

EXECUTIVE NOTE

THE MAXIMUM NUMBER OF JUDGES (TRANSITIONAL PROVISION) (SCOTLAND) ORDER 2009

SSI 2009/291

1. The above Order was made in exercise of the powers conferred by section 68(5) of the Access to Justice Act 1999 (c. 22) (“the 1999 Act”). The instrument is subject to negative resolution procedure.

POLICY OBJECTIVES

2. The Order temporarily increases by one the maximum number of judges of the Court of Session, to 35, for the period from 1st September 2009 to 30th September 2009.

3. The maximum number of judges of the Court of Session is 34, specified in Section 1(1) of the Court of Session Act 1988, as amended by the Maximum Number of Judges (Scotland) Order 2004 (SSI 2004/499).

4. Section 68(5) of the 1999 Act, enables the appropriate Minister by order made by statutory instrument to make in relation to a judge of the Court of Session who has ceased to hold office in a relevant international court such transitional provision (including, in particular, provision for a temporary increase in the maximum number of judges) as he considers appropriate.

5. The Ministry of Justice has confirmed that the International Criminal Tribunal for the former Yugoslavia (ICTY) has been designated, for the purposes of Section 68 of the 1999 Act, as a relevant international court. ICTY is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990s.

6. By virtue of section 68(3)(c) of the 1999 Act, a judge of the Court of Session who also holds office in a relevant international court is not counted among the number of judges for the purposes of Section 1(1) of the Court of Session Act 1988.

7. By virtue of section 53 of the Scotland Act 1998, for the purposes of section 68(5) of the 1999 Act in relation to a judge of the Court of Session, the appropriate Minister is the Scottish Ministers.

7. The number of judges in the Court of Session has to be increased to 35 from 1 September 2009 but it was not possible to confirm the arrangements before the summer recess so as to comply with article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999. The Scottish Government has written to the Presiding Officer explaining the reasons for this.

8. The objective of the Order is to enable Lord Bonomy to sit in the Court of Session and to receive his corresponding salary and pension contributions, from 1st September 2009, when he returns to Scotland after ceasing to hold office as a judge of the ICTY on 31st August 2009, until 30th September 2009, when Lord Nimmo-Smith retires from the Court of Session.

9. Lord Bonomy was appointed as a judge of the Court of Session in 1997. He was appointed as a judge in the ICTY in June 2004, without relinquishing office as a judge of the Court of Session.

10. There are 34 serving judges of the Court of Session counted for the purposes of establishing the maximum number of judges. When Lord Bonomy ceases to hold office as a judge in ICTY there will be 35.

11. The transitional provisions temporarily increase the maximum number of judges to 35, until Lord Nimmo-Smith's retiral on 30th September 2009.

Financial Implications

12. Lord Bonomy's salary and pension contributions as an Outer House judge of the Court of Session were suspended on his appointment to ICTY. His current remuneration arrangements are met in accordance with ICTY arrangements and not from the Scottish budget. The financial implications therefore principally include the payment of one additional month's salary and pension contributions for a judge of the Outer House of the Court of Session. An additional judge may also lead to the addition of business in the Court's schedule, with a corresponding, albeit limited, temporary increase in the Court's resource utilisation.

Regulatory Impact Assessment

13. There is no direct impact on businesses: an additional judge for a single month will not significantly impact on the handling of commercial cases before the court.

Environmental Impact Assessment

14. There is no direct impact on the environment.

Equalities Impact Assessment

15. There is no direct impact on equalities. Notwithstanding any considerations of encouraging diversity in the candidates for judicial appointment, Lord Bonomy's appointment is not being made. It was made in 1997.