

# Judiciary and Courts (Scotland) Bill

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## Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### **Guarantee of continued judicial independence**

22, 1, 2

#### **Organisational oversight of the Courts: role of Lord President**

23, 27, 28, 40, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64

#### **Judicial Training**

24, 25, 26, 13, 15, 21

#### **Senior Judiciary: Incapacity**

29, 30, 31, 32, 33

#### **Judicial Appointments Board: removal of members**

34, 35

#### **Judicial Appointments Board: Remit and Procedures**

3, 4, 5, 6

#### **Judicial Appointments Board: Recommendations and selection for recommendation**

36, 37, 38

#### **Judicial Appointments Board: confidentiality of information**

39

#### **The Scottish Court Service**

41, 47, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

#### **Sheriffs and part-time sheriffs: official oaths**

7

**Judicial Conduct: powers of the Lord President**

42, 43, 44

**Consideration of fitness for, and removal from, Judicial Office**

8, 9, 10, 11, 12

**Divisions of the Inner House: Quorum**

45, 46

**Lands Valuation Appeal Court**

14, 20

**Court holidays**

16

**Scottish Court Service: Freedom of Information**

17

**Scottish Court Service: default powers of Scottish Ministers**

18, 19

**THIS IS NOT THE MARSHALLED LIST**

**Amendments in debating order**

**Guarantee of continued judicial independence**

**Nigel Don**

- 22 In section 1, page 1, line 9 after <Ministers,> insert—  
<( ) members of the Scottish Parliament,>

**Kenny MacAskill**

- 1 In section 1, page 1, line 14, leave out <pursuance of subsection (1)> and insert <particular>

**Kenny MacAskill**

- 2 In section 1, page 1, line 22, at end insert <, and  
(c) any international court.  
( ) In subsection (3)(c) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—  
(a) an agreement to which the United Kingdom or Her Majesty’s Government in the United Kingdom is a party, or  
(b) a resolution of the Security Council or General Assembly of the United Nations.>

**Organisational oversight of the Courts: role of Lord President**

**Cathie Craigie**

- 23 In section 2, page 2, leave out lines 8 and 9

**Cathie Craigie**

- 27 In section 2, page 2, line 24, leave out subsection (3)

**Cathie Craigie**

- 28 In section 3, page 3, line 5, leave out from <the> to end of line 8

**Cathie Craigie**

- 40 Leave out section 23

**Cathie Craigie**

- 48 In section 44, page 24, leave out lines 14 to 18

**Cathie Craigie**

- 49 In section 44, page 24, line 25, leave out from <from> to <of> in line 26 and insert < “such business as aforesaid” substitute>

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**Cathie Craigie**

50 In section 44, page 24, leave out lines 28 to 40

**Cathie Craigie**

51 Leave out section 45

**Cathie Craigie**

52 Leave out section 46

**Margaret Smith**

53 Leave out section 47

**Bill Aitken**

54 In section 48, page 26, line 23, at end insert—

<( ) Before making such an order the Lord President must consult such persons as the Lord President considers appropriate.”>

**Margaret Smith**

55 Leave out section 48

**Cathie Craigie**

56 Leave out section 49

**Cathie Craigie**

57 Leave out section 50

**Cathie Craigie**

58 Leave out section 51

**Cathie Craigie**

59 Leave out section 52

**Cathie Craigie**

60 In section 53, page 28, line 10, leave out from <, and > to end of line 11

**Margaret Smith**

61 In section 54, page 28, line 21, leave out subsection (2)

**Cathie Craigie**

62 Leave out section 54

**Cathie Craigie**

64 In section 55, page 29, leave out lines 15 to 19

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### **Judicial Training**

#### **Nigel Don**

- 24 In section 2, page 2, line 17, leave out<, training>

#### **Margaret Smith**

- \*25 In section 2, page 2, line 26, at end insert—

<( ) In carrying out the responsibility for making and maintaining arrangements for training mentioned in subsection (2)(d) the Lord President must require any judicial office holder, or class of judicial office holder, to attend such training as the Lord President determines.>

#### **Nigel Don**

- 26 In section 2, page 2, line 26 at end insert—

<( ) As Head of the Scottish Judiciary it shall be the responsibility of the Lord President to ensure the provision of—

- (a) initial training for newly appointed judicial office holders, and
- (b) such subsequent training for judicial office holders as the Lord President considers necessary or desirable.>

#### **Kenny MacAskill**

- 13 After section 38, insert—

### **<CHAPTER 5A**

#### **TRAINING AND APPRAISAL OF JUSTICES OF THE PEACE**

#### **Training and appraisal of justices of the peace**

- (1) Section 69 (training and appraisal of justices of the peace) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) is amended as follows.
- (2) In subsection (1), for “Scottish Ministers” substitute “Lord President of the Court of Session”.
- (3) Subsections (2) and (4) are repealed.>

#### **Kenny MacAskill**

- 15 In section 54, page 28, line 33, leave out subsection (4)

#### **Kenny MacAskill**

- 21 In schedule 5, page 53, line 11, leave out from beginning to <2007> in line 12 and insert—

<( ) The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 is amended as follows.

- ( ) In section 81 (orders)—
  - (a) in subsection (1), after “Ministers” insert “or the Lord President of the Court of Session”,
  - (b) in subsection (2)(a), after “consider” insert “or (as the case may be) the Lord President considers”, and
  - (c) in subsection (3)(a), for the words “(2), 56 or 63(2)” substitute “(2) or 56”.

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( ) The following provisions>

### **Senior Judiciary: Incapacity**

#### **Margaret Smith**

- 29 In section 4, page 3, line 29, after first <that> insert <, having had regard, as appropriate, to a certified medical report, >

#### **Margaret Smith**

- 30 In section 4, page 3, line 33, after first <that> insert <, having had regard, as appropriate, to a certified medical report, >

#### **Margaret Smith**

- 31 In section 5, page 4, line 20 after first <that> insert <, having had regard, as appropriate, to a certified medical report, >

#### **Margaret Smith**

- 32 In section 5, page 4, line 24, after first <that> insert <, having had regard, as appropriate, to a certified medical report,>

#### **Margaret Smith**

- 33 In section 8, page 6, line 4, after <health> insert <or being otherwise indisposed>

### **Judicial Appointments Board: removal of members**

#### **Nigel Don**

- 34 In schedule 1, page 38, line 27, after <any> insert <serious>

#### **Bill Aitken**

- 35 In schedule 1, page 38, line 35, insert—

<( ) A member may not be removed from office under either sub-paragraph (1) or (2) without the member being afforded an opportunity to be heard by the Lord President or, as the case may be, the Scottish Ministers.>

### **Judicial Appointments Board: Remit and Procedures**

#### **Kenny MacAskill**

- 3 In section 10, page 7, line 2, leave out <the office of Chairman of the Scottish Land Court, sheriff principal or sheriff> and insert <one of the offices mentioned in subsection (1A)>

#### **Kenny MacAskill**

- 4 In section 10, page 7, line 8, at end insert—

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<(1A) The offices referred to in subsection (1)(c) are—

- (a) the office of judge of the European Court,
- (b) the office of judge of the European Court of Human Rights,
- (c) the office of Chairman of the Scottish Land Court,
- (d) the office of sheriff principal, and
- (e) the office of sheriff.>

### **Kenny MacAskill**

5 In section 15, page 8, line 28, leave out subsections (5) to (7)

### **Kenny MacAskill**

6 After section 15, insert—

#### **<Guidance: procedure**

- (1) Before issuing any guidance under section 15(1) or (2), the Scottish Ministers or, as the case may be, the Lord President must lay a draft of the proposed guidance before the Scottish Parliament.
- (2) The Scottish Ministers or, as the case may be, the Lord President must not issue the guidance before the expiry of the period of 21 days beginning with the day on which the draft of it is laid before the Parliament under subsection (1).
- (3) If, during that period, the Parliament by resolution makes any recommendations in relation to the draft guidance, the Scottish Ministers or, as the case may be, the Lord President must have regard to those recommendations.
- (4) The Scottish Ministers must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Lord President and the Board on the draft.
- (5) The Lord President must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Scottish Ministers and the Board on the draft.
- (6) In calculating a period of 21 days for the purposes of subsection (2), no account is to be taken of any time during which the Parliament is—
  - (a) dissolved, or
  - (b) in recess for more than 4 days.>

### **Judicial Appointments Board: Recommendations and selection for recommendation**

#### **Bill Aitken**

36 In section 11, page 7, line 17, at end insert—

<( ) Where the Board has recommended to the relevant Minister any individual for appointment to judicial office, the Board must inform that individual that such a recommendation has been made and of the ranking of that recommendation.>

## **THIS IS NOT THE MARSHALLED LIST**

### **Bill Aitken**

- 37 In section 11, page 7, line 21, at end insert—  
<( ) Any appointment, nomination or recommendation by a relevant Minister under subsection (1) must follow the order of ranking advised by the Board.>

### **Bill Aitken**

- 38 In section 14, page 8, line 15 after <encourage> insert < specialisation, where appropriate, in the judiciary and>

### **Judicial Appointments Board: confidentiality of information**

#### **Nigel Don**

- 39 In section 16, page 9, line 23, leave out subsection (6) and insert—  
<(6) A person who wilfully or recklessly discloses information in contravention of this section is guilty of an offence.  
(7) It is a defence for a person charged with an offence under subsection (6) to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.  
(8) A person guilty of an offence under subsection (6) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.>

### **The Scottish Court Service**

#### **Cathie Craigie**

- 41 In section 24, page 12, line 25, leave out <Court Service> and insert <Ministers>

#### **Cathie Craigie**

- 47 In section 44, page 24, leave out line 13 and insert—  
<(b) any person (except the Scottish Ministers) involved in the administration of the sheriff court.>

#### **Cathie Craigie**

- 63 In section 55, page 29, leave out line 14 and insert—  
<(b) any person (except the Scottish Ministers) involved in the administration of the JP court.>

#### **Cathie Craigie**

- 65 Leave out section 56

#### **Margaret Smith**

- 66 In schedule 3, page 46, line 19, at end insert—



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<( ) The Parliament is entitled to request that the Lord President, as chair of the SCS, attend its proceedings for the purpose of giving evidence, or produce documents that are in the custody or under the control of the Lord President.>

**Cathie Craigie**

**67** Leave out schedule 3

**Cathie Craigie**

**68** Leave out section 57

**Cathie Craigie**

**69** Leave out section 58

**Cathie Craigie**

**70** Leave out section 59

**Cathie Craigie**

**71** Leave out schedule 4

**Cathie Craigie**

**72** Leave out section 60

**Cathie Craigie**

**73** Leave out section 61

**Cathie Craigie**

**74** Leave out section 62

**Cathie Craigie**

**75** Leave out section 63

**Cathie Craigie**

**76** Leave out section 64

**Cathie Craigie**

**77** Leave out section 65

**Cathie Craigie**

**78** Leave out section 66

**Cathie Craigie**

**79** In section 67, page 33, line 33, leave out from <66(2)> to <3> and insert <72(1)>

**Cathie Craigie**

**80** In section 67, page 33, leave out line 37

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### **Cathie Craigie**

- 81 In schedule 5, page 52, line 15, leave out paragraph 1

### **Cathie Craigie**

- 82 In schedule 5, page 53, leave out line 1

### **Cathie Craigie**

- 83 In schedule 5, page 53, line 10, leave out paragraph 7

### **Cathie Craigie**

- 84 In the long title, page 1, line 1, leave out <to establish the Scottish Court Service;>

### **Sheriffs and part-time sheriffs: official oaths**

#### **Kenny MacAskill**

- 7 After section 25, insert—

#### **<Sheriffs and part-time sheriffs: official oaths**

In the Promissory Oaths Act 1868 (c.72), in the second part of the Schedule (persons to take oath of allegiance and judicial oath), after “sheriffdoms,” insert “sheriffs, part-time sheriffs”.>

### **Judicial Conduct: powers of Lord President**

#### **Margaret Smith**

- 42 In section 26, page 13, line 16, leave out <may> and insert <must>

#### **Margaret Smith**

- \*43 In section 26, page 13, leave out subsection (2) and insert—

<( ) Rules under subsection (1) must in particular contain provision about—

- (a) circumstances in which an investigation must or may be undertaken,
- (b) the conduct of an investigation (including in particular steps to be taken by the office holder under investigation or by a complainant or other person),
- (c) time limits for taking any step and procedures for extending time limits,
- (d) persons by whom an investigation or part of an investigation is to be conducted,
- (e) matters to be determined by the person conducting an investigation (or part of an investigation), the Lord President or any other person,
- (f) the making of recommendations by persons conducting investigations (or parts of investigations),

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- (g) the keeping of records of investigations,
  - (h) confidentiality of communications or proceedings,
  - (i) the publication of information or its provision to any person.
- ( ) Rules under subsection (1) may in particular contain provision about—
- (a) the making of complaints,
  - (b) steps to be taken by a complainant before a complaint is to be investigated, and
  - (c) the obtaining of information relating to complaints.>

### **Bill Aitken**

- 44** In section 27, page 14, line 14, leave out subsection (3)

### **Consideration of fitness for, and removal from, Judicial Office**

#### **Kenny MacAskill**

- 8** In section 35, page 18, line 29, at end insert—
- <(2A) Subsection (2B) applies where a person on whom a requirement has been imposed under subsection (1)—
- (a) refuses or fails, without reasonable excuse, to comply with the requirement,
  - (b) refuses or fails, without reasonable excuse, while attending the tribunal proceedings to give evidence, to answer any question, or
  - (c) deliberately alters, conceals or destroys any document which the person is required to produce.
- (2B) The Court of Session may, on an application made to it by the tribunal—
- (a) make such order for enforcing compliance as it sees fit, or
  - (b) deal with the matter as if it were a contempt of the Court.>

#### **Kenny MacAskill**

- 9** In section 38, page 21, line 3, at end insert—
- <(2A) Subsection (2B) applies where a person on whom a requirement has been imposed under subsection (1)—
- (a) refuses or fails, without reasonable excuse, to comply with the requirement,
  - (b) refuses or fails, without reasonable excuse, while attending the tribunal proceedings to give evidence, to answer any question, or
  - (c) deliberately alters, conceals or destroys any document which the person is required to produce.
- (2B) The Court of Session may, on an application made to it by the tribunal—
- (a) make such order for enforcing compliance as it sees fit, or
  - (b) deal with the matter as if it were a contempt of the Court.>

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### **Kenny MacAskill**

- 10 In section 38, page 21, line 19, leave out <, by order made by statutory instrument,>

### **Kenny MacAskill**

- 11 In section 38, page 21, line 26, at end insert—
- <( ) The First Minister may remove a sheriff principal or sheriff under subsection (1) only by order made by statutory instrument.>

### **Kenny MacAskill**

- 12 After section 38, insert—

*<Justices of the peace*

#### **Provision relating to tribunal considering fitness for office of justices of the peace**

- (1) Section 71 (removal of justices of the peace) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) is amended as follows.
- (2) In subsection (7), for “Scottish Ministers may by order”, substitute “Court of Session may by act of sederunt”.
- (3) In subsection (8), for “order” substitute “act of sederunt”.>

### **Divisions of the Inner House: Quorum**

#### **Cathie Craigie**

- 45 In section 42, page 23, leave out line 13 and insert—
- <( ) in subsection (4), at beginning, insert “Subject to section 5(ba) below,”>

#### **Cathie Craigie**

- 46 In section 42, page 23, line 16, after <House> insert <considering solely procedural matters>

### **Lands Valuation Appeal Court**

#### **Kenny MacAskill**

- 14 Leave out section 43

#### **Kenny MacAskill**

- 20 In schedule 5, page 52, line 18, leave out paragraphs 2 and 3

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### Court holidays

#### **Kenny MacAskill**

16 After section 55, insert—

*<Court holidays*

#### **Court holidays in sheriff courts and justice of the peace courts**

- (1) Section 8 (sittings of sheriff and justice of the peace courts) of the Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows.
- (2) In subsections (2) and (3), for “10” substitute “11”.>

### Scottish Courts Service: Freedom of Information

#### **Kenny MacAskill**

17 In schedule 3, page 48, line 22, at end insert—

*<Freedom of information*

In the Freedom of Information (Scotland) Act 2002 (asp 13), in schedule 1 (which lists the Scottish public authorities subject to that Act), in Part 2 (non ministerial office holders in the Scottish Administration), after paragraph 18 insert—

“18A The Scottish Court Service.”.>

### Scottish Courts Service: default powers of Scottish Ministers

#### **Kenny MacAskill**

18 In section 66, page 33, line 22, at end insert—

- <(5) A statutory instrument containing an order under subsection (2) (other than one to which subsection (7) applies)—
  - (a) is to be laid before the Scottish Parliament after being made, and
  - (b) unless earlier revoked, ceases to have effect at the end of the period of 40 days beginning with the day on which it is made if it is not by then approved by resolution of the Parliament.
- (6) Subsection (7) applies to a statutory instrument containing an order under subsection (2) consisting only of—
  - (a) provision revoking an earlier order under subsection (2), or
  - (b) such provision and provision made by virtue of section 67(2).
- (7) A statutory instrument to which this subsection applies is subject to annulment in pursuance of a resolution of the Parliament.
- (8) If an order under subsection (2) ceases to have effect by virtue of subsection (5)(b)—
  - (a) that does not affect—

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- (i) the validity of anything done by or in relation to the Scottish Ministers by virtue of the order, or
  - (ii) the power to make a further order under subsection (2), and
  - (b) the Scottish Ministers may by order make such consequential provision as they consider necessary or expedient.
- (9) In calculating a period of 40 days for the purpose of subsection (5)(b), no account is to be taken of any time during which the Parliament is—
- (a) dissolved, or
  - (b) in recess for more than 4 days.>

**Kenny MacAskill**

- 19** In section 67, page 34, line 5, leave out subsections (5) and (6)