

JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND FRAMEWORK DOCUMENT

Introduction

1. This framework document has been drawn up by the Scottish Government (SG) in consultation with the Judicial Appointments Board for Scotland (JABS). It sets out the broad framework within which JABS will operate and defines key roles and responsibilities which underpin the relationship between JABS and the SG. While this document does not confer any legal powers or responsibilities, it forms a key part of the accountability and governance framework and should be reviewed and updated as necessary, and at least every 2-3 years. Any proposals to amend the framework document either by the SG or JABS will be taken forward in consultation and in the light of SG priorities and policy aims. Any question regarding the interpretation of the document shall be determined by SG after consultation with JABS. Legislative provisions shall take precedence over any part of the document.

2. JABS shall not establish subsidiaries or enter into joint ventures without the express approval of the SG. There may be occasions when it is necessary for JABS to work co-operatively with other individuals, bodies and organisations in pursuit of its statutory duties.

3. Copies of the document shall be placed in the Scottish Parliament Reference Centre. It shall also be published on the SG and JABS websites.

Status of JABS

4. Statutory duties are to recommend to Scottish Ministers individuals for appointment to judicial offices within JABS remit; and to provide advice to members of the Scottish Government in connection with such appointments. In carrying out its functions, JABS is not to be subject to the direction or control of any member of SG or of any other person. The relationship between SG and JABS is governed by the Judiciary and Courts (Scotland) Act 2008 (the "2008 Act"), and was established on an administrative basis in 2002. JABS is an Advisory Non Departmental Public Body (NDPB) founded under statute. The Office of summary sheriff was created and placed under the remit of JABS by the Courts Reform (Scotland) Act 2014. The 2008 Act (as amended by the Tribunals (Scotland) Act 2014) gave JABS responsibility for making new appointments to specific posts in the Scottish Tribunals.

5. JABS must recommend candidates solely on merit. JABS must have regard to the need to encourage diversity in the range of people available for selection to be recommended for appointment; and it must devise processes and procedures that will enable appointments on merit to a judicial and tribunal office.

Relationship between SG and JABS

6. Effective strategic engagement between SG and JABS is essential in order that they work together as effectively as possible to maintain and improve public services and deliver improved outcomes. Both SG and JABS will take all necessary steps to ensure that their relationship is developed and supported in line with the jointly agreed principles set out in the statement on 'Strategic Engagement between the Scottish Government and Scotland's NDPBs.

Governance and accountability

Legal origins of powers and duties

7. JABS operates under the 2008 Act (as amended by the Tribunals (Scotland) Act 2014, and the Courts Reform (Scotland) Act 2014) in the making of appointments. The Board does not carry out its functions on behalf of the Crown.

Ministerial responsibilities

8. The Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities of JABS and its use of resources. They are not however responsible for day to day operational matters. Scottish Ministers' responsibilities include:

- agreeing JABS' strategic aims and objectives and key targets as part of the corporate planning process;
- agreeing JABS' budget;
- carrying out responsibilities specified in the 2008 Act such as appointment of legal and lay board members to JABS.

JABS Board Members Responsibilities

9. The functions of JABS are set out in Section 10 of the 2008 Act. JABS will have additional responsibilities in:

- promoting the efficient, economic and effective use of staff and other resources by JABS consistent with the principles of [Best Value](#), including, where appropriate, participation in [shared services](#) arrangements and ensuring that effective arrangements are in place so that JABS acts corporately in accordance with the priorities set out in the SG's statement of corporate expectations;
- ensuring that effective arrangements are in place to provide assurance on risk management, governance and internal control;
- ensuring that JABS receives and reviews regular financial information and is informed in a timely manner about any concerns regarding the activities of JABS; and
- demonstrating high standards of corporate governance at all times, including openness and transparency in decision making.

The Chairing Member's Responsibilities

10. The Chairing Member is accountable to the Scottish Ministers and, in common with any individual with responsibility for devolved functions, may also be held to account by the Scottish Parliament. Communications between JABS and the Scottish Ministers should normally be through the Chairing Member. The responsibilities of the Chairing Member are set out in Schedule 1 of the 2008 Act.

11. In leading JABS the Chairing Member must ensure that:

- the work of JABS is subject to regular self-assessment and that JABS is working effectively;
- JABS lay members have a balance of skills, in accordance with recognised good practice in corporate governance;
- members are fully briefed on terms of appointment, duties, rights and responsibilities;
- he or she, together with the other members, receives appropriate induction training, including on financial management and reporting requirements and, as appropriate, on any differences that may exist between private and public sector practice;
- the Scottish Ministers are advised of JABS needs when legal or lay member vacancies arise;
- there is a code of conduct for board members in place, approved by the Scottish Ministers.

12. The Chairing Member assesses the performance of individual board members on a continuous basis and undertakes an informal appraisal at least annually. The Deputy Director, Civil Law and Legal Division is responsible for undertaking an annual appraisal of the performance of the Chief Executive. This is completed after a consultation with the Chairing Member.

Individual Board Member's Responsibilities

13. Individual board members should act in accordance with the responsibilities of the board as a whole and comply at all times with the code of conduct adopted by JABS and with the rules relating to the use of public funds and to conflicts of interest. General guidance on board members' responsibilities is summarised in their appointment letters and is also provided in [On Board: A Guide for Board Members of Public Bodies in Scotland](#).

Chief Executive Responsibilities

14. The Chief Executive is the principal adviser to JABS on the discharge of its functions and is accountable to it. His or her role is to provide operational leadership to JABS and ensure that its aims and objectives are met, its functions are delivered, and its targets are met through effective and properly controlled executive action. His or her general responsibilities include the performance, management and staffing of JABS. General guidance on the role and responsibilities of the Chief Executive is contained in 'On Board.' Specific responsibilities to the board include:

- ensuring that financial considerations are taken fully into account by JABS at all stages in reaching and executing its decisions, and that appropriate financial appraisal and evaluation techniques, consistent with the [Appraisal and Evaluation](#) section of the [Scottish Public Finance Manual](#) (SPFM), are followed;
- ensuring that JABS adheres, where appropriate, to SG's [Programme and Project Management \(PPM\) Principles](#);
- having robust performance and risk management arrangements in place - consistent with the [Risk Management](#) section of the SPFM - that support the achievement of JABS aims and objectives and that facilitate comprehensive reporting to JABS, SG and the wider public;
- ensuring that adequate systems of internal control are maintained by JABS, including effective measures against fraud and theft consistent with the [Fraud](#) section of the SPFM;
- establishing appropriate documented internal delegated authority arrangements consistent with the [Delegated Authority](#) section of the SPFM;
- preparing JABS' corporate and business plans,
- ensuring effective relationships with SG officials; and
- ensuring that timely forecasts and monitoring information on performance and finance are provided to SG; that SG is notified promptly if over- or under-spends are likely and that corrective action is taken; and that any significant problems whether financial or otherwise, and whether detected by internal audit or by other means, are notified to SG in a timely fashion.

JABS Accountable Officer Responsibilities

- For career development and general employment purposes, the reporting officer for the Chief Executive will be the Deputy Director, Civil Law and Legal Division, but performance objectives and annual performance appraisals for the Chief Executive will be agreed with the Chairing Member of JABS.
- All staff including the Chief Executive owe their primary responsibility to JABS, 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 JABS, except only in the performance of duties required by a reporting officer or countersigning officer in respect of the Chief Executive.

- All staff working for JABS 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).
- Staff appointed to JABS 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 JABS and the Sponsor Division. However, staff working for JABS will be entitled to apply for promotion opportunities in accordance with procedures and rules set out in the Scottish Government's resourcing policy.

Portfolio Accountable Officer Responsibilities

15. The Principal Accountable Officer for SG will designate the Director-General for Learning and Justice as the Accountable Officer for the SG portfolio budget for JABS. Withdrawal of the Accountable Officer designation would also be a matter for the Principal Accountable Officer. The responsibilities of a Portfolio Accountable Officer are set out in detail in the [Memorandum to Accountable Officers for Parts of the Scottish Administration](#). He/she is personally answerable to the Scottish Parliament for ensuring that:

- the financial and other management controls applied by SG are appropriate and sufficient to safeguard public funds. ;
- the key roles and responsibilities which underpin the relationship between SG and JABS are set out in a framework document - and that this document is regularly reviewed;
- effective relationships are in place at Director and Deputy-Director level between SG and JABS in accordance with the strategic engagement principles; and
- there is effective continuous assessment and appraisal of the performance of the Chairing Member of JABS, in line with the requirements of the Code of Practice for Ministerial Public Appointments in Scotland.

Scottish Government Director and Deputy Director

16. The Director for Justice and Deputy Director for Civil Law and Legal System have responsibility for overseeing and ensuring effective relationships between the SG and JABS. They will work closely with JABS' Chief Executive and be answerable to the Portfolio Accountable Officer for maintaining and developing positive relationships with JABS characterised by openness, trust, respect and mutual support. They will be supported by the sponsor branch in discharging these functions. The Director of Justice shall be responsible for assessing the performance of JABS' Chairing Member, at least annually.

Sponsor Branch Responsibilities

17. The SG sponsor unit for JABS is the Courts – Sponsorship and Judicial Appointments Branch. It is the normal point of contact for JABS in dealing with the SG. The branch, under the direction of the Deputy Director, is the primary source of advice to the Scottish Ministers on the discharge of their responsibilities in respect of JABS and undertakes the responsibilities of the Portfolio Accountable Officer on his or her behalf. Specific responsibilities include:

- discharging sponsorship responsibilities in line with the principles and framework set out in the document 'Strategic Engagement between the Scottish Government and Scotland's Boards' and ensuring that sponsorship is suitably flexible, proportionate and responsive to the needs of the Scottish Ministers and JABS;

- ensuring that appointments to JABS are made timeously and, where appropriate, in accordance with the Code of Practice for Ministerial Appointments to Public Bodies in Scotland;
- proportionate monitoring of JABS activities through an adequate and timely flow of appropriate information, agreed with the Board, on performance, budgeting, control and risk management;
- addressing in a timely manner any significant problems arising in JABS, alerting the Portfolio Accountable Officer and the responsible Minister(s) where considered appropriate;
- ensuring that the objectives of JABS and the risks to them are properly and appropriately taken into account in SG's risk assessment and management systems; and
- informing JABS of relevant SG policy in a timely manner.

Annual report

18. As soon as practicable after the end of each year, JABS must

- prepare and publish a report on the carrying out of its functions during that year, and
- send a copy of the report to the Scottish Ministers.

The Scottish Ministers must lay before the Scottish Parliament a copy of each report sent to them by JABS under subsection 1 (b) of the 2008 Act. JABS shall be responsible for the publication of the report on the JABS website.

Management Responsibilities

Corporate and business plans

19. JABS must produce a high level statement or plan with finance resource for the future; recognising that the work of JABS is demand led and adhoc requests have implications on the budget.

Budget management

21. Each year, in the light of decisions by the Scottish Ministers on the allocation of budgets for the forthcoming financial year, SG will send to JABS by 1 May, a formal statement of its budgetary provision, a note of any related matters and details of the budget monitoring information required by SG. Transfers of budgetary provision between the different summary classifications as advised would require the prior approval of the SG Finance Directorate. Any proposals for such transfers should therefore be submitted to the sponsor unit. Transfers of provision within the summary classifications may be undertaken without reference to SG, subject to any constraints on specific areas of expenditure e.g. the approved pay remit.

Risk management

22. JABS shall ensure that the risks which it faces are dealt with in an appropriate manner and in accordance with relevant aspects of generally recognised best practice in corporate governance, and develop a risk management strategy consistent with the [Risk Management](#) section of the SPFM. Reporting arrangements should ensure that the sponsor unit is made aware of relevant risks and how they are being managed. JABS is also required, at the earliest opportunity, to notify the sponsorship branch if it considers that it has identified a significant problem which may have wider implications.

Fraud management

23. JABS should adopt and implement policies and practices to safeguard itself against fraud and theft, in accordance with the [Fraud](#) section of the SPFM. Application of these processes must be monitored actively, supported by a fraud response plan and robust reporting arrangements. This includes the establishment of avenues to report any suspicions of fraud. In addition JABS should take

risk-based and proportionate steps to appraise the financial standing of any supplier or other body with which it intends to enter into a contract or to provide funding.

Performance management

24. JABS shall operate management information and accounting systems that enable it to review, in a timely and effective manner, its financial and non-financial performance against the strategic aims, objectives, targets and milestones set out in the corporate and business plans. The results of such reviews should be reported on a regular basis to JABS and copied to the SG. The SG shall assess JABS performance on a continuous basis and undertake a formal internal review at least twice a year. The responsible Cabinet Secretary or Scottish Minister shall meet JABS' Chairing Member at least once a year.

JABS staff management

JABS' responsibilities for its staff

25. JABS must ensure that:

- personnel policies, practices and systems comply with employment and equalities legislation, and standards expected of public sector employers;
- the level and structure of its staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness (subject to the SG Pay Policy for Staff Pay Remits);
- the performance of its staff at all levels is satisfactorily appraised and JABS' performance measurement systems are reviewed from time to time;
- its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve JABS' objectives;
- proper consultation with staff takes place on key issues affecting them;
- adequate grievance and disciplinary procedures are in place;
- whistle-blowing procedures consistent with the Public Interest Disclosure Act 1998 are in place; and
- a code of conduct for staff is in place based on the Model Code for Staff of Executive NDPBs – see chapter 5 of [Public Bodies: A Guide for Departments](#).

Pay, conditions of service, Pension, redundancy and compensation

26. Staff appointed to JABS will all be seconded by the SG to JABS, therefore covered by the SG terms and conditions of employment for all of the above.

Asset and property management

27. JABS shall maintain an accurate and up-to-date record of its current and non-current assets consistent with the [Management of Assets](#) section of the SPFM. "Fixed" assets should be disposed of in accordance with the [Disposal of Property, Plant & Equipment](#) section of the SPFM. SG's Property Advice Division should be notified of relevant proposed disposals of property at the earliest opportunity and at least 1 month prior to them being advertised on the open market. Any proposal to acquire land, buildings or other rights in property should comply with the [Acquisition of Property](#) section of the SPFM. JABS is also subject to the [SG Asset Management Policy](#), including the requirement for any new commitments to be signed off by the Scottish Ministers. Information concerning JABS should be accurately recorded and updated as necessary by JABS on the Office of Government Commerce [electronic Property Information Mapping System](#) (e-PIMS).

Specific financial provisions

28. Many of the provisions included in this section - and other sections - of the framework document highlight specific requirements in the SPFM that are considered of particular relevance to Boards. It should be noted however that guidance in the SPFM should always be considered in its entirety as and when relevant issues arise.

Delegated authorities

29. JABS' specific delegated financial authorities - as agreed in consultation between JABS and SG - are set out in the attached **Appendix**. JABS shall obtain SG's prior written approval before entering into any undertaking to incur any expenditure that falls outside these delegations. JABS shall also comply with any requirements for prior SG approval included in the SPFM and/or this document. Prior SG approval must always be obtained before incurring expenditure for any purpose that is or might be considered novel, contentious or repercussive or which has or could have significant future cost implications.

Lease arrangements

30. Unless covered by a specific delegated authority JABS shall not enter into any finance, property or accommodation related lease arrangement – including the extension of an existing lease or the non-exercise of a tenant's lease break - without SG's prior approval. Before entering/ continuing such arrangements JABS must be able to demonstrate that the lease offers better value for money than purchase and that all options of sharing existing public sector space have been explored. Non-property/ accommodation related operating leases are subject to a specific delegated authority. JABS must have capital DEL provision for finance leases and other transactions which are in substance borrowing.

Tax arrangements

31. Non-standard tax management arrangements should always be regarded as novel and/or contentious and must therefore be approved in advance by the SG. Relevant guidance is provided in the [Tax Planning and Tax Avoidance](#) section of the SPFM. JABS must comply with all relevant rules on taxation, including VAT. All individuals who would qualify as employees for tax purposes should be paid through the payroll system with tax deducted at source. It is the responsibility of JABS to observe VAT legislation and recover input tax where it is entitled to do so. JABS must also ensure that it accounts properly for any output tax on sales or disposals.

Impairments, provisions and write-offs

32. Assets should be recorded on the balance sheet at the appropriate valuation basis in accordance with the FReM. Where an asset - including an investment - suffers impairment it is important that the prospective impairment and background is communicated to SG at the earliest possible point in the financial year to determine the implications for JABS budget. Similarly any significant movement in existing provisions or the creation of new provisions should be discussed in advance with SG. Write-off of bad debt and/or losses scores against JABS resource DEL budget classification and is subject to a specific delegated limit.

Procurement and payment

33. JABS procurement policies shall reflect relevant guidance in the [Procurement](#) section of the SPFM and relevant guidance issued by SG's Procurement and Commercial Directorate. Procurement should be undertaken by appropriately trained and authorised staff and treated as a key component of achieving JABS' objectives consistent with the principles of [Best Value](#), the highest professional standards and any legal requirements. Unless covered by a specific delegated authority any proposal to award a contract without competition (non-competitive action) must be approved in advance by SG. Any external consultancy contracts with a value of more than £100,000 must be approved in advance by the Cabinet Secretary for Infrastructure, Investment and Cities and the Cabinet Secretary for Finance, Employment and Sustainable Growth.

34. JABS shall pay all matured and properly authorised invoices relating to transactions with suppliers in accordance with the [Expenditure and Payments](#) section of the SPFM, and in doing so shall seek wherever possible and appropriate to meet the SG's target for the payment of invoices within 10 working days of their receipt.

Gifts made, special payments and losses

35. Unless covered by a specific delegated authority JABS shall not, without SG's prior approval, make gifts or special payments or write-off of losses. Special payments and losses are subject the guidance in the [Losses and Special Payments](#) section of the SPFM. Gifts by management to staff are subject to the guidance in the [Non-Salary Rewards](#) section of the SPFM.

Board expenses

36. Remuneration, allowances and expenses paid to JABS members must comply with the SG Pay Policy for Senior Appointments and any specific guidance on such matters issued by the Scottish Ministers.


01/06/2017

Jan Marshall
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JUDICIAL APPOINTMENTS BOARD FRAMEWORK DOCUMENT: APPENDIX

SPECIFIC DELEGATED FINANCIAL AUTHORITIES

| | Delegated Limit |
|--|------------------------|
| External business and management consultancies | £100,000 |
| Non-competitive action | |
| Operating leases – other than property/ accommodation related leases | |
| Gifts | |
| Special payments | |
| Claims waived or abandoned | |
| Write-off of bad debt and/or losses | |
| Others as appropriate e.g. Guarantees etc outwith normal course of business Charges on assets Loans Grants Financial investments and equity shares Major investment programmes/ projects | |