Judiciary and Courts (Scotland) Act 2008

2008 asp 6

PART 2

THE JUDICIARY

CHAPTER 3

JUDICIAL APPOINTMENTS

Judicial Appointments Board for Scotland

9 The Judicial Appointments Board for Scotland

(1) There is established a body to be known as the Judicial Appointments Board for Scotland (referred to in this Chapter as "the Board").

(2) The functions of the Board are—
- (a) to recommend to members of the Scottish Executive individuals for appointment to judicial offices within the Board's remit, and
- (b) to provide advice to members of the Scottish Executive in connection with such appointments.

(3) In carrying out its functions, the Board is not to be subject to the direction or control of any member of the Scottish Executive or any other person.

(4) Schedule 1 makes further provision about the Board.

10 Judicial offices within the Board's remit

(1) The judicial offices within the Board's remit are—
- (a) the office of judge of the Court of Session,
- (b) the office of Chairman of the Scottish Land Court,
- (c) the office of temporary judge (except in any case where the individual to be appointed to the office holds or has held one of the offices mentioned in subsection (2)),

(d) the office of sheriff principal,
(e) the office of sheriff,
(f) the office of part-time sheriff, [F1]...
[[F2](fza) the office of summary sheriff,
(fzb) the office of part-time summary sheriff,]
[[F3](fzc) the office of member of the Parole Board for Scotland (including the chairperson of the Parole Board),]
[[F4](fa) the positions within the Scottish Tribunals mentioned in subsection (2A), and]
(g) such other judicial offices (whether full-time, part-time or temporary) as the Scottish Ministers may by order specify.

(2) The offices referred to in subsection (1)(c) are—
(a) the office of judge of the European Court,
(b) the office of judge of the European Court of Human Rights,
(c) the office of Chairman of the Scottish Land Court,
(d) the office of sheriff principal, and
(e) the office of sheriff.

[[F5](2A) The positions within the Scottish Tribunals are—
(a) Vice-President of the Upper Tribunal, if to be appointed under section 26(1) of the Tribunals (Scotland) Act 2014,
(b) Chamber President in the First-tier Tribunal, if to be appointed under section 22(1) of that Act,
(c) Deputy Chamber President in the First-tier Tribunal, if to be appointed under the relevant provisions of schedule 4 to that Act,
(d) ordinary member or legal member of the First-tier Tribunal or the Upper Tribunal, if to be appointed under the relevant provisions of schedule 3 or (as the case may be) schedule 5 to that Act.]

(3) The Scottish Ministers may specify a judicial office under subsection (1)(g) only if the First Minister has, or the Scottish Ministers have, the function of making appointments to the office, or of nominating or recommending individuals for appointment to the office.

(4) In subsection (1)(g), "judicial office "means—
(a) the office of judge of any court,
(b) the office of member of any tribunal, or
(c) any other office, or appointment, consisting of functions of a judicial nature.

Textual Amendments

F1 Word in s. 10(1) repealed (1.4.2015) by Tribunals (Scotland) Act 2014 (asp 10), s. 83(2), **Sch. 9 para. 12(2)(a)** (with Sch. 9 para. 8); S.S.I. 2015/116, art. 2

F2 S. 10(1)(fza)(fzb) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 9(3)**; S.S.I. 2015/77, art. 2(2)(3), Sch.

F3 S. 10(1)(fzc) inserted (1.10.2020) by Management of Offenders (Scotland) Act 2019 (asp 14), **ss. 46(3)**, 63(2); S.S.I. 2020/283, reg. 2(k)

F4 S. 10(1)(fa) inserted (1.4.2015) by Tribunals (Scotland) Act 2014 (asp 10), s. 83(2), **Sch. 9 para. 12(2)(b)** (with Sch. 9 para. 8); S.S.I. 2015/116, art. 2

F5 S. 10(2A) inserted (1.4.2015) by Tribunals (Scotland) Act 2014 (asp 10), s. 83(2), **Sch. 9 para. 12(2)(c)** (with Sch. 9 para. 8); S.S.I. 2015/116, art. 2

11 Recommendations of the Board

(1) The relevant Minister may—

(a) appoint an individual to a judicial office within the Board's remit, or

(b) nominate or recommend an individual for appointment to such an office,

only if the Board has recommended the individual for appointment to the office.

(2) Subsection (3) applies where—

(a) the Board has recommended an individual for appointment, and

(b) the relevant Minister has decided not to accept the recommendation.

(3) The relevant Minister must give the Board notice of the decision.

(4) The notice must include the reasons for the decision.

(5) On receipt of the notice, the Board must—

(a) reconsider its recommendation, and

(b) make a further recommendation (whether of the same or a different individual).

(6) In this section references to the relevant Minister are—

(a) where the First Minister has the function of making appointments to the judicial office concerned, or nominating or recommending individuals for appointment to the office, references to the First Minister,

(b) where the Scottish Ministers have that function, references to the Scottish Ministers.

12 Selection criteria

(1) This section applies where the Board is selecting an individual to be recommended by it for appointment.

(2) Selection must be solely on merit.

(3) The Board may select an individual only if it is satisfied that the individual is of good character.

13 Assessment of legal knowledge, skills and competence

(1) Only the judicial and legal members of the Board may take part in any assessment by the Board of an individual's—

(a) knowledge of the law, or

(b) skills and competence in the interpretation and application of the law.

(2) Subsection (1) does not prevent a member of the Board from taking part in a decision of the Board as to whether to recommend an individual for appointment to a judicial office.

Status: *Point in time view as at 01/10/2020.*
Changes to legislation: *There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008, Cross Heading: Judicial Appointments Board for Scotland. (See end of Document for details)*

14 Encouragement of diversity

(1) In carrying out its functions, the Board must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office.

(2) Subsection (1) is subject to section 12.

15 Guidance

(1) The Scottish Ministers may issue guidance to the Board as to the procedures to be followed by it in the carrying out of its functions.

(2) The Lord President may issue guidance to the Board as to the procedures to be followed by it in the carrying out of its functions.

(3) Guidance issued under subsection (1) or (2) may, in particular, relate to the manner in which the Board is to publicise vacancies and identify candidates for any appointment.

(4) In carrying out its functions, the Board must have regard to any guidance issued under this section.

(5) The Scottish Ministers must publish any guidance issued under subsection (1).

(6) The Lord President must publish any guidance issued under subsection (2).

16 Guidance: procedure

(1) Before issuing any guidance under section 15(1) or (2), the Scottish Ministers or, as the case may be, the Lord President must lay a draft of the proposed guidance before the Scottish Parliament.

(2) The Scottish Ministers or, as the case may be, the Lord President must not issue the guidance before the expiry of the period of 21 days beginning with the day on which the draft of it is laid before the Parliament under subsection (1).

(3) If, during that period, the Parliament by resolution makes any recommendations in relation to the draft guidance, the Scottish Ministers or, as the case may be, the Lord President must have regard to those recommendations.

(4) The Scottish Ministers must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Lord President and the Board on the draft.

(5) The Lord President must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Scottish Ministers and the Board on the draft.

(6) In calculating a period of 21 days for the purposes of subsection (2), no account is to be taken of any time during which the Parliament is—

(a) dissolved, or

(b) in recess for more than 4 days.

17 Confidentiality of information

(1) A person (whether or not a member of the Board or its staff) who has provided or obtained confidential information in connection with the carrying out of the Board's functions must not disclose the information unless the disclosure is authorised.

(2) Information is confidential for the purposes of subsection (1) if it relates to an identified or identifiable individual.

(3) Disclosure of information is authorised for the purposes of subsection (1) only so far as it is—

(a) made with the consent of the individual to whom the information relates,

(b) necessary for the purposes of the carrying out by the Board of its functions,

(c) necessary for the purposes of the carrying out by a member of the Scottish Executive of a function of appointing an individual to a judicial office within the Board's remit, or nominating or recommending an individual for appointment to such an office, or

(d) required for the purposes of any legal proceedings, whether criminal or civil, (including for the purposes of the investigation of any offence or suspected offence).

(4) For the purposes of this section, an opinion or other information given by one identified or identifiable individual about another is to be treated as information that relates to both individuals.

(5) This section does not prevent the disclosure of information which is already, or has previously been, in the public domain.

(6) Any disclosure of information in contravention of this section which causes loss or damage to the individual to whom the information relates is actionable at the instance of that individual.

18 Annual report

(1) As soon as practicable after the end of each year, the Board must—

(a) prepare and publish a report on the carrying out of its functions during that year, and

(b) send a copy of the report to the Scottish Ministers.

(2) The Scottish Ministers must lay before the Scottish Parliament a copy of each report sent to them by the Board under subsection (1)(b).

Status:
Point in time view as at 01/10/2020.

Changes to legislation:
There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008, Cross Heading: Judicial Appointments Board for Scotland.