity to undertake Court of Session business.
5. The Policy Note also notes that the proposed increase “may also provide further opportunities to facilitate more flexible working arrangements for existing and new judges, while also assisting with workloads.” The Scottish Government believes this approach “may help attract a broader and more diverse range of applicants to the role, while maintaining a cost-effective and affordable approach.”
6. Noting that there is currently an increased reliance on temporary judges (now at the highest level on record), which “risks simply shifting pressures from one court to another, rather than addressing underlying capacity challenges across the system”, the Policy Note states that “the Order seeks to help minimise this risk and start to move away from reliance on short term, temporary fixes.”
7. One additional senator would be required immediately to enable a replacement for Lord Colbeck to be appointed. Increasing the statutory maximum number of senators to 40 would also create capacity for up to three further appointments in future, as and when required.
8. In the Scottish Government’s view:
 - ” “Increasing the statutory maximum number of senators above what is immediately required at this stage would provide greater flexibility to respond quickly to emerging business needs and support longer-term judicial workforce planning. This represents a proportionate and cost-effective approach to ensuring the resilience and sustainability of the judiciary.”

ⁱ The Policy Note explains that “judges of the Court of Session [are] also known as senators of the College of Justice.”

Consultation and impact assessments

9. The Policy Note confirms that:

” “To comply with the requirements of section 1(3A) of the 1988 Act, the Lord President has been consulted on the draft Order. The Lord President responded to the consultation on 4 August 2026 and raised no concerns.”

10. An [Equality Impact Assessment](#) (EQIA) was also completed. It states that “the Scottish Government has concluded that the Order is neither directly nor indirectly discriminatory under the Equality Act 2010. Nor has any direct adverse impact on individuals with protected characteristics been identified.”
11. The EQIA further states that the Order “may give rise to indirect positive equality outcomes through increased judicial capacity, improved access to justice and opportunities to support diversity and representation within the judiciary over time.”
12. In respect of financial effects, the Policy Note states that the Cabinet Secretary for Justice “confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has limited financial effects on the Scottish Government. There are no financial effects on local government or on business.”
13. The Policy Note further explains that cost of appointing one additional senator will amount to £416,807 per year. However, this will be offset by the Sheku Bayoh Inquiry meeting the cost of remunerating Lord Colbeck as its Chair.
14. Whilst there is no immediate intention to appoint further senators, the Policy Note confirms that, should their numbers be increased in future, “this would result in additional costs of £416,807 per senator to cover the remuneration of senators above 37 up to a maximum of 40.”

Consideration by the DPLR Committee

15. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the “reporting grounds” set out in Rule 10.3 of the Parliament’s standing orders.
16. The DPLR Committee considered the instrument on 15 September and reported on it in its [4th Report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument and agreed not to draw it to the attention of the Parliament.

Consideration by the Equalities, Human Rights and Civil Justice Committee

17. At its meeting on 8 October, the Equalities, Human Rights and Civil Justice Committee took evidence on the instrument from the Cabinet Secretary for Justice and officials.
18. Following the oral evidence, the Cabinet Secretary moved motion S7M-01122—

That the Equalities, Human Rights and Civil Justice Committee recommends that the Maximum Number of Judges (Scotland) Order 2026 [draft] be approved.
19. The motion was agreed to.

Recommendation

20. Accordingly, the Committee recommends to the Parliament that the Maximum Number of Judges (Scotland) Order 2026 [draft] be approved.

