

JUDICIARY AND COURTS (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT

Schedule 1 – the Judicial Appointments Board for Scotland

Miscellaneous provisions relating to the Board

147. Under paragraph 13, it is for the Scottish Ministers to determine and pay fees and expenses to Board members. Different fees and expenses may be paid to different categories of member. For example, the Chairing Member may receive a higher rate to reflect the level of responsibility attached to that office. In contrast, judicial members may receive no fees or expenses because they are members of the Board by virtue of the judicial office they hold, for which they already receive a salary.
148. To support the Board in its work, paragraph 14(1) places the Scottish Ministers under a duty to ensure that the Board has sufficient staff, property and services to enable it to carry out its functions. Paragraph 14(2) gives a non-exhaustive list of examples of the services that may be provided to the Board. Appointment of an independent observer could be beneficial where, for example, a person being interviewed for judicial office is a former member of the Board. The presence of an independent observer may reassure other candidates as to the propriety of the Board's selection procedures in these circumstances. Specialist advice may be sought by the Board in relation to certain judicial appointments. For example, the Chairman of the Land Court is a specialist judicial role, and the Board may wish to seek the advice of a person with expertise in land law for the purposes of that appointment. Paragraph 14(3) obliges the Scottish Ministers to consult the Board about the level of support it needs.
149. [Paragraph 15](#) provides that the Board may determine its own procedure and its own quorum. In order to maintain the legal and lay balance of membership, however, the Chairing Member does not have a casting vote. To assist the Board in the exercise of its functions, paragraph 16 allows the Board to establish committees and to delegate its functions to those committees; however, responsibility for those functions remains with the Board as a whole.
150. [Paragraph 17](#) provides that the validity of the Board's proceedings cannot be challenged on the grounds of a vacancy in the membership of the Board, a deficiency in the appointment of a member or the disqualification of a member. This ensures that decisions of the Board cannot be challenged on the grounds of such procedural irregularity alone.
151. [Paragraph 18](#) brings the appointment of legal and lay members to the Board within the remit of the Commissioner for Public Appointments in Scotland ("the Commissioner"). Under section 2 of the [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), the Commissioner must publish a code of practice ("the Code") for ministerial appointments. The current Code (dated April 2006) includes, amongst other matters,

*These notes relate to the Judiciary and Courts (Scotland) Act
2008 (asp 6) which received Royal Assent on 29 October 2008*

guidelines about the composition of selection panels to select people for appointment to public office. It also provides that a selection panel will normally include a civil servant from the Scottish Government department sponsoring the public body. The Code is silent on whether Ministers or other politicians may sit on a selection panel. The Act goes further than the Code to ensure that appointments to the Board are as free as possible from political and ministerial influence; paragraph 18(2) and (3) provide that, regardless of what the Code as revised from time to time may say, a selection panel for appointment as a member of the Board should not include any of the persons disqualified from membership of the Board under paragraph 5 (that is, MPs, MSPs, MEPs, UK Ministers, Scottish Ministers and civil servants). The Code otherwise applies in full to legal and lay appointments to the Board.

152. [Paragraph 19](#) makes the Board a devolved public body to which the [Standards in Public Life etc. \(Scotland\) Act 2000 \(asp 7\)](#) (“the 2000 Act”) applies. This means that the Board is under a duty to promote high standards of conduct on the part of its members; that the Board must prepare a code of conduct for members based on a model code prepared by the Scottish Ministers under the 2000 Act; and that the conduct of members is subject to the scrutiny of the Standards Commission for Scotland.
153. [Paragraph 20](#) adds the Board to Part 2 of Schedule 2 to the [Scottish Public Services Ombudsman Act 2000 \(asp 11\)](#), so that the Scottish Public Services Ombudsman is able to investigate complaints it receives about the actions of the Board. Paragraph 20(2) and (3) require the Board to put in place appropriate arrangements for investigating any complaints made to the Board about maladministration, and to publicise those arrangements.
154. [Paragraph 21](#) makes the Board subject to the provisions of the [Freedom of Information \(Scotland\) Act 2002 \(asp 13\)](#); however, confidential information that is prohibited from disclosure under section 17 of the Act would be exempt from disclosure by virtue of section 26(a) of the 2002 Act.
155. [Paragraph 22](#) achieves the transition from the existing non-statutory Board to the statutory Board set up under the Act by providing that the existing Board will become the first statutory Board on the coming into force of schedule 1.