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Margaret Mitchell MSP  
Convener  
Justice Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

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 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*  
*Annabelle*  
**ANNABELLE EWING**