

Judicial Office  
for Scotland

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# **Consultation on the Arrangements for Training of Justices of the Peace in Scotland**

## **Responding to the Consultation**

The Lord President is inviting written responses to this consultation. Your response should reach the Judicial Office by **noon on Wednesday 20 August 2014**. Completed responses should be submitted by e-mail to: [anicholson2@scotcourts.gov.uk](mailto:anicholson2@scotcourts.gov.uk) or by post to:

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We need to know how you wish your response to be handled. In particular we need to know whether you are content for your response to be made public. We ask that you provide the following information to ensure we treat your response appropriately. If you ask that your response should not be published, we will treat it as confidential.

Your Name

Your Organisation if you are replying on behalf of an organisation

Your full address and contact details if differing from this at which we should contact you if we need to do so (which can be simply an email address)

**Please tell us whether you are content for the name and address of your organisation and your response to be made public. If you do not request that your response remains confidential we will make your responses available to the public.**

Once the consultation has closed, we will analyse all responses and publish a summary of the consultation on our website. We will also publish on our website all responses where the respondent has given permission for the response to be made public. We reserve the right to edit any such response before publication, but only to avoid publishing any material that may be defamatory. We will consider the outcome of the consultation before we make a final decision on the matters discussed in this paper.

## **How to contact us about this consultation**

Should you wish to contact us about any aspect of the consultation, you may telephone 0131 240 6937] e-mail: [anicholson2@scotcourts.gov.uk](mailto:anicholson2@scotcourts.gov.uk) or write to the address above

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# 1 Introduction

- 1.1 The Scottish Judiciary presently has three levels of judicial office holder: High Court judges, sheriffs and justices of the peace (justices). They are all judges. Justices sit as lay judges in courts of summary criminal jurisdiction.<sup>1</sup> They are not salaried and do not need to be legally qualified (although some lawyers are justices). This consultation considers the present arrangements for the training of justices and how justices should be trained in the future.
- 1.2 Judicial training is not an optional extra.<sup>2</sup> All judicial office holders undertake training to ensure that they can discharge their judicial office effectively. Training is provided at two stages: induction when judges are first appointed; and on-going continuing professional development (CPD) to support judges throughout their judicial careers.
- 1.3 Training of justices was historically principally organised and arranged locally in the courts where they sat. In addition an annual training conference was organised for 100 Justices drawn from across Scotland. It was, and continues to be, delivered by Legal Advisers who are also responsible for providing legal advice in court. The Legal Adviser is the clerk of the JP court. He or she gives the justice legal advice, but the responsibility for making any judicial decision is entirely that of the independent justice.<sup>3</sup> Significant restructuring reforms to justices' training were introduced as part of summary justice reforms in 2007. These reforms included: -
  - (a) Locally a Justices' Training Committee (JTC) was created in each Sheriffdom with responsibility for the delivery of local justices' training and local induction training of prospective justices. Separately Justices' Appraisal Committees (JAC) were formed with responsibility for the appraisal of justices.
  - (b) Nationally, certain justices' training would be delivered by the Judicial Studies Committee (now the Judicial Institute for Scotland (JI)). This included annual residential conferences for existing justices, and mandatory residential induction training conference for prospective Justices.
- 1.4 The view has been expressed that Justices have been '*better trained*'<sup>4</sup> as a result of the reforms in 2007. Any future change must build on these significant reforms.
- 1.5 By virtue s.2(2)(d) of the Judiciary and Courts (Scotland) Act 2008 (the 2008 Act) the Lord President is responsible for making and maintaining

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<sup>1</sup> Their sentencing powers include imprisonment to 60 days and a fine up to Level 4 (£2500).

<sup>2</sup> '*Lord President opens the legal year 2012/2013*' <http://www.scotland-judiciary.org.uk/26/938/Lord-President-opens-new-Legal-Year>.

<sup>3</sup> *Clark v Kelly* 2001 J.C. 16, paragraphs 7 – 9

<sup>4</sup> '*Generally, it was felt that the reforms to lay justice had contributed significantly to meeting the intended outcome of 'appropriate allocation of case to forum, including sufficient use of better-trained lay Justices'* Summary Justice Reform: Lay Justice Evaluation <http://www.scotland.gov.uk/Resource/Doc/362583/0122706.pdf> (Page 9)

arrangements for the training of the judiciary. That Act also amended various provisions in the Criminal Proceedings etc. (Reform) Scotland Act 2007<sup>5</sup> (the 2007 Act) in respect of justices' training. Operational responsibility for delivery of judicial training is undertaken by the JI under arrangements made by the Lord President in terms of s.2 of the 2008 Act. The governance, structure and remit of the JI are contained in a Governance Framework which is set out in Appendix 2.

- 1.6 The operating structures for design, development and delivery of justices' training currently reflect the arrangements made in 2007. The provisions in The Justices of the Peace (Scotland) Order 2007 S.S.I. 2007/210 (the 2007 Order) in respect of training and appraisal were preserved on the coming into effect of s.42 the 2008 Act until such time as the Lord President chose to make other arrangements<sup>6</sup>
- 1.7 The Lord President now wishes to review the structures for providing justices' training, nationally and locally. Whatever form justices' training takes in the future the Lord President believes that all justices should receive training of a consistent quality on all relevant matters. He wishes there to be a clear link between the training needs identified through the appraisal system and the training provided. Training needs will vary between sheriffdoms in the light of the prevailing type of cases. There will always be a need to balance a core curriculum necessary for every justice, with local training requirements. Training will also need to be delivered locally. The Lord President is concerned to ensure that those delivering training are able to do so to the required standards.
- 1.8 This consultation will assist the Lord President in determining whether, and if so what, changes may need to be made to arrangements preserved in the 2007 Order as they apply to the formation and function of JTCs and JACs and arrangements for the training of justices<sup>7</sup>.
- 1.9 If the Lord President concludes that he wishes to make new arrangements it is his present intention to do so using the powers given to him by s.2 (2)(d) and 2(4) of the 2008 Act, and not to make a new Order under s.69(1) of the 2007 Act

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<sup>5</sup> s.42 of the Judiciary and Courts (Scotland) Act 2008

<sup>6</sup> Paragraph 5 of the Judiciary and Courts (Scotland) Act 2008 (Commencement No 4, Transitional Provisions and Savings Order) 2010 (S.S.I. 2010/39).

<sup>7</sup> Paragraphs 8 to 17 of the 2007 Order

## 2 The Training Context: National and Local

### Responsibility for Training

2.1 There are approximately 440 justices. The numbers fluctuate from time to time as justices retire or resign and new ones are appointed. Training for justices is currently delivered at both national and local level:-

- i) National training is undertaken by the JI. In 2014 the JI will hold four annual two-day conferences to provide training to over 100 justices. It will also hold four one-day training events that can accommodate up to 50 participants. The JI is also responsible for developing, maintaining, updating and issuing the Bench Books, briefing papers and related documents to support the justices' judicial functions.
- ii) Local training for all justices is undertaken in the Sheriffdom where the justices are appointed and thereafter sit. Training provision is fully organised, delivered and directed by each Sheriffdom JTC and each JP is expected to complete necessary training. Training is provided by way of residential or one day conferences and local sessions.

### Provision of Training

#### Continuing Professional Development (CPD)

- 2.2 During the term of their appointment, justices are expected to undertake a minimum period of approved training. The current commitment is attendance at 12 hours of training annually. This period was agreed between the then Lord President and Scottish Government in 2007<sup>8</sup> when arrangements were being made to introduce the provisions of the 2007 Act. Justices are not expressly required to attend a national training conference. Given the number of justices and the resource and capacity of JI, it was anticipated that the majority of justices would attend a national residential conference once every five years in their judicial careers. Most justices have attended at least one national residential training conference since 2007.
- 2.3 There is no national curriculum set out for training justices. Training is provided annually at the discretion of each JTC after assessing what their justices' training needs are. Each JTC is required to submit a training plan to the Lord President and the Sheriff Principal, annually, setting out relevant training information.<sup>9</sup> An Annual Report on the training that has been undertaken by each JTC<sup>10</sup> is submitted to the Lord President. No scrutiny or overseeing role of the content, provision or feedback on the training plan is required under this scheme.
- 2.4 Justices are required to demonstrate attendance at training for the minimum number of hours annually. There is no uniform pattern of accrediting attendance. Disparities exist. Some sheriffdoms permit credit for self-study or

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<sup>8</sup> The arrangements have worked well and it has not been necessary for the Lord President to specify the requirement in terms of paragraph 12 of the 2007 Order.

<sup>9</sup> Paragraph 9(2) (a)-(d) of the Justices of the Peace (Scotland) 2007 Order sets out what information is required. It includes the type of training, the number of justices to be trained, the place(s) for training and the proposed dates of training.

<sup>10</sup> Paragraph 9(4) of the Justices of the Peace (Scotland) 2007 Order.

attendance at external conferences. Others count attendance only at local training events.

- 2.5 Justices give up their valuable time to perform their duties. Account must be taken of personal and professional work commitments to ensure training is provided flexibly to allow them to fulfil their training requirements. The approach to accrediting attendance at training must be enlightened and flexible. There needs to be consistent practice. There must also be a robust review mechanism undertaken for justices who fail to meet their annual training requirement, without reasonable excuse.
- 2.6 The aim of training is to ensure that it has value and is not simply designed to fulfil an arbitrary number of hours. Training needs require to be identified and met, be they designed to meet an individual justice's needs or collectively.

#### Induction Training

- 2.7 The training commitment, requirements and objectives set out in the mandatory induction training course for prospective justices are clearly articulated. Training is undertaken using a mixed model of both national and local training. It includes a substantial course of lectures and seminars which are delivered locally, attendance at a residential conference delivered nationally and observing and 'sitting in court' requirements undertaken in collaboration with the sheriffdom judiciary.
- 2.8 Making greater use of other judicial office holders, principally but not exclusively sheriffs, in the formulation and delivery of justices' training, has been recognised as a highly successful component of national and local training. There is consistent feedback from evaluation questionnaires and comments made by Justices at courses that they find it helpful to discuss issues with other judicial office holders who are able to provide judicial insight when facilitating discussion.
- 2.9 Useful lessons have been learnt from the delivery of this structured induction training programme. Prospective justices have been trained and been successfully confirmed as justices. Feedback received from the justices in respect of their training has been highly positive. These justices represent a diverse range of external (i.e. non-legal) backgrounds and experiences and were appointed through the recruitment and appointment process.
- 2.10 Maintaining and capturing the success, enthusiasm, motivation and commitment from existing national, local and induction training is essential. It is vital that is built upon when considering, for the future, how best to provide training to all justices, at every stage of their judicial appointment.

### 3 The Case for Change

#### Why change?

- 3.1 There are a number of drivers for change. The current arrangements were made in 2007, when summary justice reforms were introduced, prior to the creation of the unified judiciary under the leadership of the Lord President, in 2010. The present arrangements reflect the reality of 2007. They also predate the development of the JI into its present structure. Arguably, had the changes of 2007 happened after the 2008 Act the arrangements would have been differently made, and they would have been made by the Lord President from the outset.
- 3.2 Since judicial training became the responsibility of the Lord President, the focus on judicial training for High Court Judges and sheriffs has been transformed. It is important that the benefits of the changes to training of this group of judiciary are made available to all the judicial office holders for whom the Lord President is responsible.
- 3.3 The Lord President is also responsible for ensuring the efficient disposal of business in the Scottish Courts. He needs therefore to be satisfied that the judicial training throughout Scotland, at all levels, is provided to a uniform standard and covers the necessary subject matters or areas. It is necessary to devise a training regime for justices that balance the need for local training with national training. It is also necessary to consider what guidance and support can be provided by the JI. This is also a time of rapid change to the criminal justice system. It is vital that coherent training provision is made at all levels of judiciary sitting in the criminal courts. Finally it makes sense to consider whether it is right to rationalise future training arrangements using the Lord President's national powers<sup>11</sup>.
- 3.4 This consultation must consider the challenges and how best justices training should be designed and delivered for the future. Whatever that may be, it must continue to ensure that :-
- a) Justices can deal effectively with cases brought before them and expensive court time can be used effectively, while ensuring accused, victims and witnesses are all treated with fairness and respect.
  - b) Justices' skills can be uniform; all justices are entitled to the same quality, scope and depth of training.
  - c) Justices can gain the relevant knowledge and skills to administer effective justice in the courts where they sit.
  - d) Justices' training can promote transparency and public confidence in equipping justices to deal with cases allocated to their courts.

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<sup>11</sup> Section 69 of the 2007 Act and s2 of the 2008 Act.



- 3.5 Nationally, development of justices' training should reflect their role within the Scottish criminal justice system. Planned court changes indicate a potential increase in business with a future shift from sheriff court business to the justices' court. This will impose further demands on justices who will require continuing professional development to meet that challenge. Equally, training must take account of the fundamental reforms to substantive criminal law and procedure anticipated following the passing of the Criminal Justice (Scotland) Bill, currently progressing through the Scottish Parliament. This legislation will have significant training implications for justices as to how business in the JP courts is conducted in the future.
- 3.6 Locally, judicial appointment requires a justice ordinarily to reside within the sheriffdom or within 15 miles of it<sup>12</sup>. Local courts reflect local dimensions to the administration of justice. The types of cases prosecuted in the Justice of the Peace Courts vary. These variations are influenced by local initiatives put in place by the Crown Office and Procurator Fiscal Service or the nature of the jurisdiction itself. Some courts will have serious road traffic cases predominate their business because that Sheriffdom has many major trunk routes passing through it. Training must be relevant to local needs. The local dimension to training is important.

### **What should change?**

- 3.7 There are two main areas where it is suggested that change is needed. First it is important that the model for delivering justices training is based on a sound pedagogical foundation in common with judicial education for other judicial office holders. Secondly the local committee structure for training and appraisal would benefit from rationalisation and aligning with the work of the JI.
- 3.8 Locally, the JTC develops its own training plan by identifying local training needs and drawing on its unique expertise and resources, and informed by the justices' appraisal process. There is no requirement with the present statutory framework to seek out, share views or obtain external advice in developing training. In practice, this happens but in no consistent, structured, transparent or formal manner. Inevitable overlaps exist in training being provided across Scotland.
- 3.9 It is recognised that much quality work has been carried out by the JTCs and the teams of LAs who have developed and delivered training to date. Local training is provided on a wide range of topics so as to achieve the outcomes set out in paragraph 3.4. Good practice and expertise has been developed. These need to be encouraged and shared nationally. It is important that the skills, both of justices (recognising that they have much to offer from their varied backgrounds) and Legal Advisers can best be deployed in developing and delivering future training. There are important roles for both.
- 3.10 To date, the JI's role has been directed towards development and delivery of national training, though it does maintain a reporting role by sending an Annual Report on Sheriffdom training to the Lord President. The JI has a

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<sup>12</sup> Section 68(1) of the 2007 Act

purpose-built learning suite within Parliament House in Edinburgh which can hold up to 30 participants. This provides enhanced opportunities for the development of future judicial training. The creation of the new learning suite has provided a focus for a number of pilot one day courses to be offered successfully to justices including:-

- a) judicial decision making and sentencing for experienced justices, and
- b) observing the Appeal Court combined with a syndicate session to consolidate judicial skills for newly appointed justices.

- 3.11 A two day, non-residential, annual conference in the learning suite was piloted in December 2013. Plans for future developments at the JI include the creation of enhanced online resources (some course materials are already made available on the judicial intranet). The 'Judicial Hub' project has introduced a new web-based judicial communication and training platform. This consultation will consider how best to utilise these resources in educating and supporting justices.
- 3.12 The JI has among its staff people professionally qualified in the art and science of education, and in the use of technology in the delivery of various types of training and reference aids. The Judicial Hub will allow the judiciary, among other things, to have access to training and reference materials including e-books and in time e-learning courses. The Hub is accessible by any computer, laptop, smart phone or tablet device capable of connecting to the internet.
- 3.13 The provision of these resources at a national level promotes consistency, uniformity and equality of training. Course content developed for one tier of the judiciary can be used and adapted for another to provide cost and time effective, consistent quality training. Future criminal reforms may well require a uniform approach to deliver training consistently to all justices. This is best coordinated centrally, with input from sheriffdom trainers, to ensure consistent content and a common minimum standard of delivery.
- 3.14 In developing the options for delivering justices' training, it must be remembered that justices are not salaried members of the judiciary. It is important that we continue to find ways in which justices can access the training materials they need easily using their time effectively and efficiently when they are undertaking training.

## The Options for Change

3.15 Discussions have been taking place with those who are involved in justices' training for some time, both at meetings of the Convenors of the JTC, at the Justices Sub-Committee of the Judicial Studies Committee (the forerunner of the JI), and elsewhere. As a result the following four options for delivering training have emerged.

### Do Nothing

3.16 It would be possible to continue with the present arrangements. As mentioned earlier the view has been expressed that Justices have been '*better trained*' as a result of the reforms in 2007. There is a good deal of effective training being delivered throughout Scotland separately by each JTC and at national level by the JI. However, it is that very separation of responsibilities and a lack of a clear relationship between the various elements responsible for justices training which suggests that change is needed. It is important that justices benefit from the significant developments in judicial education presently being provided to their judicial colleagues in the High Court and the sheriff court. That will not be sustainable or deliverable through a fragmented delivery model.

3.17 Moreover, the present arrangements do not recognise the effect of reforms contained in the 2008 Act, not least the creation of a unified judiciary under the headship of the Lord President, and the role of the JI as provided by the Governance Framework set by the Lord President (Appendix 2). Exactly how far that role should extend can be considered but it is suggested that it should include providing guidance and expertise, setting a national curriculum, outlining proposed training content, including identifying an appropriate means of qualitative monitoring and developing modern teaching methodology.

### Central control and delivery

3.18 With this option the JI would be wholly responsible for the form, content and delivery of justices training. It would exclusively use its own staff to deliver training either in the Learning Suite or at locations throughout Scotland. It would need to do this for all 440 Justices. The JTC in each sheriffdom would cease to exist.

3.19 This model would provide consistency and avoid duplication of work. It would ensure a single set of quality-designed, peer-reviewed, judicially-led training courses and materials. The JI would be able to utilise training resources developed in respect of the wider judiciary. There would be a small number of dedicated trainers for Justices.

3.20 This option however, has a number of significant disadvantages. First it loses any link with local knowledge and needs, for example, those identified through the appraisal process. It also would remove the role of the SLA and the LA in the training of their justices. This link is an important one in developing the relationship of confidence and trust that must exist between the Bench and its advisor. It would require the JI to expand its capacity to deliver training to a large number of justices. To make that cost effective it is likely training would have to take place in fewer locations, and possibly at times that were not convenient for all justices to attend easily.

### Central control with local delivery

- 3.21 This option builds on the option above to provide local participation in the delivery of training. It preserves the continuity and consistency of training provision but would seek to utilise the SLA and LAs in delivering the training. It would be necessary in this model for the JI to satisfy itself that those who are delivering training are able to do so to the required standard.
- 3.22 While this option allows for local delivery of nationally developed training it does not provide an easy means by which local needs can quickly be addressed. It also remains unconnected from the appraisal system.

### A partnership between the JI and the sheriffdoms.

- 3.23 This option emerged in discussion with convenors of JTCs. The JI would be responsible for devising a core curriculum for all justices in Scotland. It would produce the necessary materials, utilising both its resources and the skills and knowledge among the sheriffdoms. At local level where particular local needs emerge it would be possible for particular training interventions to be devised. It would also provide in the proposed Committee structure below, a means by which justices' training continued to be developed building on local knowledge. The JI would, as with the option above, have to satisfy itself that those who are delivering training are able to do so to the required standard. Finally it allows information emerging from appraisal to inform course development and design both locally, and through the structure proposed, nationally as well. For all these reasons this is the option currently preferred by the Lord President subject to the views expressed in response to this consultation paper.

### **Questions**

**3.24 *Do you have a preferred option for delivery of Justices training? Please give reasons.***

**3.25 *Are there other options for delivery of justices' training?***

### **Local Committee Structure and Function**

- 3.26 Presently there are two committees involved in justices' training and appraisal. One is effectively the subset of the other. If changes are made to the arrangements for the training of justices it is necessary to consider whether the present separate local committee structure continues to make sense.
- 3.27 The preferred option would require a means of marrying the delivery of the core curriculum with local needs. There is no suggestion that the work of the JAC should cease. The question is whether there is any continuing need for separate committees to consider appraisal and training.

### **Question**

**3.28 *Is there a need for there to be separate committees to consider training provision and the appraisal of justices?***

- 3.29 One model might be to amalgamate the work of the two committees into one committee. The membership of the new single local committee would be:

- i) Between five and eight justices of the sheriffdom
  - ii) A local sheriff
  - iii) The SLA, who would act as the legal adviser to the Committee
- 3.30 A member of the SCS staff would provide the secretariat to the Committee. In addition the Director or Deputy Director, or a member of staff of the JI nominated by the Director, would be entitled to attend meetings as an observer.
- 3.31 This mirrors the present membership of the JTC with two changes. First the SLA would sit on the committee *ex officio*. Secondly, there is a right for the Director, Deputy Director, or the Director's nominee to attend meetings of the Committee as an observer.
- 3.32 The convenor of the local committee will *ex officio* be a member of the JTCJI. A SLA nominated by the SLAs will also sit on the JTCJI for so long a period as the Chairman of the JI may provide before a new nomination or re-nomination is required. The JTCJI will be responsible for justices' training locally and nationally and reporting to the Board of the JI.
- 3.33 The table at Appendix 3 sets out the respective responsibilities for the JI, and local committees if the preferred Option is followed.

#### **Questions**

- 3.34 *What is your view on the suggestion that the JTC and JAC should be amalgamated?***
- 3.35 *If the committees are amalgamated what should the new committee be called?***
- 3.36 *Irrespective of your answer to the previous question what are your views on the respective responsibilities of the Committees set out in Appendix 3?***

## 4 Training Provision

- 4.1 The Consultation is interested in considering how training should be provided concentrating on (1) content and (2) quantity.

### Training Content

- 4.2 Justices need to understand the Scottish legal system, summary criminal law, sentencing, evidence and procedure, judicial ethics, information and communication technology, diversity awareness and social context. Justices have LAs in court to advise them on the detail of the law. Judicial decisions are the responsibility of, and made by, justices. The training curriculum should comprise three components:-

- (a) Core Training: This covers up to date law and procedure including any relevant changes. It must be delivered by legally qualified staff, trained as trainers. It may be modified for different levels of justices' experiences (from induction standard to experienced justices).
- (b) Generic Training: This covers presiding in court, case management, communication skills/presentation, dealing with party litigants, decision-making and the relationship with the LA. It will be delivered by judicial office holders, justices and legally qualified staff, if trained as trainers.
- (c) Miscellaneous Training: This covers IT skills, diversity and equality awareness, judicial ethics and off the bench duties. It will be delivered by appropriately skilled judicial office holders, justices and external bodies with relevant expertise.

- 4.3 Annual percentage requirements could be allocated to each element e.g. 60%, 30% and 10%. These percentages could be expressed in either hours of training or sessions.

### Questions

- 4.4 ***Are the three training components in paragraph 4.2 correctly specified? If not, please say why not.***
- 4.5 ***Should the curriculum for justices' training be set annually? If so, what percentage of training time should be allocated to each component?***

## Quantity of Training

- 4.6 The present expectation is that each Justice will complete annually 12 hours of training. This seems to be working satisfactorily. It is for consideration whether the requirement needs to be formalised, either in terms of the 2007 Order, or by whatever arrangements the Lord President may make in the light of this consultation.
- 4.7 Most justices meet their annual requirements locally. However, should attendance be required at a national training conference? If so, how often? Should attendance at a national training event count towards the annual training commitment?
- 4.8 National conferences provide justices with opportunities for exchange of experiences obtained from sitting in courts across Scotland. They also provide a focus for justices to network and build contacts to support them in their roles. As such, national conferences have an important role to play in developing the knowledge and experience of justices. Senators, sheriffs principal and sheriffs regularly attend national conferences. This provides an additional opportunity to engage with other tiers of the judiciary. The original five year cycle for attendance at training might be said to be too long a training rotation at a time of extensive criminal justice reforms.
- 4.9 Relevant training does not need to be only that which is delivered by the Sheriffdom or JI. What attendance at external training events should be included? How should that issue be addressed? Training for judicial office holders is always developed by judges for judges. However should a flexible approach and means of accrediting self-study and attendance at external training be developed?

## Questions

- 4.10 *Should there be a minimum mandatory annual training requirement? If so how should this be specified? Please give reasons***
- 4.11 *Should attendance at a national training conference be compulsory? If so, how often? Please give reasons.***
- 4.12 *Should attendance at a national training conference be given full or part credit towards the annual training obligation? If so how much?***
- 4.13 *Should attendance by way of self-study, attendance at external courses be credited towards the annual training requirement?***

## 5 Summary of Questions

5.1 Listed below are all the questions posed in this consultation paper to which responses are sought

- 1) Do you have a preferred option for delivery of Justices training? Please give reasons. (paragraph 3.24)
- 2) Are there other options for delivery of justices' training? (paragraph 3.25)
- 3) Is there any reason why there needs to be separate committees to consider training provision and the appraisal of justices? (paragraph 3.28)
- 4) What is your view on the suggestion that the JTC and JAC should be amalgamated? (paragraph 3.34)
- 5) If the committees are amalgamated what should the new committee be called? (paragraph 3.35)
- 6) Irrespective of your answer to the previous question what are your views on the respective responsibilities of the Committees set out in Appendix 3?
- 7) Are the three training components in paragraph 4.2 correctly specified? If not, please say why not. (paragraph 4.4)
- 8) Should the curriculum for justices' training be set annually? If so, what percentage of training time should be allocated to each component? (paragraph 4.5)
- 9) Should there be a minimum mandatory annual training requirement? If so how should this be specified? Please give reasons (paragraph 4.10)
- 10) Should attendance at a national training conference be compulsory? If so, how often? Please give reasons. (paragraph 4.11)
- 11) Should attendance at a national training conference be given full or part credit towards the annual training obligation? If so how much? (paragraph 4.12)
- 12) Should attendance by way of self-study, attendance at external courses be credited towards the annual training requirement? (paragraph 4.13)



## Appendix 1: National and Local Committee Structures

### 1. National:

The Chairman of the Judicial Institute has continued in existence a Committee, now called the JTCJI. It meets at least annually, though it may meet more often. The members of the Committee include the Director and Deputy Director of the JI, the convenors of the sheriffdom JTCs, a SLA and is chaired by a Sheriff Principal. That committee reports through the Sheriff Principal to the Board of the Institute. The Sheriff Principal is also a member of the Advisory Council of the Institute. The JTCJI assists the Lord President in the execution of his training responsibilities for justices. It makes recommendations and offers advice to the Lord President and the JI on the delivery of justices' training, both nationally and locally.

### 2. Local

There are six Sheriffdoms: Lothian & Borders, North Strathclyde, South Strathclyde Dumfries & Galloway, Glasgow & Strathkelvin, Grampian Highlands & Islands, Tayside Central & Fife. The setting up of these two committees is mandatory so that each Sheriffdom has the following Committees:-

#### Justices Training Committees (JTCs)

Membership is determined by the 2007 Order. The members of the JTC include the members of the Sheriffdom, the Justices' Appraisal Committee (JAC), a Sheriff and a LA. The JAC Convenor also chairs the JTC. The functions of the JTCs<sup>13</sup> include:-

- Considering the training needs of justices in their Sheriffdom;
- Undertaking any guidance or directions on justices' training issued by the Lord President or the Sheriff Principal; and
- Providing an annual training plan with details of the training to be delivered in that year and an annual report on training that has been delivered in the previous 12 month period.

#### Justices' Appraisal Committees (JACs)

Membership of the JACs<sup>14</sup> comprises at least 5 – 8 members. Each member holds office for three years. Each Sheriffdom has set out its own appraisal system for justices.<sup>15</sup> This consultation is not concerned with appraisal.

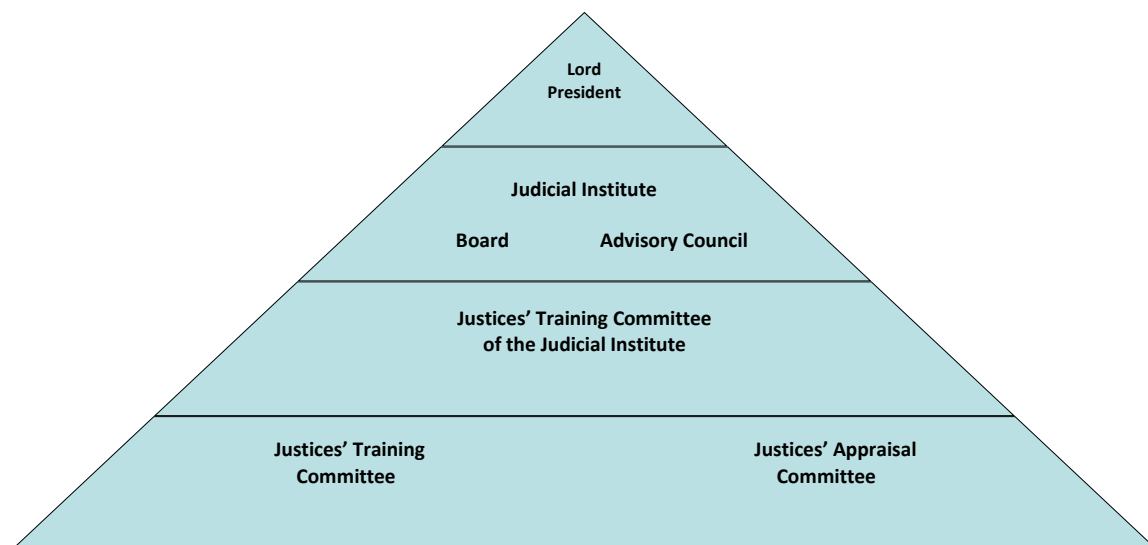
**Figure 1:** The relationship between the JI and the responsibility to the Lord President in relation to training.

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<sup>13</sup> Paragraph 9 of the Justices of the Peace (Scotland) Order 2007

<sup>14</sup> Paragraphs 14- 16 of the Justices of the Peace (Scotland) 2007.

<sup>15</sup> Paragraph 17 of the Justices of the Peace (Scotland) 2007 Order.



**Figure 1: The relationship between the JI and the responsibility to the Lord President in relation to training.**

## **Appendix 2:**

### **The Governance Framework of the Judicial Institute**

#### **The Judicial Institute for Scotland**

1. The Lord President requires there to be an Institute, of which he shall be President, called the Judicial Institute for Scotland.

#### **The remit of the Judicial Institute**

2. The Institute shall be responsible for all aspects of the professional development of judicial office holders and in particular shall be responsible for:

a) promoting and continuously updating the identification of the needs of the Scottish judiciary for education, including skills training; IT training; case management training and professional development as judges;

b) developing courses to meet the needs of the judiciary for life long education and training;

c) facilitating, by strong independent leadership and strategic guidance, the planned development and delivery of meaningful, modern and relevant educational courses and initiatives to the Scottish judiciary;

d) representing, explaining, protecting and promoting the core value of judicial independence, including budgetary independence, in the context of training and education of judges;

e) establishing short, medium and long term educational and training strategies for judicial education in Scotland; and

f) generally providing advice to the Lord President in respect of the development of judicial training and education and in particular the circumstances in which he should use his powers under s2 (4) of the Judiciary and Courts (Scotland) Act 2008 to require a judicial office holder to attend training.

3. The Institute shall be committed to and governed by the following guiding principles:

#### **Judicial training and education**

a) shall be directed to promoting and fostering the highest standard of judicial conduct, performance and public service through creating and delivering training and education courses that stimulate and sustain the continuing professional and personal development of judicial office holders in modern Scotland;

b) shall promote and engender the highest level of judicial social awareness of cultural, sexual and ethnic diversity, ethical sensitivity and pride in judicial excellence within an independent judiciary serving a diverse public in modern Scotland; and

c) shall be directed to promoting and improving the administration and delivery of justice in modern Scotland.

### **The Board of the Judicial Institute**

4. The realisation of the remit in conformity with the guiding principles will be the responsibility of the Board of the Institute which shall comprise:

a) two Senators of the College of Justice, one of whom shall act as Chairman of the Institute and the other as Vice Chairman of the Institute;

b) a sheriff who shall be the Director of the Institute;

c) a sheriff who shall be the Deputy Director of the Institute;

5. The Board may invite other persons, including the Head of Education of the Institute and the Executive Director of the Judicial Office, to attend its meetings.

### **6. Appointment of Chairman and Vice Chairman of the Board**

The Lord President shall, from time to time, appoint a Senator to be Chairman or Vice Chairman for such period as he deems appropriate. He may bring an appointment to an end at any time.

### **The Director**

7. The Lord President shall appoint a Director of the Institute who is a serving sheriff and who shall occupy the office of Director for such period as the Lord President may determine which will usually be for a period of three years. The Director will be expected to devote most of his time to the work of the Institute but may provide relief judicial assistance from time to time

8. The Lord President may extend the appointment, or further extend the appointment, for such period or periods as he may determine.

9. The appointment process shall be by advertisement among the sheriffs followed by sift and interview by an appointment panel comprising the Chairman, Vice Chairman, and a lay member of the Council of the Institute. The interview panel will make recommendations to the Lord President of the name or names of those it considers suitable.

10. The Lord President may bring the appointment of the Director to an end at any time after consultation with the Chairman of the Institute. The Lord President may appoint an interim Director while the appointment process for a new Director is being completed.

### **Deputy Director**

11. The Lord President shall appoint a Deputy Director of the Institute who is a serving sheriff and who shall occupy the office of Deputy Director for such period as the Lord President may determine which will usually be for a period of three years. The Lord President will determine at the time of appointment the number of days per year that the Deputy Director shall devote to the work of the Institute.

12. The Lord President may extend the appointment, or further extend the appointment of the Deputy Director for such period or periods as he may determine.

13. The appointment process shall be the same as that for the Director save that the Director is to be part of the selection panel in addition to those named in paragraph 9.

14. The Lord President may bring the appointment of the Deputy Director to an end at any time after consultation with the Chairman of the Institute.

#### **Duties of the Director and Deputy Director**

15. The Director shall be responsible for the operational work of the Institute and in particular shall have the following responsibilities:

- a) to create the annual legal training and education curriculum of the Institute for approval by the Lord President;
- b) to implement any training direction or determination received from the Lord President in respect of any judicial office holder or group of office holders;
- c) to issue the annual training curriculum by the end of October each year
- d) to prepare each year a three-year rolling training plan for approval by the Lord President identifying the specific short, medium and long term objectives for developing and improving judicial training and education;
- e) to identify new significant legislation and cases which the judiciary require to be briefed on and organise delivery of this;
- f) to create and deliver effective training programmes and teaching materials and make them available to all judicial office holders;
- g) to promote the operation of the European Judicial Training Network in Scotland;
- h) to promote the operation of the Judicial Training Partnership between the Institute and the National Judicial Institute of Canada
- i) to identify and develop new technologies for judicial teaching and education, including the promotion of technology-enhanced learning opportunities; to engage and co-operate with Government, academics, criminal justice agencies and other individuals and bodies to promote delivery of information to judicial office holders, which will assist them in their office

16. The Deputy Director shall:

- a) assist the Director in the work of the Institute as the Director shall require; and
- b) deputise for the Director when he is on annual leave.

#### **Business Plans and Financial Provisions**

17. The Institute will prepare for the Lord President by the end of January each year a Business Plan for the following financial year, together with a bid for the resources necessary to enable the plan to be carried into effect. The Lord President will approve the plan with such modifications as he may require in the light of the

decisions of the members of the Scottish Court Service on the funding available to the Judicial Office for Scotland.

18. The Executive Director of the Judicial Office for Scotland will ensure that staff are made available from among the staff of the Judicial Office for Scotland to support the work of the Institute as provided in its Business Plan. The staff will be managed by the Head of Education, under the direction of the Director.

19. The Executive Director of the Judicial Office shall ensure that appropriate funds are made available from within the Judicial Office for Scotland budget to enable the Institute to carry out its Business Plan. In doing so he may make such arrangements, after consultation with the Director of the Institute, as he considers necessary to ensure proper control of that money, and in particular who may commit, authorise and account for expenditure. He may require the staff supporting the Institute to give effect to any such arrangements.

### **Annual Report**

20. As soon as practicable after the end of the financial year the Institute shall submit a report to the Lord President giving an account of the activities of the Institute during the financial year just ended.

### **The Advisory Council**

21. There shall be established a Council to provide the Board of the Institute with advice on any aspect of the remit of the Institute. The Board of the Institute must consider any advice it receives from the Council in fulfilling its remit.

22. The Council shall be no more than 12 in number (excluding members of the Board of the Institute), and shall have a majority of members that hold judicial office. The Council shall include at least the following:-

- a) a sheriff principal;
- b) two sheriffs;
- c) one part-time sheriff;
- d) two justices of the peace;
- e) a representative of the Justice Directorate of the Scottish Government;
- f) a lay person; and
- g) such other persons who possess such particular expertise as the Chairman, considers would be of assistance to the work of the Judicial Institute.

23. Appointments to the Council are to be made by the Chairman of the Institute. He may remove a person from the Council at any time. Appointments will be for such period as the Chairman determines necessary and they may be extended, or further extended as he sees fit. A person appointed to the Council shall receive a copy of this Governance Framework. In making appointments to the Council the Chairman

will take account of its overall composition and will have regard to issues of equality and diversity.

24. The Council shall meet four times in any 12 month period and at such other times as the Board of the Institute considers necessary.

25. Every member of the Board of the Institute may, as of right, attend any meeting of the Council.

26. The Chairman of the Institute will be Chair of the Council. In his absence the Vice Chairman will take the chair.

### **Committees and working groups**

27. The Board of the Institute may create such other committees or working groups as it considers necessary to assist it with fulfilling the remit, the training plan, or the business plan of the Institute. Appointments to any committees created under this provision will be made by the Chairman for such period as he considers necessary, and he may also designate who is to chair any committee so created. Appointments to working groups may be made by the Director.

28. This Governance Framework is approved by the Lord President in terms of the provisions contained in s2 (2) (d) of the Judiciary and Courts (Scotland) Act 2008 by which he has an obligation to make appropriate arrangements for the training welfare and guidance of judicial office holders in Scotland. It replaces the Governance Framework of the Judicial Studies Committee of 1 April 2010, which is revoked.

29. For the purposes of this Governance Framework a judicial office holder is a person who occupies:

- a) the office of judge of the Court of Session, or, having retired is reappointed as a judge,
- b) the office of Chairman of the Scottish Land Court,
- c) the office of temporary judge,
- d) the office of sheriff principal,
- e) the office of temporary sheriff principal,
- f) the office of sheriff or, having retired is reappointed as a sheriff,
- g) the office of part-time sheriff,
- h) the office of stipendiary magistrate,
- i) the office of justice of the peace.

30. The Lord President may, at his absolute discretion, depart from the provisions of this document in the discharge of his statutory duty in relation to training, and he may revoke it at any time. He may also from time to time make amendments to these

arrangements or make temporary provision in respect of specific identified training needs.

31. This Governance Framework shall come into effect on 2 September 2013

Lord President



### Appendix 3: Proposed Committees' Membership and Remit.

Committee	Membership	Functions
BJI (Board of the Judicial Institute)	As set out in the Governance Framework in Appendix 2.	Operational responsibility as set out in Governance Framework.
ACJI (Advisory Council of the Judicial Institute)	To continue as currently set out in the Governance Framework with 2 justices as members appointed by the Chairman.	To advise the Board on any aspect of the remit of the JI in accordance with the Governance Framework.
JTCJI (Justices' Training Committee of Judicial Institute)	<p>The Chair will be the Sheriff Principal on the ACJI.</p> <p>The Director and Deputy Director of the JI will be members.</p> <p>Convenors of the six local committees.</p> <p>One nominated SLA</p> <p>Staff from the JI as determined will attend for educational and training input.</p> <p>The JI staff will perform the secretariat functions for the committee.</p>	<p>To make recommendations and offer advice to the Lord President and the BJI on national and local training.</p> <p>To report on the local training provision and results from appraisal to allow trends in training to be developed.</p> <p>To oversee the programme of training that will be delivered nationally.</p> <p>To identify core training requirements and to set the national curriculum for training and to develop training interventions as required.</p>
<p>Local Committee</p> <p>Each Sheriffdom has a committee.</p>	<p>Membership will comprise the current members of the JTC and JAC.</p> <p>Convenor will be appointed from the justices.</p> <p>Sheriff appointed by local Sheriff Principal to have overseeing responsibility.</p> <p>SLA</p> <p>Secretariat undertaken by SCS staff.</p> <p>Director or Deputy Director of the JI or nominated staff may attend meetings as observers but are not members of the committee.</p>	<p>To develop and deliver local Sheriffdom training.</p> <p>To be responsible for appraisal and reporting the results of appraisal.</p> <p>To communicate, liaise, engage and work with the JI at an operational level</p>

#### **Appendix 4: List of those consulted**

Convenors, Justices' Training Committees

Crown Office and Procurator Fiscal Service

Judicial Appointments Board for Scotland

Law Society of Scotland

Part-Time Sheriffs' Association

Police Scotland

Public and Civil Service Union

Scottish Government

Scottish Justices Association

Scottish Legal Aid Board

Sheriffdom Legal Advisors

Sheriffs' Association

Sheriffs Principal