JUSTICE COMMITTEE

AGENDA

10th Meeting, 2020 (Session 5)

Tuesday 10 March 2020

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 8 in private.

2. **Subordinate legislation:** The Committee will take evidence on the Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020 [draft] and the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 from—


3. **Subordinate legislation:** Ash Denham (Minister for Community Safety) to move—

   - S5M-21023 That the Justice Committee recommends that the Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020 [draft] be approved.

   - S5M-21024 That the Justice Committee recommends that the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 [draft] be approved.

4. **Subordinate legislation:** The Committee will take evidence on the First-tier Tribunal for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020 [draft], the First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020 [draft], the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020 [draft] and the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 [draft] from—
Ash Denham, Minister for Community Safety, Paula Stevenson, Head of Devolved Tribunals, and Jo-Anne Tinto, Scottish Government Legal Directorate, Scottish Government.

5. **Subordinate legislation:** Ash Denham (Minister for Community Safety) to move—

   S5M-21025 That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020 [draft] be approved.

   S5M-21026 That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020 [draft] be approved.

   S5M-21027 That the Justice Committee recommends that the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020 [draft] be approved.

   S5M-21028 That the Justice Committee recommends that the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 [draft] be approved.

6. **Air Traffic Management and Unmanned Aircraft Bill (UK Parliament legislation):** The Committee will consider the legislative consent memorandum lodged by Humza Yousaf (Cabinet Secretary for Justice) (LCM(S5)34).

7. **Public petition PE1458:** The Committee will consider correspondence received in relation to petition PE1458.

8. **Work programme:** The Committee will consider a number of issues relating to the Scottish Police Authority.

   Stephen Imrie
   Clerk to the Justice Committee
   Room T2.60
   The Scottish Parliament
   Edinburgh
   Tel: 0131 348 5195
   Email: justiceCommittee@parliament.scot
The papers for this meeting are as follows—

**Agenda items 2 & 3**

Paper by the Clerk J/S5/20/10/1

**Agenda items 4 & 5**

Paper by the Clerk J/S5/20/10/2

**Agenda item 6**

Paper by the Clerk J/S5/20/10/3

**Agenda item 7**

Paper by the Clerk J/S5/20/10/4

**Agenda item 8**

PRIVATE PAPER J/S5/20/10/5 (P)
Justice Committee

10th Meeting, 2020 (Session 5), Tuesday 10 March 2020

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instruments:
   
   - Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020 [draft]
   
   - Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 [draft]

Introduction

2. The Scottish Courts and Tribunals Service (Judicial Members) (Amendment) Order 2020 [draft] is made under paragraph 2(5) of schedule 3 of the Judiciary and Courts (Scotland) Act 2008(a).

3. The purpose of the Order is to amend Paragraph 2(2)(e) of Schedule 3 to the Judiciary and Courts (Scotland) Act 2008 to provide that those holding the office of Summary Sheriff may now be appointed to the board of the Scottish Courts and Tribunals Service.

4. The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 [draft] are made under paragraph 3(2) and (3) of schedule 3 of the Judiciary and Courts (Scotland) Act 2008.

5. The purpose of the Regulations is to amend Paragraph (3)(a) of regulation 2 of The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015 to provide that those holding the office of Summary Sheriff may now be notified of relevant vacancies for members of the Scottish Courts and Tribunals Service.

6. Further details on the purpose of the instruments can be found in the policy notes attached in the Annex.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

7. The Delegated Powers and Law Reform Committee considered both instruments at its meeting on 25 February 2020 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.
JUSTICE COMMITTEE CONSIDERATION

8. The Justice Committee is required to report to the Parliament on both instruments by 29 March 2020. The Minister for Community Safety has lodged motions S5M-21023 and S5M-21024 proposing that the Committee recommends approval of the instruments. The Minister for Community Safety is due to attend the meeting on 10 March to answer any questions on the instruments and to move the motions for approval.

9. It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament by 29 March. Thereafter, the Parliament will be invited to approve the instruments.

10. The Committee is asked to delegate to the Convener authority to approve the report on the instruments for publication.
SCOTTISH COURTS AND TRIBUNALS SERVICE
SCTS BOARD MEMBERSHIP - SUMMARY SHERIFF REPRESENTATION

The Scottish Courts and Tribunals Service (Judicial Members) (Amendment) Order 2020

SSI 2020/xxx

The Scottish Ministers make the following Order in exercise of the powers conferred by paragraph 2(5) of schedule 3 of the Judiciary and Courts (Scotland) Act 2008(a) and all other powers enabling them to do so.

In accordance with paragraph 2(5) of schedule 3 of that Act, the Scottish Ministers have obtained the consent of the Lord President of the Court of Session.

In accordance with section 71(4) of that Act, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

The instrument is subject to affirmative procedure.

Purpose

The purpose of this instrument is to amend Paragraph 2(2)(e) of Schedule 3 to the Judiciary and Courts (Scotland) Act 2008 to provide that those holding the office of Summary Sheriff may now be appointed to the board of the Scottish Courts and Tribunals Service. Paragraph 2(2)(e) of Schedule 3 to the Judiciary and Courts (Scotland) Act 2008 outlines the categories that are entitled to apply to become members of the SCTS board.

By virtue of The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) (Amendment) Regulations 2020 summary sheriffs may now be notified of relevant vacancies for members of the Scottish Courts and Tribunals Service.

[This policy note should be read in conjunction with policy note for The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) (Amendment) Regulations 2020, set out on pages 6 and 7 below]

Background

When the then Scottish Court Service became a non-ministerial department in 2010, a Board Chaired by the Lord President was established by virtue of the provisions of the Judiciary and Courts (Scotland) Act 2008 – specifically schedule 3 which makes detailed provision relating to membership and proceedings. Paragraph 2 of schedule 3 sets out the categories of Board membership, ensuring that there is a judicial majority on the Board.

The Board has fourteen members in total – eight of whom hold judicial office. One of the policy intentions of schedule 3 was to ensure that the Board had a judicial majority.
in its membership – and that this included representation from each level of the Scottish judiciary.

On 1 April 2015, under the Courts Reform (Scotland) Act 2014, the Scottish Courts and Tribunals Services (SCTS) assumed the responsibilities of the former Scottish Court Service and Scottish Tribunals Service.

Policy Objective:

Ensure that the SCTS board includes representation from each level of Scottish Judiciary

A new level of judicial office that of summary sheriff was established by section 5 of the Courts Reform (Scotland) Act 2014. The 2014 Act distinguishes the office of sheriff from that of summary sheriff (with the office of sheriff established separately under section 4 of that Act). The Judiciary and Courts (Scotland) Act 2008 makes no provision for those holding the office of summary sheriff to be appointed to the board of the Scottish Courts and Tribunals Service.

The Lord President is of the opinion that the law should be changed. It is anomalous that the current regime does not permit those holding the office of summary sheriff to apply for board membership.

The Lord President is of the view that Paragraph 2(2)(e) of Schedule 3 to the 2008 Act might be amended to broaden its current eligibility from those holding “the office of sheriff” to those holding “either the office of sheriff or summary sheriff”. This would allow future vacancies under this category of membership to be filled by the most appropriate shrieval candidate – irrespective of whether they held the role of sheriff or summary sheriff. It would also ensure that, should a summary sheriff be successful in securing the office of sheriff during their tenure on the Board, they would not be required to demit Board membership as a consequence of that success.

To allow summary sheriffs to be notified of relevant vacancies for members of the SCTS board a further consequential amendment is required to section 2(3)(a) of the 2015 Board appointment regulations – which details the process to be followed when filling vacancies (as this section refers to “sheriffs”). This will be achieved by The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) (Amendment) Regulations 2020.

The Scottish Government fully agrees with the view of the Lord President. This amendment in conjunction with The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) (Amendment) Regulations 2020 will rectify the anomaly and fulfil the policy intention that each level of the Scottish judiciary will be represented on the SCTS board.

Consultation

The power under which the order will be made (paragraph 2(5) of schedule 3 to the 2008 Act) requires that the Lord President consent to the order prior to it being made. The draft order was shared with the Lord President and he is content, thus the consenting requirements with the Lord President have been successfully completed.
Impact Assessments
An equality impact assessment was discussed with SCTS and there was agreement that there are no equality impact issues. The amendment to the order will provide a wider pool of candidates for the SCTS board.

Financial Effects
Business and Regulatory Impact Assessment (BRIA) is not required as there are no financial effects.
The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020
SSI 2020/xxx

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 3(2) and (3) of schedule 3 of the Judiciary and Courts (Scotland) Act 2008 and all other powers enabling them to do so.

In accordance with paragraph 3(4) of schedule 3 of that Act the Scottish Ministers have consulted the Lord President of the Court of Session.

In accordance with section 71(4) of that Act, a draft of these Regulations has been laid before, and approved by resolution of, the Scottish Parliament.

The instrument is subject to affirmative procedure.

Purpose

The purpose of this instrument is to amend Paragraph (3)(a) of regulation 2 of The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015 to provide that those holding the office of Summary Sheriff may now be notified of relevant vacancies for members of the Scottish Courts and Tribunals Service.

By virtue of The Scottish Courts and Tribunals Service (Judicial Members) (Amendment) Order 2020 Summary Sheriffs may now be appointed as members of the board of the Scottish Courts and Tribunals Service.

[This policy note should be read in conjunction with policy note for The Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020 set out on pages 3 to 5]

Background

When the then Scottish Court Service became a non-ministerial department in 2010, a Board Chaired by the Lord President was established by virtue of the provisions of the Judiciary and Courts (Scotland) Act 2008 – specifically schedule 3 which makes detailed provision relating to membership and proceedings. Paragraph 2 of schedule 3 sets out the categories of Board membership, ensuring that there is a judicial majority on the Board.

The Board has fourteen members in total – eight of whom hold judicial office. One of the policy intentions of schedule 3 was to ensure that the SCTS Board had a judicial
majority in its membership – and that this included representation from each level of the Scottish judiciary.

On 1 April 2015, under the Courts Reform (Scotland) Act 2014, the Scottish Courts and Tribunals Services (SCTS) assumed the responsibilities of the former Scottish Court Service and Scottish Tribunals Service.

**Policy Objective:**

**Ensure that the SCTS board includes representation from each level of Scottish Judiciary**

A new level of judicial office that of summary sheriff was established by section 5 of the Courts Reform (Scotland) Act 2014. The 2014 Act distinguishes the office of sheriff from that of summary sheriff (with the office of sheriff established separately under section 4 of that Act). The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015, makes no provision for those holding the office of summary sheriff to be notified of vacancies for members of the board of the Scottish Courts and Tribunals Service.

To achieve the policy intention of achieving representation from each level of the Scottish judiciary on the board, summary sheriffs, the Lord President is of the opinion that the law should be changed.

The Scottish Government fully agrees with the opinion of the Lord President. The proposed amendment in the draft regulations will allow summary sheriffs to be notified of relevant vacancies.

This amendment in conjunction with The Scottish Courts and Tribunals Service (Judicial Members) (Amendment) Order 2020 will fulfil the policy intention that each level of the Scottish judiciary will be represented on the SCTS board.

**Consultation**

The power under which the regulations will be made (paragraph 3(4) of schedule 3 to the 2008 Act) requires that the Scottish Ministers consult with the LP on the terms of the order before it is made.

The regulations have been shared with the Lord President and he is content, thus the consulting requirements are complete.

**Impact Assessments**

An equality impact assessment was discussed with SCTS and there was unanimous agreement that there are no equality impact issues. The amendment to the order will provide a wider pool of candidates for the SCTS board as Summary Sheriffs will now be included.

**Financial Effects**
Business and Regulatory Impact Assessment (BRIA) is not required as there are no financial effects.
Purpose

1. This paper invites the Committee to consider the following affirmative instruments:

- **First-tier Tribunal for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020 [draft]**

- **First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020 [draft]**

- **First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020 [draft]**

- **First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 [draft]**

Introduction

2. The First-tier Tribunal for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020 [draft] and the First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020 [draft] are made under sections 20(2), 28(2), 79(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014.

3. The purpose of these instruments is to make provision for the transfer to the First-tier Tribunal for Scotland of the functions of bus lane adjudicators and parking adjudicators.

4. The First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020 [draft] are made under sections 10(2) and (3), 38(1) and (2) and 40(1) to (5) of the Tribunals (Scotland) Act 2014.

5. The purpose of this instrument is to make provision as to the composition of the General Regulatory Chamber of the First-tier Tribunal for Scotland when dealing with appeals, referrals or reviews of parking cases and bus lane cases.

6. The First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 [draft] are made under section 43(3)(b)(ii), section 67(1) and paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014.
7. The purpose of this instrument is to provide for the rules of procedure which are to apply in the First-Tier Tribunal for Scotland General Regulatory Chamber when hearing cases against the decision of a local authority to issue a penalty charge notice or bus lane enforcement notice.

8. Further details on the purpose of the instruments can be found in the policy notes attached in the Annex.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

9. The Delegated Powers and Law Reform Committee considered all four instruments at its meeting on 25 February 2020 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

10. The Justice Committee is required to report to the Parliament on the instruments by 29 March 2020. The Minister for Community Safety has lodged motions S5M-21025, S5M-21026, S5M-21027 and S5M-21028 proposing that the Committee recommends approval of the instruments. The Minister for Community Safety is due to attend the meeting on 10 March to answer any questions on the instruments and to move the motions for approval.

11. It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament by 29 March. Thereafter, the Parliament will be invited to approve the instruments.

12. The Committee is asked to delegate to the Convener authority to approve the report on the instruments for publication.
POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND (TRANSFER OF FUNCTIONS OF BUS LANE ADJUDICATORS) REGULATIONS 2020

SSI 2020/XXX

1. The above instrument will, if approved by the Parliament, be made in exercise of the powers conferred by sections 20(2), 28(2), 79(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014 (‘the 2014 Act’). The instrument is subject to affirmative procedure.

2. In accordance with section 11(1)(a) and (b) of the 2014 Act, the approval of this instrument by the Lord President of the Court of Session has been obtained.

Purpose of the Instrument:

The purpose of the instrument is to make provision for the transfer to the First-tier Tribunal for Scotland of the functions of bus lane adjudicators. The instrument also makes provision to transfer the bus lane adjudicators into the First-tier tribunal, manage the transfer of on-going casework and makes necessary consequential amendments to legislation.

Policy Objectives

3. The 2014 Act allows the Scottish Ministers to transfer the functions of tribunals listed in schedule 1 of the Act to the Scottish Tribunals.

4. These regulations transfer into the Scottish Tribunals the existing functions of bus lane adjudicators in so far as practicable. Upon transfer, the office of bus lane adjudicator will be abolished as applies in Scotland and first decisions will be heard in the First-tier Tribunal for Scotland, General Regulatory Chamber (First-tier Tribunal) with onward appeals to the Upper Tribunal for Scotland (Upper Tribunal).

5. These regulations also transfer the bus lane adjudicators into the First-tier Tribunal. Existing bus lane adjudicators will transfer to the First-tier Tribunal to become legal members as long as they meet the relevant eligibility criteria as set out in regulations (2015/381).

6. These Regulations also set out transitional arrangements for the handling of cases during transfer. Cases in progress on the day of transfer will be continued in the First-tier Tribunal with the same members dealing with the case, wherever possible. Unexercised rights of review will be to the First-tier Tribunal. If a party has already exercised its right of review prior to the transfer day then the review will continue in the First-tier Tribunal under section 43 of the 2014 Act.
7. The First-tier Tribunal for Scotland and the Upper Tribunal for Scotland were established by the 2014 Act. The First-tier Tribunal is divided into chambers according to the subject matter of the case, with the General Regulatory Chamber dealing with appeals against bus lane contraventions after these regulations come into force.

8. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum. 
http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx

Consultation

9. A consultation with interested parties took place in 2018. There were no concerns raised in relation to the proposed transfer of functions of bus lane adjudicators to the First-tier Tribunal or Upper Tribunal.

10. A full list of those consulted and who agreed to the release of their consultation responses are available on the Scottish Government website:

Impact Assessments and Financial Effects

11. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:

12. An Equality Impact Assessment is not required for these regulations.

13. A Business and Regulatory Impact Assessment has been completed and is attached. The impact of this policy on the Scottish Legal Aid Board is minimal. The impact on the Scottish Government is minimal.

Scottish Government
Justice Directorate

February 2020
POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND (TRANSFER OF FUNCTIONS OF PARKING ADJUDICATORS) REGULATIONS 2020

SSI 2020/XXX

1. The above instrument will, if approved by the Parliament, be made in exercise of the powers conferred by sections 20(2), 28(2), 79(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014 (‘the 2014 Act’). The instrument is subject to affirmative procedure.

2. In accordance with section 11(1)(a) and (b) of the 2014 Act, the approval of this instrument by the Lord President of the Court of Session has been obtained.

<table>
<thead>
<tr>
<th>Purpose of the Instrument:</th>
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<tbody>
<tr>
<td>The purpose of the instrument is to make provision for the transfer to the First-tier Tribunal for Scotland of the functions of parking adjudicators. The instrument also makes provision to transfer the parking adjudicators into the First-tier tribunal, manage the transfer of on-going casework and makes necessary consequential amendments to legislation.</td>
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Policy Objectives

3. The 2014 Act allows the Scottish Ministers to transfer the functions of tribunals listed in schedule 1 of the Act to the Scottish Tribunals.

4. These regulations transfer into the Scottish Tribunals the existing functions of parking adjudicators in so far as practicable. Upon transfer, the office of parking adjudicator will be abolished as applies to Scotland and first decisions will be heard in the First-tier Tribunal for Scotland, General Regulatory Chamber (First-tier Tribunal) with onward appeals to the Upper Tribunal for Scotland (Upper Tribunal).

5. These regulations also transfer the parking adjudicators into the First-tier Tribunal. Existing parking adjudicators will transfer to the First-tier Tribunal to become legal members as long as they meet the relevant eligibility criteria as set out in regulations (2015/381).

6. These Regulations also set out transitional arrangements for the handling of cases during transfer. Cases in progress on the day of transfer will be continued in the First-tier Tribunal with the same members dealing with the case, wherever possible. Unexercised rights of review will be to the First-tier Tribunal. If a party has already exercised its right of review prior to the transfer day then the review will continue in the First-tier Tribunal under section 43 of the 2014 Act.

7. The First-tier Tribunal for Scotland and the Upper Tribunal for Scotland were established by the 2014 Act. The First-tier Tribunal is divided into chambers according to the subject matter of the case, with the General Regulatory Chamber dealing with appeals against parking contraventions after these regulations come into force.

Consultation

9. A consultation with interested parties took place in 2018. There were no concerns raised in relation to the proposed transfer of functions of parking adjudicators to the First-tier Tribunal or Upper Tribunal.


Impact Assessments and Financial Effects

11. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:

12. An Equality Impact Assessment is not required for these regulations.

13. A Business and Regulatory Impact Assessment has been completed and is attached. The impact of this policy on the Scottish Legal Aid Board is minimal. The impact on the Scottish Government is minimal.

Scottish Government
Justice Directorate

February 2020
POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND GENERAL REGULATORY CHAMBER PARKING AND BUS LANE CASES AND UPPER TRIBUNAL FOR SCOTLAND (COMPOSITION) REGULATIONS 2020

SSI 2020/XXX

1. The above instrument will, if approved by the Parliament, be made in exercise of the powers conferred by sections 10(2) and (3), 38(1) and (2) and 40(1) to (5) of the Tribunals (Scotland) Act 2014 ('the 2014 Act'). The instrument is subject to affirmative procedure.

2. In accordance with section 11(2) of the 2014 Act, the President of the Scottish Tribunals has been consulted.

Purpose of the Instrument:

The purpose of the instrument is to make provision as to the composition of the General Regulatory Chamber of the First-tier Tribunal for Scotland when dealing with appeals, referrals or reviews of parking cases and bus lane cases. This instrument also makes provision as to the composition of the Upper Tribunal for Scotland when hearing appeals or referrals from the First-tier Tribunal for Scotland General Regulatory Chamber on such cases.

Policy Objectives

3. The 2014 Act allows Scottish Ministers to determine the composition of the First-tier Tribunal for Scotland or the Upper Tribunal for Scotland when convened to decide any matter in a case before it.

4. These Regulations set out the composition of the General Regulatory Chamber of the First-tier Tribunal when dealing with appeals, referrals or reviews of parking cases and bus lane cases. The policy intent is to replicate the existing composition for cases when heard by Parking Adjudicators and Bus Lane Adjudicators. This means that cases will be heard by one member only.

5. These Regulations also set out the composition of the Upper Tribunal for Scotland when hearing appeals or referrals from the First-tier Tribunal for Scotland General Regulatory Chamber on such cases. There is no current onward right of appeal from decisions made by Parking Adjudicators and Bus Lane Adjudicators. Accordingly, the right of appeal to the Upper Tribunal on a point of law provided by the 2014 Act will be a new mechanism for appellants. The policy intent is to provide for the composition of the new Upper Tribunal hearing parking and bus lane cases.

6. The First-tier Tribunal for Scotland and the Upper Tribunal for Scotland were established by the 2014 Act. The First-tier Tribunal is divided into chambers according to the subject matter of the case, with the General Regulatory Chamber dealing with appeals against parking and bus lane contraventions. This instrument sets out which...
member or members may deal with parking and bus lane cases before the two Tribunals.

7. Further details of the policy objectives relating to the 2014 Act are set out in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum:

http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx

Consultation

8. A consultation with interested parties took place in 2018. There were no concerns raised in relation to the proposed composition of the First-tier Tribunal or Upper Tribunal.

19. A full list of those consulted and who agreed to the release of their consultation responses are available on the Scottish Government website:


Impact Assessments and Financial Effects

10. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:


11. An Equality Impact Assessment is not required for these regulations.

12. A Business and Regulatory Impact Assessment has been completed and is attached. The impact of this policy on the Scottish Legal Aid Board is minimal. The impact on the Scottish Government is minimal.

Scottish Government
Justice Directorate

February 2020
POLICY NOTE

THE FIRST-TIER TRIBUNAL FOR SCOTLAND GENERAL REGULATORY CHAMBER PARKING AND BUS LANE APPEALS (RULES OF PROCEDURE) REGULATIONS 2020

SSI 2020/XXX

1. The above instrument will, if approved by the Parliament, be made in exercise of the powers conferred by section 43(3)(b)(ii), section 67(1) and paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014 (‘the 2014 Act’). The instrument is subject to the affirmative procedure.

2. In accordance with section 67(3) of the 2014 Act, the approval of the Lord President of the Court of Session has been obtained. In accordance with paragraph 4(3) of schedule 9 of the 2014 Act, the President of the Scottish Tribunals has been consulted.

Purpose of the Instrument:

The purpose of the instrument is to provide for the rules of procedure which are to apply in the First-Tier Tribunal for Scotland General Regulatory Chamber (‘the First-tier Tribunal’) when hearing cases against the decision of a local authority to issue a penalty charge notice or bus lane enforcement notice.

The rules of procedure are set out in the schedule of the regulations.

Policy Objectives

3. The First-tier Tribunal for Scotland and the Upper Tribunal for Scotland (‘the Upper Tribunal’) were established by the 2014 Act. The First-tier Tribunal is divided into chambers according to the subject matter of the case, with the General Regulatory Chamber allocated to deal with appeals against parking and bus lane contraventions once these regulations come into force.

4. The 2014 Act authorises rules to be made to regulate the practice and procedure of both the First-tier and Upper Tribunals. Paragraph 4(2) of Schedule 9 to the 2014 Act requires rules to be made by the Scottish Ministers until such time as responsibility for rule-making passes to the Scottish Civil Justice Council and the Court of Session.

5. These regulations establish rules of procedure for the First-tier Tribunal General Regulatory Chamber when hearing parking cases and bus lane cases. The functions of parking adjudicators and bus lane adjudicators, who previously heard these types of appeal, have been transferred to the First-tier Tribunal in regulations (SSI 2020/XXX and SSI 2020/XXX).

6. The rules of procedure for the First-tier Tribunal General Regulatory Chamber, insofar as possible, have been drawn from the existing rules of procedure for appeals heard by parking adjudicators and from the existing rules of procedure for appeals heard by bus lane adjudicators.
7. There are a number of areas in which the new rules of procedure differ from the existing parking adjudicator and bus lane adjudicator rules. The policy intent in doing so was to bring the various rules together into one document which would apply to both parking and bus lane cases. This is also intended to aid consistency within the Scottish Tribunals.

8. The main change from the existing rules lies in new draft rule 18, which makes provision for the First-tier Tribunal’s consideration of an application for permission to appeal to the Upper Tribunal. This is because there is currently no onward right of appeal from the decisions of parking adjudicators and bus lane adjudicators, whereas upon transfer the provisions of the 2014 Act will apply and the Upper Tribunal will be available to appellants.

9. Other substantive changes from the existing rules involve incorporation throughout the Rules of the use of an online case management system as a means of limited communication between the parties and the First-tier Tribunal. In addition, specific provision for the signing of documents electronically.

10. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx

Consultation

11. A consultation with interested parties took place in 2018. There were no concerns raised in relation to the proposed rules of procedure for the First-tier Tribunal.

12. A full list of those consulted and who agreed to the release of their consultation responses are available on the Scottish Government website:


Impact Assessments and Financial Effects

13. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:


14. An Equality Impact Assessment is not required for these regulations.

15. A Business and Regulatory Impact Assessment has been completed and is attached. The impact of this policy on the Scottish Legal Aid Board is minimal. The impact on the Scottish Government is minimal.
Introduction

1. The Air Traffic Management and Unmanned Aircraft Bill is a UK Government Bill introduced in the House of Lords on 9 January 2020. The Bill is currently nearing Report stage in that House. As such, the Scottish Parliament needs to take a view on legislative consent before the Bill has reached its last amending stage.

Legislative consent process

2. The process for considering consent to the relevant provisions in a UK Bill essentially commences with the publication, normally by the Scottish Government, of a Legislative Consent Memorandum (LCM). This LCM relates to a Bill under consideration in the UK Parliament which contains what are known as “relevant provisions”. These provisions could:

   - change the law on a “devolved matter” (an area of policy which the UK Parliament devolved to the Scottish Parliament in the Scotland Act 1998); or
   - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).

3. Under an agreement formerly known as the “Sewel Convention”, the UK Parliament will not normally pass Bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament. The consent itself is given through a motion (a Legislative Consent Motion) which is taken in the Chamber – but the detailed scrutiny is undertaken by a Scottish Parliament committee on the basis of a memorandum. The motion must normally be decided on before the Bill reaches its final amending stage at the UK Parliament in the House in which it was first introduced (although this can be as late as the last amending stage in the second house). On occasion, a memorandum is lodged which invites the Parliament to note that the Scottish Government does not intend to lodge a legislative consent motion on a particular bill.

4. The detailed procedure for scrutiny of Legislative Consent Memorandums and Motions is set out in Chapter 9B of the Parliament’s Standing Orders.
Air Traffic Management and Unmanned Aircraft Bill

5. The Bill's provisions extend and apply to the whole of the UK. Civil aviation (including airspace) is a reserved matter. The Explanatory Notes accompanying the Bill set out the UK Government's view of its purpose and main functions. The UK Government describes the overall aim of the Bill is to modernise UK airspace and to tackle the illegal use of unmanned aircraft (UA). The Bill provides that "unmanned aircraft" means any aircraft operating or designed to operate autonomously or to be piloted remotely without a pilot on board. Drones and model aircraft are the most commonly used types of UA.

6. The Bill contains provisions which make changes to Scots law on devolved matters, however these are, principally, for the purpose of the reserved matter of air transport. This includes, in Part 3, a power conferred on a police constable to require the suspected controller of an unmanned aircraft to ground it where there are reasonable grounds for believing that the aircraft has been or is likely to be involved in the commission of an offence. Failure to comply with such a requirement is itself an offence. Power is also conferred on the police to search a person or a vehicle where there is reasonable suspicion that this will yield evidence of an unmanned aircraft being involved in various sorts of air navigation offence or prison offence. There is also a new judicial power to issue a search warrant to look for a specified unmanned aircraft or an article associated with it which has been involved in the commission of a "relevant offence" (an offence under the Bill or various air navigation/prisons offences).

7. While police powers and criminal procedure are generally devolved, the overall purpose of the Bill is reserved. Aspects of the Bill that clearly do trigger the need for an LCM are as follows:

Part 3: Unmanned Aircraft

Clause 12: General police powers and prison powers relating to unmanned aircraft. This clause introduces Schedule 8 which amongst other things gives those with responsibilities in respect of prisons certain powers relating to tackling the illegal use of unmanned aircraft.

Schedule 8:

Authorisations to interfere with property etc. Schedule 8, paragraph 5 of the Bill amends section 93 of the Police Act 1997 to insert a limb alongside the serious crime definition under which property interference authorisations can be obtained by a Scottish Prison Officer to allow interference where an UA is being used in the commission of certain offences relevant to Scottish prisons – the definition of those "relevant offences" in this case is set out in the amendments made by paragraph 5(11).

Paragraph 5 of Schedule 8 also amends section 93 to provide for persons to authorise such interference. At subparagraph (15) it requires that person to be a senior manager at a penal institution, (Scottish Prison Service (SPS) staff), who has functions exercisable in relation to that institution and who has been designated for that purpose by the Scottish Ministers. This
conferral of functions on Scottish Ministers alters their executive competence. Paragraphs 19 and 20 make amendments to section 93 by providing definitions of terms used in the amendments.

Schedule 8, paragraph 6(4) of the Bill amends section 94(1) of the Police Act 1997 to allow a designated deputy to the authorising person identified in section 93, to instead authorise an interference in certain circumstances. Paragraph 6(11) amends section 94(4) (which sets out definitions for section 94(1)), to make further provision about that designated deputy, including that they are to be designated for these purposes by the Scottish Ministers. This conferral of functions on Scottish Ministers alters their executive competence.

Section 94(2) makes provision for authorisation in urgent cases in the absence of both the authorising person identified under section 93 and their designated deputy. Schedule 8, paragraph 6(8) of the Bill amends section 94(2) so that in such cases the authorisation is by an employee of the Scottish administration with particular penal institution duties and who has been authorised for such a purpose by the Scottish Ministers. This conferral of functions on Scottish Ministers again alters their executive competence.

8. In summary, these provide overall for amendments to sections 93 and 94 of the Police Act 1997, for the purpose of authorisation of actions in relation to UA where such action is necessary for the purpose of preventing or detecting the use of that aircraft in the commission of an offence relating to a Scottish prison.

9. The amendments set out that the person who may authorise such actions will be certain persons (the primary authorising person), who are designated by the Scottish Ministers. It makes further provision for other persons authorised by the Scottish Ministers to also authorise such actions in the absence of the primary authorising person. There is no prescribed procedure to be followed by Scottish Ministers when they designate.

10. On that basis legislative consent of the Scottish Parliament is being sought, and a legislative consent memorandum was lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, on 26 February 2020. The LCM can be accessed in the Annex to this paper.

Scottish Government Legislative Consent Memorandum

11. The LCM states that it is the view of the Scottish Government that to the extent that the Bill legislates in an area of devolved competence or make changes to the executive competence of the Scottish Ministers it should be considered by the UK Parliament.

12. The LCM (Annex, paragraph 16) sets out the Scottish Government’s draft motion.
Action

13. Members are invited to consider whether to agree with the recommendation of the Scottish Government that the legislative consent motion should be agreed by the Scottish Parliament.

14. Members are also asked to agree that the Convener should arrange for the publication of a short, factual report on the outcome of the Committee's deliberations.
LEGISLATIVE CONSENT MEMORANDUM
AIR TRAFFIC MANAGEMENT AND UNMANNED AIRCRAFT BILL

Background

1. This memorandum has been lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, under Rule 9.B.3.1(a) of the Parliament’s standing orders. The Air Traffic Management and Unmanned Aircraft Bill (“the Bill”) was announced in the Queen’s Speech on 19 December 2019 and introduced to the House of Lords by the UK Minister for Transport, Roads and Security on 9 January 2020. The Bill (as introduced) can be found in the following link:


Content of the Air Traffic Management and Unmanned Aircraft

2. The Bill's provisions extend and apply to the whole of the UK. Civil aviation (including airspace) is a reserved matter. The Explanatory Notes accompanying the Bill set out the UK Government's view of its purpose and main functions.1 The UK Government describes the overall aim of the Bill is to modernise UK airspace and to tackle the illegal use of unmanned aircraft (UA). The Bill provides that “unmanned aircraft” means any aircraft operating or designed to operate autonomously or to be piloted remotely without a pilot on board. Drones and model aircraft are the most commonly used types of UA.

3. The main elements of the Bill are:

- New UK Government powers to direct an airport or other relevant body to prepare and submit a proposal to the Civil Aviation Authority to change the design of airspace.
- Modernising the licensing framework for air traffic control.
- New police powers to tackle the unlawful use of unmanned aircraft. These include the ability to require a person to land an unmanned aircraft and enhanced stop and search police powers where particular unmanned aircraft related offences have taken place.
- New powers for the purpose of preventing or detecting the use of that aircraft in the commission of an offence relating to a prison.

4. The Bill does contain provisions which make changes to Scots law on devolved matters, however these are, principally, for the purpose of the reserved matter of air transport. This includes in Part 3 a power conferred on a police constable to require the suspected controller of an unmanned aircraft to ground it where there are reasonable grounds for believing that the aircraft has been or is likely to be involved in the commission of an offence. Failure to comply with such a requirement is itself an offence. Power is also conferred on the police to search a person or a vehicle where there is reasonable suspicion that this will yield evidence of an unmanned
aircraft being involved in various sorts of air navigation offence or prison offence. There is also a new judicial power to issue a search warrant to look for a specified unmanned aircraft or an article associated with it which has been involved in the commission of a “relevant offence” (an offence under the Bill or various air navigation/prisons offences).

5. While police powers and criminal procedure are generally devolved, the overall purpose of the Bill is reserved. Aspects of the Bill that clearly do trigger the need for an LCM are discussed at paragraph 7 below.

6. The Bill provides for the majority of the provisions to come into force by way of commencement regulations made by the Secretary of State.

Provisions Which Relate to Scotland

7. A summary of the clauses in the Bill that require legislative consent in the Scottish Parliament is as follows (clause numbers etc relate to the print of the Bill on introduction as of 9 January 2020):

**Part 3: Unmanned Aircraft**

Clause 12: General police powers and prison powers relating to unmanned aircraft. This clause introduces Schedule 8 which amongst other things gives those with responsibilities in respect of prisons certain powers relating to tackling the illegal use of unmanned aircraft.

**Schedule 8:**

Authorisations to interfere with property etc. Schedule 8, paragraph 5 of the Bill amends section 93 of the Police Act 1997 to insert a limb alongside the serious crime definition under which property interference authorisations can be obtained by a Scottish Prison Officer to allow interference where an UA is being used in the commission of certain offences relevant to Scottish prisons – the definition of those “relevant offences” in this case is set out in the amendments made by paragraph 5(11).

Paragraph 5 of Schedule 8 also amends section 93 to provide for persons to authorise such interference. At subparagraph (15) it requires that person to be a senior manager at a penal institution, (Scottish Prison Service (SPS) staff), who has functions exercisable in relation to that institution and who has been designated for that purpose by the Scottish Ministers. This conferral of functions on Scottish Ministers alters their executive competence. Paragraphs 19 and 20 make amendments to section 93 by providing definitions of terms used in the amendments.

Schedule 8, paragraph 6(4) of the Bill amends section 94(1) of the Police Act 1997 to allow a designated deputy to the authorising person identified in section 93, to instead authorise an interference in certain circumstances.
Paragraph 6(11) amends section 94(4) (which sets out definitions for section 94(1)), to make further provision about that designated deputy, including that they are to be designated for these purposes by the Scottish Ministers. This conferral of functions on Scottish Ministers alters their executive competence.

Section 94(2) makes provision for authorisation in urgent cases in the absence of both the authorising person identified under section 93 and their designated deputy. Schedule 8, paragraph 6(8) of the Bill amends section 94(2) so that in such cases the authorisation is by an employee of the Scottish administration with particular penal institution duties and who has been authorised for such a purpose by the Scottish Ministers. This conferral of functions on Scottish Ministers again alters their executive competence.

8. In summary, these provide overall for amendments to sections 93 and 94 of the Police Act 1997, for the purpose of authorisation of actions in relation to UA where such action is necessary for the purpose of preventing or detecting the use of that aircraft in the commission of an offence relating to a Scottish prison.

9. The amendments set out that the person who may authorise such actions will be certain persons (the primary authorising person), who are designated by the Scottish Ministers. It makes further provision for other persons authorised by the Scottish Ministers to also authorise such actions in the absence of the primary authorising person. There is no prescribed procedure to be followed by Scottish Ministers when they designate.

**Reasons for seeking legislative consent**

10. The Bill applies to the whole of the United Kingdom, but the legislative consent process is engaged in relation to provisions in paragraphs 5 and 6 of Schedule 8 to the Bill. This alters the executive functions of Scottish Ministers as it provides for them to designate certain persons who may authorise such actions in Scottish prisons.

11. The Scottish Prison Service is an Executive Agency of the Scottish Government and is responsible for operational aspects of the prison service. In practice authorisation for Scottish prison interests will be taken by the Scottish Prison Service as follows:

**Requirements for a prison authorisation- anti unmanned aircraft interception**

- An authorising officer will be empowered to authorise any action in relation to any property in a relevant area as s/he may specify. (The officer to be designated will be a choice for Scottish Ministers, however we will likely recommend either the SPS Director of Operations or the Deputy Director of Operations).

- S/he may authorise where s/he believes that it is necessary for that action to be taken for the purpose of preventing or detecting the use of a specified unmanned aircraft in the commission of a relevant offence*. 


The legislation will provide that the officer is to be a member of the staff of the Scottish Administration (i.e. a civil servant). The legislation for the rest of the UK will require that civil servant to be a senior civil servant, (SCS) however the version for Scotland will not do so. This is because there are relatively few SCS in SPS compared with the prison service in Northern Ireland or in England & Wales and restricting the authorising officers to SCS in SPS could prove operationally restrictive.

The authorising officers in SPS can only authorise the action if s/he has received an application for that from a prison officer.

Where it is not reasonably practicable for the authorising officer to act, the powers to authorise may, be exercised by their deputy, or, in an urgent case, be exercised by the Prison Governor.

The Bill will not refer to a prison governor, it will again refer to a member of staff of the Scottish administration as designated by the Scottish Ministers (again to ensure we have operational flexibility).

Requirements for a prison authorisation as that affects a private prison (HMPs Addiewell and Kilmarnock)

The process of authorisation will be consistent in private prisons as with a public sector prison, but includes the option to designate different authorising officers within SPS in those circumstances. Further, where it is not reasonably practicable for that authorising officer to consider an application, the power to authorise may be exercised by their deputy or, in an urgent case, be exercised by the Controller of that prison (who again is referred to just as a member of the staff of the Scottish Administration (or one of his/her deputies who are also civil servants)) as designated by Scottish Ministers.

* Relevant offence in relation to a prison authorisation includes certain offences committed in respect of prisons such as a breach of section 41 (unlawful introduction of proscribed articles into prison) or 41ZA (introduction of mobile phones into prison) of the Prisons (S) Act 1989 and common law offences of assisting a prisoner to escape or to attempt to escape and facilitating the escape of a prisoner by doing things (such as taking things into the prison to assist the prisoner in doing that)).

Consultation

12. In respect of the better regulation of unmanned aircraft, two UK Government public consultations have informed the main purpose and contents of the Bill, “Taking Flight: The Future of Drones in the UK”, which ran between 26 July 2018 and 17 September 2018, and “Stop and search: extending police powers to cover offences relating to unmanned aircraft (drones), laser pointers and corrosive substances”, which ran between 9 September 2018 and 22 October 2018. The UK Government consultation response can be found at the following links:
Financial Implications

13. The UK Government’s impact assessment notes that the Home Office conclude that the provisions in relation to stop and search powers for police and interception of unmanned aircraft use in respect of prisons will have minimal economic impact.

Conclusion

14. The Police Act 1997 provides for a public body to be authorised to take action in relation to a person’s private property. As such the Bill sets out that the action must be a necessary one, for the purpose of detecting or preventing the use of an unmanned aircraft in the commission of an offence relative to a prison, and that the action proposed must be proportionate. Given these tests must be met in order to interfere with private property, the Bill puts in place a system of request, consideration and authorisation. In order to ensure that those undertaking that consideration and authorising the proportionate actions are of sufficient seniority, the Bill makes provision for that matter and for those persons to be designated as such by Scottish Ministers.

15. It is therefore the view of the Scottish Government that to the extent that the Bill legislates in an area of devolved competence or make changes to the executive competence of the Scottish Ministers it should be considered by the UK Parliament.

Draft Legislative Consent Motion

16. The draft motion, which will be lodged by the Cabinet Secretary for Justice, is:

“That the Parliament agrees that the relevant provisions of the Air Traffic Management and Unmanned Aircraft Bill, introduced in the House of Lords on 9 January 2020, so far as they fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.

SCOTTISH GOVERNMENT
February 2020
Justice Committee

10th Meeting, 2020 (Session 5), Tuesday 10 March 2020

Petition PE 1458

Note by the clerk

Introduction

1. The Committee last considered Petition 1458 at its meeting on 19 November 2019, taking oral evidence from Moi Ali, the former Judicial Complaints Reviewer.

2. The Committee agreed subsequently keep the petition open and to write to the Lord President, the Cabinet Secretary for Justice, the Sheriffs Association and the Scottish Justices Association for further information. Responses have now been received (see Annex A). A response has also been received from Mr Peter Cherbi, who is the petitioner (see Annex B).

Background to the petition

3. The terms of the petition are as follows:

PE 1458 (lodged 7 December 2012) Calls on the Scottish Parliament to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill (as is currently being considered in New Zealand’s Parliament) or amend present legislation to require all members of the Judiciary in Scotland to submit their interests and hospitality received to a publicly available Register of Interests.

4. The petition was introduced to the Parliament in 2012 and has been considered by the Public Petitions Committee between 2012 and 2018. The Public Petitions Committee wrote to the Lord President and the then Cabinet Secretary for Justice and in March 2018, recommending that a register of judicial interests should be introduced.

5. The petition was then referred to the Justice Committee on 31 May 2018. The then Cabinet Secretary’s response to the Public Petitions Committee simply noted the Committee’s conclusions and the petition’s referral to the Justice Committee. The webpage for the petition contains all information of the consideration of the petition to date, as well as all submissions received.

For decision

6. The Committee is invited to consider the correspondence received and then decide what further action, if any, it wishes to take on the petition.

Justice Committee clerks
March 2020
7 February 2020

Dear Margaret,

**Public Petition PE 1458: Register of interests for members of Scotland’s judiciary**

Thank you for your letter of 22 November asking me to review the evidence you heard on 19 November and the previous evidence taken regarding this petition and to then set out in detail why I do not think it is necessary to establish a register.

**The evidence of 19 November**

**Written Evidence**

On the 19 November, the Committee considered written evidence in the form of a letter from the petitioner. I think it is important to address a number of issues with the evidence contained in his letter. The Lord President does not appoint judges or sheriffs to the bench. Judicial appointments are made by the Scottish Ministers on the recommendation of the Judicial Appointments Board for Scotland (JABS). JABS are an independent statutory body and carry out a rigorous recruitment process which involves written application, tests, interview, references and background checks carried out before recommendations are made based on merit from candidates who meet statutory criteria.

The petitioner highlights the press coverage of two former Scottish judges sitting in other jurisdictions. One of these judges was retired, the other was still a temporary judge at the relevant time. Once a member of the judiciary has retired, the individual would not be included in any proposed register of interests. Temporary judges are not full time salaried judiciary. These are judges who can be called on to cover gaps in the court rota and therefore not covered by the restrictions on other employment which full time judiciary are. Whilst a register of interests would have disclosed this additional work, it would not have prevented it being carried out.

Since the Petition was originally introduced to the Parliament, a register of recusals was introduced in 2014 and, I understand, is being used by both the judiciary and those appearing in court. From 1 February 2018, the register was extended to also include members of the Scottish Tribunals. The reasons for recusal tend to relate to personal knowledge of a litigant or witness or previous involvement in another relevant case. The register of recusals does not appear to have highlighted the sort of problems with conflicts of interest of the nature that the petitioner is concerned about. For clarification also, there are 277 justices of the peace, rather than 450.
The proposed reforms to the law of corroboration in Scotland, which the petitioner refers to, were aimed at addressing the difficulty in prosecuting certain types of criminal cases. These proposals were based on detailed research and analysis conducted by Lord Carloway and set out in a published report. It is difficult to see the relevance of this as evidence in support of a register of judicial interests.

The petitioner cites extensive written submissions of evidence in relation to this petition and the Committee have asked that I review all previous evidence. In doing so, I can see that almost half of those submissions are from the petitioner and over one third are either correspondents declining to make a submission or from the Scottish Government, the Scottish Courts and Tribunals Service or the Lord President and present evidence which is not in support of the register. The petitioner’s submissions do not always raise new evidence and cover some matters that would be outwith the scope of this petition.

**Oral evidence**

In terms of the oral evidence taken, a considerable part of this discussion focussed on the system for complaints about members of the judiciary. I note the point raised that Scotland differs from other jurisdictions in that upheld complaints are not published. I agree that this is a matter that consideration could be given to as it is transparent and consistent with the complaint process for many professions, however complaints against the judiciary are the responsibility of the Lord President and there may be valid reasons why complaints are not published. I also note the distinction that was explained by Ms Ali between judicial decisions and service complaints about the judiciary. This was followed by discussion on independence and accountability.

I have also considered the written and oral submissions from Professor Alan Paterson, the academic who has contributed views on this petition. I note that Professor Paterson told the Public Petitions Committee that he had not reached a concluded opinion on a register of interests for the Scottish judiciary. He explains that this question comes back to the role of the judiciary in a democracy and there is a need to balance judicial independence and accountability. Professor Paterson told the Public Petitions Committee that he considers transparency as part of accountability. I would agree with this point and I’m of the view that the judiciary’s decision making is transparent and subject to appeal.

**International factors**

At the time the Petition was lodged, and in a number of the petitioner’s subsequent written submissions, reference is made to the New Zealand Parliament’s consideration of a judicial register of interests. By a large majority, the New Zealand Parliament voted down a Bill to create a register after considering the whole issue and its difficulties. Few analogous jurisdictions to Scotland have legislated for a judicial register of interests, and those that have did so in response to evidence of challenges specific to those jurisdictions. South Africa, for example, created one as part of cementing its new democracy.

The Council of Europe Group of States Against Corruption (GRECO) is an independent international body tasked with monitoring and advancing anti-corruption measures in countries across the world. It has examined the need for a judicial register of interests
twice in Scotland and the most recent report of the Fourth Evaluation Round concluded that there was no evidence of corruption in relation to the judiciary in Scotland or of judicial decisions being influenced inappropriately. They do not recommend the introduction of an asset declaration scheme.

**Ways to introduce a scheme**

Your letter also asked for the Scottish Government’s view of what would be involved in establishing such a register and whether this would require primary legislation or could be achieved by some other means.

At present, and in line with the requirement to uphold the continued independence of the judiciary, set out in section 1 of the Judiciary and Courts (Scotland) Act 2008, Scottish Ministers do not have existing powers to establish such a register, whether voluntary or mandatory. Accordingly primary legislation would be required to implement any such register. I would caution however that if such a register were to be established by way of legislation, rather than through the powers of the Lord President, this may be perceived as undermining the principle of judicial independence and the separation of powers between the judiciary and other branches of government.

**Conclusion**

My predecessors set out in detail in earlier correspondence the safeguards in place. These safeguards are the judicial oath, the statement of principles of judicial ethics and the various rules made under the Judiciary and Courts (Scotland) Act 2008 which concern complaints about the judiciary and judicial conduct. I would draw particular attention to the statement of principles of judicial ethics. This is some thirty five pages long and sets out clearly the standards judicial office holders are expected to meet. Breach of the ethics can result in serious consequences for a judicial office holder. Having considered the evidence, I share the views of both of my predecessors that there are sufficient safeguards in place to ensure the impartiality of the judiciary.

As mentioned previously, in the time since this petition was lodged with the Parliament, further measures have been introduced for, and by, the judiciary; such as the register of recusals and publication of judicial expenses and overseas travel. I believe that these measures have increased the transparency of the judiciary.

I am also mindful of the statutory requirement within the Judiciary and Courts (Scotland) Act 2008, that Scottish Ministers and Members of the Scottish Parliament must uphold the continued independence of the judiciary.

I have given further consideration to the matter and have considered the evidence before the Justice Committee. I remain of the view that it is not necessary to establish a register of interests. I hope the detail of this letter explains my reasons for that.

**HUMZA YOUSAF**
I thank you for your letter of 22 November 2019 in which you indicate that the Justice Committee is inclined to support the principle behind the petition of a judicial register of interests. I have, once again, considered the matter very carefully. As I mentioned in my letter of 23 August 2019, if substantive new issues had been identified then I would have been happy to address them. However, no new issues have been identified.

Over the course of 7 years, I and my predecessor have repeatedly explained our view that a register of judicial interests is constitutionally inappropriate, unnecessary, disproportionate, unsupported by objective evidence, and incapable of achieving its stated aim. On a practical level, it would have negative effects on judicial retention and recruitment at a time when attracting quality applicants for judicial office is, as I suspect you are already aware, extremely challenging. It would be cumbersome to operate. It would provide additional means for disgruntled litigants to target judges and their families. Elected office and judicial office are not comparable. The checks and balances applicable to each are different by conscious design. Judges and sheriffs are fully accountable for each and every decision which they take. Those decisions are taken in open forum and subject to appeal. At each stage the actions of the court are governed by clear and transparent legal rules. The nature of political decision-making is very different from that of legal decision-making. That is why the checks and balances are correspondingly different.

The Committee will be familiar with the Council of Europe Group of States Against Corruption (GRECO). The Committee undertakes regular independent investigations into anti-corruption mechanisms in member states. It concluded (at para 133), once again, in its Fourth Evaluation Round Report about our judiciary that
there is no "element of corruption in relation to judges, nor is there evidence of judicial decisions being influenced in an inappropriate manner... What was said in the First Evaluation Round Report with respect to the absence of a system for formal registration of interests of judges is still valid. GRECO did not recommend the introduction of an asset declaration system at that time and the GET found no change of circumstance that require such a recommendation at this time". GRECO is an important independent source of evidence on how our legal system functions. In the absence of any objective suggestions of corrupt practices, and by that I mean from those without axes to grind, I would suggest that no additional controls, beyond those already in place, are desirable.

The Committee appears already to have reached at least a preliminary view on the matter. There would seem to be little value in wasting the Committee's time with a third Parliamentary appearance only to rehearse the same arguments which have not apparently found favour.

I have mentioned previously that the question of whether to have a register of interests for the judiciary is not something that can be considered in isolation. It forms part of a larger equation which bears on judicial recruitment, retention, reward, quality, independence and effectiveness. As part of ensuring that this equation continues to balance, the Committee may be interested to know that a judicial working group of the Judicial Council, comprising members drawn from each of the judicial ranks, has been working for some months on a project to refresh the Statement of Principles of Judicial Ethics. The Statement is a cornerstone in supporting judicial independence, impartiality and integrity. It builds on the UN Bangalore Principles.

At its most recent meetings, the group has focussed on the extent to which judges may undertake extra judicial activities. In due course, the Judicial Council will be considering whether or not, among a range of other measures, a system of permissions for commercial activity has a place in any adjusted code of ethics. Regardless of the decisions which the group may eventually reach, the Committee can have confidence that they will have been arrived at after deep consideration of the likely effects of any change across the whole judicial system. That is the most effective means by which such questions can be explored and resolved.

I remain of the view that, from the constitutional perspective, the extent of any monitoring of judicial conduct, including judges' interests relative to the performance of their duties, should remain a matter for the Judiciary and not for Government or Parliament. I note that almost every country in Europe and the Commonwealth agrees with this analysis.
PE1458: Register of Interests for members of Scotland’s judiciary

Letter from the Sheriffs Association

A copy of your letter of 22 November 2019 has been forwarded to me for reply.

Justices and Legal Advisers in this Sherifffdom are fully aware of the need for Justices to recuse themselves in cases in which they either personally know the accused, witnesses, prosecutor or defence solicitor or have a sufficient interest or knowledge such as would prevent them from hearing a case and impartially dispensing justice.

As you will be aware, Justices have to undergo “continuing professional training” and at both induction and training events this subject is explored – usually in the form of “role play”.

I understand that Justices have been included in the Register of Recusals since January 2018. This means that any motion made for recusal – whether granted or refused has to be recorded. The pro-forma return is prepared by the Legal Adviser and has to be sent to the Judicial Office for Scotland for inclusion on the SCTS website.

I have a copy of the pro-forma and guidance, if you would like a copy please let me know.

Given the limited amount of sitting time available to JPs I am not at all surprised that there are, as I understand it, no returns relating to a formal recusal by a Justice of the Peace. In over 30 years of practice I have never had cause to make such a motion nor in over 10 years as a full time Sheriff or Sheriff Principal has such a motion been made to me.

Part of the reason may well be that Justices use their good sense to take active steps to avoid cases being called before them for trial where there is a “personal connection” of one sort or another.

If a possible problem is identified at an early stage, arrangements can usually be made to call the case for trial before another justice.

I hope this information is of assistance.

Sheriff Principal Ian R Abercrombie Q.C.
With reference to both your letter to Mr Gordon Hunter, the Chair of the Scottish Justices Association, on 22\textsuperscript{nd} November 2019, and his reply dated 24\textsuperscript{th} November 2019 on the matter of Justice of the Peace (JP) recusals, I can now advise that we have investigated this matter further.

We have established that recusals by JPs do happen occasionally, but to date all such instances have been initiated by the JP themselves. If I may use myself as an example, I have recused myself on three separate occasions, sitting in the JP Courts in Glasgow over the past ten years, as I have personally known the accused. We have been advised by Scottish Courts and Tribunals Service (SCTS) staff, that in instances where the JP has initiated the recusal themselves, it is treated as an informal administrative decision not to sit in a particular case, and as such is not recorded.

If, however, the court receives a formal motion from either the Procurator-fiscal or the defence agent then it must be recorded by the Clerk of the Court and details must be sent to the Judicial Office, where the information is collated on behalf of the Lord President. This formal notification is recorded irrespective of whether the motion for the recusal was granted or refused. This arrangement has been in place in the JP Courts since 2018.

It is evident from the pro-forma used by SCTS staff acting as Clerk of the Court, for recording such motions, that use of the pro-forma applies to all levels of the Judiciary in Scotland, including JPs. In discussions with SCTS in each of the six Sherifffdoms it became clear that nobody could recall the use of the pro-forma in any Scottish JP Court over the past two years.
I do think it important to stress that in principle JPs do consider themselves to be fully integrated members of the Scottish Judiciary and would seek to be subject to the same processes and procedures as other members. The lack of formal motions for the recusal of JPs is, we believe, more reflective of the fact that JPs are representative members of the community they live within and serve; and clearly wish to demonstrate their impartiality in the cases that come before them. The relative minor nature of the criminal cases heard by JPs may also be a factor, notwithstanding the fact that some cases may have a relatively high public profile.

I can assure you that all of the Sheriffdom Legal Advisors (SLAs), who sit alongside JPs in court, are aware of the requirement to use the standard pro-forma when a formal motion for a recusal is made. I am not aware of any formal recording of instances where a JP has recused themselves from a case, and thereby it would not be possible to provide the public with such details.

As far as the SJA believe, this policy of regarding self-recusals as informal administrative decisions, and thus not recorded, applies to all levels of the Judiciary in Scotland. To this extent we understand that we are treated in the same manner as Sheriffs, and indeed Senators, and it is an approach that we would vigorously support.

I hope that this clarifies the position, but if you do require any further information then I and all other members of the SJA Executive Committee would be very happy to assist.

Dennis W. Barr
Secretary
PE1458: Register of Interests for members of Scotland's judiciary

Submissions from the petitioner

NB. Mr Cherbi has also provided background information and email communications from the Judicial Office in relation to judicial recusals and the subject of recusals in relation to Justices of the Peace. He also provide a number of cuttings from newspapers. Hard copies are available to Committee Members on request.

Submission 1 - Lord Carloway's letter of 29 January 2020

Noting the terms of Lord Carloway's letter, the Lord President's earlier evidence to the Petitions Committee on 29 June 2017 is available in video format here https://www.youtube.com/watch?v=9ckFj-pk9og for members interest.

I would encourage the Justice Committee to engage with Alex Neil MSP, who attended that hearing and asked pertinent questions of the Lord President. I believe the Committee could gain further insight into the issue of judicial interests, and failures of judges to declare recusals, by hearing from Mr Neil.

Lord Carloway states in his letter that "Elected office and judicial office are not comparable".

I believe anyone watching the evidence session where Lord Carloway faced questions from Mr Neil, would disagree with the Lord President's statement.

Transparency is, a public expectation of public office. A necessary guardian of fair hearing, truth, and a form which holds everyone accountable. Transparency can many times, be the foundation of public trust in politics, public life, and even the courts - where - without transparency, where would justice be?

The judiciary are the most powerful branch of the executive and therefore must be held to be the most accountable and adhere to the same level of transparency which applies to all other branches of public service.

Importantly, transparency does not impede independence of the judiciary, or even any other branch of the Executive. Rather transparency enhances public trust, and adherence to public service.

Lord Carloway states the following: "I remain of the view that, from the constitutional perspective, the extent of any monitoring of judicial conduct, including judges' interests relative to the performance of their duties, should remain a matter for the Judiciary and not for Government or Parliament."

The policy adopted by the judiciary of 'judges judging judges' is what ended up blunting any meaningful powers to the office of the Judicial Complaints Reviewer to oversee judicial complaints in Scotland.
These issues involving a lack of oversight of judicial complaints powers have been widely reported in the media:


Judicial Conduct, judicial interests and related issues are certainly a matter for primary legislation, and it is worth noting the office of the Judicial Complaints Reviewer was established by Section 30 of the Judiciary and Courts (Scotland) Act 2008

In terms of a failure to declare interests or to maintain a register of interests, I draw to the attention of members - the issue of Lord Hoffmann's failure to declare interests in Regina v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (1999), commonly referenced as "Hoffmann/Pinochet"

Hoffmann/Pinochet tainted the Law Lords over the question of declarations of interest despite their requirement to declare in a register, and subsequently the UK Supreme Court was created in the Constitution Reform Act 2005 Part 3 Section 23 http://www.legislation.gov.uk/ukpga/2005/4/section/23

Importantly the previous requirements of Law Lords to declare interests when they sat as Law Lords in the House of Lords, was omitted from the 2005 UK legislation and set the stage where to this day - the Justices of UKSC have stated they themselves judge they do not require to declare their interests.

The UKSC's position on judicial interests https://www.supremecourt.uk/about/justices-interests-and-expenses.html

The statement from the UKSC justices which has been quoted by two Lord Presidents previously, reads as follows: "Against this background the Justices have decided that it would not be appropriate or indeed feasible for them to have a comprehensive Register of Interests, as it would be impossible for them to identify all the interests, which might conceivably arise, in any future case that came before them. To draw up a Register of Interests, which people believed to be complete, could potentially be misleading."

Lord Hoffmann's failure to declare his interests and the impact of such on public confidence could be summarised by Lord Hutton in his ruling on Hoffmann/Pinochet. Lord Hutton said: 'there could be cases where the interest of the judge in the subject matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation."

While no one has been willing to discuss exactly why UKSC judges lost the previous Law Lords requirement to declare and register interests - Lord Hoffmann's failure to declare his interests in the Pinochet case, set a standard for judges to declare interests - which even Professor Paterson in his testimony to the Public Petitions Committee agreed with.
The judiciary's position on declarations of interests and creating a register of judicial interests, is contrary to the wider public interest and expectation of transparency - especially in our courts.

While noting the Lord President's repeat of his earlier comments in relation to issues involving the Council of Europe, and the Judicial Council in Scotland, Lord Carloway has not provided any convincing argument against creating a register of judicial interests.

It is also very clear from Lord Carloway's letter, the judiciary continue to maintain resistance to the very notion of a register of judicial interests, and will not create one on their own.

As the Public Petitions Committee have already found the petition's proposal of a Register of Judicial Interests to be "workable", and there has been consistent support including media and public interest and for the petition since it was filed in 2012 - and given the Justice Committee are minded to advance this matter as no convincing argument against this proposal has been made, I urge members to take the petition forward and advance PE1458 to primary legislation, to ensure all members of Scotland's judiciary declare and register their interests, in the same way as all others in public life, including all 129 MSPs of the Scottish Parliament register and declare their interests.

Submission 2 – Cabinet Secretary’s letter of 7 February 2020

Noting the Cabinet Secretary's response, I wish to point out one of the two Scottish judges in articles submitted to the Justice Committee, was indeed serving in Scotland at the time of his service in the UAE, - dates on court opinions delivered by Lord McGhie in Scotland and previously provided to the Justice Committee show this to be the case.

The newspaper investigation stated "Our investigation found that Lord McGhie has been registered to sit in the UAE for the past two years while he was also dispensing justice at the Court of Session in Edinburgh." - This was accurately reported in the media:

https://www.dailyrecord.co.uk/news/uk-world-news/scottish-judges-slammed-being-payroll-13376003

Regarding Lord Hope of Craighead, members will be aware Lord Hope serves in the UAE and has done for some time, while also remaining a cross bench peer in the House of Lords, and therefore being required to declare his interests:

https://members.parliament.uk/member/2004/registeredinterests

As well as having a continuing effect on public life in the UK and Scotland as a peer, Lord Hope's House of Lords register of interests list "Chief Justice of the Abu Dhabi Global Market Courts (commercial court system in Abu Dhabi)" - necessitating the swearing of a judicial oath in Abu Dhabi, "Council Member and Trustee, Commonwealth Magistrates’ and Judges’ Association" & "Door Tenant, Brick Court Chambers, London, as an arbitrator".
Members of the Justice Committee will be aware many retired Scottish judges are brought back into service in the Scottish Courts, or for the purposes of heading inquiries and other public service roles - such as Lord Bracadale, and others such as retired Lord President Brian Gill, who is also listed as working as a Judicial Commissioner (along Lord Bracadale) for the UK Surveillance Commissioner:


Lord Gill is also involved in calling for a major inquiry into the land tenure system in Scotland - and therefore still maintains an influence on legislation and public life in Scotland.

Clearly, where retired judges are brought back into service, for court duty or inquiries, the Judiciary of Scotland should maintain their register of interests, given these judges are again, serving either the courts or the Scottish Government, and therefore contributing to public life in Scotland.

On the issue of recusals - in relation to financial interests (although the petition does seek to include all interests & links of members of the judiciary) for some reason there have never been any requirements for judges to disclose financial links which may result in a recusal published in the register of recusals.

And, I would draw to the attention of the Justice Committee - reports of a Sheriff heard a case involving a supermarket in which he had shareholdings, and then refused to recuse himself from the case - reported by the Herald newspaper:


A further report on the same Sheriff revealed he also held shares in a company which was the subject of Scotland's biggest Proceeds of Crime order in connection with activities in Iraq, reported by the Scottish Sun:

https://www.thesun.co.uk/archives/news/808021/judge-has-shares-in-the-bribe-firm/

I have previously drawn members attention to the promotion of former top prosecutor Lord Advocate Frank Mulholland to the position of a Senator of the Court of Session. It is a matter of record Lord Mulholland supported Lord Carloway's review to abolish corroboration and previously appeared before the Justice Committee as Lord Advocate, as a witness expressing such support.

The fact Scotland's top prosecutor was given a position as a top judge in the Court of Session, is a matter of public interest, and as anyone may conclude, could create multiple conflicts of interest particularly given the short gap between Lord Mulholland's retirement as Lord Advocate and elevation to the judiciary.

These are issues which are clearly of relevance to a register of judges interests and should be included in such a register, given there are clear examples of cases in the past where prosecutors, promoted to members of the judiciary have heard cases and
appeals by persons they previously prosecuted, but failed to declare any interest in court.

Over the course of six years of investigation and consideration by the Public Petitions Committee of evidence and hearings, every opportunity was given to myself and others, to respond to hearings, evidence and submissions from others in relation to Petition PE1458.

There is a stark contrast in these submissions, where only the judiciary and vested legal interests have taken an opposite view to transparency and declarations of interest - to the point Lord Gill refused twice to appear before the Petitions Committee, and now Lord Carloway has refused to appear before the Justice Committee on this petition.

Everyone else, and including two Judicial Complaints Reviewers who filed submissions with the Public Petitions Committee, and the Justice Committee, support the creation of a register of judicial interests.

Given the Cabinet Secretary's comments and the lack of any further arguments advanced by the Scottish Government and Lord President against the creation of a register of judicial interests, I would urge the Justice Committee to move forward and advance the petition to primary legislation.

**Submission 3 - Scottish Justices Association 27 January 2020**

The Scottish Justice Association's view of how Justices of the Peace recuse themselves and how recusals are recorded, appears to contradict information previously provided on recusals by Justices of the Peace - by the Head of Strategy and Governance for the Judicial Office in material which I have previously provided to the Public Petitions Committee, and which has also been reported in the media.

In a query to the Judicial Office, I was informed on 21/12/2017:

"The JP courts will start reporting any recusals to us (Judicial Office) come January. When we may see the first we don’t know until we get one of course. But January we have asked them to start sending us any notes of recusals and that will be reported on our website.

I am in touch with the tribunal presidents but don’t yet know when we will be able to start reporting in this area. I’ll hopefully have an update for you re timescales come mid-January on tribunals"

There are admissions in the SJA response of Justices of the Peace, including the author of the letter Mr Dennis Barr - recusing themselves from cases.

In the case of Mr Barr - he states "If I may use myself as an example, I have recused myself on three separate occasions, sitting in the JP Courts in Glasgow over the past ten years, as I have personally known the accused"
Mr Barr goes on to state: "We have been advised by Scottish Courts and Tribunals Service (SCTS) staff, that in instances where the JP has initiated the recusal themselves, it is treated as an informal administrative decision not to sit in a particular case, and as such is not recorded."

I draw members attention to my submission of 29 November 2017:

PE1458/JJJ
http://www.parliament.scot/S5_PublicPetitionsCommittee/Submissions%202017/Pe1458_JJJ.pdf

to the Public Petitions Committee on the issue of Justice of the Peace which refer to communications between myself and the Judicial Office on JPs recusals. The Justice of the Peace issue was also reported in the media:


Justices of the Peace were excluded from the creation of the Register of Recusals in 2014 - despite making up the largest membership of Scotland's judiciary. No reason has been given for their exclusion.

Successive hearings by the Public Petitions Committee and requests for my response to Committee hearings, improved the coverage and content of the Register of Recusals over the course of this petition, however, not until 2018 and after communications with the Judicial Office were Justices of the Peace included in the recusals register.

There is only one single published recusal of a Justice of the Peace - coincidentally - which was published in the recusals register at http://www.scotland-judiciary.org.uk/68/0/Judicial-Recusals after the SJA's letter to the Justice Committee of 27 January.

The recusal is listed as occurring on 04 February 2020 at Dumfries JP Court as "Of member's own accord - accused's family are known to the Justice"

Mr Barr states in his response to the Justice Committee: "I do think it important to stress that in principle JPs do consider themselves to be fully integrated members of the Scottish Judiciary and would seek to be subject to the same processes and procedures as other members."

I feel the time has come to ensure JPs recusals are formalised and properly published in the same way as recusals of other members of the judiciary which have been published since April 2014..

Justices of the Peace - who comprise a significant number in the total membership of Scotland's judiciary, should be included in a publicly available register of judicial interests.
Submission 4 - Sheriff Principal's Chambers Sheriff Court House Airdrie 22
January 2020

The scarcity of information and reluctance of the Judicial Office to publish information regarding Justices of the Peace, in relation to their interests, who they are or how they were appointed, does indicate there are barriers to any member of the public being able to scrutinise JPs interests to the point where a recusal motion may be necessary.

Justices of the Peace are a significant part of the Judiciary of Scotland - with potentially just as many local connections as other members of the judiciary, and like all other members of the judiciary, Justices of the Peace impose sentences including custodial sentences.

Clearly Justices of the Peace should be included in a register of judicial interests.