Written submission from the Judicial Appointments Board for Scotland

Purpose

1. The Judicial Appointments Board for Scotland (JABS) is responding to the Justice Committee’s call for written views on the Courts Reform (Scotland) Bill.

2. The Board wishes to restrict its views to the Section in the Bill relating to the creation of a new judicial office of ‘summary sheriff’ and the transfer of the Scottish Tribunal Service into the Scottish Court Service.

Creation of a new judicial office of ‘summary sheriff’ to cover a more restricted range of civil and criminal matters

3. The Board has noted that the draft Bill proposes to amend the Judiciary and Courts (Scotland) at 2008 to extend the Boards remit to include office of summary sheriff and office of part-time summary sheriff.

4. The Board acknowledges that the creation of these new judicial offices may help to encourage diversity in the range of applicants that may apply and is encouraged to read in the Bill that salaried part-time working is being explored with recognition that in the future there may be more salaried judicial officers who work part-time (rather than working on a daily, fee paid basis).

5. The Board noted that - the policy on qualification is to retain the approach in section 5 of the 1971 Act. It will be the same for all of the judicial offices in the sheriff court, including the new offices of summary sheriff and part-time summary sheriff – either the appointee must have held another judicial office or, on appointment, have been legally qualified for the previous ten years. It is expected that the summary sheriffs and part-time summary sheriffs will be recruited from the ranks of practitioners who have experience and expertise in the kinds of cases which will form the competence of summary sheriffs.

6. The Board in noting that the qualification will be the same for all judicial offices remains concerned about the distinctions between the two offices; Sheriff and Summary sheriff. It is keen to be involved in discussion on the skills and competencies required for summary sheriff bearing in mind the move to greater specialisation. The Board will need to consider carefully the breadth of specialist skills and ensure that its assessment processes are revised as necessary to address this development. To this end the Board has accepted an invitation to join the Implementation Working Group of the Judicial Structures Project. This project is part of Making Justice Work Programme. The Judicial Structures Project exists to assist the Lord President and Sheriffs Principal to implement the introduction of a new judicial tier, and other agreed changes to judicial structures in Scotland.
Transfer of the Tribunal Service into the Scottish Court Service to form one body – the Scottish Courts and Tribunals Service (SCTS).

7. The Board notes that the proposed new model will help support the independence of the members of the new tribunals created by the Tribunals (Scotland) Bill and would create a joint board chaired by the Lord President.

8. The Judiciary and Courts (Scotland) Act 2008 states that the Scottish Ministers must provide, or ensure provision of, such staff, property and services as they consider the Board requires for the purpose of carrying out its functions. The Act further provides that in carrying out its functions, the Board is not subject to the direction or control of any member of the Scottish Government or any other person. In the absence of any proposed change to the statute the Board assumes that these provisions will remain the same. It would therefore still be Scottish Ministers who would ultimately trigger Tribunal recruitment exercises and resource them, irrespective of whether administratively requests to run exercises initiated with the new Corporate Body, or resources were transferred by the Body directly to the Board. The Board would therefore welcome clarification that it would not be accountable to the new Corporate Body under the proposed arrangements.

9. The Committee will recollect that that the Board raised the issue of capacity to deliver on tribunal appointments during the Committee’s consideration of the Tribunals (Scotland) Bill. Essentially the Board were seeking a broadening of the co-opt provision in the Tribunals (Scotland) Bill which at present would allow only Tribunal members to be co-opted to sit on interview panels. In recent months the Board has met with the Minister for Community Safety and Legal Affairs, Roseanna Cunningham MSP, and Scottish Government officials to discuss the absence of a revised co-opt provision in the Tribunals (Scotland) Bill. The Board understands that the policy position of the Scottish Government is that tribunal and other judicial appointments should be treated consistently where possible and that any additional powers or resources would need to cover both categories of appointment. The Board therefore urge the Scottish Government to propose a Stage 2 Amendment to the Courts Reform (Scotland) Bill creating such a provision. At this stage it is not straightforward for the Board to describe exactly how, when and how frequently this provision would be used given the uncertainties about the timing of requests to the Board to run judicial and/or tribunal selection exercises in the future. But the Board would certainly welcome such a provision as it would greatly assist the Board in responding flexibly and timeously to such requests, particularly for exercises where a large number of applicants might be anticipated. A broader co-opt provision would also provide the Board with the flexibility available to comparable bodies in the rest of the UK where the integration of judicial and tribunal appointments has been operational for some time.

Sir Muir Russell
Chairing Member
13 March 2014