

Judicial Appointments Board for Scotland

Framework Document

June 2009

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Foreword

This Framework Document sets out the relationship between the Scottish Government (Scottish Government) and the Judicial Appointments Board for Scotland (JABS).

That relationship is governed by the Judiciary and Courts (Scotland) Act 2008, and we welcome the fact that JABS, which was established on an administrative basis in 2002, is now a fully fledged Advisory Non Departmental Public Body (NDPB) established under Statute. This gives added authority and independence to its role of recommending candidates for judicial office and providing advice in connection with such appointments.

JABS is a key part of the reforms contained within the 2008 Act, aimed to secure judicial independence and to help modernise the justice system. The establishment of JABS as an Advisory NDPB is an important move towards greater separation of Government, Parliament and the courts and is a significant step forward.

The purpose of the Board is to recommend to Scottish Ministers individuals for appointment to judicial offices within the Board's remit. The new Act is absolutely clear that JABS must recommend candidates solely on merit. The Act preserves a careful balance between legal and lay members, but ensures that only the legal members are to be involved in the assessment of the candidate's legal knowledge and skills in the application of that knowledge. This will help build confidence in the quality of the appointments that JABS recommends.

The Act also provides that the Board should have regard to the need to encourage diversity in the range of people available for recommendation for appointment, and we are confident that this will continue to provide a basis for the Board to devise processes and procedures that will enable appointments on merit to a judiciary that is seen to comprise people who understand and are in touch with the communities they serve.

Responsibility for making recommendations to Her Majesty for judicial appointments continues to lie with the First Minister but the First Minister can only do so on the basis of recommendations from JABS. We both believe that this Framework Document will support both JABS and the Scottish Ministers in making this relationship work effectively and in a way that meets the aspirations underlying the new legislation.

Signed

Signed

Sir Muir Russell
Chairing Member
Judicial Appointments Board for Scotland

Kenny MacAskill MSP
Cabinet Secretary for Justice

SECTION 1

Introduction

- 1.1 In June 2000 the Scottish Ministers issued for public consultation *Judicial Appointments: An Inclusive Approach*, which invited views on options for change to arrangements for judicial appointments.
- 1.2 The options presented for consultation were intended to establish an open and accessible system for judicial appointments, one which could be readily understood and so command the respect and support of the legal profession and the public at large. Responses demonstrated substantial support for the creation of an independent judicial appointments board.
- 1.3 In March 2001, the Judicial Appointments Board for Scotland (JABS) was set up as an ad hoc organisation to deal with judicial appointments that required to be made in the course of 2001.
- 1.4 In June 2002, JABS was formally established by Scottish Ministers but began its work without a formal remit or statutory basis. It was established as an administrative body with a remit of providing recommendations on merit for appointment to the First Minister, to consider ways of recruiting a judiciary that is representative of the communities served and to undertake the recruitment processes in an efficient and effective manner, with the aim of creating more open and accessible arrangements for judicial appointments in Scotland. On establishment, the stated intention was that after a period of operating on an administrative basis JABS would be placed on a statutory footing.
- 1.5 In February 2006, after 172 judicial appointments had been made on the basis of recommendations from JABS and substantial operational experience had been gained, including detailed reconsiderations of the original remit, Scottish Ministers issued *Strengthening Judicial Independence in a Modern Scotland*, a further consultation paper containing proposals for the reform of Scotland's justice system.
- 1.6 In particular, the further consultation paper set out proposals to bring forward legislation to establish JABS on a statutory basis, based in many aspects on the practices that JABS had developed. Views were invited on twenty-two questions and the responses informed the preparation of the Judiciary and Courts (Scotland) Bill, which was included in the legislative programme of the new administration elected in May 2007.
- 1.7 The Judiciary and Courts (Scotland) Bill was introduced to the Scottish Parliament in January 2008 and included provisions to establish in statute the Judicial Appointments Board for Scotland.
- 1.8 The Bill as amended was passed by the Scottish Parliament on 25 September 2008.

Judiciary and Courts (Scotland) Act 2008

- 1.9 The Judiciary and Courts (Scotland) Act 2008 (“the Act”) received Royal Assent on 29 October 2008. The overarching objective of the Act is to modernise and improve the court system through strengthening the role of Scotland’s judiciary.
- 1.10 Substantive provision is made in relation to four main policy areas:
- judicial independence;
 - the judiciary, including appointments and the establishment of JABS;
 - the courts; and
 - the governance of the Scottish Court Service.
- 1.11 Chapter 3 and Schedule 1 of the Act provide the statutory basis for JABS, prescribing its remit, powers, duties, constitution and organisation.

Status of the Judicial Appointments Board for Scotland

- 1.12 JABS (“the Board”) is now established as an advisory non-departmental public body (aNDPB). It is not a body corporate and is not a servant of the Crown. It has no status, immunity or privilege of the Crown.

The Framework Document

- 1.13 The purpose of this framework document is to set out in a manner which can be readily understood, the overarching framework within which the Board and its Secretariat will operate.
- 1.14 The framework document is subordinate to the statutory arrangements and it does not create any new legal powers or responsibilities. It is not intended to compromise or limit the independence of the Board, but it does introduce a framework within which the Board and the Scottish Government have agreed to exercise their respective statutory functions.
- 1.15 The document describes the responsibilities of the Scottish Government and of the Board, as well as the appropriate expectations of each other and the working relationships necessary for an open and effective system of judicial appointments. These arrangements may be periodically reviewed, when appropriate.
- 1.16 The document describes the responsibilities of the Scottish Government and of the Board, as well as the appropriate expectations of each other and the working relationships necessary for an open and effective system of judicial appointments. These arrangements may be periodically reviewed, when appropriate.
- 1.17 The document has been prepared by the Legal System Division of the Scottish Government (“the Sponsor Division”) in conjunction with a working

group of the Board, and has been agreed by Scottish Ministers and the Board, after consulting the Lord President.

- 1.18 The framework complies with the Scottish Government's guidance on public bodies and describes in particular:
 - a) JABS overall aims and objectives;
 - b) The rules and guidelines relevant to the exercise of JABS functions, duties and powers
 - c) The arrangements under which JABS is funded by the Scottish Government;
 - d) How JABS and the Board are to be held accountable for their performance.
- 1.19 In addition, the document explains the roles and responsibilities of all those who are involved, including the Scottish Ministers, individual parts of the Scottish Government, the JABS Secretariat, the Board and the individual Board Members.
- 1.20 The Board, the Scottish Ministers or the Lord President may propose amendments to this document at any time. Any such proposals shall be considered in the light of evolving aims and objectives, operational factors and experience.
- 1.21 Copies of the Framework Document will be available to members of the public on both the JABS and Scottish Government websites.
- 1.22 A copy been placed with Spice, the Scottish Parliament Information Centre.

SECTION 2

Role of the Judicial Appointments Board for Scotland

- 2.1 The purpose of the Board is to recommend to Scottish Ministers individuals for appointment to judicial offices within the Board's remit and to provide advice to Scottish Ministers in connection with such appointments.
- 2.2 The judicial offices within the Boards remit are:
- a) the office of judge of the Court of Session
 - b) the office of Chairman of the Scottish Land Court
 - c) the office of sheriff principal
 - d) the office of sheriff
 - e) the office of part-time sheriff and
 - f) the office of temporary judge, except in the case where the individual to be appointed already holds or has held one of the following offices:
 - i. the office of judge of the European Court
 - ii. the office of judge of the European Court of Human Right
 - iii. the office of Chairman of the Scottish Land Court
 - iv. the office of sheriff principal
 - v. the office of sheriff
- 2.3 Scottish Ministers may specify other judicial offices coming within the Board's remit, whether full-time, part-time or temporary, but may only do so by order which requires laying a Statutory Instrument before the Scottish Parliament.
- 2.4 Appointments to the office of temporary judge not falling within the Board's remit shall be made in accordance with Law Reform Miscellaneous Provisions (Scotland) Act 1990. Such appointments may be made without individuals being recommended to Scottish Ministers by the Board.

Selection of Recommended Individuals

- 2.5 The selection of individuals for recommendation must be made solely on merit and an individual may only be selected for recommendation if he or she is of good character.
- 2.6 Additionally, only the legal members of the Board may take part in the assessment of an individual's knowledge of the law or skill and competence in the interpretation and application of the law.
- 2.7 Further, certain eligibility criteria including qualifying periods of practice are established in statute for most judicial offices, including some within the Board's remit.

- 2.8 The Board will therefore select for recommendation only eligible individuals that have been assessed by the judicial and legal members as legally competent and have satisfied the Board of their merit and good character.
- 2.9 The Board is responsible for determining the processes and procedures by which individuals to be recommended for appointment are assessed for selection, having regard to any published guidance issued by either the Lord President or the Scottish Ministers.
- 2.10 Questions of an individual's merit other than good character, knowledge of the law and skills and competence in the interpretation and application of the law, are not addressed in the Act. It is for the Board, subject to necessary regard to published guidance, to ensure that processes for selection on merit make appropriate use of the skills and knowledge of all Board members.
- 2.11 The selection of individuals for recommendation will in all cases be made solely on merit, but the Board will also in the performance of its functions, have regard to the need to encourage diversity in the range of individuals available for selection. JABS original remit to consider ways of recruiting a *representative* judiciary is not duplicated in the statutory arrangements or in this framework agreement, but this duty will help to ensure that the pool of candidates eligible for recommendation to judicial office is appropriately diverse, enabling appointments on merit to a judiciary that is seen to comprise people who understand and are in touch with the communities they serve.
- 2.12 The Board will devise its own processes and promote its own initiatives to encourage a diverse range of candidates and applicants, having regard to any published guidance issued by either the Lord President or the Scottish Ministers.
- 2.13 In making recommendations the Board will seek to achieve consistency and transparency.

Appointments

- 2.14 Appointments to all the full-time judicial offices within the Boards remit are made by the Crown, on the recommendation of the First Minister after consulting the Lord President. Appointments to the offices of part-time sheriff and temporary judge are made by the Scottish Ministers after consulting the Lord President.
- 2.15 Scottish Ministers may only appoint an individual to judicial office within the Board's remit or recommend an individual to Her Majesty for appointment to such an office if he or she has first been recommended for appointment by the Board.

- 2.16 It is for the Board to determine how such recommendations will be made, having regard to any published guidance issued by either the Lord President or the Scottish Ministers.

SECTION 3

Aims and Objectives

- 3.1 The Board's overall aim is to select and recommend persons eligible for judicial appointment on merit and subject to being satisfied of good character and legal competence.
- 3.2 It is essential that the Board acts and is seen to be acting in the interests of the administration of justice in Scotland and the interests of the public in discharging its functions and those functions are exercised in accordance with the reformed Scottish system of justice and the standards of best practice maintained in a modern democratic society.
- 3.3 It is also essential that the Board is and is seen to be exercising its functions independently, and especially that its processes and procedures will be free from interference by Scottish Ministers or any other undue political pressures that could arise, thus further enhancing Scotland's reputation for providing and maintaining an independent, robust, impartial and open judicial system.
- 3.4 The work of the Board is not therefore subject to the direction of any member of the Scottish Government or any other person. This arrangement will ensure that the Board may not be directed by anyone outside the Board, including the Scottish Ministers.
- 3.5 However, the Board does not operate in isolation and all judicial appointments falling within the Board's remit are instrumental in ensuring the efficient disposal of business in the Scottish courts.
- 3.6 In exercising its functions the Board will have regard to the related statutory duties of the Lord President, the Sheriffs Principal and the Scottish Ministers, and may expect to receive relevant information from them.

SECTION 4

Guidance

- 4.1 The Scottish Ministers and/or the Lord President may issue guidance to the Board on the procedures to be followed in exercising its statutory functions.
- 4.2 Guidance may relate to the exercise of any function by the Board and may for example specify the manner in which the Board is to publicise vacancies or procedures for the assessment of a candidate's merit. Any such guidance can be added to at any time by the Scottish Ministers and the Lord President.
- 4.3 The Board must have regard to any guidance issued. This means that the Board must consider the guidance. In the event of the Board deciding not to follow any such guidance it will provide reasons for its decision not to do so.

Guidance: Procedure

- 4.4 Both the Scottish Ministers and the Lord President must publish and lay a draft of the proposed guidance before the Scottish Parliament. This allows Parliamentary scrutiny for a period of 21 days and the Scottish Ministers or the Lord President must have regard to any recommendation that has been made by the Parliament.
- 4.5 Before the Scottish Ministers lay a draft of the proposed guidance before the Parliament they must consult with the Lord President and the Board on the draft guidance.
- 4.6 In turn before the Lord President lays a draft of the proposed guidance before the Parliament he must consult with the Scottish Ministers and the Board on the draft guidance.

Indemnity

- 4.7 If legal proceedings are brought against any Board members by a third party, Scottish Ministers will meet any civil liability which is incurred in the execution or purported execution of their functions, provided they have acted honestly, reasonably and in good faith.
- 4.8 Individual Board members who have acted honestly, reasonably and in good faith should not have to meet out of their own personal resources any personal civil liability which is incurred in the execution or purported execution of their functions.
- 4.9 In those circumstances, claims established against any Board members will be met from funds provided by the Scottish Ministers, except where Board members are found to have acted recklessly or fraudulently.

- 4.10 Board members who have acted honestly, reasonably and in good faith should not have to meet out of their own personal resources the cost of defending any claim/action. The reasonable legal expenses which have been reasonably incurred by any Board members associated with defending any claim/action will be met from funds provided by the Scottish Ministers, except where Board members are found to have acted recklessly or fraudulently.
- 4.11 As soon as a Board member becomes aware of any claim/action or of any circumstances which could give rise to legal expenses being incurred, that Board member must give prompt intimation of this to the Scottish Ministers for the purpose of allowing them an opportunity to get involved in an action/claim to the extent that they feel is appropriate, which may include negotiating, handling, conducting, defending or settling a claim/action and with or without any further involvement from the Board member, and for the purpose of agreeing reasonable expenses.
- 4.12 At the request of Scottish Ministers, the Board members must assign all rights, title and interest in any and all claims/actions. Board members must also fully cooperate with Scottish Ministers in dealing with any claims/actions and must not make any admission or undertaking to any third party in connection with any claim/action.
- 4.13 Board members may seek to acquire individual letters of comfort from Scottish Ministers to these effects.

SECTION 5

Responsibilities and Accountabilities

The Scottish Ministers

- 5.1 The Scottish Ministers responsibilities and accountabilities in respect of the Board include in particular:
- 5.2 To appoint, re-appoint or remove from office the legal and lay members of the Board but not the judicial members.
- 5.3 To determine the period of office of such members on appointment and to direct temporary continuation in office of such members on cessation.
- 5.4 To determine and pay Board members' entitlement to fees and expenses.
- 5.5 To add to (and subsequently subtract from) the categories of legal and judicial membership of the Board - but not to remove any membership category provided for in the Act on commencement.
- 5.6 To appoint to judicial office or to recommend for appointment to judicial office individuals selected by the Board, or to provide reasons for refusing any such recommendations.
- 5.7 To follow procedures and processes which ensure confidentiality in the selection of individuals to be recommended for appointment to judicial office.
- 5.8 To ensure the provision of such staff, property (including accommodation) and services (including independent observer and adviser) as they consider is required by the Board for the purpose of carrying out its functions, and to consult the Board on any and all such requirements.
- 5.9 To issue and publish guidance to the Board on the procedures to be followed in the exercise of statutory functions, including the selection of recommended individuals and the encouragement of diversity.
- 5.10 To be accountable to the Scottish Parliament for activities of the Board including answering Parliamentary Questions, securing approval for the required funds, the use of public finances by the Board and the specific responsibilities set out in the Act.
- 5.11 In practice, the Cabinet Secretary for Justice will respond to Parliamentary Questions on matters that relate to the Board and to correspondence that relates to the policy underpinning the Board's activities, asking the Chairing Member to supply relevant information.

- 5.12 In practice, the Cabinet Secretary for Finance and Sustainable Growth will respond to Parliamentary Questions on matters that relate to securing approval of the Board's required funds and to correspondence relating to policy underpinning those matters.
- 5.13 Scottish Ministers will provide non-statutory guidance to the Board in issuing the Scottish Government Public Finance Manual, which provides officials and public bodies with guidance on the proper handling and reporting of public funds. It sets out the relevant statutory, Parliamentary and administrative requirements for financial management. It emphasises the needs for economy, efficiency and effectiveness and promotes good practice and high standards of propriety.

The Sponsor Division

- 5.14 The Sponsor Division is a part of the Scottish Administration. In the first instance, the Sponsor Division will be the Legal System Division of the Constitution, Law and Courts Directorate.
- 5.15 The Sponsor Division comprises civil servants reporting to and serving the Scottish Ministers. It is the primary point of contact for the Board in all day-to-day and routine dealings with the Scottish Ministers. Written communications addressed to specific Ministers may be sent from the Board to either Ministerial private offices or to the Sponsor Division.
- 5.16 The Sponsor Division will liaise with specialist, operational and associated policy colleagues in other Divisions of the Scottish Government so as to ensure timely and efficient communications between the Board and the Scottish Ministers. The Sponsor Division will nominate teams and individuals with lead responsibility for specific matters relating to the Board, and will communicate these to the Board.
- 5.17 In conjunction as required with specialist, operational and related policy colleagues, the Sponsor Division will advise the Scottish Ministers on all matters relating to the Board and its operations, seeking relevant information from the Chief Executive as necessary.
- 5.18 The Sponsor Division will ensure that staff vacancies are advertised and filled in accordance with Scottish Government's resourcing policies, on the basis of information provided by the Chief Executive, or in the case of the Chief Executive, by the Chairing Member.
- 5.19 The Head of the Sponsor Division or another Senior Civil Servant will be the reporting officer for the Chief Executive and in conjunction with the Chairing Member, will set annual performance objectives and conduct annual appraisals for the Chief Executive, in accordance with the Scottish Government's performance management policies.
- 5.20 The Sponsor Division will maintain confidential information including compulsory retirement dates and length of service of judicial office holders,

and will invite the Board to detailed annual discussions to be concluded before the end of each calendar year, in order to provide the Board with information concerning anticipated retirements or other reasons for expected vacancies arising. These annual discussions will enable consultation with the Board on the expected consequential resource requirements for an agreed annual programme of operations for each coming financial year. The agreed annual programme of operations need not be limited to selection exercises but may relate to any activities connected to the exercise of the Board's functions.

- 5.21 With regard both to the consultations with the Board and public finance policies, the Sponsor Division will provide the Cabinet Secretary for Finance and Sustainable Growth with sufficient information concerning the Board's agreed programme and corresponding requirements for supply estimates included a determination of the Board's required resources to be presented to the Scottish Parliament in the annual Budget debate(s).
- 5.22 The Sponsor Division will provide the Board with the relevant elements of the supply estimates before the end of the financial year, and will confirm the allocated resources within three weeks of the Budget settlement, or will provide reasons for not doing so.
- 5.23 The Sponsor Division will hold the Board's budget in an account with a dedicated code and will authorise payments from that account in accordance with the agreed programme of activities and guidance or rules set out in the Scottish Government's Public Finance Manual.
- 5.24 The Sponsor Division will ensure the Board is provided through the Secretariat with access to *Saltire*, the Scottish Government's Intranet, for purposes including availability of the Scottish Public Finance Manual (SPFM) and other necessary operational guidance.
- 5.25 The Sponsor Division will ensure that all supplementary financial contributions are provided in the Board's budget by the associated policy Divisions commissioning from the Board any additional projects on an ad-hoc basis.
- 5.26 The Sponsor Division will monitor expenditure by the Board and will provide the Accountable Officer with monthly reports and supplementary details as required by the Scottish Government's financial management systems.
- 5.27 The Sponsor Division will ensure that the Scottish Government's Finance Directorate (Portfolio Finance and as necessary Internal Audit) is involved at the earliest possible stage in the preparation of all policy proposals concerning the Board which may have resource or other finance related implications, and will keep them informed of developments.
- 5.28 The Sponsor Division will consult the Justice Portfolio Finance Team on all responses to reports and reviews in relation to the Board's processes,

procedures and operations with unplanned resource implications or which include matters of financial regularity, propriety or accountability.

Accountable Officer

- 5.29 The Accountable Officer is the Director General for Justice and Communities, or a nominated person with delegated authorities.
- 5.30 The Accountable Officer is liable to be summoned to account for the use of public funds by the Board.

The Board

- 5.31 The Board's primary responsibility is for the delivery of the functions of the Judicial Appointments Board for Scotland, in accordance with Chapter 3 and Schedule 1 of the Judiciary and Courts (Scotland) Act 2008.
- 5.32 The Board will select individuals for recommendation to the First Minister for appointment to the judicial offices within its remit, and will provide advice to the Scottish Ministers in connection with those appointments.
- 5.33 The Board will determine its own procedures and processes including the manner in which individuals are assessed and recommended, having regard to published guidance issued by either the Lord President or the Scottish Ministers.
- 5.34 The Board will ensure processes compatible with the aim of delivering recommendations for appointment of individuals to judicial office enabling Scottish Ministers to meet their responsibility for the prompt filling of vacancies and vice versa.
- 5.35 The Board will provide to Scottish Ministers on request detailed information on its procedures and processes, in sufficient order that Scottish Ministers may reasonably determine the resources required by the Board for the exercise of its functions.
- 5.36 The Board will exercise its functions with regard for the guidance, rules and requirements set out in the Scottish Public Finance Manual.
- 5.37 The Board will ensure its procedures and processes ensure confidentiality in the selection of individuals to be recommended for appointment to judicial office.
- 5.38 The Board will agree with the Scottish Ministers, after consulting the Lord President, a programme of selection exercises for each financial year on the basis of anticipated vacancies arising, making reasonable allowance for unanticipated vacancies arising.
- 5.39 The Board will assess the merit of individual candidates in accordance with its own processes and will consult the Lord President and the Scottish

Ministers or the Scottish Parliament as required, in order to ensure the changing needs of the business in Scottish Courts are taken into account.

- 5.40 The Board will determine the number of members required to constitute a quorum. It may establish committees of Board members and delegate the carrying out of any of its functions, other than that of the decision as to the recommendation of a candidate for judicial appointment, to such a committee.
- 5.41 The Board will produce a code of Conduct for their members in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000.
- 5.42 The Board will make arrangements and take reasonable steps to ensure that any individuals in relation to whom it carries out functions are made aware of the arrangements, for the investigation of any complaints of maladministration made to it by an individual concerning the manner in which it has carried out its functions in relation to the individual concerned, in accordance with the Scottish Public Services Ombudsman Act 2002.
- 5.43 The Board will make arrangements which ensure compliance with relevant provisions of the Freedom of Information (Scotland) Act 2002.
- 5.44 The Board will be accountable for its activities to the Scottish Parliament through the Scottish Ministers. In practice, this means that individual members of the Board will appear as witnesses before Parliamentary Committees and will present the annual report to Ministers, who will lay it before the Parliament.
- 5.45 The Scottish Ministers will seek information as required from the Board for the purpose of answering Parliamentary Questions relating to the activities of the Board, and the Board will respect deadlines established by the Parliament for Ministerial responses.
- 5.46 The Scottish Ministers will seek also seek information as required from the Board for the purpose of answering correspondence from Members of the Scottish Parliament relating to the activities of the Board and the Board will respect reasonable deadlines established by the Scottish Ministers for answering such correspondence. The Board will encourage Members of the Scottish Parliament to correspond directly with them on matters relating to the activities of the Board.
- 5.47 The first members of the Board are those persons who were members of JABS on the coming into force of the Judiciary and Courts Scotland Act Commencement Order No.2 2009 and the Scottish Ministers have determined that the period of office for the first Board Members will run from the date on which they were first appointed as Members of JABS.
- 5.48 The Board's annual programme will be agreed with the annual budget and it will provide for all known vacancies arising in the coming year for the relevant judicial offices.

- 5.49 Agreement will require consultation and exchanges of information between the Board, the Lord President and the Scottish Ministers, and the agreed programme will consider the most recently published JABS annual report and will have regard to any advice provided by the Board in respect of the appointments concerned.

The Chairing Member

- 5.50 The Chairing Member will chair meetings of the Board without a casting vote and is the principal point of contact with the Board for the Scottish Ministers.
- 5.51 The Chairing Member will exercise all functions of other individual Board Members, save only the specific functions of the judicial and legal members of the Board.
- 5.52 The Chairing Member will lead the strategic development of the Board, overseeing, monitoring and reviewing its operations and is the Board's principal spokesperson.
- 5.53 The Chairing Member will participate in interviews with candidates for the position of Chief Executive of the Board and on behalf of the Board will set the performance objectives of the Chief Executive in conjunction with the reporting officer in the Sponsor Division.
- 5.54 On a day to day basis, the Chairing Member will manage and direct the performance of the Chief Executive on behalf of the Board and will contribute to annual performance appraisals of the Chief Executive completed by the reporting officer in the Sponsor Division.
- 5.55 The Chairing Member will seek to establish and maintain good working relationships with Scottish Ministers, the Lord President, the Sponsor Division, the Accountable Officer, the Scottish Courts Service and other parties including the Faculty of Advocates, the Law Society of Scotland, the Sheriffs' Association and the Association of Sheriffs Principal.
- 5.56 The Chairing Member will nominate another lay member to act as chairing member during any period where the Chairing Member is unable to act.
- 5.57 During any period where there is no Chairing Member then the functions of the Chairing Member may be carried out by another lay member of the Board.
- 5.58 The first Chairing Member of the Board is to be the person who chairs the existing (non statutory) Judicial Appointments Board of Scotland.

Judicial and Legal Members of the Board

- 5.59 The judicial and legal members of the Board will assess a candidate's legal competence.

Individual Members of the Board

- 5.60 Individual Members of the Board will participate in the selection of individuals for recommendation to the First Minister.
- 5.61 Individual Members of the Board will participate in the discharge of any or all of the Board's collective functions in accordance with any delegations to committees that the Board may decide, or will provide a reasonable excuse for not discharging those functions.
- 5.62 Individual Members of the Board will give notice of resignation to the Lord President or Scottish Ministers, as appropriate.

The Chief Executive

- 5.63 The Chief Executive will manage the Board's Secretariat with the aim of ensuring the Board is provided with an efficient and effective supporting administration.
- 5.64 The Chief Executive will be the Sponsor Division's principal point of contact with the Board on routine and day to day matters, and will also bear primary responsibility for ensuring the Board is provided with advice and information concerning Scottish Government guidance, systems and requirements, including entitlements of Secretariat staff.
- 5.65 The Chief Executive will recruit, manage and develop all other staff of the Secretariat, in accordance with the Scottish Government Staff Handbook and resourcing policies.
- 5.66 The Chief Executive will ensure that staff have or acquire the tools and expertise necessary to deliver work for the Board successfully and to the required standards. It will be his/her responsibility to ensure that the staff of the Secretariat are aware of and follow the appropriate processes and that required performance standards are maintained to the satisfaction of the Board.
- 5.67 The Chief Executive will agree line management responsibilities within the Secretariat with the Chairing Member and will act as either reporting officer or countersigning officer for all staff of the Secretariat.
- 5.68 The Chief Executive will manage the use of resources provided to the Board in order to ensure that risks, whether to achievement of business objectives, regularity, propriety, or value for money, are identified, that their significance is assessed and that systems and processes appropriate to

the risks are in place to manage them and to protect public funds and assets from loss or fraud.

- 5.69 The Chief Executive will seek to achieve value for money in the use of public resources by ensuring that functions are discharged with due regard to economy, efficiency and effectiveness, and will ensure that arrangements have been made to secure “best value” from resources by pursuing continuous improvement.
- 5.70 The Chief Executive will ensure that in the consideration of the Board’s determination of processes and procedures all relevant financial considerations are taken into account and where necessary brought to the attention of the Board, including any issues of regularity, propriety or value for money.
- 5.71 The Chief Executive will provide the Sponsor Division with all information necessary for it to contribute effectively to any public expenditure planning and monitoring exercises co-ordinated by the Scottish Government’s Finance Directorate.
- 5.72 The Chief Executive will ensure that requests for authorisation of payments are made only to the extent and for the purposes authorised by the Scottish Parliament, in accordance with the agreed programme of activities underpinning the presentation of supply estimates.
- 5.73 For career development and general employment purposes, the reporting officer for the Chief Executive will be the Deputy Director, Legal Systems Division, but performance objectives and annual performance appraisals for the Chief Executive will be agreed with the Chairing Member of JABS.

Secretariat

- 5.74 All staff working in the Secretariat including the Chief Executive owe their primary responsibility to the Board, and it will not be possible for the Scottish Government or the Sponsor Division to instruct them in the performance of their duties except by agreement with the Board, except only in the performance of duties required by a reporting officer or counter-signing officer in respect of the Chief Executive.
- 5.75 All staff working in the Secretariat are also civil servants and will be bound by the Civil Service Code and other civil service requirements as to their conduct, impartiality and confidentiality etc. (Section 4 of the Staff Handbook applies).
- 5.76 Staff appointed to positions in the Secretariat will be appointed for a period of no less than three years and will not be withdrawn from their positions other than with a suitable period of notice agreed between the Board and the Sponsor Division. However, staff working in the secretariat will be

entitled to apply for promotion opportunities in accordance with procedures and rules set out in the Scottish Government's resourcing policy.

The Scottish Parliament and the Lord President

- 5.77 The Act also confers additional powers and duties in relation to the system of judicial appointments and the operation of the Board on others, including the Scottish Parliament and the Lord President.
- 5.78 This document represents an agreement between the Board and the Scottish Ministers and does not attempt to describe the framework of arrangements under which such others will exercise their functions in these respects, which shall be a matter for them to agree separately.

SECTION 6

Membership of the Board of the Judicial Appointments Board for Scotland

Judicial, Legal and Lay Members

Judicial Membership Category

6.1 The judicial membership category comprises:

- a) one person holding the office of judge of the Court of Session (other than the Lord President and the Lord Justice Clerk)
- b) one person holding the office of sheriff principal
- c) one person holding the office of sheriff

6.2 The role of the judicial members is:-

- a) to contribute to the determination of the criteria for assessment of a candidate's knowledge of the law and skills and competence in the interpretation and application of the law;
- b) to contribute to the determination of whether or not a candidate possesses the knowledge of the law and skill and competence in its application which they consider to be required for the judicial post for which application is made;
- c) to participate in the decision to select and recommend candidates for judicial appointment; and
- d) to contribute to the definition and review of the Boards policies.

6.3 In addition, as legal members on the Board, the judicial members must be satisfied that any candidate to be recommended for appointment has the necessary professional competence for the post.

Legal Membership Category

6.4 The legal membership category comprises:

- a) one advocate practising as such in Scotland
- b) one solicitor acting as such in Scotland

6.5 The role of the legal members is:-

- a) to contribute to the determination of the criteria for assessment of a candidate's knowledge of the law and skill and competence in the interpretation and application of the law ;
- b) to contribute to the determination of whether or not a candidate possesses the knowledge of the law and skill and competence in its application which they consider to be required for the judicial post for which application is made;
- c) to participate in the decision to select and recommend candidates for judicial appointment; and
- d) to contribute to the definition and review of the Boards policies.

Lay Members

6.6

- a) The number of lay members is to be equal to the total number of judicial and legal members
- b) Each lay member must be resident in Scotland
- c) Each lay member must not be a solicitor or advocate practising as such in Scotland
- d) Each lay member must not hold any judicial office within the Board's remit.

6.7 The role of the lay members is:

- a) to participate in the decision to select and recommend candidates for judicial appointment; and
- b) To contribute to the development and review of the Board's policies.

Assessment of legal knowledge, skills and competence

- 6.8 Only the judicial and legal members of the Board may take part in any assessment by the Board of an individual's:
- a) knowledge of the law
 - b) skills and competence in the interpretation and application of the law.
- 6.9 Nevertheless the decision about whether to recommend an individual for appointment remains a matter for the Board as a whole. No Board member can be excluded from participating in a decision of the Board.

Recommendations of the Board

- 6.10 The relevant Minister may appoint an individual to a judicial office within the Board's remit or nominate or recommend an individual for appointment to such an office only if the Board has recommended the individual for appointment to the office.

Rejecting a recommendation of the Board

- 6.11 In the event that the Board has made a recommendation for appointment to a relevant Minister and that Minister has decided not to accept the recommendation then the Minister must give notice to the Board of that decision and the reasons for that decision.

Reconsidering a rejected recommendation

- 6.12 When the Board receive notice of a relevant Ministers' decision to reject a recommendation of the Board the Board must reconsider its recommendation and then make a further recommendation to the relevant Minister. This recommendation can be for the same individual or someone different. This provision enables the Minister to seek clarification or further information in respect of the Board's recommendation.

Appointment of Members

- 6.13 Under the Act the judicial members are appointed by the Lord President. An independent panel following OCPAS guidance on public appointments recommends for appointment the legal and lay (including chairing member) members to the Scottish Ministers.

Confidentiality of Information

- 6.14 The Board will handle sensitive and personal information on those being considered for appointment to the judiciary. This information should remain strictly confidential within the Board and its staff and the following applies:
- a) A Member of the Board who has provided or obtained confidential information in connection with the carrying out of the Board's functions must not disclose the information unless the disclosure is authorised. Information is confidential if it relates to an identified or identifiable individual. An example would be where a reference has been supplied by one person about another. Such a reference is confidential information about both persons.
 - b) Disclosure of information is authorised if:
 - i. it is made with the consent of the individual to whom the information relates, or
 - ii. it is necessary for the purposes of the carrying out of by the Board of its functions, or
 - iii. it is necessary for the purposes of the carrying out by a member of the Scottish Executive of a function of appointing an individual to a judicial office within the Board's remit or nominating or recommending an individual for appointment to office e.g. when inviting references for a criminal check, or;
 - iv. it is required for the purpose of any legal proceedings whether criminal or civil, including for purposes of the investigation of any offence or suspected offence.
 - c) This does not prevent the disclosure of information which is already, or has been previously, in the public domain.

Persons disqualified from membership of the Board

6.15

- a) A member of the House of Commons
- b) A member of the Scottish Parliament
- c) A member of the European Parliament
- d) A minister of the Crown
- e) A member of the Scottish Executive
- f) A civil servant

Terms of Office

6.16

- a) A member holds office for a period of not more than 4 years or as determined on their appointment by the relevant appointee.
- b) A person who is, or has been a member may be reappointed in the same or different capacity for further periods.
- c) A member may not hold office as a member for periods totalling 8 years whether or not consecutive.

Cessation of Office

6.17 A member's appointment ceases in the following circumstances:

- a) On expiry of the member's period of appointment.
- b) On the member becoming disqualified from holding office as a member.
- c) If a judicial or legal member cease to fall within their respective membership category.
- d) If a lay member ceases to be qualified for appointment.

Variations

6.18

- a) The Lord President or the Scottish Ministers may direct that a member is to continue to hold office for a period not exceeding 6 months from the time a member's appointment ceases.
- b) A member may continue to act as a member from the time a member's appointment ceases so far as is necessary for the purposes of concluding consideration of a judicial appointment which the Board is in the course of considering at the time the member's appointment ceases.

Resignation of Members

6.19 A member may resign office by giving notice in writing to either the Lord President or Scottish Ministers as appropriate. The member must send a copy of the notice to the Lord President and the Scottish Ministers as appropriate.

6.20 The period of notice must be given as 6 months unless a shorter period is agreed by the Lord President and the Scottish Ministers.

Removal of Members

6.21

- a) The Lord President may, by notice in writing, remove a judicial member from office if satisfied after consulting the Chairing Member and the Scottish Ministers if c) below applies.
- b) The Scottish Ministers may, by notice in writing, remove a judicial member from office if satisfied after consulting the Chairing Member and the Lord President if c) below applies.
- c) a) and b) apply if the member:
 - i. has failed without reasonable excuse to discharge the functions of a member for a continuous period of six months.
 - ii. has been convicted of any offence.
 - iii. has become insolvent (in terms defined Schedule 1, Section 8(5) of the Act)
 - iv. is otherwise unfit to be a member or unable for any reason to discharge the functions of a member.

Conflicts of Interest

- 6.22 Where the Chairing Member is satisfied that a member of the Board is unable by reason of a conflict of interest to take part in the Board's consideration of a particular appointment then the Chairing Member may:
- a) where the ineligible member is a judicial member, request that the Lord President appoint an individual to be a substitute member of the Board
 - b) where the ineligible member is a lay or legal member, request that the Scottish Ministers appoint an individual to be a substitute member of the Board.
- 6.23 In both cases the individuals appointed by either the Scottish Ministers or the Lord President must satisfy the criteria of the category of membership that they belong to.

Temporary Board Members

- 6.24
- a) The Chairing Member may request that the Lord President appoint a temporary judicial member to the Board in the event that a judicial member ("absent member") may be unable to discharge their duties as a member for a time not exceeding 6 months. The individual must be qualified for appointment.
 - b) The Chairing Member may request that the Scottish Ministers appoint a temporary lay member to the Board in the event that a lay member ("absent member") may be unable to discharge their duties as a member for a time not exceeding 6 months. The individual must be qualified for appointment.
 - c) The absent member is not to be counted as a member while the temporary member holds office.
 - d) The temporary member's appointment ceases when the absent member returns or a period of 6 months has expired from date of appointment.

