

JUDICIARY AND COURTS (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT

Part 2 – the Judiciary

Chapter 3 - Judicial Appointments

Lord President and Lord Justice Clerk

Section 19 - Appointment

57. The arrangements for selecting a Lord President and a Lord Justice Clerk when these respective offices are vacant are set out in section 19 and schedule 2 which require the First Minister to establish a selection panel with the function of making a recommendation to the First Minister about those individuals deemed suitable for appointment.
58. The arrangements for appointing to these offices are set out in section 95 of the Scotland Act 1998. This provides that it is for the Prime Minister to recommend to The Queen the appointment of a person as the Lord President or the Lord Justice Clerk. However, the Prime Minister cannot recommend any person who has not been nominated by the First Minister. In recognition of the role of the panel established under subsection (2), subsection (4) places a duty on the First Minister to wait until the panel has made its recommendation before nominating any individual for appointment and subsection (5) requires the First Minister to have regard to the panel's recommendation.

Section 20 - Selection criteria

59. This section is a similar provision to section 12. Subsection (2) makes it clear that selection to either of these offices must be solely on merit in order to ensure the integrity of the process. In addition, subsection (3) requires that an individual may only be selected if he or she is of good character.