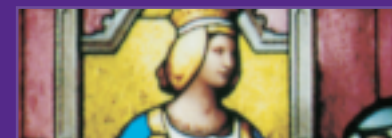


## The Judicial Appointments Board for Scotland Annual Report 2005 – 2006



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**Annual Report 2005-2006**

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# Annual Report 2005-2006



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# Annual Report 2005-2006

## FOREWORD

I am pleased to present the fourth Annual Report of the Judicial Appointments Board for Scotland. This has been a particularly busy year for the Board who have submitted recommendations for the appointments of Senators, Sheriffs Principal, All-Scotland Floating Sheriffs and Part-time Sheriffs. It has also been a year of changes – the expansion of the Board’s Secretariat and our relocation to new dedicated offices.



The Board continues to develop its policy and procedures. As I write this Foreword we have completed a round of All-Scotland Floating Sheriff competition, which will be the product of a specific report in the next Annual Report. The competition has also identified the need to develop guidance in relation to the handling of declared criminal convictions, the reporting arrangements and the streamlining of the recruitment timetables at all stages of the process.

In February the Scottish Executive issued a consultation paper on whether the Board should be placed on a statutory basis. It is unfortunate that this has not proceeded on the original timetable and I trust that this fundamental underpinning of the Board’s activities will be pursued in the coming year.

I would like to personally thank each of the Board members for their unstinting commitment to the ever increasing workload. Without their efforts, we would not have been able to deliver on our Remit. I would also like to thank each of the Secretariat staff for their dedicated support to the Board.

A handwritten signature in blue ink, which appears to read "Neil McIntosh". The signature is fluid and cursive, with a large initial 'N' and 'M'.

Sir Neil McIntosh CBE DL  
Chair

# The Judicial Appointments Board for Scotland

## INTRODUCTION AND MEMBERSHIP

### Introduction

1. This is the fourth Annual Report of the Judicial Appointments Board for Scotland and covers the period from June 2005 to May 2006.
2. Prior to the Board being created, the system for judicial appointments was regarded as lacking openness and transparency. The Scottish Executive published a consultation paper *Judicial Appointments: An Inclusive Approach*. This led to the creation of an independent Judicial Appointments Board for Scotland in June 2002.

### Membership

3. The Board comprises 10 members, with an even balance of lay and legal members and a lay Chair. Membership for the year covered by this Annual Report was as follows:

#### Lay Members

Sir Neil McIntosh CBE DL (Chair)

Mrs Barbara Duffner OBE

Professor Alan Paterson, Professor of Law at Strathclyde University

Sir Robert Smith, Chair of the Weir Group plc and of Scottish and Southern Energy plc

Professor Joan Stringer CBE, Principal and Vice Chancellor of Napier University

#### Legal Members

Sheriff J Douglas Allan OBE, Sheriff of Lothian and Borders at Edinburgh

Sheriff Principal Bruce A Kerr QC, Sheriff Principal of North Strathclyde

Mr Michael Scanlan, Solicitor, Glasgow

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Mrs Valerie E Stacey QC, Vice Dean of the Faculty of Advocates

The Hon Lord Wheatley, Senator of the College of Justice

Biographies of each of the Board members can be found at Annex A.

### **Remit and Scottish Ministers' Guidance**

4. The broad remit of the Board is:
  - To provide the First Minister with a list of candidates recommended for appointment to vacancies for Senator of the College of Justice, Sheriff Principal, Sheriff and Part-time Sheriff;
  - To make such recommendations on merit, but in addition to consider ways of recruiting a Judiciary which is as representative as possible of the communities in which they serve; and
  - To undertake the recruitment and assessment process in an efficient and effective way.
5. The Scottish Ministers gave the Board general guidance in 2002 but we are responsible for developing our own policies and procedures. We continue to review and refine the appointment process.
6. At the outset the Scottish Ministers gave a commitment that the Board would be placed on a statutory basis and we welcomed the publication of the consultation paper *Strengthening Judicial Independence in a Modern Scotland* in February 2006. The paper include a proposal to place the Board on a statutory basis. This paper is discussed in more details later in this Annual Report.



# The Judicial Appointments Board for Scotland

## **SECRETARIAT**

### **Staffing**

7. During the year covered by this report, our Secretary to the Board, Miss Margaret Peattie, departed in November to return to the Scottish Court Service. We would like to express our gratitude for her service to the Board since our inception in June 2002. We welcome Mr Chris Orman to the post of Secretary to the Board and look forward to working with him in the challenges facing the Board over the next few years.
8. The Board also recruited two additional members of staff in the Secretariat. We welcome Ms Avril Coats as Competitions Manager. She will be responsible initially for establishing arrangements for the recruitment of lay justices. We also welcome Mrs Susan McColl as Office Administrator, who will provide support to the Board and Secretariat. Together with our Policy Director, Ms Christine Dora, who joined us in the Spring of 2005, this brings our staffing complement to 4 (3.6 full-time equivalent).

### **Accommodation**

9. Due to accommodation pressure in Hayweight House, combined with the need to increase our secretariat team, the Secretary to the Board was tasked with finding new premises. Suitable accommodation was found in MWB Business Exchange, St Andrew Square, Edinburgh and we moved there in March. These new premises underline the Board's independence from the Scottish Executive and offer flexibility of accommodation for meetings.

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# The Judicial Appointments Board for Scotland

## **MEETINGS AND VISITS**

### **Board Meetings**

10. The Board normally meet once a month to discuss general business but, from time to time, some of the scheduled dates have been used for interviewing candidates.

### **Meetings With Others**

11. During the year we invited a number of guests to discuss a number of issues with the Board. These visits are summarised in the following paragraphs.
12. Mr David Stewart of the Scottish Executive Justice Department regularly meets us to brief the Board on a number of issues, inform us about anticipated vacancies and judicial moves/transfers, and to take the Board's comments back to the Scottish Ministers. We appreciate the work that he has undertaken.
13. In September, Mrs Wilma Dickson, Scottish Executive Justice Department, joined us to outline the background and proposals for the appointment of lay justices following the implementation of the McInnes Report on Summary Criminal Justice. The appointment of lay justices is covered in more detail later in this Annual Report.
14. In May, the Board welcomed Ms Millie Banerjee CBE, formerly a Commissioner for Judicial Appointments in England and Wales, to our meeting. Ms Banerjee gave an interesting presentation on the issue of diversity and merit.

### **Keeping In Touch**

15. The Board maintain contact with individuals and commissions involved in judicial appointments in the UK and overseas. We welcome the establishment of the Northern Ireland Judicial Appointments Commission on 15 June, under the Chairmanship of the Lord Chief Justice, The

## Annual Report 2005-2006

Right Honourable Sir Brian Kerr. On 1 April 2006, the responsibility for judicial appointments in England and Wales was transferred to the new Judicial Appointments Commission. The 15 strong Commission is chaired by the Baroness Usha Prashar CBE. We look forward to strengthening our close relationship with these Commissions.

16. On 2 November Professor Alan Paterson and Mr Michael Scanlan attended an international diversity summit in London. Professor Paterson spoke at the summit on the experience of the Board in this area.
17. In November 2005 the Chair, Sir Neil McIntosh, was interviewed for an article in *The Scotsman* newspaper regarding the work of the Board. Sir Neil was also interviewed by *The Firm* magazine for an article which appeared in their December 2005 issue. In December, Mr Orman and Ms Dora met with officials in the Department for Constitutional Affairs (DCA) in London. They discussed the DCA's current judicial appointments database and how Assessment Centres are used as part of their recruitment exercises. They also met with the Secretary of the former Commission for Judicial Appointments (CJA). On 1 April the CJA became the Judicial Appointments and Conduct Ombudsman, responsible in England and Wales for the investigation of complaints about the judicial appointments process and the handling of matters involving judicial discipline or conduct.
18. In February the Chair, Sir Neil McIntosh, met with the then Lord Advocate, The Right Honourable Lord Boyd of Duncansby QC, to talk about the Board's work to date and the Scottish Executive consultation paper. In March, Sheriff Principal Bruce Kerr attended, on behalf of the Board, the annual conference of the UK Association of Women Judges in Birmingham. Sheriff Principal Kerr took part as a panel member in a Question and Answer session.

# The Judicial Appointments Board for Scotland

## ESTABLISHED PRINCIPLES AND POLICIES

### Diversity

19. The Board's remit is to recommend candidates for judicial office on merit but in addition to consider ways of recruiting a judiciary which is as representative as possible of the communities which they serve. In common with many recruiting organisations, the Board keeps anonymised statistics relating to candidates' gender, nationality, ethnicity and any declared disability.
20. During the year covered by this Report, the Board have returned several times to issues of diversity. We have looked principally at gender equality.
21. Over the lifetime of the Board, proportions of women in the judiciary in Scotland have increased (except in the office of Sheriff Principal).

**Table 1: Judicial Office in Scotland – Numbers in Post<sup>1</sup>**

Office	Date	Total	No. of males	No. of females	% female of total
Senators of the College of Justice	As at April 2001	32	30	2	6%
	As at March 2006	34	29	5	15%
Sheriffs Principal	As at April 2001	6	6	0	0%
	As at March 2006	6	6	0	0%
Sheriffs	As at April 2001	120	103	17	14%
	As at March 2006	135	110	25	19%
Temp. Sheriffs	As at January 1999	131	115	16	12%
Part-time Sheriffs	As at March 2006	60	46	14	23%

<sup>1</sup> Note: this table covers only those judicial offices to which the Board recommends candidates. December 2004 and March 2006 statistics are from the SE Justice Department; April 2001 Statistics are from the Official Report of the Scottish Parliament; January 1999 statistics (for temporary sheriffs) are from Hansard.



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22. We took note of the publication in November 2005 of “Women in the Legal Profession”, a study by the Law Society of Scotland and the Equal Opportunities Commission Scotland. We took a “snapshot” look at a competition run by the Board – that of Part-time Sheriff in 2005 – to see what we could infer from the “success” rates of women and men.
23. The statement is often made that more women than men are entering the legal profession in Scotland and this is particularly true of solicitors. Figures published by the Law Society of Scotland in their 2004 annual report<sup>2</sup> noted that of practising certificate holders under the age of 30, 61.1% were female. As a minimum qualification for the office for part-time sheriff, a candidate must have been either an advocate or a solicitor for at least 10 years. In practice, most of the successful candidates in the 2005 part-time sheriff competition were in their 40s. Women made up 37.6% of this age group among solicitors in Scotland.
24. Women made up just under 25% of candidates for the Part-Time Sheriff Competition in 2005; just under 25% of successful candidates were female. In other words, fewer candidates are female than are male, but success rates for male and female candidates are similar.
25. Asking ourselves the question “what is preventing women from applying in proportionate numbers?”, we have been looking at the possibilities for research into potential barriers to applying for judicial office for different groups within the legal profession, following on from the work done for us by Dr Fiona Mackay in 2005. In May 2006, we welcomed Ms Millie Banerjee, formerly a Commissioner for Judicial Appointments in England and Wales, to share with the Board her knowledge in this area. This is an ongoing area for policy development.

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<sup>2</sup> We have retained use of these figures as they were concurrent with the competition being considered.

# The Judicial Appointments Board for Scotland

## **Confidentiality**

26. All applications are considered in strictest confidence and only the names of those appointed are made public. Only on appointment will the application forms of those individuals be made available to the Scottish Executive Justice Department for administrative purposes. The referee assessment forms are not passed to the Scottish Executive Justice Department but retained by the Board.
27. The Board is particularly anxious to ensure that confidentiality is maintained throughout the process. Members are precluded from divulging the identity of applicants or confidential information in connection with their application and the Secretariat takes every steps to ensure that no one other than Board members has access to such information.
28. In any organisation or profession, particularly where the field of applicants is restricted to a certain group or requires a specific professional qualification, it is probably inevitable that there will be some speculation about who might have applied for a particular vacancy or who may have been recommended. Some applicants may be open about their intentions to apply for judicial appointment but this does not mean that we will relax our rule on confidentiality.
29. Referees can be assured that their assessments are considered to be confidential and are not shown to anyone other than Board members. Neither are the contents of their assessments divulged to applicants. We ask referees that they treat requests for these assessments in strictest confidence and these assessments are covered by the Data Protection legislation.

## ACHIEVEMENTS AND POLICY DEVELOPMENT

### Recommendations for Appointments

30. We are pleased to report that during the year we completed four recruitment exercises. In addition, at the end of June 2006 we advertised for applications for the office of Part-time Sheriff. This exercise will be covered by our next Annual Report.

### *Part-time Sheriffs*

31. In January 2005, the Board had invited applications for the office of Part-time Sheriff. Competition for this type of appointment was keen and our advertisements attracted 238 applications. We interviewed 72 applicants and a slate of 49 candidates was recommended to the First Minister. During the course of the year, the full slate was taken up as a result of the maximum number of Part-time Sheriffs being increased to 80. The First Minister approved the appointment of the following individuals:

Robert B Anthony QC	Dorothy R Bain
Andrew Berry	Jack M Brown
Donald S Corke	Charlotte W B Coutts
Richard A F Clark	Ian M Fleming
Jamie Gilchrist	Sheriff Margaret A F Gimblett
Peter Grant-Hutchison	David W Hall
Jacqueline M Harris	James M Hendry
George Jamieson	Valerie Johnston
Sheriff A Graham Johnston	Daniel Kelly
Desmond J Leslie	Marysia W Lewis
Andrew Mackie	Gerard P MacMillan
Charles N Macnair QC	Mhari S Mactaggart



## The Judicial Appointments Board for Scotland

Philip Mann	Desmond McCaffrey
Thomas McCartney	Colin B McClory
Richard H McFarlane	Kenneth J McGowan
Thomas S Millar	Alan D Miller
Duncan L Murray	Margaret M Neilson
Derek O'Carroll	Peter Paterson
Norman C Ritchie QC	Kenneth R Robb
Janys M Scott	Wendy A Sheehan
Gerard W Sinclair	Linda A R Smith
David L Stewart	Mark L Stewart
Fiona Tait	Thomas Ward
Michael M Wood	

### ***Sheriff Principal of Glasgow and Strathkelvin and/or South Strathclyde Dumfries and Galloway***

32. In our last Annual Report we mentioned that we had begun an exercise to make recommendations to the offices of Sheriff Principal in Glasgow and Strathkelvin and in South Strathclyde, Dumfries and Galloway. The number of applications received in response to the advertisement was rather disappointing with only ten individuals submitting applications for consideration. Of the ten, nine applications were from serving sheriffs. Five individuals were interviewed by the Board and the following candidates were recommended for appointment to the office of Sheriff Principal:

Sheriff James A Taylor as Sheriff Principal of Glasgow and Strathkelvin

Sheriff Brian A Lockhart as Sheriff Principal of South Strathclyde, Dumfries and Galloway

### ***Senator of the College of Justice***

33. In July we advertised for the above office on the basis that there were three known vacancies for Senators at that time. However, one further vacancy arose during the competition due to a planned retirement and 16 applications were received. Following the First Minister's agreement with our recommendations, we are pleased to note the following appointments were made to the office of Senator of the College of Justice:

S Neil Brailsford QC (Lord Brailsford)

Baroness Clark of Calton QC (Lady Clark of Calton)

Roderick F Macdonald QC (Lord Uist)

Alan D Turnbull QC (Lord Turnbull)

### ***All-Scotland Floating Sheriffs***

34. The Board advertised for applications for the above office in October 2005. The competition was runned to create a new "slate" from which All-Scotland floating vacancies arising in the period to 30 September 2007 may be filled. We received 93 applications, from which 20 candidates were recommended to the First Minister for appointment on 13 April 2006.

35. Details of the relevant appointment statistics for the year are set out in Annex B to this Annual Report.

36. During the year we have continued the two-sift process which was mentioned in our last Annual Report. Members of the Board individually assess all the application forms received before the preliminary sift meeting. At the outset of this meeting they declare their individual provisional markings and then discuss initial assessments. Importance is placed on the self-assessment section of the application form as well as the statement setting out the applicant's reasons for applying for judicial office and the skills and abilities they would bring to the office. A 'long list' of candidates for whom referees' assessments are requested is drawn up.

## The Judicial Appointments Board for Scotland



37. The second sift is carried out in the same way – with all members individually assessing the application forms and referees’ reports for the long-listed applicants. The Board then meet to discuss these markings and agree upon the short list of candidates who are invited for interview. At interview, candidates are asked to address the panel for up to ten minutes on a given subject and to answer questions arising from their presentation. Candidates are then subject to questioning by panel members to elicit evidence of their legal knowledge, skills, and abilities and to assess them against the published criteria which are as follows:

“The Board will rank and prefer those candidates who are considered suitable for appointment and make its recommendation to the First Minister.

Successful candidates will have:

- attained a high level of legal knowledge and experience;
- the ability to apply knowledge and experience to make sustainable decisions;
- intellectual and analytical ability;
- sound judgement and the ability to exercise discretion effectively;
- the ability to marshal facts and competing arguments and reason logically to a correct and balanced conclusion;
- the ability to reach firm conclusions, to think, decide and act independently of others and rely on their own judgement;
- good communication and listening skills;
- the ability to communicate with all types of court user, including lay people, giving instructions, explaining complex issues and giving decisions clearly, concisely and promptly, either orally or in writing;
- the ability to command the respect of court users and to maintain fair-minded discipline in court and in chambers without appearing pompous, arrogant or overbearing;

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- the ability to manage cases effectively and promote the expeditious despatch of business.

Successful candidates will also possess the following personal qualities:

- integrity and independence – they will have a history of honesty, discretion and straightforward dealing with professional colleagues, clients and the courts;
- independence of mind and moral courage – prepared to take and maintain unpopular decisions when necessary;
- fairness and impartiality – they will be open minded and objective, with the ability to recognise and discount any personal prejudices. They will seek to ensure that all who come before them have the opportunity to put their case clearly and have it considered as fully and as objectively as possible;
- understanding of people and society – respect those of different backgrounds and be sensitive to the influence of different ethnic and cultural backgrounds on the attitudes and behaviour of people whom they encounter in the course of their work;
- maturity and sound temperament – they will display a maturity of attitude and approach and be firm and decisive while remaining patient, tolerant, good-humoured and even-tempered;
- courtesy – they will be courteous and considerate to all court users and court staff;
- commitment conscientiousness and diligence – committed to public service and to the proper and efficient administration of justice, which they will pursue conscientiously, with energy and diligence and a due sense of responsibility.

In assessing these qualities the Board will have regard to the information provided by candidates in their applications, the reports from referees and the performance of individuals at interview.”

## The Judicial Appointments Board for Scotland

38. Following the interview the panel members will review the candidates, with the lay members speaking first, and have a discussion on the comparative merits of the candidates. At the conclusion of each day of interviews a further discussion takes place to arrive at a consensus view of the panel. Upon completion of the full interview process the Board reaches its final conclusions as to the rankings of all candidates. The Board makes recommendations in a Report to the First Minister. The First Minister considers the recommendations and in turn makes his recommendation to Her Majesty The Queen for appointment by Royal Warrant or, in the case of part-time sheriffs only, arranges the appointment in the name of the Scottish Ministers. In the case of floating and part-time sheriff competitions, the Board offers more names to the First Minister than there may be immediate vacancies; in that case, the names of remaining candidates are placed on a “slate” over a fixed period of time, for appointment to relevant vacancies which may arise during that time.

### **Consultation Paper on Judicial Appointments**

39. On 8th February 2006, the Scottish Ministers published a wide-ranging consultation paper – *Strengthening Judicial Independence in a Modern Scotland* – on the unification, appointment, removal and management of Scotland’s judiciary. The paper included a proposal to establish the Judicial Appointments Board for Scotland on a statutory basis, with its equal mix of lay and legal membership.
40. The Board submitted our response to the Scottish Executive on 26th April 2006 and a copy of the response can be found in Annex C of this Annual Report.
41. In June 2006, the Scottish Ministers announced that they will not now bring forward legislation to establish the Board on a statutory basis before the Scottish Parliamentary election in May 2007. Though this is disappointing, we welcome the announcement that a draft Bill will be published before



## Annual Report 2005-2006

the end of 2006 that will allow an incoming Administration to expedite the process, if they choose to do so.

### Annual Seminar

42. This year we held our annual seminar at Ballathie House Hotel in Perthshire. We had an in-depth discussion of recruitment practices and policy programme priorities and actions (including research and outreach). Our discussion was informed by a helpful document from FWB Finlayson Wagner Black. The Board identified a number of key policy issues which will be the subject of development. These include:

- Maximising the information available for the appointment process;
- Ensuring that we have the best objective and relevant information on all candidates;
- Considering the appropriateness of the competencies for judicial office and how we are evidencing them; and
- The interview marking framework and decision making process following interviews.

### Judicial Appointments Database

43. The Secretariat currently maintain a simple spreadsheet-style database for each competition. This database was initially created for the most recent All-Scotland Floating Sheriff competition and will be used for subsequent competitions. The purpose of the database is to extrapolate data for the Board's information on a number of issues and to provided statistical information in our report to the First Minister. The Board is keen to build on this and is currently considering the implementation of a competition management database, which would be used to manage our competitions from start to finish. In December Mr Orman and Ms Dora visited the Department for Constitutional Affairs in London to view the database in use there and to meet officials involved in the development of their database. A

# The Judicial Appointments Board for Scotland

similar database would enable the Secretariat to track the progress of each applicant at each stage of the competition and will, in time, be made retrospective to include all the competitions held under the auspices of the Board. It is planned that the database will also include the recruitment of lay justice (covered later in this Annual Report).

## **Data Protection and Freedom of Information**

44. We take very seriously the safeguarding of personal data. The Board is registered as a Data Controller in terms of the Data Protection Act 1998
45. During the year, the Board considered the implications of the Freedom of Information (Scotland) Act 2002 for our activities, particularly in relation to safeguarding candidate confidentiality. We have taken the view that the Act does not currently apply to the Board and its activities, since the Board is not listed in Schedule 1 to the Act (which sets out those bodies to which the Act applies).
46. However, in line with the Board's commitment to openness and transparency, we make information about the Board and its activities available on our website – [www.judicialappointmentscotland.gov.uk](http://www.judicialappointmentscotland.gov.uk). We also deal with individual requests for information. Given the nature of the Board's work, we treat requests with appropriate caution. We refused a request by a journalist in May 2006 for the names of referees of successful candidates for judicial office. At the behest of the applicant, we carried out a review of our decision but ultimately upheld it. The applicant then made an appeal to the Scottish Information Commissioner; the Commissioner's office did not take the appeal forward because they concluded, as had we, that the Board is not covered by the Act.

### Lay Justices

47. In September 2005, we were approached by the Scottish Executive Justice Department in relation to its summary justice reforms and were asked if we would consider it appropriate to take a role in the appointments process for lay justices (also known as Justices of the Peace) under a unified courts system.
48. The Board considers that since lay justice is a judicial role, the process of selection for lay justices should be broadly consistent with the process for roles on which we currently advise. We have therefore suggested to the Department that the Board should consult on and issue protocols for recruitment with local Justice of the Peace Advisory Committees (JPACs), each chaired by a Sheriff Principal, and that we could provide a centralised staff resource to assist with recruitment and national publicity to attract more candidates from all walks of life. As we currently envisage it, consideration of applications, interviewing and decision making would all be done by the JPAC at local level. We will be monitoring each stage of the process.
49. We have established the post of Competitions Manager to the Board. The immediate task of the postholder will be to establish suitable arrangements for the recruitment of lay justices. It is envisaged that eventually the postholder will take in hand all the Board's competitions for judicial office. We welcome Ms Avril Coats to this post.



# The Judicial Appointments Board for Scotland

## ISSUES FOR FUTURE DEVELOPMENT

### Outreach and Raising Awareness

50. In our last Annual Report, we mentioned that a communications framework will be developed. This is still in progress and the Secretary to the Board has been tasked to consider how we can develop our links with the Scottish Parliament and Ministers, the judiciary, the legal profession, the media and analogous organisations elsewhere in the UK. We publish information about the Board, its processes and recruitment exercises on our website. We recently added a News section to inform visitors of the latest updates to our website.
51. We are keen for the Board's roles and responsibilities to be better understood and the proposed communication framework will enable us to take this forward.

### Budgeting and Finance

52. In previous years, administrative services were provided directly by the Scottish Executive Justice Department. Concurrent with our move to new premises, however, the Board has been given a budget framework, which we are now developing for future years.
53. It is part of the Board's remit to undertake the recruitment and assessment process in an efficient and effective way. To some extent it is difficult to assess in advance the adequacy of the budget we have been allocated for our planned activities; we will be able to say more about our use of resources in our next annual report after experience of the first year of working with our own budget.

## FURTHER INFORMATION

54. General information about the Board and vacancy announcements are published on our website at [www.judicialappointmentscotland.gov.uk](http://www.judicialappointmentscotland.gov.uk).

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### Secretariat

Policy Director: Ms Christine Dora

Secretary to the Board: Mr Chris Orman

Recruitment Manager

(Lay Justice): Ms Avril Coats

Office Administrator: Mrs Susan McColl



# The Judicial Appointments Board for Scotland

## Annex A

### BOARD MEMBERS

The Board comprises 10 members, including the Chairman, who were all appointed by the Scottish Ministers, to whom the Board is responsible for its activities. There is an even balance of legal and lay members.

#### Lay Members

##### **Sir Neil McIntosh CBE DL (Chairman)**

Sir Neil has had an extensive career in industry and local government, latterly as Chief Executive of Dumfries and Galloway Regional Council (1985-1992), then Strathclyde Regional Council (1992-1996). He co-ordinated the response of Dumfries and Galloway Regional Council to the Lockerbie Disaster in 1988 and was awarded the CBE in 1990.



Other public service includes his recent service as Convener of the Scottish Council for Voluntary Organisations, Scottish Adviser to the Joseph Rowntree Foundation, Expert Adviser to the Northern Ireland Review of Public Administration and current membership of the UK Electoral Commission, Trustee of the National Museums of Scotland and. In 2006, Sir Neil became a member of the BBC Audience Council for Scotland. He received a knighthood in 2000.

##### **Mrs Barbara Duffner OBE**

Until taking early retirement in March 2004, Mrs Duffner was Head of People and Organisational Development North, Royal Mail (covering Scotland, Northern Ireland and the North of England). Her whole career was with the Royal Mail where she gained a wide experience in strategic



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planning, organisational development and change, line management, personnel and the executive committee for one of 9 Royal Mail Divisions. She was awarded the OBE in 2002.

Other public service includes Chair of the Children's Hospice Association and, from November 1999 to October 2000, she was Chair of the Careers Service Review. She is a Fellow of the Royal Society of Arts, a Board Member for Scottish Enterprise, a non executive director of the Students Loan Company and a member of the Employment Tribunals and the Fitness to Practice Panel of the General Dental Council. In 2005 she was appointed lay member for the Institute of Chartered Accountants Scotland.

Mrs Duffner was appointed as a lay member of the Court of the University of Glasgow in 2006.

### **Sir Robert Smith**

Sir Robert is Chair of The Weir Group plc and of Scottish and Southern Energy plc. He is also the Chancellor of Paisley University. He has held appointment at Chief Executive and Chairman level of several commercial companies.



Public appointments have included Trustee (1985-2002) and Chairman of the Board of Trustees of the National Museums of Scotland (1993-2002), President of the Institute of Chartered Accountants of Scotland (1996-97), Member of the Financial Services Authority (1997-2000), Member of Financial Reporting Council (2001-2004), Trustee, British Council (2002-2005), Commissioner (1988-1998) and Vice Chairman (1997-1998) of the Museums and Galleries Commission.



# The Judicial Appointments Board for Scotland

## **Professor Alan Paterson**

Alan Paterson is the Director of the Centre for Professional Legal Studies and a Professor of Law at Strathclyde University since 1984. He was a Lecturer in the Law Faculty, Edinburgh University from 1975-1984. He is a former Chair of the Committee of Heads of UK Law Schools and a Past President of the Society of Legal Scholars.



He has held a number of other appointments and currently serves as a member of the Advisory Council, Institute of Advanced Legal Studies, London University, Director/Trustee of the British and Irish Legal Information Institute and a co-opted Member of the Council of the Law Society of Scotland. In addition, Professor Paterson has undertaken academic research into and published widely on judges and judicial appointments and in 2000 researched the operation of the Judicial Appointments Advisory Committee of Ontario, leading to the delivery of several seminars in the UK and Australia on the subject of Judicial Appointments.

## **Professor Joan Stringer CBE**

In January 2003, Professor Stringer became Principal and Vice Chancellor of Napier University, prior to which she was Principal of Queen Margaret University College, Edinburgh.



Previous appointments include Assistant Principal at Robert Gordon University from 1991-1996 and Head of Public Administration and Law, Robert Gordon University from 1988-1991. She was a Lecturer there from 1980-1988. She was awarded CBE in 2001 for services to higher education.

A number of other public appointments held include Vice Convener, Universities Scotland (1998-2002), Scottish Commissioner for the Equal Opportunities Commission

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(1995-2001), Member of the Universities UK Equality Challenge Steering Group, Member of the Scottish Committee of the British Council and Convener of the Scottish Council for Voluntary Organisations (SCVO) (1991-).

### Legal Members

#### **The Hon Lord Wheatley**

Lord Wheatley was admitted to the Faculty of Advocates in 1966 and served as Advocate Depute from 1974 to 1978. He was appointed as Sheriff of Tayside Central and Fife at Dunfermline in 1979 and transferred to Perth in June 1980. In 1998 he was appointed Sheriff Principal of Tayside Central and Fife, an office he held until his appointment as Senator of the College of Justice in January 2000.



Other appointments include membership of the Parole Board 2000 to 2003 and Chairman of the Judicial Studies Committee from 2002 to 2006.

#### **Sheriff Principal Bruce Kerr QC**

Sheriff Principal Kerr was appointed Sheriff Principal of North Strathclyde on 1st January 1999. He began his career as an Advocate and was admitted to the Faculty of Advocates in 1973, taking Silk in 1986. He served as a Temporary Sheriff before being appointed Sheriff of Glasgow and Strathkelvin in September 1994.



As a practising Advocate Sheriff Principal Kerr was Standing Junior Counsel to the Home Office in Scotland (1982-1985) and was Advocate Depute from 1986-1989.

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## **Sheriff Douglas Allan OBE**

Sheriff Allan was first appointed Sheriff of South Strathclyde Dumfries and Galloway at Lanark in 1988 where he served until transferring to the Sheriffdom of Lothian and Borders in August 2000 where he sits as Sheriff at Edinburgh. Prior to taking up judicial office, Sheriff Allan was admitted as a solicitor in 1963 and from 1967 worked in the Procurator Fiscal Service, serving in the courts in Edinburgh and Glasgow as well as the Crown Office before becoming Regional Procurator Fiscal for Lothian and Borders (1983-1988).



Among other appointments held, he served as Honorary Secretary and Treasurer (1991-97), Vice President (1997-2000) and President (2000-2002) of the Sheriffs' Association. He was a member of the Mental Welfare Review Committee and was a Board member (1995-2003) and Deputy Chairman (2002-03) of the Scottish Children's Reporter Administration. He is a Regional Vice President of the Commonwealth Magistrates and Judges Association.

## **Mrs Valerie E Stacey QC**

Valerie Stacey began her career as a solicitor, was admitted to the Faculty of Advocates in 1987 and took silk in 1999. She served as an Advocate Depute from 1993 to 1996 and was a temporary sheriff from 1997 to 1999. She was elected Vice Dean of the Faculty of Advocates in 2004.



Other appointments include Standing Junior Counsel to the Home Office in Scotland (1996-1999), Chairman, Social Security Appeals Tribunal (1987-1993) and member of the Sentencing Commission.

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### **Michael Scanlan**

Michael Scanlan was admitted as Solicitor in 1971 and is currently a partner in the Glasgow firm of Russells Gibson McCaffrey. He was formerly President of the Law Society of Scotland.

Other experience and public appointments held include Temporary Sheriff from 1986-1996, lecturer in the law of Evidence and Procedure at Strathclyde University and External Examiner in Evidence and Procedure at Glasgow University.





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## **Annex B**

### **APPOINTMENT STATISTICS JUNE 2005 – MAY 2006**

#### **APPOINTMENT OF SENATORS OF THE COLLEGE OF JUSTICE**

##### **Eligibility**

Eligibility for appointment as a Judge is set out in statute and provisions were first enshrined in the Courts Act 1672. Article xix of the Union with England Act 1707 conferred power on the United Kingdom Parliament to appoint the Lords Ordinary of Session, but restricted the appointments to Advocates of five years standing. Writers to the Signet of 10 years standing could be appointed as Lords Ordinary if they passed the examination in civil law before the Faculty of Advocates two years before taking up their seat on the Bench.

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 made further provisions regarding the criteria under which Sheriffs Principal, Sheriffs and certain types of solicitors may be appointed as Judge.

Sheriffs Principal and Sheriffs who have continuously exercised their respective functions for a period of at least five years are eligible for appointment, as are solicitors who have continuously had a right of audience in both the Court of Session and High Court of Justiciary for at least five years. The Act makes clear that temporary Sheriffs Principal and part-time Sheriffs are not eligible for appointment.

## SHRIEVAL APPOINTMENTS

### Eligibility

Eligibility is set out in the Sheriff Courts (Scotland) Act 1971. No person may be appointed Sheriff Principal or Sheriff unless they are, and have been, legally qualified for at least 10 years. A person who is legally qualified is either an advocate or solicitor.

## EQUAL OPPORTUNITIES

The Board is committed to the principles of equal opportunity and, in order to monitor diversity, a questionnaire is issued with all application forms.

As a matter of policy, completed questionnaires are detached from the application forms on receipt and are not shown to the Board.

### Gender Balance

The following tables show the male/female balance throughout the various exercises.

#### *Senator of the College of Justice*

	<b>Total</b>	<b>Male</b>	<b>Female</b>
Applicants	16	12 (75%)	4 (25%)
Long-listed	9	7 (78%)	2 (23%)
Interviewed	9	7 (78%)	2 (23%)
Recommended	4	3 (75%)	1 (25%)

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## ***Sheriff Principal of Glasgow and Strathkelvin and/or South Strathclyde Dumfries and Galloway***

	<b>Total</b>	<b>Male</b>	<b>Female</b>
Applicants	10	8 (80%)	2 (20%)
Long-listed	6	4 (67%)	2 (33%)
Interviewed	5	3 (60%)	2 (40%)
Recommended	2	2 (100%)	0 (0%)

## ***All-Scotland Floating Sheriffs***

	<b>Total</b>	<b>Male</b>	<b>Female</b>
Applicants	93	62 (67%)	31 (23%)
Long-listed	40	30 (75%)	10 (25%)
Interviewed	27	19 (70%)	8 (30%)
Recommended	20	17 (85%)	3 (15%)

## ***Part-time Sheriff***

	<b>Total</b>	<b>Male</b>	<b>Female</b>
Applicants	238	180 (76%)	58 (24%)
Long-listed	119	90 (76%)	29 (24%)
Interviewed	72	56 (78%)	16 (23%)
Recommended	49	37 (76%)	12 (24%)

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## Ethnicity

The questionnaire sought to elicit information on the nationality individuals most identified with, and their ethnic background.

Not all questionnaires were returned or completed. The information submitted by applicants during the four completed exercises is summarised here.

### *Senator of the College of Justice*

The information provided by those returning the questionnaire is shown in the following table:

British/ Mixed British	Scottish	English	Irish	Welsh	Other	No Response
16*	16*	0	0	0	0	0

\* includes candidates who ticked more than one of the options

On ethnicity the responses received were as follows:

Asian	Black	Chinese	Mixed Ethnic	White	No Other	Response
0	0	0	0	7	0	9

### *Sheriff Principal of Glasgow and Strathkelvin and/or South Strathclyde Dumfries and Galloway*

The information provided by those returning the questionnaire is shown in the following table:

British/ Mixed British	Scottish	English	Irish	Welsh	Other	No Response
4*	7*	0	0	0	0	0

\* includes those who ticked two boxes

On ethnicity the responses received were as follows:

Asian	Black	Chinese	Mixed Ethnic	White	Other	No Response
0	0	0	0	8	0	2

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## ***All-Scotland Floating Sheriffs***

A number of returned questionnaires were incomplete with no information recorded on ethnic origin; however, from those completed, all but two of the applicants declared themselves to be from a “White” background.

## ***Part-time Sheriff***

On this occasion a number of questionnaires were incomplete with no information recorded on national or ethnic origin. From those completed, the majority of applicants declared themselves to be from a “White” background. One applicant selected “Mixed Ethnic” – ticking the description “Asian and White”, two selected “Indian”, while two others selected “Other Ethnic Background” one of them specifying “Jewish”.

## **Disability**

The questionnaire also provided an opportunity for applicants to declare whether they have a physical or mental impairment, which was defined as having a substantial or long-term adverse effect on their ability to carry out normal day-to-day activities. None of the applicants who completed this part of the questionnaire during the course of the year made a declaration.

## **Age**

Applicants for appointment to judicial office come from a broad age range. The statutory criteria for appointment to the various juridical offices influence the age at which applicants may apply, simply because they must have been legally qualified for a certain number of years before they may be considered for such an appointment.

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### *Senator of the College of Justice*

Statistics showing the age range of applicants are shown below:

	Aged 35 – 40	Aged 41 – 50	Aged 51 – 60	Aged 61 and over
Applicants	1	5	9	1
Appointees	0	1	3	0

### *Sheriff Principal of Glasgow and Strathkelvin and/or South Strathclyde Dumfries and Galloway*

	Aged 35 – 40	Aged 41 – 50	Aged 51 – 60	Aged 61 and over
Applicants	0	1	7	2
Appointees	0	0	1	1

### *All-Scotland Floating Sheriffs*

In this competition applicants came from a broad range of ages:

	Aged 35 – 40	Aged 41 – 50	Aged 51 – 60	Aged 61 and over
Applicants	9	53	28	3
Appointees	0	17	3	0

### *Part-time Sheriff*

	Aged 35 – 40	Aged 41 – 50	Aged 51 – 60	Aged 61 and over	Date of birth not given
Applicants	37	129	63	8	1
Appointees	4	33	9	3	0



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## Annex C

### “STRENGTHENING JUDICIAL INDEPENDENCE IN A MODERN SCOTLAND”

#### RESPONSE BY THE JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

##### Introduction

1. We welcome the opportunity to comment on the Executive’s consultation on the unification, appointment, removal and management of Scotland’s judiciary. In this response, we concentrate on issues which are directly relevant to our work. It is open to individual members of the Board to make separate representations either personally or through a relevant professional body.
2. Crucial to the operation of any new system which the Executive proposes to put in place will be the allocation of resources, the independent status of the budget of the statutory Board, the direct appointment of staff by that Board and their direct accountability to that Board. The Board will need sufficient resources to allow it to access independent legal advice.

##### Chapter 2 – The Independence of the Judiciary

3. On **Questions 1 and 2** (which relate to judicial independence), we fully recognise the importance of judicial independence but do not consider it within the scope of the Board to respond in any more detail to these questions. We do consider however that the independence of Board’s role in the appointments process is a fundamental element of the independence of the judiciary.

### Chapter 3 – The Lord President

4. **Questions 3, 4, 5, 6 and 7** relate to proposals about the responsibilities of the Lord President and Lord Justice Clerk. We do not consider these matters to be within our scope and we therefore offer no comment.

### Training

5. **Question 8** asks: “Do you agree that the Lord President should have overall responsibility for the training and guidance of the judiciary?” In response, we can see that there are benefits which would accrue from the co-ordination of training in this way. We are positively supportive of regular, relevant training, taking account of the needs of the individual, particularly where newly-appointed members of the judiciary require to broaden their background knowledge and skills. We would also see value in the Lord President being able to define more generally certain types of training as obligatory for individuals at different stages of their judicial career. For any system of training and development to be effective, adequate resources must be allocated both into the provision of the training itself, and into ensuring individuals – at whatever stage in their judicial career – can attend.
6. **Question 9** falls.

### Deployment of the Judiciary

7. In paragraph 3.7 ff of the consultation paper, the Executive proposes to give responsibility to the Lord President and Sheriffs Principal for deployment of the judiciary. The Executive proposes that the Lord President and Sheriffs Principal would develop policies for judicial resource planning, with the Lord President giving approval to specific transfers. The Consultation Paper says: “This role would have to be exercised in conjunction with that of the Judicial Appointments Board who would advertise vacancies which the Sheriffs Principal and Lord President might decide should not be filled by transfer of a serving sheriff.” In response



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to these proposals, the Board would comment that there is a need for early and automatic communication to it about vacancies likely to arise, and a recognition of the necessary timescale requirements for open recruitment to judicial office.

8. In response to **Questions 10, 11, 12 and 13**, all relating to deployment of the judiciary, we would expect that all appointments processes, whether by the Board or other parties, would be subject to equal opportunities considerations.
9. Our lay members have been surprised at the absence of any requirement for members of the judiciary to give a reasonable period of notice of their intention to retire. This impacts on the Board's ability to complete the appointments process within a reasonable time frame, with resultant impact on the efficient operation of the courts. We recommend that there should be a reference in the statute to a requirement on judges to give a specified period of notice of intention to retire unless the reason for retirement would prevent this.

## Appraisal

10. We note that the Executive are not making proposals at this stage about the introduction of any form of appraisal for the full-time judiciary. While we acknowledge that there are challenges in formulating and introducing a system of appraisal, we would like to see a definite commitment to exploring, assessing and developing an appropriate system. We would welcome involvement in any consultation on such a system.
11. We have no comment on the following questions: **Question 14** (welfare); **Questions 15 and 16** (strategic management and governance with the Executive and Scottish Court Service); **Question 17** (arrangements for supporting the Lord President and the senior judiciary); **Questions 18 and 19** (judges' council); **Questions 20 and 21** (administrative judges).

### Chapter 6 – Judicial Appointments

12. The Board fully endorses the views expressed at paragraph 6.3 of the consultation paper that the balance of lay and legal members with a lay chair is a particular strength of the present arrangements.
13. In paragraph 6.6 of the Consultation Paper, the Executive propose that where the First Minister rejects the Board's recommendations, he will give the Board his reasons in writing. We agree that this should happen, but we recommend that the First Minister should refer the issue back to the statutory Board, giving reasons why he is disposed to reject its recommendations and the opportunity to respond, before making a final decision.
14. We consider that it would also be appropriate to make clear the role(s) of the Scottish Ministers individually or collectively in considering the advice contained in the Board's report once it has been submitted to the First Minister. It is already set out in statute that the Lord President must be consulted. The Board recommend that in the interests of transparency it should be made clear which other office holders the First Minister has the power to consult. The Board recommend that there should be a requirement that the First Minister's consultation process be published.
15. In relation to paragraph 6.7, our view is that the remit of the statutory board should itself be set in statute. In our view, this will ensure clarity of purpose and intent. We acknowledge the need for flexibility to vary the remit in the future and propose that this should be done by secondary legislation.
16. **Question 22** asks whether Ministers should have the power to issue guidance about procedures for the performance by the Board of its functions. We consider that Ministers should have the power to issue guidance relating to their interpretation of the statutory remit of the new Board.

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However, this guidance should not include material which could be viewed as compromising the statutory Board's independence in assessing the suitability of candidates for judicial office. The consultation paper states Ministers' intentions to consult the Lord President about the content of guidance. We would recommend that the statutory Board also be consulted at that stage.

17. **Question 23** asks whether there is any area of the statutory Board's activity which respondents would like to see covered by guidance. We believe there would be merit in Ministers providing guidance to the Board on the issue of Diversity and Judicial Appointment (which guidance could be formulated in consultation with the Board) so there was a common understanding as to what such issues entail for the work of the Board.
18. **Question 24** asks whether the Board should be bound by statutory provision to follow any guidance issued by Ministers. The Board's preference as detailed above is that there should be a statutory remit which they would be bound to follow. Guidance on the interpretation of that remit should not require the underpinning of compulsion and should be seen as a positive contribution rather than an instruction.

## Membership

19. **Question 25** asks whether membership of the Board should include one senator only, or two senators (one from the Inner House, one from the Outer House). The arguments advanced for having 2 senators as members of the statutory Board seem to some extent to be based on a mistaken assumption about the way we operate. The argument that having 2 senators offers greater reassurance of objectivity, the views of one judge being balanced by those of his or her judicial colleague, implies greater influence by one member of the Board on collective decision-making than ought to be the case. It also may be seen to imply the sharing of personal knowledge about candidates. The Board operates

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on the basis of interview panels with equal numbers of lay and legal members, and also on the basis that all recommendations are approved by the full Board. Our procedures do not allow members to introduce their personal knowledge of candidates into the Board's considerations, although individual members may take any material reservation to the Chairman. We would wish to avoid any suggestion of a re-creation of the old system: namely, one or 2 highly-placed individuals making decisions and having disproportionate influence over appointments.

20. The opinion of the Board is that our current membership is capable of effective operation and that the current blend of membership is representative and well balanced.
21. Having said that, the Board does recognise that there are legitimate arguments in favour of a capacity to increase membership. These include the following: the provision of extra practical knowledge; the capacity to deal with an increased workload; and the ability to deal with situations where a judicial member declares a conflict of interest in relation to a candidate. If Board members' workload increases substantially then extra membership should be considered at that time, and a decision about numbers should be based on the relevant circumstances. If the Executive determined that an increase in numbers were necessary right now, then bearing in mind that the majority of appointments advised on by the Board are to the shrieval bench, the Board's view would be that a further shrieval member, balanced by an additional lay member, would best fit our workload.
22. We recognise that the occasional conflict of interest may arise for a senior judicial member during a competition where his or her participation is necessary. In such a case, we consider that the best course of action would be the appointment of a temporary substitute member, in line with the arrangements envisaged in paragraphs 6.24 and 6.25 of the consultation paper.



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## Changes to the statutory numbers by order

23. Paragraph 6.16 of the consultation paper contains proposals for varying the numbers of the Board by order. We are content with those proposals, but in addition we recommend that it should also be open to the statutory Board themselves to make an approach to Ministers to request an increase in numbers if this is warranted by workload.
24. **Question 26** asks whether the judge member(s) should be appointed to the Board on the nomination of the Lord President or through elections by the relevant peer group. From the context this seems to refer to the senatorial member(s) only. As previously stated we have a preference for procedures which are equal opportunity compliant. We do think it important that regardless of the process of appointment, court timetabling must allow for the availability of judicial members to participate fully in the work of the Board.
25. **Question 27** asks for views on the proposed term of appointment of three years, and arrangements for renewal. We consider this the minimum practicable term of office. Recommending appointments is a relatively lengthy and complex process. New members will require some time to settle in. Any lesser period will diminish the value of appointment to the Board, especially for lay members who necessarily will take some time to attain familiarity with the rich and varied complexities of the Scottish justice system.
26. **Question 28** falls.

## Arrangements when a judicial member retires during term of appointment to Board

27. We note that paragraph 6.19 holds out the prospect of a “retired judicial office-holder making appointments to a Bench that he or she had left some time before”. (The Board would like to note in passing that judicial office-holders do not make appointments to the Bench. The Board is an advisory body, its decisions are collective and

it does not confer appointment.) We would think it always preferable for a judicial member wherever possible to give appropriate notice to the Department of intention to retire from office, to allow for a new member to be recruited and appointed so as to have a straightforward handover upon the retirement of the judicial member. Having said that, we recognise that there will inevitably be circumstances where this is not possible, and agree (in response to **Question 29**) that provision should be made restricting continued membership of a judicial member of the Board on his or her retiral from full-time office. In response to **Question 30**, the Board agrees that a 6-month period after retirement should allow for the appointment of a new judicial member.

28. **Question 31** asks whether only the judicial members and two legal members of the statutory Board should have a duty to determine whether the legal ability of a candidate is adequate for the judicial office applied for, or whether any academic lawyer on the Board should participate in this process. We consider that if an academic lawyer is a lay member of the Board, it follows that he or she should not be considered a legal member for the purposes of determining whether a candidate's legal ability is sufficient for judicial office. However, it is entirely possible that an academic lawyer would assist the Board in formulating arrangements to determine the legal ability of a candidate.
29. **Question 32** falls.
30. **Questions 33** and **34** ask about provision for the appointment of a temporary member to the Board. We agree that such provision should be made. However, in the case of the Chair being temporarily unable to attend the Board, the principle of lay chairmanship should continue to apply, with a lay Acting Chair who has been either previously nominated by the Chair or, if the Chair is unable to make such a nomination, who has been chosen



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by the whole Board. It would be the Acting Chair who would make the necessary approach to Ministers for appointment of a temporary member in the event of the Chair's being unable to do so.

## Conduct of Board Members

31. Paragraph 16.27 of the Consultation Paper sets out a number of proposed grounds under which Ministers would be authorised to remove any member from the Board. Interpretation of this will be critical. Is it the intention that an undischarged bankrupt would invariably be removed? Would conviction for **any** type of offence, for example fixed penalty speeding or parking offences, result in removal of a member from the Board or would there be distinction between different types of offence? How would the Rehabilitation of Offenders Act 1974 apply?
32. We have no other comments to make in response to **Question 35** (changes to the list of proposed grounds for unfitness).

## Confidentiality

33. **Question 36** asks whether a duty of confidentiality should be imposed on those who give and receive information about an individual within the context of the Board's activities. We wholeheartedly support the principle of candidate confidentiality. However, the definition of the proposed statutory duty will be critical. There is a need for clarification as to the scope and impact of such a duty, particularly as it might apply to persons or organisations other than individual Board members and staff: for example to the Board as an organisation, to referees, to candidates themselves and to officials in the offices of the First Minister and the Lord President. We believe it will also be important, as we suggest in paragraph 14 of this response, to make clear the group of people whom the First Minister may consult on receipt of recommendations from the Board before making his decision. Unless this is clear to candidates,

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the risk is run of candidate confidentiality being breached. The Board would like to emphasise that confidentiality should apply only to candidates; the Board's general procedures themselves should not be "confidential".

34. It would be unfair to expose Board members acting in good faith to the prospect of personal financial risk, for example if an action were to be brought against the Board collectively. We suggest that Board members be indemnified by Ministers.
35. **Question 37:** We support the introduction of a complaints procedure.
36. **Question 38:** We agree that such a complaints procedure should be set up by the statutory Board, with review falling to the Scottish Public Services Ombudsman.

### **Appointment of Lord President and Lord Justice Clerk**

37. **Questions 39** and **40** ask whether provisions should be made for a panel to advise the First Minister on the suitability of candidates for selection to the office of Lord President and Lord Justice Clerk and about the provisions which should be made to regulate membership of such a panel. We agree in principle with the use of a panel to advise on the appointment of the Lord President and Lord Justice Clerk. However, we are not convinced that such a panel should be set up "under the auspices of the [statutory] Board". Current practice is that all Board members take responsibility for any advice given by the Board to the First Minister. For the reasons set out in the Consultation Paper, we do not think it appropriate for the two high judicial offices mentioned to be subject to the full Board's consideration and advice. The involvement of the Chair and a lay member on a separate appointments panel convened by the First Minister could have benefits, but there will be a need for transparency about the activities of such a panel and it should be clearly understood that it was not convened in the name of the Board. Again, we recommend that the First Minister's options for consultation when considering

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the advice of that panel should be made clear in the interests of full transparency.

## **Inner House Judges**

38. **Question 41** asks for views about arrangements for appointment to the Inner House of the Court of Session. We consider that the Lord President should have responsibility for the selection process for Inner House judges. We can see the benefit of lay involvement in the interests of transparency (for example, through consultation with the Chair of the Board or the Chair's nominee during such a process or, alternatively, consultation in general terms by the Lord President from time to time about the process of selection and the way it is carried out in individual cases). For the reasons set out in the preceding paragraph, we do not agree with the idea of convening a panel "under the auspices of the Board" but not belonging to the Board. We recognise that the Lord President will have operational issues to consider in the appointment of Inner House judges, who carry out highly specialised activities.

39. **Questions 42** and **43** fall.

## **Chapter 7 – Removal from Office and**

## **Chapter 8 – Discipline**

40. We have no comment to make in relation to **Questions 44** to **61**.

## **Chapter 9 – Re-employing retired judges and sheriffs**

41. **Question 62** asks whether respondents agree with the proposal that retired judges and sheriffs should be eligible to sit as temporary judges or part-time sheriffs at the behest of the Lord President or the Sheriff Principal without reference to the Board. Under its remit the Board has an obligation to consider ways of recruiting a judiciary which is as representative as possible of the communities they serve. We recognise the need, in the interest of efficiency, to make use of retired judges and sheriffs on a temporary

basis. However, we would be concerned if the effect of this were to “fill” vacancies which would otherwise be subject to the full open resourcing procedure. We would therefore recommend that the Lord President should only call upon retired judges and sheriffs where there is clear operational need to do so and on a temporary basis.

42. In response to **Question 63**, which asks if there are any adjustments to be made to what is proposed, we propose that any deployment of re-appointed retired sheriffs or senators should not place them on a different footing with other part-time fee-paid individuals eligible to perform the office. In other words, it should be demonstrable that individuals in the pool are given assignments on the basis of operational requirements and that work is allocated fairly within the constraints of those requirements.

### **Chapter 10 – Lord Justice Clerk to fulfil duties of Lord President in certain circumstances**

43. We offer no response to **Questions 64** and **65**, relating to proposals that the Lord Justice Clerk should under certain circumstances discharge the functions of the Lord President.

### **Chapter 11 – The Office of Temporary Judge**

44. We recommend that the terms of the Board’s remit should include the office of temporary judge (except where covered by the provision to call upon retired members of the judiciary). We believe there would be benefit in more fundamental consideration of the role of, scale of deployment of and opportunities afforded to temporary judges. It may be that the best way to secure the continuance of court business is an increase in the number of permanently-established judges and the use of retired judges, or making all serving sheriffs and sheriffs principal (who had discharged their duties for a specified period of time) part of a pool from which to draw temporary judges. However, in response to **Question 66**, if the office of temporary judge as we currently know it is to continue to exist, then we believe it should be subject

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to open competition within the scope of the statutory Board's activities.

45. On **Question 67** about terminology ("temporary judge" or "deputy judge") we offer no comment.

### **Chapter 12: Eligibility for appointment to the office of judge of the Court of Session**

46. The Board clearly have an interest in the proposals about broadening eligibility to be a judge in the Court of Session, which would widen the pool of candidates for these appointments. Given the range of professional interests involved, however, we do not feel it is appropriate for the Board to formulate a position in response to **Questions 68** and **69**.

### **Conclusion**

47. We are grateful for the opportunity to contribute to this important area of policy making and are glad to share our practical knowledge. We would be willing to discuss further with the Executive any area of this response.

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**26 April 2006**



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