

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008, SCHEDULE 1. (See end of Document for details)*

## SCHEDULE 1

*(introduced by section 9(4))*

### THE JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

#### *Status of the Board*

- 1 The Board is not a servant of the Crown and has no status, immunity or privilege of the Crown.

#### *Membership*

- 2 The Board consists of—
- (a) judicial members appointed by the Lord President,
  - (b) legal members appointed by the Scottish Ministers, and
  - (c) lay members appointed by the Scottish Ministers.

#### *The judicial and legal members*

- 3 (1) The judicial members comprise—
- (a) one person holding the office of judge of the Court of Session (other than the Lord President and the Lord Justice Clerk),
  - (b) one person holding the office of sheriff principal, and
  - (c) one person holding the office of sheriff.
- (2) The legal members comprise—
- (a) one advocate practising as such in Scotland, and
  - (b) one solicitor practising as such in Scotland.
- (3) Each of the descriptions of members mentioned—
- (a) in sub-paragraph (1) is referred to in this schedule as a “judicial membership category”, and
  - (b) in sub-paragraph (2) is referred to in this schedule as a “legal membership category”.
- (4) The Scottish Ministers may by order modify sub-paragraph (1) or (2).
- (5) However, an order under sub-paragraph (4) may not remove any judicial or legal membership category other than one added by such an order.

#### *The lay members*

- 4 (1) The number of lay members is to be equal to the total number of judicial and legal members.
- (2) Each lay member is to be an individual who—
- (a) is resident in Scotland,
  - (b) is not a solicitor or advocate practising as such in Scotland, and
  - (c) does not hold and has not held any judicial office within the Board's remit.

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*Persons disqualified from membership*

- 5 A person is disqualified from appointment, and from holding office, as a member if the person is or becomes—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a Minister of the Crown,
  - (e) a member of the Scottish Executive, or
  - (f) a civil servant.

*Term of office*

- 6 (1) A member holds office for such period of not more than 4 years as—
- (a) the Lord President in the case of a judicial member, or
  - (b) the Scottish Ministers in the case of a legal or lay member,
- at the time of appointment, may determine.
- (2) A person who is or has been a member may be reappointed (whether in the same or a different capacity) for further periods.
- (3) However, a person may not hold office as a member for periods (whether or not consecutive) totalling more than 8 years.
- (4) A member's appointment ceases—
- (a) on expiry of the member's period of appointment,
  - (b) on the member's becoming disqualified from holding office as a member,
  - (c) in the case of a judicial or legal member, on the member's ceasing to fall within the judicial or legal membership category under which the member was appointed, or
  - (d) in the case of a lay member, on the member's ceasing to be qualified for appointment as a lay member.
- (5) However, despite the occurrence (or likely occurrence) of an event mentioned in sub-paragraph (4) in relation to a member—
- (a) the Lord President in the case of a judicial member, or
  - (b) the Scottish Ministers in the case of a legal or lay member,
- may direct that the member is to continue to hold office for such period, not exceeding 6 months, as the Lord President or the Scottish Ministers, as the case may be, may direct.
- (6) Such a direction may be given in relation to a member before or after the occurrence of an event mentioned in sub-paragraph (4).
- (7) A person whose appointment as a member ceases by virtue of sub-paragraph (4) or (5) may nonetheless continue to act as a member so far as that is necessary for the purposes of concluding consideration of a judicial appointment which the Board is in the course of considering at the time the person's appointment ceases.

*Resignation of members*

- 7 (1) A member may resign office by giving notice in writing—

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- (a) in the case of a judicial member, to the Lord President, and
  - (b) in the case of a legal or lay member, to the Scottish Ministers.
- (2) A member giving notice—
- (a) under sub-paragraph (1)(a) must send a copy of the notice to the Scottish Ministers,
  - (b) under sub-paragraph (1)(b) must send a copy of the notice to the Lord President.
- (3) Notice under sub-paragraph (1) must be given at least 6 months before the proposed date of resignation unless a shorter period is agreed with the person to whom notice is to be given under that sub-paragraph.

#### *Removal of members*

- 8
- (1) The Lord President may, by notice in writing, remove a judicial member from office if satisfied, after consulting the Chairing Member and the Scottish Ministers, that sub-paragraph (4) applies in relation to the member.
  - (2) The Scottish Ministers may, by notice in writing, remove a legal or lay member from office if satisfied, after consulting the Chairing Member (unless that is the member concerned) and the Lord President, that sub-paragraph (4) applies in relation to the member.
  - (3) A member may not be removed from office under sub-paragraph (1) or (2) without the member being afforded an opportunity to be heard by the Lord President or, as the case may be, the Scottish Ministers.
  - (4) This sub-paragraph applies if the member—
    - (a) has failed without reasonable excuse to discharge the functions of a member for a continuous period of 6 months,
    - (b) has been convicted of any offence,
    - (c) has become insolvent, or
    - (d) is otherwise unfit to be a member or unable for any reason to discharge the functions of a member.
  - (5) For the purposes of sub-paragraph (4)(c), a member becomes insolvent on—
    - (a) the approval of a voluntary arrangement proposed by the member,
    - (b) being adjudged bankrupt,
    - (c) the member's estate's being sequestrated, or
    - (d) the member's granting a trust deed for creditors.

#### *Chairing Member: appointment and tenure*

- 9
- (1) The Scottish Ministers must appoint one of the lay members to chair the Board.
  - (2) That member is referred to in this Act as the “Chairing Member”.
  - (3) The Chairing Member holds office as such for such period of not more than 4 years as the Scottish Ministers, at the time of appointment, may determine.
  - (4) The Chairing Member's appointment as such ceases on the Chairing Member's ceasing to be a member of the Board.

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- (5) A member who is or has been the Chairing Member may be reappointed for further periods.

*Chairing Member: resignation, removal, vacancy etc.*

- 10 (1) The Chairing Member may resign office as such by giving notice in writing to the Scottish Ministers.
- (2) The Scottish Ministers may, by notice in writing, remove the Chairing Member from office if, after consulting the Lord President, they are satisfied that the member—
- (a) has failed without reasonable excuse to discharge the functions of the Chairing Member for a continuous period of 6 months, or
  - (b) is otherwise unfit to be the Chairing Member or unable for any reason to carry out the functions of the Chairing Member.
- (3) During any period when there is a vacancy in the office of the Chairing Member, the functions of the Chairing Member may be carried out by another lay member nominated by the Board.
- (4) During any period when the Chairing Member is for any reason unable to act, the functions of the Chairing Member may be carried out by another lay member nominated—
- (a) by the Chairing Member, or
  - (b) if the Chairing Member is unable to make such a nomination, by the Board.
- (5) Sub-paragraphs (1), (2) and (4) apply to a member carrying out functions by virtue of sub-paragraph (3) or (4) as they apply to the Chairing Member.

*Temporary members*

- 11 (1) Where the Chairing Member is satisfied that a member of the Board (“the absent member”) is likely to be unable to discharge the functions of a member for a period of time not exceeding 6 months (“the period of absence”), the Chairing Member may—
- (a) where the absent member is a judicial member, request that the Lord President appoint an individual to be a temporary member of the Board,
  - (b) where the absent member is a legal or lay member, request that the Scottish Ministers appoint an individual to be a temporary member of the Board.
- (2) On receipt of a request under sub-paragraph (1), the Lord President or, as the case may be, the Scottish Ministers may, if satisfied that it is necessary for the carrying out by the Board of its functions during the period of absence, appoint an individual to be a temporary member in place of the absent member during that period.
- (3) An individual appointed by the Lord President under sub-paragraph (2) must fall within the same judicial membership category as that under which the absent member was appointed.
- (4) An individual appointed by the Scottish Ministers under sub-paragraph (2)—
- (a) where the absent member is a legal member, must fall within the same legal membership category as that under which the absent member was appointed,
  - (b) where the absent member is a lay member, must be qualified for appointment as a lay member.

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- (5) Before appointing a temporary member, the Lord President or, as the case may be, the Scottish Ministers must consult the Chairing Member.
- (6) A temporary member takes the place of the absent member and, accordingly, the absent member is not to be counted as a member while the temporary member holds office.
- (7) A temporary member's appointment ceases on—
  - (a) the period of absence coming to an end, or
  - (b) the expiry of the period of 6 months from the date of appointment, (whichever occurs first).
- (8) A person whose appointment as a temporary member ceases may nonetheless continue to act as a member so far as that is necessary for the purpose of concluding consideration of a judicial appointment which the Board is in the course of considering at the time the person's appointment ceases.
- (9) Otherwise, the provisions of this schedule apply to a temporary member as they apply to any other member, and references in this schedule to a member of the Board are to be read accordingly.

#### *Conflicts of interest*

- 12 (1) Sub-paragraph (2) applies where the Chairing Member is satisfied that a member of the Board (“the ineligible member”) is unable by reason of a conflict of interest to take part in the Board's consideration of a particular appointment (“the appointment concerned”).
- (2) The Chairing Member may—
  - (a) where the ineligible member is a judicial member, request that the Lord President appoint an individual to be a substitute member of the Board,
  - (b) where the ineligible member is a legal or lay member, request that the Scottish Ministers appoint an individual to be a substitute member of the Board.
- (3) On receipt of a request under sub-paragraph (2), the Lord President or, as the case may be, the Scottish Ministers may, if satisfied that it is necessary for the carrying out by the Board of its functions in relation to the appointment concerned, appoint an individual to be a substitute member to take the place of the ineligible member for the purposes of that appointment.
- (4) An individual appointed by the Lord President under sub-paragraph (3) must fall within the same judicial membership category as that under which the ineligible member was appointed.
- (5) An individual appointed by the Scottish Ministers under sub-paragraph (3)—
  - (a) where the ineligible member is a legal member, must fall within the same legal membership category as that under which the substituted member was appointed,
  - (b) where the ineligible member is a lay member, must be qualified for appointment as a lay member.

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- (6) The appointment of a substitute member under sub-paragraph (3) in relation to the appointment concerned does not prevent the ineligible member from taking part in the Board's consideration of any other appointment.
- (7) A substitute member is not to be counted as a member for the purposes of paragraph 4(1).
- (8) A substitute member's appointment ceases on the conclusion of the Board's consideration of the appointment concerned.
- (9) Otherwise, the provisions of this schedule apply to a substitute member as they apply to any other member, and references in this schedule to a member of the Board are to be read accordingly.

*Fees and expenses*

- 13 (1) Each member of the Board is entitled to such fees and expenses, if any, as the Scottish Ministers may determine.
- (2) It is for the Scottish Ministers to pay those fees and expenses.
- (3) The Scottish Ministers may determine different fees and expenses for different members.

*Administrative support*

- 14 (1) The Scottish Ministers must provide, or ensure the provision of, such staff, property and services as they consider the Board requires for the purpose of carrying out its functions.
- (2) Reference to “services” in sub-paragraph (1) includes, in particular, the appointment of a person—
  - (a) as an independent observer of the Board's procedures, or
  - (b) to provide the Board with advice.
- (3) The Scottish Ministers must consult the Board as to the staff, property and services it requires for the purpose of carrying out its functions.

*Procedure*

- 15 (1) The Board may determine its own procedure (including the number of members required to constitute a quorum).
- (2) However, the Chairing Member is not to have a casting vote.

*Committees and delegation*

- 16 (1) The Board may establish committees and may delegate the carrying out of any of its functions to a committee.
- (2) Sub-paragraph (1) does not affect the Board's responsibility for the carrying out of its functions.

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### *Validity of proceedings*

- 17 The validity of any proceedings or actings of the Board is not affected by—
- (a) any vacancy in the membership of the Board,
  - (b) any defect in the appointment of a member of the Board, or
  - (c) disqualification of any person from holding office as a member of the Board.

### *Board to fall within remit of Commissioner for Public Appointments in Scotland*

- 18 (1) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (which lists the authorities appointments to which are subject to the remit of the Commissioner for Public Appointments in Scotland), under the heading “Advisory bodies”, insert, at the appropriate place in alphabetical order— “ Judicial Appointments Board for Scotland ”.
- (2) If the code of practice published under section 2 of that Act contains provision of the kind described in sub-paragraph (3), that provision does not apply in relation to the making by the Scottish Ministers of an appointment to the Board.
- (3) That is provision which has the effect of requiring that there be included among the members of any selection panel constituted for the purpose of considering candidates for the appointment a person falling within any of sub-paragraphs (a) to (f) of paragraph 5 of this schedule.

### *Code of conduct for members*

- 19 In the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), in schedule 3 (which lists the devolved public bodies required to produce a code of conduct for their members under that Act), insert, at the appropriate place in alphabetical order — “ The Judicial Appointments Board for Scotland ”.

### *Maladministration*

- 20 (1) In the Scottish Public Services Ombudsman Act 2002 (asp 11), in schedule 2 (which lists the authorities subject to investigation under that Act), in Part 2 (entries amendable by Order in Council), after paragraph 25 insert—
- “25A The Judicial Appointments Board for Scotland.”.
- (2) The Board must make such arrangements as it considers appropriate for the investigation by it of any complaints of maladministration made to it by an individual concerning the manner in which the Board has carried out its functions in relation to the individual.
- (3) The Board must take reasonable steps to ensure that any individuals in relation to whom it carries out functions are made aware of the arrangements made under sub-paragraph (2).

### *Freedom of information*

- 21 In the Freedom of Information (Scotland) Act 2002 (asp 13), in schedule 1 (which lists the Scottish public authorities subject to that Act), in Part 7 (other authorities), before paragraph 69 insert—
- “68A The Judicial Appointments Board for Scotland”.

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*Transitional provision: constitution of the first Board*

- 22 (1) The first members of the Board are to be those persons who are members of the existing Judicial Appointments Board on the coming into force of this schedule.
- (2) The first Chairing Member of the Board is to be the person who chairs the existing Judicial Appointments Board on the coming into force of this schedule.
- (3) In sub-paragraphs (1) and (2), “the existing Judicial Appointments Board” means the administrative body established by the Scottish Ministers known as the Judicial Appointments Board for Scotland.



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