EXECUTIVE NOTE

JUDICIARY AND COURTS (SCOTLAND) ACT 2008:

THE JUDICIARY AND COURTS (SCOTLAND) ACT 2008 (COMMENCEMENT NO.4, TRANSITIONAL PROVISIONS AND SAVINGS) ORDER 2010 (SSI 2010/39(C.1))

THE TRANSFER OF PROPERTY ETC. (SCOTTISH COURT SERVICE) ORDER 2010 (SSI 2010/40)

THE SCOTTISH COURT SERVICE (CORPORATE PLAN) ORDER 2010 (SSI 2010/41)

1. The Judiciary and Courts (Scotland Act 2008 (Commencement No. 4, Transitional Provisions and Savings) Order 2010 is being made in exercise of the powers conferred by section 76(1) of the Judiciary and Courts (Scotland) Act 2008 ("the 2008 Act"); The Transfer of Property etc. (Scottish Court Service) Order 2010 is being made in exercise of the powers conferred by section 71(2) of and paragraph 20 of schedule 3 to the 2008 Act; and The Scottish Court Service (Corporate Plan) Order 2010 is being made in exercise of the power conferred at section 68(8)(a) of the 2008 Act.

THE JUDICIARY AND COURTS (SCOTLAND) ACT 2008 (COMMENCEMENT NO.4, TRANSITIONAL PROVISIONS AND SAVINGS) ORDER 2010 (SSI 2010/39(C.1))

2. This Order brings into force the order making powers in sections 37(5) and 40 of the Judiciary and Courts (Scotland) Act 2008 ("the 2008 Act") on 20 February and the remaining provisions on 1 April 2010, apart from paragraph 1 of Schedule 3. There is no intention to commence that paragraph and it will be repealed at the earliest opportunity. It is no longer a necessary provision given the terms of the Judiciary and Courts (Scotland) Act 2008 (Consequential Provisions and Modifications) Order 2009 (SI 2009/2231).

3. The following transitional and saving provisions have been made in the Order:

- Despite the coming into force of sections 35-40 and paragraphs 2(1) and (3) and 3 of schedule 5, any proceedings for removal from judicial or shrieval office which have been commenced before 1st April 2010 shall continue to be governed by the law in force immediately before that date.
- Judicial conduct occurring before 1st April 2010 may be taken into account in any proceedings under Chapters 4 and 5 of Part 2.
- Despite the coming into force of sections 41 and 42, subordinate legislation made by Scottish Ministers under sections 69(1) and 71(7)

of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(**1**) shall continue to have effect on or after 1st April 2010 as it had effect immediately before that date until such time as the Lord President of the Court of Session and the Court of Session respectively exercise their powers to make subordinate legislation under those sections and such subordinate legislation comes into force.

- Despite the coming into force of section 48, any direction given by Scottish Ministers under section 9 of the 1971 Act before 1st April 2010 shall continue to have effect until its expiry or until the Lord President gives a direction under section 2(3) covering that subject matter.

- Despite the coming into force of section 53 any authorisation or direction given by Scottish Ministers under section 10 of the 1971 Act before 1st April 2010 shall continue to have effect until its expiry or until revoked by the Lord President of the Court of Session.

- Despite the coming into force of section 55, any requirement imposed or direction given by Scottish Ministers respectively under subsections (2) and (3) of section 14 of the 1971 Act shall continue to have effect until revoked by the Lord President of the Court of Session.

TRANSFER OF PROPERTY ETC. (SCOTTISH COURT SERVICE) ORDER 2010 (SSI 2010/40)

Policy Objectives and Background

4. Full implementation of the 2008 Act transfers responsibility for the running of the Scottish courts from the Scottish Ministers to the Scottish Court Service (SCS). Part of that function includes providing, or ensuring the provision of property. To allow SCS to fully exercise this responsibility provision has been made at paragraph 20(1) of Schedule 3 to the 2008 Act for Scottish Ministers by order to provide for the transfer of property and liabilities.

5. The Order makes provision at article 2 to transfer all property and liabilities used wholly or mainly for or in connection with the functions of the SCS. Article 3 makes provision for where land or corporeal moveable property (i.e. physical moveable property) is used not only by Scottish Ministers for the purposes of the Scottish courts but also by other parties, such as Crown Office and Procurator Fiscal Office and this use is regulated by a written agreement

6. Article 4 reserves the right of Scottish Ministers to access records transferred to the SCS.

7. Article 5 provides for the determination of questions as to whether and to what extent property and liabilities are transferred by this Order and of disputes concerning compensation which may be payable by virtue of paragraph 20(7) of schedule 3 to the Act.

8. Article 6 and 7 make consequential, supplementary, transitional and saving provision.

THE SCOTTISH COURT SERVICE (CORPORATE PLAN) ORDER 2010 (SSI 2010/41)

9. Section 66(8) of the 2008 Act provides that the planning period of the first SCS corporate plan is to begin on the day that section 61 comes into force (i.e. 1st April 2010) and ends on a date specified in an order by the Scottish Ministers. Thereafter every planning period will be for 3 years. The Order specifies the date that the first planning period ends as 31st March 2011. A one year period has been prescribed to allow the new SCS Corporate Body time to adjust to their role before committing to a 3 year plan which by virtue of section 61(1) of the 2008 Act must be approved by the Scottish Ministers.

Delina Cowell
Justice Directorate
Ext 42446