

# **JUDICIARY AND COURTS (SCOTLAND) ACT 2008**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 2 – the Judiciary**

#### **Chapter 3 - Judicial Appointments**

#### **Section 9 - The Judicial Appointments Board for Scotland**

32. Subsection (1) establishes the Judicial Appointments Board for Scotland (“the Board”) as a statutory body. The Board is an advisory non-departmental public body which is not a body corporate.
33. Subsection (2) provides that the functions of the Board are to recommend individuals for appointment to the judicial offices within the Board’s remit, listed at section 10(1), and to provide advice on those appointments. The Board makes recommendations and provides advice to “members of the Scottish Executive”. This expression is used because some judicial appointment functions are exercised by the First Minister individually (e.g. appointment of judges of the Court of Session, sheriffs principal and sheriffs) and some by the Scottish Ministers collectively (e.g. appointment of temporary judges and part-time sheriffs). It would therefore be misleading to simply refer here to “the Scottish Ministers” as that would fail to catch appointments functions exercised by the First Minister alone. “Members of the Scottish Executive” also addresses the fact that functions placed on the Scottish Ministers collectively may in practice be exercised by a particular Minister (section 52(3) of the [Scotland Act 1998 \(c.46\)](#) (“the Scotland Act 1998”) provides that “Statutory functions of the Scottish Ministers shall be exercisable by any member of the Scottish Executive”).
34. Subsection (3) makes it clear that the work of the Board is not subject to either the direction or the control of any member of the Scottish Executive or any other person. This ensures that the Board may not be directed or controlled by anyone outside the Board, including the First Minister when he or she exercises appointment powers alone, the Scottish Ministers when they act collectively, junior Scottish Ministers (who are not members of the Scottish Executive by virtue of section 44 of the Scotland Act 1998) and the Lord President.
35. Subsection (4) refers to Schedule 1 which sets out matters relating to the Board such as membership, fees and expenses, administrative support and procedures. Schedule 1 is further explained below.