

Equalities, Human Rights and Civil Justice Committee
8 October 2026
7th Meeting, 2026 (Session 7)

Note by the Clerk on Maximum Number of Judges (Scotland) Order 2026 [draft]

Overview

1. At this meeting, the Committee will take evidence from the Cabinet Secretary for Justice and officials on the Maximum Number of Judges (Scotland) Order 2026 before debating a motion in the name of the Cabinet Secretary inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

Title of instrument: [Maximum Number of Judges \(Scotland\) Order 2026](#) [draft]

Laid under: powers conferred by section 1(2) of the [Court of Session Act 1988](#)(a) and all other powers enabling His Majesty to do so.

Laid on: 7 September 2026

Procedure: Affirmative

Lead committee to report by: 1 November 2026

Commencement: If approved, the instrument comes into force on the day after the day on which it is made at a future meeting of the Privy Council.

Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.

6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Cabinet Secretary and officials, followed by
 - a formal debate on a motion, lodged by the Cabinet Secretary, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

Delegated Powers and Law Reform Committee consideration

8. 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.

Purpose of the instrument

9. The Policy Note accompanying the instrument is included as an annexe. It 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.”
10. 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 senators¹ 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.
11. 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.”
12. 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

¹ The Policy Note explains that “judges of the Court of Session [are] also known as senators of the College of Justice.”

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.”

13. 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.

14. 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.”

Consultation and impact assessments

15. 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.”

16. An [Equalities Impact Assessment](#) 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.”
17. 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.”
18. 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.”
19. 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.
20. 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.”

Report

21. Depending on the outcome of today’s proceedings on the instrument, the Committee should either:

- agree to consider a draft report in private at its next meeting (if members wish the report to make points of substance or recommendations); or
- delegate to the Convener responsibility for approving a report for publication (if members are content with a short, factual report only).

Clerks to the Committee
October 2026

Annexe: Scottish Government Policy Note

THE MAXIMUM NUMBER OF JUDGES (SCOTLAND) ORDER 2026

SSI 2026/xxx

1. The above instrument is made in exercise of the powers conferred by section 1(2) of the Court of Session Act 1988 ("the 1988 Act"). The instrument is subject to affirmative procedure. This instrument is to be laid before the Scottish Parliament and approved by resolution in advance of being made at a meeting of the Privy Council.
2. The purpose of this 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.

Policy Objectives

3. The maximum number of judges of the Court of Session is currently 36, specified in section 1(1) of the 1988 Act, as amended by the Maximum Number of Judges (Scotland) Order 2022 (SSI 2022/096).
4. This Order will increase the maximum number of judges of the Court of Session, also known as senators of the College of Justice to 40.
5. Section 1(2) of the 1988 Act enables His Majesty by Order in Council to increase the maximum number of persons who may be appointed as senators of the Court. Section 1(3) provides that no recommendation shall be made to His Majesty to make an Order unless a draft has been approved by resolution of the Scottish Parliament.
6. An increase in the number of judges of the Court of Session is required in part due to Lord Colbeck being appointed as Chair of the Sheku Bayoh Inquiry, following the resignation of the previous Chair. There are already three senators engaged in other Inquiries. These judges continue to carry out Court of Session business where their workload permits. However, their capacity is limited, as their primary focus remains on their Inquiry responsibilities. Further there is one senator sitting as the President of the Employment Appeal Tribunal and another senator has been appointed as President of the Upper Tribunal Administrative Appeals Chamber.
7. There is also one senator who works 0.8 FTE. Increasing the maximum number of judges to 40 may also provide further opportunities to facilitate more flexible working arrangements for existing and new judges, while also assisting with workloads. We believe this approach may help attract a broader and more diverse range of applicants to the role, while maintaining a cost-effective and affordable approach.
8. There remain significant pressures across both the High Court and the Court of Session, and these have been further exacerbated by the loss of another senator to Inquiry work. As of August 2026, there are 34 temporary judges, comprising of 25 salaried sheriffs acting as temporary judges along with nine other retired

judicial office holders sitting in retirement as temporary judges. While these arrangements assist in managing existing pressures, these resources are fully utilised within the High Court and provide limited additional capacity to further mitigate the impact on Court of Session business. The increased reliance on temporary judges as an intended short term solution also places additional demands on the sheriff court, which is currently managing existing vacancies. This risks simply shifting pressures from one court to another, rather than addressing underlying capacity challenges across the system. The Order seeks to help minimise this risk and start to move away from reliance on short term, temporary fixes. This is particularly important given that the current level of reliance on temporary judges is the highest on record.

9. One additional senator is immediately required to enable a replacement for Lord Colbeck to be appointed, without adding additional pressure on the sheriff courts. Increasing the statutory maximum number of senators to 40 would create capacity for up to three further appointments, as and when they are required. Forecasting by the Scottish Courts and Tribunals Service (SCTS) indicates that pressure on High Court business is expected to increase over the coming years.
10. 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.

Consultation

11. 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.

Equality Impact Assessment

12. The SSI is not expected to have any direct impact on people with protected characteristics, as its primary purpose is administrative, namely increasing the maximum number of judges. The Judicial Appointments Board for Scotland is responsible for recommending individuals to the First Minister who are suitable for appointment as senators of the Court of Session. In carrying out its functions, the Board is under a statutory duty to have regard to the need to encourage diversity in the range of individuals available for selection and recommendation for judicial appointments.

Financial Effects

13. The Order will raise the maximum number of judges to 40 however there is no immediate intention to recruit additional senators to that level. Rather, the intention is to recruit one additional senator, raising the headcount to 37 senators at this time, which will cost £416,807 per year. There will be no immediate financial implication as the costs of raising the number of senators from 36 to 37 will be offset by the Sheku Bayoh Inquiry meeting the cost of remunerating Lord Colbeck as Chair. Thereafter, it is expected there will be future retirements and natural attrition. However, if additional senators are required to support an

increase in court business beyond 37, 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.

14. 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.

Scottish Government

Civil Law and Legal System Division

Justice Directorate

August 2026