

## **IAJ-UIM-2006 Meeting**

### **Response for Scotland to the First Study Commission Questionnaire.**

1. By appointment to another position or function, we presume that it remains within the judiciary, e.g. sheriff to sheriff principal or sheriff to senator ( Court of Session or High Court judge), as opposed to a “judge” taking on a role in a different field. The Judicial Appointments Board is responsible for all appointments within the professional judiciary, whether it be promotion or first-time appointment. A good example would be that of a permanent sheriff who wished to become a part-time sheriff. At present, he or she would have to apply for that post and undergo an interview even though one would presume that that person had the relevant experience and fulfilled the other criteria for the post. That position may soon change however. As matters stand the criteria to become a “judge” remain the same for first-time and further appointments and are based on standards set by the JBA. The process is also the same. The JAB will sift the applications, gain reports from referees, judge the performance at interview and make such recommendations as they see fit. Once a recommendation is approved by the First Minister the individual is officially appointed. A sheriff proposing to go part-time is guaranteed an interview. Promotion of an Outer House Judge to the Inner House of the Court of Session is on merit, on the joint recommendation of the Lord President and the Lord Justice-Clerk. Inner House Judges are sworn as members of the Privy Council and may be invited to sit on its Judicial Committee. Appointment to a body such as the Judicial Studies Committee has tended to be by invitation, excluding the post of Director, which involves an application and an interview process. That post is a temporary one for a fixed term of three years. As far as lay magistrates, or justices, are concerned, they are nominated for appointment by local Justice of the Peace Advisory Committees ( JPACs). They have to meet certain criteria for appointment. They must be suitable in terms of character, integrity and understanding, they must live in the locale and should not be over 64 when appointed ( 60 if appointed for court duty). They are advised by legally qualified clerks on matters of law. JPACs advise the First Minister of suitable candidates and the First Minister is responsible for all appointments.
2. Please see above. Apart from proceedings before the JAB there is currently no formal assessment of Judges or justices. Justices hold the post for life unless they move from the Commission area to which they were appointed or resign or are removed from office. However the Criminal Proceedings etc. (Reform)(Scotland) Bill currently before the Scottish Parliament provides that all Justices will be appointed for five years and will automatically be re-appointed except if over 69, if the person declines, if the person is bankrupt or if the Sheriff Principal makes a recommendation against re-appointment on certain specified grounds, such as inadequacy of performance. The new provisions introduce a system of appraisal for justices. A set of competences have been prepared and justices will be both trained and appraised against these. Appraisal will be conducted by fellow justices and will most likely take the form of court observation and discussion sessions but these details have yet to be finalised. It is proposed that the Scottish Ministers may by order make provision as to training arrangements for and appraisal of justices

but no such order may be made without the Lord President's approval. It is hoped that this will ensure that training and appraisal will ultimately be by the judiciary

3 Please see above

4. Please see above

5 and 6. It is thought that the JAB takes account of relevant experience, both quantitative and qualitative. Otherwise there is no ongoing formal assessment.

7. It is not thought that the JAB would take account of the outcome of cases and it would be very worrying if they did. Otherwise please see above answer.

8. The JAB takes account of the efficiency of candidates. If a candidate had a history of failing to produce work on time that would count against him. The Board is also interested in the case management skills of candidates. If cases dragged on because, for example, the judge kept turning up late or took frequent breaks then the Board could take account of that. The mere fact that a case is lengthy, complex or difficult is not something which it is thought the Board could legitimately look at. Otherwise please see above answers.

9. Judges are not formally assessed in court. If an appeal is taken then of course the judgement will be examined in a superior court, which is itself a form of accountability. The Judicial Studies Committee runs courses which are not designed as formal assessments but are a way of ensuring that the judiciary receive continual assessment by seeing themselves on video for example and commenting on each other's performances. This is training by the judges for the judges.

10. If it was felt during one of the JSC courses that a judge was not fully competent this should be picked up and dealt with at the time. The aim however is not formal appraisal but further training and guidance.

11. No, unless a promotion leads to a higher salary.

12. As matters stand, since there is no formal assessment other than by the JAB when an appointment is being considered, and such assessments as are undertaken, albeit informal, are by the judiciary there is no infringement. Provided judges are responsible for assessment there will be no difficulty but we would be concerned if the position changed. There are certain proposals in a consultation document entitled "Strengthening Judicial Independence in a Modern Scotland" which are worrying.

The document may be accessed on

<http://www.scotland.gov.uk/publications/2006/01/30154152/3>.

Reference is made in particular to Chapters 6-12.

There is a proposal, for example, that Ministers should be able to issue guidance to the JAB about the performance of its functions. This would be fine if such guidance were limited to matters of procedure but if it went further it could encroach on the

Board's independence and on the make-up of the judiciary. There are proposals for lay involvement in certain disciplinary matters which would involve a degree of assessment and this is also concerning. The responses to the consultation document may be found at <http://www.scotland.gov.uk/Publications/2006/06/13143517/0>.

13. We agree with the suggestion of our English friends.

Sheriff Hugh Matthews QC