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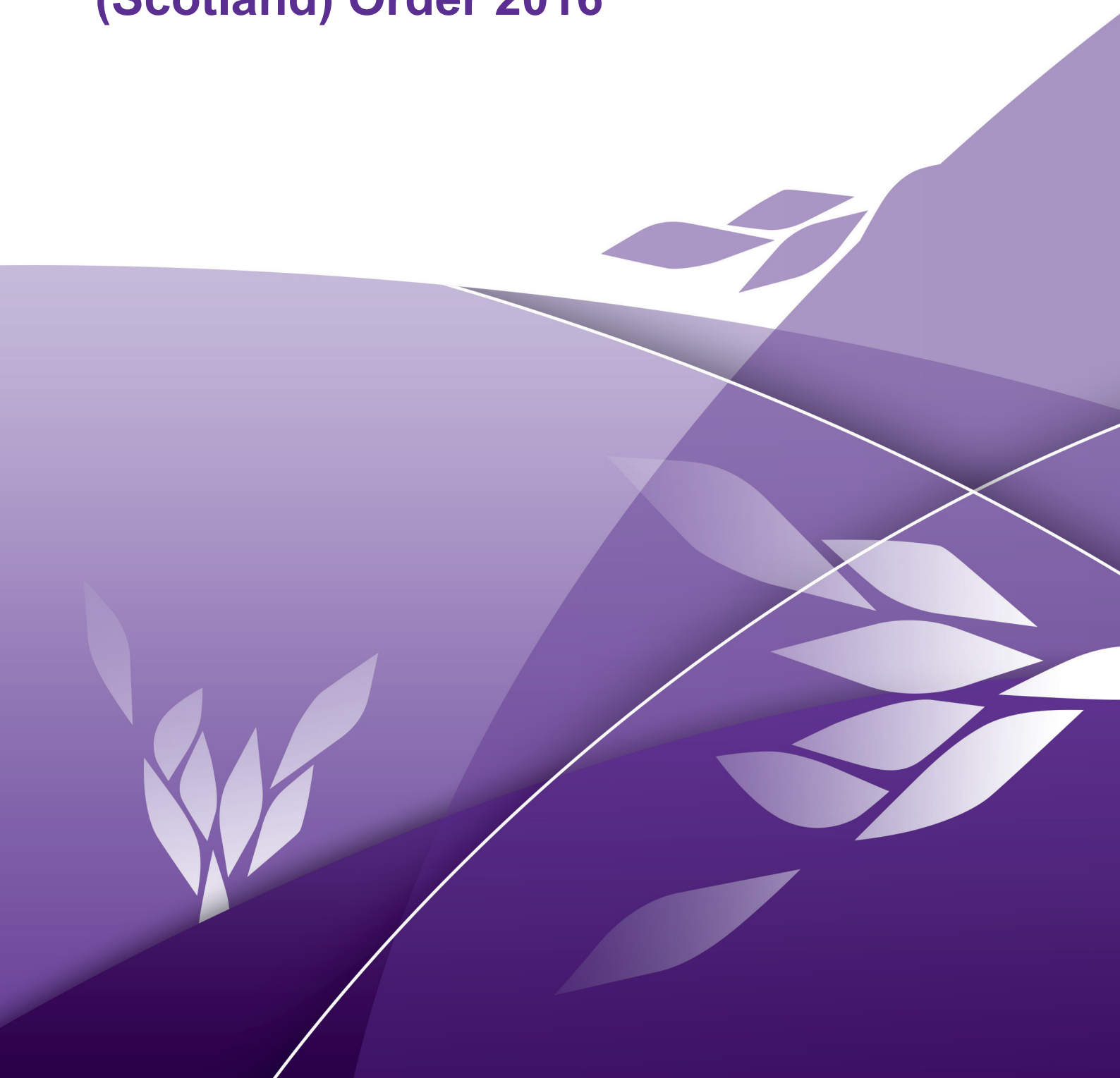
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Web

Justice Committee

Maximum Number of Judges (Scotland) Order 2016



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Justice Committee

Remit: To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



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Scottish Conservative
and Unionist Party



Douglas Ross
Scottish Conservative
and Unionist Party



Stewart Stevenson
Scottish National Party

Introduction

1. At its meeting on 1 November 2016¹ the Committee considered the following instrument—

Maximum Number of Judges (Scotland) Order 2016 [draft]
2. The instrument was referred to the Justice Committee as lead committee and was subject to affirmative procedure. The Minister for Community Safety and Legal Affairs, Annabelle Ewing, attended the meeting to give evidence on the instrument and also to move the relevant motion recommending approval of the instrument.
3. The instrument is made under section 1(2) of the Court of Session Act 1988.

Scrutiny by the Delegated Powers and Law Reform Committee

4. The Delegated Powers and Law Reform Committee considered the draft instrument at its meeting on 25 October 2016 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

5. The Justice Committee considered the draft instrument at its meeting on 1 November 2016, when Annabelle Ewing, Minister for Community Safety and Legal Affairs, attended to give evidence on the instrument.
6. Ms Ewing explained that the Order increases the maximum number of judges in the Court of Session by one, to a total of 35, following the appointment of Lady Smith as Chair of the Scottish Child Abuse Inquiry. During her secondment to the Inquiry she will not be available to sit in court, but she will remain a judge for the purposes of the statutory limit that is set in the 1988 Act.
7. The Committee noted the information contained in the policy note accompanying the Order that the financial effects will be cost neutral in respect of the budgets for judicial salaries and pensions. The reason given for this is that the Inquiry will meet the costs of Lady Smith's salary and pension.
8. The Committee queried whether the total number of judges would remain at 35 at the end of the Inquiry and the cost implications if this were to happen. It also sought clarity on whether an assessment on the likelihood of judicial retirements between now and the end of the Inquiry, currently scheduled for 2019, had been made. The Committee further queried if it would have the opportunity to debate

the financial implications of 35 judges being retained in 2019 or whenever the Inquiry ends.

9. The Minister undertook to write to the Committee in respect of these points. The letter is attached in the Annexe to the report.
10. The Minister confirmed in her letter that the Lord President has indicated he is not seeking an increase in the effective number of judges in the Court of Session in the longer term. Once the Inquiry has concluded the Lord President expects the working number of judges in post to return to 34.
11. The letter also confirmed that when the Cabinet Secretary for Justice agreed to the Lord President's request to increase the maximum number of judges he made it clear that he would review the desirability of maintaining the number of judges at the statutory maximum each time a request is made for a new appointment in the future.
12. With regard to future retirements of the judiciary, the letter confirmed that the statutory retirement age for judges is 70. The Lord President requests that judges in the Court of Session give 12 months' notice of their intention to retire and from 2019 at least one judge will reach the statutory retirement age each year until 2025. Following a request from the Lord President, it is for the Scottish Ministers to ask the Judicial Appointments Board for Scotland to recommend individuals for appointment. The letter states that this provides the Scottish Government with the opportunity and notice to take decisions of the appropriate level of resource prior to the conclusion of the Inquiry.
13. The Minister stated in her letter that if the number of judges were to be retained at 35 following the conclusion of the Inquiry, should this be required for business or other reasons, the Committee would not have the opportunity to debate the financial implications. The letter also stated that the number of judges in post can be below the statutory maximum, as has often been the case in recent years. The Minister concluded this point by adding an assurance to the Committee that Scottish Ministers will have regard to efficiency and economy in managing succession planning with stakeholders.

The Minister moved the motion lodged in her name: S5M-01715—That the Justice Committee recommends that the Maximum Number of Judges (Scotland) Order 2016 [draft] be approved.

14. The motion was agreed to.

Recommendation

The Justice Committee recommends to the Parliament that it approve the draft instrument.

In recommending approval of the draft motion the Justice Committee expects the Scottish Government to keep the number of judges needed for the effective disposal of business under review, particularly on conclusion of the Scottish Child Abuse Inquiry.

Annexe

Letter from the Minister for Community Safety and Legal Affairs

2 November 2016

Dear Margaret,

THE MAXIMUM NUMBER OF JUDGES (SCOTLAND) ORDER 2016 [DRAFT]

At my appearance before the committee on 1 November 2016, I undertook to provide additional information on the Maximum Number of Judges (Scotland) Order 2016 [draft]. I welcome that the committee will recommend to the Chamber that the Order be affirmed.

This Order in Council (“Order”) increases the statutory maximum number of judges to 35 as a consequence of Lady Smith’s recent appointment as Chair of the Scottish Child Abuse Inquiry (“the Inquiry”). Concern was expressed about the possible long-term financial implications of the Order once the Inquiry has concluded and whether the costs of judicial salaries and pensions would need to increase to pay for the additional Judge of the Court of Session.

The Lord President has indicated that he is not seeking an increase in the effective number of judges in the Court of Session in the longer term and that, once the Inquiry has concluded, he would expect the working number of judges in post to return to 34. It is important to note that the number of judges in post can be below the statutory maximum, as has often been the case in recent years.

The Cabinet Secretary for Justice made clear, when agreeing to the Lord President’s request to increase the maximum number of judges, that he would review the desirability of maintaining the number of judges at the statutory maximum each time a request is made for a new Senator appointment in the future. The effect of this Order is to ensure the appropriate judicial resource is available to ensure the effective disposal

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of business whilst Lady Smith chairs the Inquiry and we agree with the Lord President that the working number of judges should return to 34 once the Inquiry concludes, all things being equal.

The statutory retirement age for judges of the Court of Session is 70. This is provided for by section 26(1) of the Judicial Pensions and Retirement Act 1993. My officials liaise regularly with the Lord President's Judicial Office and the Judicial Appointments Board for Scotland to ensure careful succession planning for all members of the judiciary. To enable effective planning, the Lord President requests that judges of the Court of Session give 12 months notice of their intention to retire. From 2019, at least one judge will reach the statutory retirement age each year until 2025. Following a request from the Lord President, it is for Scottish Ministers to ask the Judicial Appointments Board for Scotland to recommend individuals for appointment to judicial offices within the Board's remit, including the office of judge of the Court of Session. This ensures we will have the opportunity, and notice, to take decisions on the appropriate level of resource prior to the conclusion of the Inquiry, whether it ends in October 2019 or anytime thereafter.

Mr Ross queried to what extent the committee would be appraised of changes in the number of judges, in particular the financial implications of there potentially being more judges in office. I can advise that the Justice Committee would not have the opportunity to debate the financial implications if 35 judges were to be retained following the conclusion of the Inquiry, if that was required for business or other reasons. Nonetheless the committee can be assured that Scottish Ministers will always have regard to efficiency and economy in managing succession planning with stakeholders.

Yours sincerely,

A handwritten signature in black ink, reading "Annabelle Ewing". The signature is written in a cursive, flowing style. The first name "Annabelle" is written in a larger, more prominent script, and the surname "Ewing" follows in a similar but slightly more compact style. The ink appears to be from a ballpoint pen.

ANNABELLE EWING

¹ Scottish Parliament Justice Committee. *Official Report 1 November 2016* Cols 3-9. Available at:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10594&mode=pdf>

