



House of Commons

Committee on the  
Lord Chancellor's Department

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# **Judicial Appointments: lessons from the Scottish experience**

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**Second Report of Session 2002–03**





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*Report, together with formal minutes and  
appendices*

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## Summary

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This Report follows the Committee's recent visit to Edinburgh, where it held discussions with a number of interested parties on the Scottish experience of an independent judicial appointments board. The aim of the Report is to highlight the main issues which arose in the course of our discussions. At this stage, in advance of the Government's consultation paper on the establishment of an independent judicial appointments commission, we make no specific recommendations about how those issues should be addressed.

Our general impression was that the Judicial Appointments Board had settled down well, and was seen as successful even by those who had initial reservations about its creation or its structure.

The main issues which arose were as follows:

- The importance of independence, and the perception of independence, both in the Board itself and in the appointments it makes
- The need for a degree of accountability for the functioning of the system, and the balance to be struck between accountability and independence
- The perceived importance of setting the Commission on a statutory footing, and the matter of what guidance should be given to the Commission and what status that guidance should have
- How the Commission should be funded
- The importance of openness and transparency both in judicial appointments and appointments to the Commission itself
- The appropriate makeup of the Commission in terms of the balance between legal and lay representation, and the role to be played by the lay members
- The appropriate length of tenure of Commission members
- How long after leaving the Commission former members should themselves remain ineligible for judicial appointment
- The mechanism for appointment once the Commission has made a decision on the suitability of candidates
- Whether the most senior judicial appointments should be subject to the same procedures (at present in Scotland they are not)
- The tier of the judiciary at which appointments should begin to be made by the Commission, whether tribunal appointments will be included, and whether a series of regional commissions will be necessary

- The procedures for conducting the appointment process, for example:
  - whether there should be an annual round of appointments at certain levels
  - whether the Commission should be able to invite applications from those who might not otherwise apply
  - if the Commission is not itself to be the appointing authority, how its recommendations should be presented to the Minister
  - whether the full Commission, or most of its members, will themselves conduct the interviews of candidates at all levels of judicial appointments, as is the practice in Scotland
  - the treatment of unsuccessful candidates nevertheless assessed as suitable for appointment in subsequent appointment rounds
- The extent to which the Board should be able to decide its own assessment procedures.
- The extent to which the new appointments system could achieve greater diversity in the gender and ethnic background of the judiciary, and the extent to which this was dependent on widening access to and career development in the legal profession generally.

# 1 Introduction

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## Background to this Report

1. On 16<sup>th</sup> and 17<sup>th</sup> June this year we undertook a visit to Edinburgh to discuss the Scottish experience of an independent system for the appointment of judges. The visit followed the Prime Minister's announcement the previous week of the abolition of the post of Lord Chancellor and the establishment of an independent judicial appointments commission.<sup>1</sup>

2. In the course of our visit we held discussions with a number of individuals and organisations:

- the Chairman and the members of the Judicial Appointments Board itself
- the Lord President of the Court of Session, Lord Cullen
- members of the two Justice Committees of the Scottish Parliament
- Rt Hon Jim Wallace QC MSP, Deputy First Minister and former Minister of Justice in the Scottish Executive
- the Head of the Justice Department and the Head of the Judicial Appointments and Finance Division, Scottish Executive Justice Department
- the Vice-Dean and Treasurer of the Faculty of Advocates
- the Vice-President, the Director, Professional Practice, and the Director, Law Reform, Law Society of Scotland
- the Chair of the Scottish Human Rights Centre.

We are very grateful to all of those who gave their time to speak to us.

3. Discussions on the Scottish experience of an independent Judicial Appointments Board threw up a number of issues which we consider to be of relevance to consideration of an independent judicial appointments system for England and Wales. It was clear from our meetings that no discussions have yet been held between the UK Government and those in Scotland who have been involved in the system there about the lessons to be learnt from their experience. We have therefore set out the views expressed to us during our visit, and sought to identify some of the issues which will need to be addressed if this system was applied to England and Wales. At this stage, in advance of the Government's consultation paper, we make no specific recommendations about how to do so.

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<sup>1</sup> *Modernising Government - Lord Falconer appointed Secretary of State for Constitutional Affairs*, 10 Downing St press notice, 12/06/03

## The Judicial Appointments Board for Scotland

### *History*

4. In September 1999, the Scottish Ministers set out their commitment to consulting on the system of judicial appointments in *A Programme for Government*. In the summer of 2000, a public consultation exercise was carried out under the auspices of the Scottish Executive consultation paper, *Judicial Appointments: An Inclusive Approach*.

5. Responses to the consultation paper demonstrated substantial support for the creation of an independent Judicial Appointments Board and, in March 2001, the Justice Minister, Jim Wallace, announced the setting up of such a Board to create more open and accessible arrangements for judicial appointments in Scotland.

6. The Board began its work in June 2002 under the Chairmanship of Sir Neil McIntosh CBE.

### *Remit*

7. The remit of the Judicial Appointments Board for Scotland is:

- to provide the First Minister with a list of candidates recommended for appointment to the offices of Judge of the Court of Session, 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 which they serve
- to undertake the recruitment and assessment process in an efficient and effective way.

### *Judicial appointments with which the Board is not concerned*

8. Different arrangements apply to the appointment of the Lord President of the Court of Session and the Lord Justice Clerk (the two most senior judicial posts in Scotland). Under section 95 of the Scotland Act 1998 it is for the Prime Minister to recommend to Her Majesty the appointment of people to these most senior offices. The Prime Minister cannot recommend someone who has not been nominated by the First Minister of the Scottish Executive for such appointment. Before the First Minister gives his advice he in turn must consult the serving Lord President and the serving Lord Justice Clerk where both are still in post. It is not currently envisaged that the Board will have a role in this process, and any change in the process would require amendment by Westminster of the 1998 Scotland Act.

9. The Board is not involved in the appointment of justices of the peace in Scotland. Nor does it have any role in respect of Scottish members either of the Appellate Committee of the House of Lords or of the Judicial Committee of the Privy Council.

### **Judicial discipline**

10. The Judicial Appointments Board for Scotland has no role in relation to the discipline or removal of judges.

### **Principles**

11. The Board describes itself as committed to the principles of appointment on merit and to the well-informed choice of individuals who, through their abilities, experience and qualities, match the requirements of the post. Successful candidates will be those who appear to be best qualified, regardless of gender, ethnic background, marital status, sexual orientation, political affiliation, religion or disability, except where the disability prevents the fulfilment of the physical requirements of the office and reasonable adjustment cannot be made.<sup>2</sup>

12. Scottish Ministers have given the Board the task of establishing its own working arrangements, but have given it guidance that procedures should include that:

- vacancies are publicly advertised
- all eligible applicants must be considered
- applicants should be considered against objective criteria
- legally qualified members must be satisfied that any candidate to be recommended for appointment has the requisite professional competence for the post
- candidates must be recommended on merit
- no candidate should be recommended without having been interviewed
- Ministers are provided with a written report on all competitions and that candidates interviewed should be reported on
- feedback is provided to applicants, if requested, although it is for the Board to decide the method and extent of feedback given to applicants.

### **Other matters**

13. The Board also acknowledges a number of other considerations:<sup>3</sup>

- **Equal opportunities:** The Board maintains statistical data on all applicants, with particular reference to gender, ethnic background and disability, to assist with the monitoring of diversity in the judicial appointments process. This is done in such a way as to preserve confidentiality of applicants.
- **Confidentiality:** The proceedings of the Board with regard to individual applicants are entirely confidential. Information provided by applicants and their referees are not

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<sup>2</sup> Judicial Appointments Board for Scotland website, [www.judicialappointmentscotland.gov.uk](http://www.judicialappointmentscotland.gov.uk).

<sup>3</sup> *ibid*

disclosed and only the names of those candidates appointed to judicial office are made public.

- **Conflict of interest:** Board members may not act as referees for candidates and do not participate in the selection process where there may be a conflict of interest. Further, whilst holding appointment, Board members are not eligible for consideration for judicial appointment.

14. A list of the Chairman and Members of the Board, together with brief biographies, may be found at Appendix 1. Appendix 2 lists the criteria applied by the Board when recommending candidates for appointment.

## 2 Lessons from the Scottish experience

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15. **Our general impression was that the Judicial Appointments Board had settled down well, and was seen as successful even by those who had initial reservations about its creation or its structure.** It was also particularly welcomed by those who regarded the old system of appointment as too open to political influence, too secretive, or too dominated by those practising in Edinburgh.

### **Independence vs accountability**

16. **All those we met during our visit stressed the vital importance of independence, and of the perception of independence, in the recommendations for appointment made by the Board. They also stressed the importance of the independence, and again perception of independence, of Board members themselves. Just as public confidence in the judicial system depends on the impartiality of the judiciary, so public confidence in the judicial appointments system depends on the impartiality of the Board.**

17. **At the same time, however, the need for a degree of accountability for the operation of the system as a whole was also recognised.** It was generally agreed by those to whom we spoke that it was not possible to remove the hand of the Executive entirely from the judicial appointments system. Appointments are made under the authority of the Crown, on the advice of the Executive's First Minister, and there is no other obvious source of authority short of a system in which judges are elected (which raises many other issues). Moreover, responsibility for the overall efficiency of the justice system continues to rest with Ministers. **In consideration of a judicial appointments commission, decisions will have to be made in a number of crucial areas about precisely how the balance between independence and accountability can best be struck.**

### ***Necessity of placing the Board/Commission on a statutory footing***

18. **It was generally agreed, for instance, that the independence of the Board/Commission could only be truly enshrined if it is put on a statutory footing.** At present, the Scottish Board is an administrative construct, created and sustained by the Executive. The flexibility allowed by its initial status as an administratively-created advisory body has allowed it a certain amount of latitude to determine its own working methods and procedures, which might not have been possible had it been on a statutory basis from the start. Nonetheless, the members of the Scottish Board whom we met were quite clear, as were the majority of our other interlocutors, that the Board should be set on a statutory basis in order to enshrine its independence. However well the system might be considered to be working without legislation, it was considered essential that legislation be brought forward as soon as possible to set the board on a statutory footing.

### ***Provision of guidance to the Commission***

19. **When legislation establishing a Commission is brought forward, however, decisions will have to be made about what guidance should be provided to it on the performance of its functions, and what status that guidance should have.** If it is felt, for example, that

the appointments system should aim to produce a judiciary “more reflective of society”, as is the declared intention in Scotland, should the responsible Minister issue guidance as such, or leave the matter entirely to the discretion of the Commission? If he is to issue guidance, should it be statutory guidance? If so, what Parliamentary involvement should there be in the issuing of that guidance? Guidance has been issued to the Scottish Board, but it is of course currently non-statutory; it was described to us as “essentially a compendium of best recruitment practice”.

### ***Funding***

**20. Issues of independence and accountability also arose in consideration of the funding of the Board.** Opinion amongst those to whom we spoke was divided on this issue. Some felt that maximum independence should be secured by the “top-slicing” of a sum for the running of the Board to be determined by someone other than the Executive, in a similar way to Audit Scotland (the Scottish equivalent of the National Audit Office). Others believed that considerations of accountability dictated that Ministers should be directly responsible for ensuring that the Board was sufficiently well-resourced. **These matters will be equally relevant to the establishment of a Commission.**

### ***Openness and transparency***

**21. Crucial to both independence and accountability, however, are openness and transparency.** Naturally the confidentiality of individual applicants must be respected, but with that caveat it was agreed that **procedures both for appointment of the judiciary and for appointment to the Board/Commission should be as open and as transparent as possible.**

## **Composition of the Board**

### ***Balance of legal and lay representation***

**22.** The Judicial Appointments Board for Scotland is unusual amongst similar bodies internationally, we were told, in that it does not contain a majority of legal members. The Board has a lay Chairman and four other members, balanced by five legal members drawn from both the judiciary and legal practitioners. Whilst there were initial concerns about the degree of lay representation, and some continued to believe that there should be a majority drawn from the legal profession, no-one to whom we spoke felt that the Board with its current makeup had not worked well in practice. Indeed, there was general acknowledgement that the lay members—who had significant personnel and recruitment expertise—had brought a great deal of value to the appointment process. We were told that discussions on candidates did not result in divisions of opinion in which the professional and lay members were ranged on opposite sides.

**23. Views will need to be sought about the appropriate makeup of the Commission.** One argument against the presence of a majority from the legal profession is that a Commission dominated by the judiciary and lawyers might produce a self-perpetuating judicial oligarchy, hindering attempts to make the judiciary more reflective of society as a whole. Among the arguments against the presence of a majority of non-legal appointees is

the risk that the Commission might become dominated by political placemen or women, appointed by the Minister to ensure the appointment in turn of judges of their preferred political persuasion or philosophical tradition. Consideration will also need to be given to what the lay membership will be expected to bring to the Commission.

### ***Appointment of individual members***

24. This leads to the question of how the individual membership of the Board should be determined. Almost inevitably the relevant Minister must have ultimate responsibility for appointment to the Commission. **The view expressed to us in Scotland, however, was that it was vitally important that all members, legal and lay, should be seen to be politically independent as well as of the highest possible calibre. How this can best be achieved will be a further matter for debate.**

25. The initial appointments of lay members to the Scottish Board were of people of proven ability and experience who had no record of active involvement in politics. The question arises as to whether it will always be possible or desirable to exclude people who have known political views, and how, if they were not excluded, it would be possible to ensure a balance of opinion. The insistence on “non-political” lay members was seen to be important in Scotland, which has a relatively recent history of political appointments to judicial and legal posts, and seems to have been a significant factor in achieving recognition that the Board is completely independent.

26. Another question which arose in the course of our discussions was whether legal members might themselves be elected by their representative bodies. The Scottish Board contains the Dean of Faculty and a former president of the Law Society. Both were “preferred candidates” of their respective organisations, but both had been appointed through the same procedure as other members. **Opinion was divided as to whether independence was better secured through “caucus” nomination as described above, thus removing the power of appointment from the Executive, or through fair and open competition amongst all candidates for appointment to the Board in each category.**

### ***Tenure***

27. Another issue relating to the independence of the Board/Commission is that of the nature and length of tenure of its members. It was felt that appointees should have security of tenure, to avoid the risk of their removal if they make the “wrong” appointments. It was also felt, however, that appointment should not be indefinite, as this would risk the stagnation of the appointments process. **Views will need to be sought on the appropriate length of tenure of Commission members, as well as whether appointments should be renewable. The desirability of staggering appointments to the Commission, to ensure continuity, should also be considered.**

### ***Conflicts of interest***

28. Whilst the presence on the Scottish Board of practising lawyers was considered essential, it also raised two further issues. **The first is the necessity, accepted by Board members, that they withdraw from an appointment process if there is any risk of a**

conflict of interest—for example, if a close colleague, friend or family member applies for appointment. The second is the possibility that Board members might themselves be suitable for judicial appointment. Board members are considered ineligible for appointment whilst they are on the Board. The question arises of how long after a person ceases to be a member he or she should remain ineligible, given that it would probably be some time before there were any number of Board/Commission members who had not worked closely with the applicant and would not therefore rule themselves out from considering the application.

### ***Appointments to be made by the Commission***

29. The Judicial Appointments Board for Scotland does not have the power to make appointments itself. Rather, its role is to make recommendations to the First Minister, which it does by placing recommended candidates in a ranked order; the First Minister then makes the final decision. That decision is only made after consultation with the Lord President of the Court of Session. We were told that the Minister had on every occasion so far accepted the advice of the Board. We were also told that the Lord President had not so far had occasion to advise against a recommendation of the Judicial Appointments Board (JAB), which he would have done if he had considered that there was a fundamental objection to the recommended person which the JAB had overlooked or under-estimated.

30. Scotland is, however, constrained by the terms of the Scotland Act, which provides that judicial appointments are to be made by the First Minister (after consultation with the Lord President of the Court of Session).<sup>4</sup> No such constraints need necessarily apply to the body to be established for appointments in England and Wales.

31. **A number of questions arise:**

- **should the Commission be responsible for making appointments, or for recommending candidates for appointment to a Minister?** (We note that the press notice announcing the creation of an independent commission referred to the commission being given the role “to recommend candidates for appointment as judges”, implying that the Government was intending that the final decision on who should be recommended to the Queen should remain with Ministers<sup>5</sup>)
- **should the Commission be responsible for all appointments, or should any senior appointments fall outside its remit?**
- **if any senior appointments (for example, appointments to the proposed Supreme Court or of the head of the judiciary) were to be excluded, how should those appointments be made?**
- **what role would there be in the process for the head of the judiciary (assuming that the head of the judiciary is not him or herself to be a member of the Commission)?**

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<sup>4</sup> See also para 8 above.

<sup>5</sup> *op cit*

32. Depending on the level of seniority of appointment at which the Commission will be expected to operate, the Government will also wish to consider what, if any, implications the creation of a judicial appointments commission will have for the arrangements for judicial appointments in Scotland enshrined in the Scotland Act. The Government will also need to consider the implications for appointments to the proposed Supreme Court (to which Scottish civil cases may be brought on appeal) and to the Judicial Committee of the Privy Council, which rules on devolution matters.

33. Another question to be considered is that of the tier of the judiciary at which appointments should begin to be made by the Commission. The Judicial Appointments Board for Scotland makes recommendations for appointment at every level except the two most senior posts. Scotland, however, is a small enough jurisdiction to make this possible. A different and more extended structure would be required for England and Wales. If regional commissions were set up, that would raise further questions, such as whether the membership of such commissions should be drawn from within or outside the region concerned. If the Commission takes over responsibility for appointments of justices of the peace and of adjudicators and tribunal chairmen currently appointed by the Lord Chancellor, a significantly larger administrative structure will need to be brought within the Commission.

### Procedures for assessment of suitability for appointment

34. The Judicial Appointments Board for Scotland advertises openly for candidates, as and when a vacancy arises. It does not have the power to invite applications from those who might not otherwise have applied. All Members of the Board are directly involved with the interviewing of candidates. Its recommendations are presented to the Minister in the form of a ranked list of those considered suitable for appointment. That way there is some flexibility to make appointments from lower-ranked candidates should further vacancies arise during the process.

35. Once again, a number of points arise:

- is it appropriate to advertise for each vacancy, or should there be an annual round of interviews for appointments at certain levels?
- if there is to be an annual round, to which appointments should that annual round apply (recognising that some more senior vacancies, for example, will arise only irregularly)?
- should the Commission have the power to invite applications from those who might not otherwise apply?
- if the Commission itself is not to be the appointing authority, how should its recommendations be presented to the Minister:
  - a single “take it or leave it” option for each vacancy
  - a ranked list of suitable candidates (as is the case with the Scottish Board)
  - a “pool” of suitable candidates from which the Minister may choose?

- **how should unsuccessful candidates nevertheless assessed as suitable for appointment be treated? Should there be a period of time within which those candidates should not have to undergo the interview procedure again should further suitable vacancies arise, and if so, how long should that period be?**

36. Decisions will also have to be made about the procedures which the Commission will use to assess candidates. The Scottish Board presently uses a “classic” process of shortlist and interview. The importance of ensuring as many members as possible of the Board were involved in the interview process was emphasised. However, we were also told that the Board was aware of the assessment centre procedures used in England and Wales, and that it would give some thought to them when developing its own processes and procedures. **The question arises of the extent to which the Commission should be able to decide its own assessment procedures, independently of Ministers or of its enabling legislation. The size of the Commission and the terms of appointment of its members will also have to be considered in the light of the number of appointments which will have to be made and the desirability of ensuring that the Commission is able to make collective decisions in which all members have been directly involved.**

## **Diversity**

37. The Board recognised the need to increase diversity in the experience, gender balance and ethnic background of judicial office holders. There was some evidence that the establishment of the Board had already opened up the appointments process to some extent, for example in attracting applications from more practitioners based outside Edinburgh. Many of our interlocutors, however, expressed the opinion that the appointments which had been made so far were not very greatly different from those which might have been made under the previous system. It was recognised that the “pool” of applicants from which judicial appointments were made was reflective of the historic makeup of entrants to the legal profession. Efforts were therefore required to increase diversity not merely among judicial appointments, but among entrants to the legal profession as a whole. Given the proportionately larger ethnic minority population in England and Wales compared to that in Scotland, this is an issue which will assume even greater importance when considering arrangements for this part of the United Kingdom.

# Conclusions

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## The Judicial Appointments Board for Scotland

1. Our general impression was that the Judicial Appointments Board had settled down well, and was seen as successful even by those who had initial reservations about its creation or its structure. (Paragraph 15)

## Independence vs accountability

2. All those we met during our visit stressed the vital importance of independence, and of the perception of independence, in the recommendations for appointment made by the Board. They also stressed the importance of the independence, and again perception of independence, of Board members themselves. Just as public confidence in the judicial system depends on the impartiality of the judiciary, so public confidence in the judicial appointments system depends on the impartiality of the Board. (Paragraph 16)
3. At the same time, however, the need for a degree of accountability for the operation of the system as a whole was also recognised. In consideration of a judicial appointments commission, decisions will have to be made in a number of crucial areas about precisely how the balance between independence and accountability can best be struck. (Paragraph 17)
4. It was generally agreed, for instance, that the independence of the Board/Commission could only be truly enshrined if it is put on a statutory footing. (Paragraph 18)
5. When legislation establishing a Commission is brought forward, decisions will have to be made about what guidance should be provided to it on the performance of its functions, and what status that guidance should have. (Paragraph 19)
6. Issues of independence and accountability also arose in consideration of the funding of the Board: these matters will be equally relevant to the establishment of a Commission. (Paragraph 20)
7. Crucial to both independence and accountability, however, are openness and transparency. Procedures both for appointment of the judiciary and for appointment to the Board/Commission should be as open and as transparent as possible. (Paragraph 21)

## Composition of the Board

8. Views will need to be sought about the appropriate makeup of the Commission. (Paragraph 23)
9. The view expressed to us in Scotland, however, was that it was vitally important that all members, legal and lay, should be seen to be politically independent as well as of

the highest possible calibre. How this can best be achieved will be a further matter for debate. (Paragraph 24)

10. Opinion was divided as to whether independence was better secured through “caucus” nomination as described above, thus removing the power of appointment from the Executive, or through fair and open competition amongst all candidates for appointment to the Board in each category. (Paragraph 26)
11. Views will need to be sought on the appropriate length of tenure of Commission members, as well as whether appointments should be renewable. The desirability of staggering appointments to the Commission, to ensure continuity, should also be considered. (Paragraph 27)
12. Whilst the presence on the Scottish Board of practising lawyers was considered essential, it also raised two further issues. The first is the necessity, accepted by Board members, that they withdraw from an appointment process if there is any risk of a conflict of interest—for example, if a close colleague, friend or family member applies for appointment. The second is the possibility that Board members might themselves be suitable for judicial appointment. Board members are considered ineligible for appointment whilst they are on the Board. The question arises of how long after a person ceases to be a member he or she should remain ineligible, given that it would probably be some time before there were any number of Board/Commission members who had not worked closely with the applicant and would not therefore rule themselves out from considering the application. (Paragraph 28)
13. A number of questions arise in relation to the issue of the appointments to be made by the Commission:
  - should the Commission be responsible for making appointments, or for recommending candidates for appointment to a Minister?
  - should the Commission be responsible for all appointments, or should any senior appointments fall outside its remit?
  - if any senior appointments (for example, appointments to the proposed Supreme Court or of the head of the judiciary) were to be excluded, how should those appointments be made?
  - what role would there be in the process for the head of the judiciary (assuming that the head of the judiciary is not him or herself to be a member of the Commission)? (Paragraph 31)
14. Depending on the level of seniority of appointment at which the Commission will be expected to operate, the Government will also wish to consider what, if any, implications the creation of a judicial appointments commission will have for the arrangements for judicial appointments in Scotland enshrined in the Scotland Act. The Government will also need to consider the implications for appointments to the proposed Supreme Court (to which Scottish civil cases may be brought on appeal)

and to the Judicial Committee of the Privy Council, which rules on devolution matters. (Paragraph 32)

15. Another question to be considered is that of the tier of the judiciary at which appointments should begin to be made by the Commission. A different and more extended structure would be required for England and Wales, which is a far larger jurisdiction than Scotland. If regional commissions were set up, that would raise further questions, such as whether the membership of such commissions should be drawn from within or outside the region concerned. If the Commission takes over responsibility for appointments of justices of the peace and of adjudicators and tribunal chairmen currently appointed by the Lord Chancellor, a significantly larger administrative structure will need to be brought within the Commission. (Paragraph 33)

### Procedures for assessment of suitability for appointment

16. A number of points arise:
- is it appropriate to advertise for each vacancy, or should there be an annual round of interviews for appointments at certain levels?
  - if there is to be an annual round, to which appointments should that annual round apply (recognising that some more senior vacancies, for example, will arise only irregularly)?
  - should the Commission have the power to invite applications from those who might not otherwise apply?
  - if the Commission itself is not to be the appointing authority, how should its recommendations be presented to the Minister:
    - a single “take it or leave it” option for each vacancy
    - a ranked list of suitable candidates (as is the case with the Scottish Board)
    - a “pool” of suitable candidates from which the Minister may choose?
  - how should unsuccessful candidates nevertheless assessed as suitable for appointment be treated? Should there be a period of time within which those candidates should not have to undergo the interview procedure again should further suitable vacancies arise, and if so, how long should that period be? (Paragraph 35)
17. The question arises of the extent to which the Commission should be able to decide its own assessment procedures, independently of Ministers or of its enabling legislation. The size of the Commission and the terms of appointment of its members will also have to be considered in the light of the number of appointments which will have to be made and the desirability of ensuring that the Commission is able to make collective decisions in which all members have been directly involved. (Paragraph 36)

## Appendix 1: Membership of the Judicial Appointments Board for Scotland<sup>6</sup>

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 and current membership of the UK Electoral Commission, Trustee of the National Museums of Scotland and Scottish Adviser to the Joseph Rowntree Foundation. He received a knighthood in 2000.

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

Mrs Duffner is head of Personnel North, Royal Mail (covering Scotland, Northern Ireland and the North of England). Her whole career has been with the Royal Mail and she has a wide experience in strategic planning, organisational development and change, line management, personnel, and 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, membership of the Welfare to Work Task Force in Scotland and of the Qualifications Committee of the QCA in England. Mrs Duffner was chair of the Careers Service Review from November 1999 to October 2000.

#### **Sir Robert Smith**

Sir Robert is Chairman of The Weir Group plc and is BBC National Governor for Scotland. He is currently on the board of the British Council, Network Rail and Aegon UK and is a member of the Financial Reporting Council. He has held appointment at Chief Executive and Chairman level of several commercial companies, most recently the Vice Chairmanship of Deutsche Asset Management and Chief Executive of Morgan Grenfell Asset Management. He received a knighthood in 1999.

Other public appointments include Chairman of the Board of Trustees of the National Museums of Scotland (1993–2002), Past President of the Institute of Chartered Accountants of Scotland (1996–97), Member of the Financial Services Authority 1997–2000), Commissioner (1988–1998) and Vice Chairman (1997–1998) of the Museums and Galleries Commission.

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<sup>6</sup> Taken from the website of the Judicial Appointments Board for Scotland, [www.judicialappointmentscotland.gov.uk](http://www.judicialappointmentscotland.gov.uk).

### **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, Law Faculty, Edinburgh University from 1975–1984.

He has held a number of other public appointments and most recently became 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.

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 1981–1988. She was awarded CBE in 2001 for services to higher education.

A number of other public appointments held include Vice Convener, Universities Scotland, Scottish Commissioner for the Equal Opportunities Commission (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 Organisation (SCVO).

## ***Legal Members***

### **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 and is currently a member of the Council of that body.

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.

### **Colin Campbell QC**

Colin Campbell was admitted to the Bar in 1977 and took Silk in 1990. He was elected Dean of the Faculty of Advocates in October 2001. Before that he was Vice-Dean of the Faculty for 4 years and a part-time member of the Mental Welfare Commission for Scotland from 1997–2001.

Earlier in his career Mr Campbell lectured in the Scottish Law Department of the University of Edinburgh and was Standing Junior Counsel to the Scottish Development Department.

**The Rt Hon Lord MacLean**

Lord MacLean was admitted to the Faculty of Advocates in 1964 and took Silk in 1977. He was appointed Senator of the College of Justice in 1990 and was elevated to Inner House Judge and appointed to the Privy Council in April 2001.

Whilst a practising Advocate, Lord MacLean was Standing Junior Counsel to the Health and Safety Executive (Scotland) 1975–77 and Home Advocate Depute from 1979–1982.

Other public appointments held include Chairman of the Committee on Serious, Violent and Sexual Offenders 1999–2000, Member of the Parole Board for Scotland 1998–2000 and Chairman of Governors, Fettes College from 1996.

**Sheriff Principal Bruce Kerr QC**

Sheriff Principal Kerr was appointed Sheriff Principal of North Strathclyde on 1 January 1999. He began his career as an Advocate and was admitted to the Faculty of Advocates on 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 he was Standing Junior Counsel to the Home Office in Scotland (1982–1985) and was Advocate Depute from 1986–1989.

**Sheriff Douglas Allan**

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 is a Board member and Deputy Chairman of the Scottish Children's Reporter Administration.

## Appendix 2: Judicial Appointments Board for Scotland— Criteria for Judicial Appointment<sup>7</sup>

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;
- 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;

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<sup>7</sup> Taken from the website of the Judicial Appointments Board for Scotland, [www.judicialappointmentscotland.gov.uk](http://www.judicialappointmentscotland.gov.uk).

- 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.

# Formal minutes

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**Tuesday 1 July 2003**

Members present:

Mr A J Beith, in the Chair

Mr Peter Bottomley  
Mr James Clappison  
Ross Cranston  
Mrs Ann Cryer

Mr Jim Cunningham  
Mr Mark Field  
Mr Clive Soley  
Keith Vaz

The Committee deliberated.

Ross Cranston declared a pecuniary interest as a holder of a renewable judicial appointment, and withdrew.

Draft Report [Judicial Appointments: lessons from the Scottish experience], proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 37 read and agreed to.

Conclusions read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the House.

Two papers were ordered to be appended to the Report.

*Ordered*, That the Appendices to the Report be reported to the House.

*Ordered*, That the provisions of Standing Order No 134 (Select Committees (Reports)) be applied to the Report.

[Adjourned till Tuesday 8 July at 3.00pm]