

# **JUDICIARY AND COURTS (SCOTLAND) ACT 2008**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 2 – the Judiciary**

#### **Chapter 4 – Judicial Conduct**

#### **Judicial conduct**

#### ***Sections 28 and 29 - Rules about investigations etc. and Powers of the Lord President***

68. These sections enable the Lord President to establish a judicial conduct scheme and are pursuant on the Lord President's responsibility in section 2(2)(e) of making and maintaining appropriate arrangements for the investigation and determination of any matter concerning the conduct of judicial office holders and the review of such determinations.
69. **Section 28(1)** provides that the Lord President may make rules for the investigation and determination of issues of judicial conduct and for reviews of any such determinations. Subsection (2) contains a non-exhaustive list of the matters that may be covered by the rules. Subsection (3)(a) would enable the Lord President to, for example, make provision in the rules in terms of subsection (2)(f) for different people to conduct investigations dependent on whether a judge or sheriff was the subject of the investigation. Subsection (3)(b) provides for the publication of these rules.
70. **Section 29** enables the Lord President to administer one of three types of disciplinary sanction where an investigation has been carried out and the investigator has recommended a disciplinary sanction. The disciplinary sanctions are set out at subsection (1) and are, in ascending order of severity: formal advice, a formal warning and a reprimand. This is a discretionary power and subsection (3) makes it clear that this does not restrict what the Lord President may do informally.