

# Criminal Justice Committee

**26th Meeting, 2022 (Session 6), Wednesday, 26 October 2022**

## Subordinate legislation

### Note by the clerk

### Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:
  - [The Judicial Appointments Board for Scotland \(Membership\) Modification Order 2022](#) (SSI 2022/268) [*see page 3*];
2. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by **31 October 2022**.

## Delegated Powers and Law Reform Committee Consideration

2. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 20 September 2022. The DPLR Committee agreed that it did not need to draw the instrument to the attention of the Parliament on any grounds within its remit.

## Procedure for negative instruments

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.
4. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

5. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
6. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
7. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
8. Each negative instrument appears on the Criminal Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
9. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

## **Guidance on subordinate legislation**

10. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-delegated-powers-and-law-reform-committee>

11. **The Committee is invited to consider the instrument.**

Clerks to the Committee  
October 2022

## Policy Note

# The Judicial Appointments Board For Scotland (Membership) Modification Order 2022

## SSI 2022/268

1. The above instrument is made in exercise of the powers conferred by paragraph 3(4) of schedule 1 of the Judiciary and Courts (Scotland) Act 2008 (“the 2008 Act”). The instrument is subject to negative resolution procedure.

The purpose of this instrument is to increase the Judicial Appointments Board for Scotland (“JABS”) by one additional legal member and one additional judicial member.

### Policy Objectives

2. JABS must be made up of 12 members (4 judicial members appointed by the Lord President, with 2 legal members and 6 lay members appointed by Scottish Ministers), specified in schedule 1 of the 2008 Act.

3. Paragraphs 3(1) and 3(2) of schedule 1 of the 2008 Act make further provision as to the judicial membership category and the legal membership category. The Order increases by one the number of judicial members of JABS and by one the number of legal members of JABS.

4. Paragraph 4(1) of schedule 1 of the 2008 Act states that the number of lay members is to be equal to the total number of judicial and legal members. The Order therefore increases the number of lay members on JABS by two taking the total number of lay members to 8 and the total number of board members of JABS from 12 to 16.

5. Paragraph 3(4) of Schedule 1 of the 2008 Act enables Scottish Ministers to modify by order the number and kind of judicial members and legal members of JABS.

6. An increase in the number of members of JABS is required as JABS’ remit has expanded significantly since the 2008 Act was introduced. JABS’ remit now includes a wider range of judicial offices such as Summary Sheriffs, members of the Scottish Tribunals as well as Parole Board members.

7. This wider remit was not anticipated when the 2008 Act was introduced and the number of members of JABS has not been increased to reflect the expanded remit. The limited capacity of JABS has resulted in delays which has impacted the resourcing of courts and subsequently access to justice for users. Increasing the number of members on JABS will increase its capacity and resilience and assist

JABS in meeting the required timescales for recruitment. It will also assist with the courts and tribunals' recovery from Covid.

**Consultation**

8. No statutory consultation is required under the 2008 Act in respect of these increases to the membership of JABS. We have consulted informally with key stakeholders and the amendment is supported by JABS and the Lord President.

**Equality Impact Assessment**

9. There is no direct impact on the protected characteristics. The Lord President and Scottish Ministers are responsible for recommending individuals suitable for appointment to JABS. In carrying out their functions, the Lord President and Scottish Ministers have a statutory obligation to have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to JABS.

**Financial Effects**

10. The increase to the number of members on JABS will cost £35,520, however, it will ensure recruitment timescales can be met, courts are resourced and users have access to justice. The additional cost for this is accounted for in the Scottish Budget for 2022/23.

11. The Cabinet Secretary for Justice and Veterans confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has limited financial effects on the Scottish Government, and no financial effects on local government or on business.

Scottish Government  
Civil Law and Legal System Division  
Justice Directorate  
September 2022