Written submission from the Judicial Appointments Board for Scotland

Purpose

1. The Judicial Appointments Board for Scotland (the Board) is responding to the Justice Committee’s call for evidence on the Tribunals (Scotland) Bill.

Rules relating to appointments/membership

2. The Board wishes to restrict its views to Section 75 schedule 9 part 2, in the Bill, *Consequential Modifications* which seeks amendment to the Judiciary and Courts (Scotland) Act 2008 to bring the tribunal appointments within the Board’s remit.

3. The Board's fundamental purpose is to secure that the process of judicial appointment in Scotland is independent, transparent and fair. It expresses its statement of these aims in the following terms, reflecting its statutory duties:

   - To attract applicants of the highest caliber, recognising the need to encourage diversity in the range of those available for selection, and
   - To recommend applicants for appointment to judicial office on merit through processes that are fair, transparent and command respect.

4. The Board’s understanding is that all tribunal appointments will be viewed as judicial regardless of whether the appointees are legally qualified. The Board welcomes the opportunity to be involved in Tribunal appointments, and proposes to adopt an approach that will uphold the continued independence of the judiciary. In particular, it welcomes the proposal that the Bill will introduce a common system for appointments to the Scottish Tribunals which will ensure that members have security of tenure and independence from the executive.

5. The Board notes however that the draft Bill does not propose that it should become involved in any re-appointments to tribunals. While recognising the element of pragmatism in this, in that, for example it may ease the burden of transition to the new system, the Board comments that it may delay by several years the practical effect of the change in the appointment process that the Bill is aiming to achieve. The alternative would be to have the Board oversee the re-appointments process. Any perceived benefit to the independence and transparency of re-appointments would have to be set against the resource implications for the Board.

6. Given the importance of what it is seeking to achieve, the Board offers for consideration the proposition that the relevant statutory provisions should be spelled out on the face of the Bill rather than by a complex series of amendments to the 2008 Act.
7. The Board notes and welcomes the following features of the draft Bill in extending to tribunal appointments the provisions of the Judiciary and Courts (Scotland) 2008:

- in carrying out these functions the Board is not subject to the direction or control of any member of the Scottish Executive or any other person.
- the selection of individuals to be recommended for tribunal appointments will be based solely on merit and with regard to encouraging diversity in the range of individuals available for selection.

8. The Board has considered how best to discharge the new statutory responsibilities that the Bill will bring. At present, for the appointments within its remit, its approach is that Board Members are involved directly in the process of sifting, interviewing and making recommendations. The Board’s view is that this would not be sustainable given the caseload of Tribunal appointments, so that the work would have to be delegated to panels, which might include Board members or might have Board members as supervisors or assessors to quality assure the process.

9. In the Board’s view, delivering this approach will require the following:

- a requirement for an increase of two in the Board membership (one lay and one legal member) and additional administrative support to cover the additional workload.
- the option to have tribunal appointment panels supplemented where appropriate with individuals with relevant professional experience or other qualities.
- the option, therefore, to co-opt from a pool of individuals approved to undertake interviewing on behalf of JABS. The Board is currently in correspondence with Scottish Government officials on the need for a provision in the Bill to allow the Board to co-opt specialist or independent panel members. The Board understands that the Government tribunals policy team are considering this issue and the Board further understands that the Scottish Government may seek an amendment at stage 2 of the Bill to include such a provision.

Sir Muir Russell
Chairing Member
22 July 2013