

# The Royal Society of Edinburgh

## Strengthening Judicial Independence in a Modern Scotland

The Royal Society of Edinburgh (RSE) is pleased to respond to the Scottish Executive consultation on a range of proposals to modernise and improve the court system through strengthening the role of Scotland's judiciary, in particular on the unification, appointment, removal and management of Scotland's judiciary. These comments have been compiled with the assistance of a number of expert Fellows of the RSE, under the direction of the General Secretary, Professor Gavin McCrone.

The consultation paper seeks views on a number of proposals for improving the organisation and administration of the Scottish judiciary. The proposals are generally reasonable but there are concerns about some of them.

Of major concern is that the proposals increase greatly the powers and responsibilities of the Lord President. There is a danger that so many administrative burdens will be placed on the Lord President that he or she will be unable to fulfil properly his or her important judicial responsibilities. There are also potential dangers in giving too much power to one individual within any organisation. In most big organisations power resides in a Board or Council. There is a titular head of the organisation and an adequate executive structure or secretariat. Furthermore, the administrative support which the office has at present would need to be expanded to enable the additional duties to be performed effectively under the direction and control of the Lord President. This would have implications for resources which have not been fully recognised in the consultation paper.

The paper would also have benefited from considering what is being done in other countries, apart from some brief references to England and Wales.

### The Independence of the Judiciary

*Question 1: Would a provision reflecting the commitments to the independence of the judiciary deliver all that is required by way of a guarantee of judicial independence?*

There is no evidence that judicial independence is under threat in Scotland and on one view a statutory guarantee would not add anything of value to what already exists. However, the independence of the judiciary is of fundamental importance in our constitutional democracy and there is a gap in the current legislation for Scotland as compared to that for the United Kingdom which, for the avoidance of doubt, ought to be filled. Section 3 of the Constitutional Reform Act 2005 contains a statutory guarantee of continued judicial independence which is binding on the Lord Chancellor and other Ministers of the Crown. As such, an equivalent provision should be enacted by the Scottish Parliament which would ensure the judicial independence of the Scottish judiciary from influence of any kind, whether direct or indirect, by Scottish Ministers.

*Question 2: Should a duty be imposed on the First Minister or Scottish Ministers collectively to ensure judicial independence is recognised and respected within the Executive?*

The duty to ensure judicial independence should be imposed upon Scottish Ministers collectively.

### The Lord President

*Question 3: Do you agree that the Lord President should be given formal status as head of the Scottish Judiciary?*

To give the Lord President formal status as head of the Scottish Judiciary and thus the authority to speak on its behalf both to the Scottish Parliament and the Scottish Ministers seems an acceptable development within a

modern constitutional framework. Although, proper balance should be struck between what this status will involve and what is practicable.

*Question 4: If so, what would be a fitting title for this judicial office?*

The Lord President is called the Lord President because he is the President of the Court of Session. It is a position that carries great weight because of the pre-eminence that has attached to it for centuries. The fact that a large number of additional duties are already imposed on the holder of the office of Lord President by statute shows that there is no necessary incompatibility between his retaining the title which is given to him as President of the Court of Session and his having responsibilities which lie elsewhere.

*Question 5: Should a statutory duty be placed on the Lord President and Lord Justice General to put in place arrangements for the speedy and efficient disposal of business in the Court of Session and the High Court of Justiciary?*

If the purpose of the statutory duty is to strengthen the authority of the Lord President and the Lord Justice General to direct how the business in these courts is to be conducted, it could be argued that he has all the authority that is needed already and that a general statutory duty of the kind envisaged is unnecessary. Where he needs statutory powers to dispose of business in the High Court he already has these under the Criminal Procedure (Scotland) Act 1995. Furthermore, it is not obvious that placing the duty on one individual is the only or best option.

*Question 6: Should a prior claim to resources over the lower courts be recognised in statute?*

Under normal circumstances the absence of express statutory authority should not give rise to any difficulties in practice as Sheriff Principal would support the Lord President in carrying out his overarching responsibility for the administration of justice. Exercise of the statutory power would need to be preceded by consultation with the Sheriff Principal in order to ascertain whether the resources that were needed were available. It is difficult to conceive of circumstances when the Lord President would wish to exert his authority in the face of a properly argued objection by a Sheriff Principal. Furthermore, express statutory authority in this context may conflict with the principle of judicial independence, which applies as much to the Sheriff Principal as it does to the Lord President.

*Question 7: Do you agree that responsibility be placed on the Lord President to ensure the speedy and efficient disposal of business in the sheriff and district courts?*

If the responsibilities of the Lord President are to be widened as suggested, this proposal would be appropriate. However, the principle of the independence of the sheriffs from the Court of Session is an ancient one and some will not welcome any substantial derogation from it. As well as this, the word "ensure" may be too strong as court business is notoriously unpredictable.

*Question 8: Do you agree that the Lord President should have overall responsibility for the training and guidance of the judiciary?*

It is appropriate that the Lord President should have overall responsibility for the training and guidance of the judiciary. This would strengthen the hand of the Lord President in giving directions as to how these matters are to be organised and in calling for resources that are needed to provide for them. It may also be appropriate that the Lord President liaise with the Judicial Appointments Board over the needs for training of new appointments to the judiciary.

*Question 9: If not, who should have this responsibility?*

Alternatively, responsibility could rest with the new Judges' Council.

*Question 10: Do you agree the Lord President should have responsibility for the deployment of members of the judiciary?*

Whilst it is agreed that the Lord President should have responsibility for the deployment of the judiciary, weight should be given to the views of Sheriffs Principal as much responsibility would be delegated to them and they should be regarded as an asset and the service that they can provide should be built upon.

*Question 11: If not, what other proposals would you wish to see provided?*

Whilst accepting the role of the Sheriff Principals and the Lord President in such decisions, in a modern Scotland decisions to fill shrieval vacancies by transfer should be subject to equal opportunities considerations and as transparent as possible. It may be that the Chair of the Judicial Appointments Board could be consulted on such appointments. Where the decision is taken to advertise a shrieval post rather than filling it by transfer this should be left to the Judicial Appointments Board.

*Question 12: Should explicit provision be made authorising the transfer of a sheriff on a compulsory basis in the interests of the administration of justice?*

Yes, although it would be anticipated that this would happen only in exceptional cases.

*Question 13: If you answer yes to question 12, do you agree with our proposals, or would you wish to see other arrangements provided for?*

We agree with proposals, subject to the need to clarify the existing statutory provisions set out in section 14(4) of the Sheriff Courts (Scotland) Act 1971.

*Question 14: In conferring on the Lord President responsibility for the welfare of the judiciary are there any particular aspects of welfare that should be specified?*

Perhaps some thought should be given to the welfare needs of a more diverse judiciary. For example, steps are being taken in England and Wales to make the holding of judicial office more attractive to women. Their welfare concerns need to be recognised, as do those of members of the judiciary who belong to minority ethnic groups and those with disabilities.

*Question 15: What provision, if any, should be made to facilitate the greater involvement of the Lord President in the strategic work of the Executive?*

We agree that the effective running of the court system requires close co-operation between the Judiciary and the Executive. A satisfactory working relationship between the Lord President and the Scottish Court Service will be essential if the Lord President is to have the new powers that are proposed.

*Question 16: Should there be a senior judicial representative involved in the governance of the Scottish Court Service, and, if so, which office holder should that be?*

For the reasons set out in the answer to question 19, there are strong arguments for subsuming the work of the Scottish Courts Service under the aegis of the Lord President. If, however, the Scottish Courts Service is to be kept entirely separate and run entirely by the Executive, then it will be essential in the interests of maintaining its independence that the Judiciary should be kept separate from the Executive. There is a risk that this principle would be compromised if a senior judicial figure were to be involved in the governance of the Scottish Court Service. It may be that the formal structure that is suggested would impede the close working relationship with the Scottish Court Service which has been based upon mutual trust and respect.

*Question 17: What arrangements for supporting the Lord President and the other members of the senior judiciary in their new functions proposed in this paper do you consider are appropriate in (a) the medium and (b) the longer term?*

Experience suggests that the present support arrangements work satisfactorily and could be adapted, in consultation with the judiciary, to provide the support that will be required to meet the additional responsibilities. The alternative approach to create a separate support structure for the Lord President and the senior judiciary raises some difficult questions. The issues raised here require careful and independent investigation before any assumptions can be made as to what can be done. Particular attention should be paid to the need to attract and retain high quality support staff.

## Judges' Council

*Question 18: Do you agree a statutory Judges' Council, chaired by the Lord President, should be established?*

The concept of a unified judiciary headed by the Lord President administering the civil and criminal business in the superior, sheriff and district courts, requires a different approach to the establishment of the necessary governance, management and support systems to enable this concept to be successfully achieved. Consideration should be made of the full implications of increasing substantially the functions of the Lord President and therefore of managing those functions through an appropriate command structure which extends to cover staff and buildings, which are both essential elements in an efficient justice system. For example, there is presently being set in place a new Judicial Office (see The Times, Law Section 28 March 2006) responsible to the Lord Chief Justice, alongside a judicial executive board.

*Question 19: If so, what should be the Council's membership and remit?*

It is suggested that the Lord President requires to be supported by a "judicial executive board" of which the Lord President is the chairman; the board comprising of representatives of the different levels of the judiciary. This board would include the Lord Justice Clerk *ex officio* and at least one other Court of Session judge (an obvious candidate being the administrative judge referred to in chapter 5), at least one Sheriff Principal and one sheriff and one or more representatives drawn from the district courts, possibly a stipendiary magistrate and a lay justice. Appointment might be made from within each level by election by the body of judges at that level, e.g. a Sheriff Principal by all the Sheriffs Principal. Perhaps the Dean of the Faculty of Advocates and the President of the Law Society of Scotland could also be *ex officio* members. Advocates and solicitors are important players in the Scottish court system and there is an argument for giving them formal representation on the proposed governing body.

Such a body could be structured in such a way that it acted both as a single executive body to determine strategy and policy which straddled both the civil and the criminal courts, for example, judicial training, judicial communications, staff and building resources and budgetary estimates, and was also able to operate in two divisions, one concerned with issues surrounding the practice and procedure of the civil courts and the other with similar issues in the criminal courts.

It is evident from the above that the work of the present Scottish Court Service would require to be subsumed under the aegis of the Lord President. Responsibility for the provision of adequate staff and adequate court space and court buildings, which presently lies outside the remit of the judiciary, is an integral part of any unified judicial system charged with the functions proposed in the consultation document.

The present horizontal layered system of responsibilities would thus be replaced by a vertical system of responsibilities under a unified command structure stemming from the Lord President, who would thus be in pole position to make representations to the Executive and to the Parliament on behalf of the whole judiciary. It would be envisaged that the Executive would seek views from the Lord President on any or all of the matters which are presently separately sought at the various levels referred to paragraphs 4.1 and 4.2. Furthermore, the Lord President and the judicial executive board and its members would be able to consult with the judges throughout the system by means of the existing arrangements such as with the Court of Session judges through the Judges' Council, the Sheriffs Principal, the Sheriffs' Association, and such body or bodies as represented the stipendiary magistracy and the lay judiciary in the district courts.

## Administrative responsibilities for judges of the Court of Session

*Question 20: Do you agree that an administrative role for judges, to support the Lord President in discharging his duty to secure the speedy and efficient disposal of business, should be established in statute?*

Within each court level of the court system responsibility for the day to day operations of the courts would remain generally as it is at present but it is clearly sensible to identify in the Court of Session one judge who would supervise the management of the day to day business of the superior courts as envisaged in paragraph 5.1. As this is a matter of the delegation of functions, it would not be necessary to provide for this in statute other than by way of a general provision allowing for such delegation to one or more judges. Greater prescription is

unnecessary and indeed this may be an issue which the judicial executive body might consider as a matter of policy, and one which might be extended elsewhere in the court system if judged appropriate.

*Question 21: If so, what functions, if any, should be prescribed for this role?*

For the above system to operate successfully it will be essential that there is a separate and publicly funded support system, with a senior directorate, centred about the Lord President, the judicial executive board and the Lord President's private office, to carry through the day to day business for such support, covering, amongst other things, judicial communications, judicial complaints, human resources and welfare, court buildings, and budgetary estimates and control and all the other matters taken within the envelope of a unified judiciary.

## **Judicial Appointments**

*Question 22: Do you agree Ministers should have power to issue guidance about procedures for the performance by the Board of its functions?*

While there is undoubtedly a role for such guidance, especially on policy issues such as the importance of diversity and the judiciary reflecting society, it is vital that the independence of the Board is not undermined by this process. Accordingly, before such guidance is issued, Ministers should consult with the Chair of the Judicial Appointments Board as well as the Lord President.

*Question 23: If so is there any area of Board activity that you would wish to see covered by a specific power to issue guidance.*

Guidance could be issued as to how the Board deals with the issues surrounding the current system of appointing judges to the highest levels in the judiciary. The impartiality of the system and independence from the Executive is not in doubt. However, there are concerns about whether the best candidates are coming forward.

*Question 24: Should the Board be bound by statutory provision to follow any guidance issued by Ministers?*

It will be important that any guidance issued does not undermine the independence of decision making which the Board is intended to have.

*Question 25: Should membership of the Board include one judge of the Court of Session or two judges: one from the Inner House and one from the Outer House?*

The balance of the existing Board (five lay and five legal with a lay Chair) has been highly successful and does not need to be altered. If there is a case for adding to the composition of the Board, it should be done in a balanced way such that the proportion of lay members remains at parity, as at present. In order to ensure that each member of the Board plays a full and equal part in the work of the Board it is vital that the Board adheres to its current policies of rejecting soundings and not allowing personal knowledge on the candidates to be shared with other members of the Board, although individual members may take any material reservation to the Chairman.

At present, there is a concern that the best candidates are not coming forward and this has the potential to negatively impact upon the highest levels of the judiciary, including the position of Lord President. It is imperative that the people who have demonstrated that they are capable of performing the enhanced role that is proposed for the Lord President put themselves forward. It is accepted that no system for appointing members of the judiciary is likely to be perfect, although the system is in need of careful review to establish whether, and if so why, the system is failing.

*Question 26: Should the judge or judges appointed to the board be nominated by the Lord President, or elected by their respective peer groups?*

The judge or judges should be elected by their respective peer groups. This would enhance public confidence in the Board's independence.

*Question 27: Do you agree with a proposed term of appointment of three years, and with the arrangements for renewal?*

The proposals for terms of appointment and arrangements for renewal appear to be appropriate.

*Question 29: Do you consider that provision should be made restricting the continuing membership of a judicial member of the Board on his or her retiral from full time office?*

Such a provision does not appear to be necessary

*Question 30: If so, do you agree with our proposal or what other arrangements would you wish to see in place?*

However, if there were to be a restriction, a time limit of one year after retirement would seem reasonable.

*Question 31: Do you agree that only the judicial members and two legal members of the Board should have a duty to determine whether the legal ability of a candidate is adequate for the judicial office applied for, or should any academic lawyer on the Board participate in this process*

We see no reason why a suitably qualified legal academic should not be in a position to assess the legal abilities of candidates.

*Question 33: Do you agree that provision should be made for the appointment of a temporary member to cover long term absence of a member?*

Yes, provision should be made.

*Question 34: If so, are you content with our proposals or what other arrangements would you wish to see in place?*

We are content with the proposals.

*Question 35: Are there any changes you would wish to see made to the list of proposed grounds for unfitness?*

The proposals appear reasonable, although it might be appropriate to include breach of the duty of confidentiality.

*Question 36: Do you agree a duty of confidentiality should be imposed on those who give and obtain information about an individual within the context of the Board's activities?*

Yes. This is a vitally important aspect of the Board's activities if it is to retain the confidence of candidates. Although it could be argued that it would be almost impossible for any system that depends on the making of applications to preserve that confidentiality.

*Question 37: Do you agree that there should be a procedure to deal with complaints about the way the Board applied its procedures during the appointments and interview process?*

We support the introduction of a complaints procedure.

*Question 38: If so, do you agree that the Board should set up a complaints scheme and that independent review should fall to the Scottish Public Services Ombudsman?*

We agree that such a complaints procedure should be set up by the statutory Board, with independent review falling to the Scottish Public Services Ombudsman.

*Question 39: Should provision be made for a panel to advise the First Minister on the suitability of candidates for selection to the office of Lord President and Lord Justice Clerk?*

The arrangements in section 95 of the Scotland Act 1998 should be amended by inserting a requirement into the statute that an independent panel is to be appointed to advise the First Minister on the suitability of candidates for these offices. This model worked well in the recent appointment of the Lord President and should be placed on a statutory footing.

*Question 40: If so, what provisions should be made to regulate the membership of the panel (a) concerning the office of Lord President, and (b) that of Lord Justice Clerk?*

The Lord President, as head of the court, should be a member of the panel where the post to be filled is that of Lord Justice Clerk. This is because a good working relationship between the holders of these two offices is likely to be essential to the sound administration of the court. On the other hand, it would not be right for the Lord Justice Clerk, even if he or she were not a candidate, to be a member of the panel for the office of Lord President.

For the judicial membership of the panel a discretionary power would seem to be the most appropriate given the small pool of suitable members. The main option would seem to be using the Scottish Lords of Appeal in Ordinary or, after 1 October 2009, the Scottish judges serving on the UK Supreme Court. In the interests of independence we do not believe that the current holder of the post for which a successor is being sought should be on the panel. There might be an argument for increasing the non-judicial membership to include not only the lay Chair of the Judicial Appointments Board (as already proposed in the paper) but also a senior representative of the Faculty of Advocates and the Law Society of Scotland.

*Question 41: Should appointments to the Inner House of the Court of Session be (a) within the remit of the Board, or (b) informed by a panel under the auspices of the Board?*

With regard to appointments to the Inner House of the Court of Session, we see no reason to depart from the existing arrangements.

*Question 43: If a judge of the Court of Session who is a member of the Board wishes to be considered for appointment to the Inner House, should he or she require to resign from the Board, or would another arrangement be acceptable in the circumstances?*

He or she should be required to withdraw from the Board temporarily. However, it should be up to him or her to decide whether to resign or not.

### **Removal from Office**

*Question 44: Do you agree that the procedures to be followed by the tribunal should be set out in regulations made by the Lord President under a general authority in primary statute?*

Yes. Cases of this kind are likely to be rare, and each one is likely to throw up new problems. Flexibility is key. This is best achieved by leaving it to the Lord President to make regulations.

*Question 45: If so, what provisions regulating the procedure to be followed by a tribunal to examine fitness for office, should be prescribed?*

There is a question mark over whether the proceedings ought to be held in public. This may be thought to be undesirable. Proceedings would have to be conducted on the assumption that the tribunal may dismiss the complaint, with the result that the judge will remain in office. There is a line of authority that suggests proceedings of this kind may not fall within article 6(1) of the European Convention on Human Rights as there is no criminal charge and the proceedings may perhaps be said to be disciplinary in character. We believe that it would be wise to confer statutory authority on the Lord President to direct that the proceedings be held in private, in whole or in part.

*Question 46: Do you agree with the proposed arrangements for suspending the judicial office holder while an investigation into fitness is being conducted?*

The decision to suspend a judge from office is a step that must not be taken lightly. On the other hand, to confine the power to cases where the judge has been convicted of a criminal offence could be unwise. It is not possible to predict when suspension will be necessary in the public interest, therefore an unqualified power to

suspend should be conferred upon the Lord President. Judicial review is a sufficient protection against the use of the power where its use could be said to have been arbitrary or unreasonable.

*Question 47: Do you agree that the arrangements for investigating questions of fitness for office of Sheriff Principal, sheriff and part-time sheriff should be changed to a four person tribunal, with membership fixed on the same basis as that proposed for the tribunal to investigate fitness for office of judge of the Court of Session, except in the case of a part-time sheriff where the judicial chair will be either a judge of the Court of Session or a Sheriff Principal?*

We agree that a common approach is desirable.

## **Discipline**

*Question 49: Do you agree that inappropriate judicial conduct should not be defined in statute, other than to include a provision that makes it clear that failure to perform work associated with the discharge of judicial functions is included?*

We agree that the phrase “inappropriate judicial conduct” should not be defined in statute. Also, the term “inappropriate” could be considered too vague and subjective. Furthermore, to refer to failure to perform work associated with the discharge of judicial functions would be to single out just one aspect of a wide range of possible grounds of complaint.

*Question 51: Do you agree that a Sheriff Principal should have responsibility for dealing with issues of conduct concerning sheriffs, including floating sheriffs and part-time sheriffs, arising within his or her sheriffdom?*

Yes. We agree.

*Question 52: Do you agree responsibility for all disciplinary procedures concerning the judiciary, short of removal, should lie with the Lord President, who would have power to delegate exercise of those powers to such judges as he considered appropriate?*

Yes. We agree.

*Question 53: Do you agree that there should be a mechanism for dealing with any grievance about the way in which an issue of conduct had been handled, but without reviewing the merits of the decision reached?*

Yes. We agree.

*Question 54: If so, should this review responsibility lie with (a) the Lord President, (b) an ombudsman created for this function, (c) a lay observer, or (d) some other arrangement for independent review?*

As cases will probably be rare, a separate mechanism would seem unjustified if an existing body or office-holder could appropriately be used. If the question is only the manner in which disciplinary procedures have been conducted there would seem to be no good reason, constitutional or otherwise, for not using the Scottish Public Services Ombudsman. Judges perform a public service. Those disciplining judges perform a public service. However, as the issue of judicial independence arises here perhaps review responsibility should lie within the judiciary. It should be regarded as a sufficient safeguard against mishandling of the procedure that the system is under the general supervision and control of the Lord President.

*Question 55: Do you agree that the judge with responsibility for dealing with an issue of conduct should have a discretion to decline to deal with a complaint where it is unsupported by evidence or is manifestly vexatious or trivial?*

This is an essential safeguard.

*Question 56: Should a procedure for investigating issues of conduct (a) be set out in statute, (b) be set out in regulations made under statutory authority, (c) be determined by the Lord President or (d) left to the discretion of the judge with responsibility for dealing with the issue?*

Our preference is for option (c). The procedure should be determined by the Lord President. It is important that it should be known that there is a procedure, and what it is, so that those who have a complaint know what they should do about it. So it should be set out in a Practice Note, which is the usual way on which procedural issues of this kind to which publicity needs to be given are dealt with by the Lord President. Provision should be made for cases which turn out to raise issues of unfitness for office to be transferred over to the removal from office procedure.

*Question 57: If some specification is favoured, what matters should be included?*

Our preference is to leave the details to the Lord President. However, matters such as the person to whom complaints should be addressed, how that person may be contacted, the procedure that is to be adopted for sifting out complaints of the kind mentioned in Question 55, the various steps that may be taken if the complaint is one that needs to be investigated and the various ways in which the complaint may be disposed of after it has been investigated would most probably be included by the Lord President.

*Question 58: Should a procedure exist for reviewing the merits of a complaint and any penalty imposed?*

Yes. This would seem only fair.

*Question 59: If so, what review arrangements would you consider adequate?*

There should be an appeal to the full Judges' Council. Cases will probably be rare, but if they turned out not to be, the Council could set up an appeals committee.

*Question 60: Should provision be made for the suspension of a judicial office holder other than in the context of a formal investigation into fitness?*

We believe it to be wise that a provision should be made for suspension of a judicial office holder other than in the context of a formal investigation into fitness. Such a provision is necessary in the public interest.

*Question 61: If so, do you agree with the proposed grounds on which suspension could be ordered, and that power to suspend should lie with the Lord President?*

Yes. We agree with the proposed grounds on which suspension could be ordered and that power to suspend should lie with the Lord President.

### **Re-employing retired judges and sheriffs**

*Question 62: Do you agree with the proposals for re-employing retired judges and sheriffs?*

Yes. We agree with the proposals.

Lord Justice Clerk to fulfil duties of Lord President in certain circumstances

*Question 64: Should the Lord Justice Clerk be given statutory authority to discharge the functions of Lord President and Lord Justice General when that (combined) post is vacant, or the office holder is unable to discharge his or her duties owing to temporary incapacity?*

Yes, but as noted above it is hoped that the "combined post" will become one office with one title.

*Question 65: If so, are there any functions of the Lord President or Lord Justice General which should be excluded?*

We believe that there are no functions of the Lord President or Lord Justice General which should be excluded.

### **Strengthening the office of temporary judge**

*Question 66: Should recommending for appointment to the office of temporary judge of the Court of Session fall within the remit of the Judicial Appointments Board?*

It would be logical to include the office of temporary judge within the remit of the Board.

*Question 67: Do you agree that the title of the office presently known as "temporary judge" should be changed to "deputy judge"? If you do not agree, what should the office be called?*

We agree that the title is inappropriate and should be changed but "deputy judge" gives the wrong impression. It suggests that the office-holder is a deputy for another judge. A better title would be "supplementary judge" or "supernumerary judge".

*Question 68: Should eligibility for appointment to the post of judge of the Court of Session be extended to all practising solicitors?*

This does not seem obviously necessary at first sight. A solicitor with such judicial ambitions could be expected to seek rights of audience in the higher courts first. On the other hand the Board could be expected to take lack of direct experience of Court of Session practice into account in any event. So there can be no strong objection to extending eligibility.

*Question 69: If you agree, what qualifying period of practice should be set? Should different periods be set for those solicitors with rights of audience and for those without such rights?*

We suggest that any period must be arbitrary. Subject to this, a period of fifteen years might be considered appropriate. There would seem to be no need to have different periods for the two categories mentioned.