

**Cabinet Secretary for Justice and Veterans**

**SUBMISSION- ADVICE ON THE INTRODUCTION OF A JUDICIAL REGISTER OF INTERESTS IN SCOTLAND**

**PRIORITY AND PURPOSE**

1. This **routine** submission is seeking a Ministerial decision on how to progress the 2021/22 Programme for Government commitment to establish a judicial register of interests (JRI) in Scotland.

**RECOMMENDATION**

2. **[Redacted.]**

**CONTEXT AND ISSUES**

3. A JRI would require members of the judiciary to submit their pecuniary interest(s), membership of bodies or organisations and material relationships to a Register of Interests which would be publicly available. **[Redacted.]**

4. The SNP 2021 manifesto committed to introducing a JRI to improve transparency and trust in the justice system. The commitment to begin work on establishing a judicial register of interests was subsequently included in the 2021/22 Programme for Government. It was not, however, included in the 2022/23 Programme for Government.

5. **[Redacted.]**

6. In September 2021, **[redacted]** prepared a paper discussing **[redacted]** research on the introduction of a JRI in Scotland (Annex A). This included evidence from stakeholders and from other countries who considered introducing a JRI. **[redacted]** submitted an update on the Programme for Government commitment to establish a JRI in Scotland in March 2022 (Annex B).

7. Stakeholder interest in the development of a JRI has generally been low, and indeed **[redacted]**. The issue however continues to attract parliamentary attention.

8. There has also been a petition which has been open before the Scottish Parliament since 2012 (referred to in Annex A and Annex B), lodged by Peter Cherbi, which calls on the Scottish Government to introduce a JRI (Petition 1458). **[Redacted.]**

9. There have been two Freedom of Information requests, one in January 2022 and one in April 2022, relating to a JRI. In July 2022, we also received a written Parliamentary Question (PQ) from Russell Findlay, a Scottish Conservative and Unionist MSP and the Deputy Convener of the Criminal Justice Committee, asking for an update on the Scottish Government's progress on developing a JRI. Our response to this PQ can be found at Annex C. **[Redacted.]**

#### **OPTIONS CONSIDERED AND ADVICE**

**[Redacted.]**

12. The introduction of a JRI was not included in the 2022/23 Programme for Government. **[Redacted.]**

#### **BUTE HOUSE AGREEMENT IMPLICATIONS**

25. This is not the portfolio responsibility of any Green minister. **[Redacted.]**

#### **SENSITIVITIES**

28. None

#### **QUALITY ASSURANCE**

29. This submission has been approved by **Denise Swanson, Deputy Director, Civil Law and Legal Systems Division.**

#### **CONCLUSION AND NEXT STEPS**

30. We invite you to:
- note the contents of this submission; **[redacted]**

**[Redacted]**

Civil Law and Legal Systems- Justice Directorate

**[Redacted]**

<b>Copy List:</b>	<b>For action</b>	<b>For information</b>		
		Portfolio interest	Constituency interest	General awareness
Minister for Community Safety				X

DG Education and Justice

Neil Rennick

Denise Swanson

**[Redacted]**

Communications Justice

# SCOTTISH PARLIAMENT

## WRITTEN ANSWER

5 August 2022

Index Heading: Education and Justice

**Russell Findlay (West Scotland) (Conservative):** To ask the Scottish Government whether it will provide an update on its work to establish a judicial register of interests.

(S6W-09968)

**Mr Keith Brown:**

In 'A Fairer, Greener Scotland: Programme for Government 2021/22', the Scottish Government committed to begin work on establishing a register of interests for the judiciary to increase public confidence and improve transparency.

To date, preparatory work on developing proposals for a judicial register of interests has been undertaken and my officials are currently developing options and next steps with the intention of engaging with stakeholders towards the end of 2022.

SCOTTISH GOVERNMENT

## BACKGROUND NOTE FOR PQ S6W-09968

1. Russell Findlay is a Scottish Conservative and Unionist MSP for West of Scotland and the Deputy Convener of the Criminal Justice Committee.
2. Since 2012, there has been a petition before the Scottish Parliament, lodged by Peter Cherbi, which calls on the Scottish Government to introduce a judicial register of interests (Petition 1458).
3. After 5 years of consideration the Public Petitions Committee reached the conclusion that a register should be introduced and in 2018 referred it to the Criminal Justice Committee.
4. In 2020, the Lord President and the Law Society of Scotland opposed the introduction of a Judicial Register of Interests and the Lord President described it as *“constitutionally inappropriate, unnecessary, disproportionate, unsupported by objective evidence, and incapable of achieving its stated aim.”*
5. The introduction of a Judicial Register of Interests was also resisted by Scottish Ministers, including the Cabinet Secretary for Justice to the Criminal Justice Committee in 2020 and as a result its introduction was not progressed.
6. The SNP 2021 manifesto, however, committed to introducing a JRI to improve transparency and trust in the justice system. We included a commitment to begin work on establishing a judicial register of interests in the 2021/22 Programme for Government.
7. The Criminal Justice Committee wrote to you in 22 November 2019 requesting an update on the commitment and you provided a response on 6 February 2020.
8. You also wrote to the Lord President regarding the JRI and discussed the matter at your last discussion with him.
9. **[Redacted.]**

Contact name: **[Redacted]**

Email: **[Redacted.]**

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**PfG 2022-23: Policy Commission**

Ministerial Portfolio:	Justice	DG:	DG Education and Justice
Directorate:	Justice	Unit/Branch:	CCLS: Courts and Tribunals
Lead Official:	[Redacted]	Director clearance*:	Neil Rennick, 26/6/22
Portfolio FBP clearance*:	Yes	Portfolio Coordinator:	[Redacted]
Date of completion:	04/07/22	ID:	[completed by PfG team]

*\*All completed templates **must** be cleared by your Director and by your Portfolio Finance Business Partner (FBP). Any templates without Director or Portfolio FBP clearance, will be returned.*

**Section 1: Policy summary**

Policy title	Judicial Register of Interest
<b>Tweet your policy (50 words or less)</b> <i>This should be a brief description of the policy and what it aims to achieve.</i>	[Redacted]
Please confirm this is a continuation of an <b>existing policy</b> or an <b>entirely new policy</b> ? (Please delete as appropriate)	[Redacted]
Was this policy included within PfG 21-22, the Bute House Agreement, or a different public facing Government strategy published this year? (Please delete as appropriate)	Yes – PfG 21-22
If a different strategy, please state	
If this policy is included within the SG’s Performance Framework Delivery Report, please provide the Status Report Template ID	LB12
What is the <b>primary</b> core strategic priority that this policy will contribute to? Please select only <b>one</b> (Please delete as appropriate)	Constitution
Will this policy contribute to any of the other strategic priorities? (Please delete as appropriate)	
Child Poverty	No
Climate Change	No
Covid Recovery	No
Constitution	Yes
Cost of Living	No
Core Public Service	Yes

**Section 2: Policy details – delivery, impact and outcomes**

<b>What is the issue that needs to be solved and how does this policy seek to address it?</b> <i>Summarise the issue; what this policy will do; and the expected impact and policy outcomes</i>
Justice is fundamental in ensuring we live in safe, inclusive and thriving communities. It supports the rule of law and our democracy, and is a core part of our public services. We have worked

over many years to strengthen and modernise the justice system, making improvements to ensure we have a system in which individuals and communities have trust.

The SNP manifesto and 2021 programme for government outlined that “To safeguard the independence and reputation of the judiciary, we will begin work on establishing a register of interests of its members to increase public confidence and improve transparency.” The desire to increase public confidence in our justice services is also contained within the Scottish Government’s Vision for Justice in Scotland.

Judges are the public face of justice. It is their binding legal decisions that can have a great impact on people’s lives. It’s society’s confidence in the impartiality of individual decisions that forms the core strength of the judiciary as an institution. It is, of vital importance that judges are seen to be both independent and impartial. They must be free from prejudice by association or relationship and demonstrate impartiality by having no vested interest, such as a pecuniary interest or indeed a familial interest, that could affect them in exercising their judicial functions.

The introduction of a Judicial Register of Interests would help refute allegations of judicial bias and provide greater transparency. It is also hoped that it would reduce complaint numbers and review requests. Members of the judiciary would be required to submit their pecuniary interest(s), membership of bodies or organisations and material relationships to the Register of Interests which would be publicly available.

A number of countries have introduced Judicial Registers of interest to create a more transparent judiciary.

Since 2012, there has been a petition before the Scottish Parliament, lodged by Peter Cherbi, which calls on the Scottish Government to introduce a judicial register of interests (Petition 1458). In January 2020, the Lord President described a Judicial Register of Interests as “*constitutionally inappropriate, unnecessary, disproportionate, unsupported by objective evidence, and incapable of achieving its stated aim.*” The Lord President has not provided further comment since the introduction of a Judicial Register of Interests became a Programme for Government commitment however both the Law Society of Scotland and the Faculty of Advocates have questioned the need for one.

There has however been previous support for the introduction of a Judicial Register of Interests from two former Judicial Complaint Reviewers. In 2015, the former JCR, Gillian Thompson said:

*“We live in an age in which transparency about interests and activities of those in the public eye is regarded as good practice. There is a perception that anything less is the result of attempts to hide things. In the case of judges, it is clear that court users and the public more widely seek reassurances of fairness and impartiality. I think it is difficult for those outside the judiciary to understand the notion that the oath taken by judges on appointment should be regarded as sufficient evidence of their commitment to uphold the principles of public life.”*

Scottish Ministers do not currently have existing powers to establish a Judicial Register of Interests, whether voluntary or mandatory. **[Redacted.]**

**What has been delivered since publication of the last PfG and what impact has the policy had to date?**  
*What are the concrete things that have been delivered over the past year that you would want to communicate publicly? What has the real world impact been? E.g. How many people has it affected? What day-to-day changes have the public experienced? What geographical regions have been affected?*

**[Redacted.]**

Last year, initial research was carried out to look at ways in which a Judicial Register of Interest could be introduced in Scotland. This has included: looking at issues with introducing Judicial Registers in other countries; the type of register that could be implemented; which members of the judiciary should be required to complete the register; where responsibility for implementing and maintaining a register could sit; and potential costs. Early engagement with stakeholders also took place at official level.

**[Redacted.]**

**What will be delivered over the next year?**

*What are the concrete things that will be delivered from September 2022 to August 2023 that should be included within this year's PfG?*

**[Redacted.]**

**What is the expected impact of the policy over the next year, and how does this policy link up to one (or more) of the core organisational strategic priorities ?**

*What will be the further real world impact of the policy? How many more people will this affect or how will it affect them differently? What further day-to-day changes will the public experience?*

**[Redacted.]**

**Please provide a link to any evidence that this policy will have the impact stated above**

**How will you measure progress/success?**

*Focussed on the measures and indicators you will use. Include reference to any equality data you are gathering or plan to gather.*

**[Redacted.]**

**Section 3: Financial costs**

Please note that all completed templates **must** be cleared by your Finance Business Partner (FBP). *When completing this section, please liaise with your FBP and budget/finance lead (often the Business Manager).*

<b>Does this policy come with a specific spending commitment/requirement?</b>										<b>[Redacted.]</b>	
<b>If there is a spending requirement/commitment, please provide the expected resource and/or capital costs across this Parliament:</b>											
<b>FY</b>	<b>2022-23</b>		<b>2023-24</b>		<b>2024-25</b>		<b>2025-26</b>		<b>2026-27</b>		
<b>Funding type</b>	Resource	Capital	Resource	Capital	Resource	Capital	Resource	Capital	Resource	Capital	
<b>Budget/SR £m</b>	<b>[Redacted.]</b>										
<b>Funding type</b>	Resource	Capital	Resource	Capital	Resource	Capital	Resource	Capital	Resource	Capital	
<b>Forecast £m</b>	<b>[Redacted.]</b>										
<b>Confirm that funding for this policy can be met and will be prioritised within the portfolio's agreed funding envelope as set through the Resource Spending Review (RSR) process and the 2022-23 budget. Please also confirm it will provide value for money:</b>										<b>[Redacted.]</b>	
<b>Please provide the reference to the relevant line(s) of the strategic approach to budget (SAB) return that relate to this spend:</b>											

**Section 4: Legislative requirements**

Does this proposal require primary or secondary legislation? If yes, please indicate whether this will be primary or secondary legislation.	[Redacted.]	[Redacted.]
If legislation is required, when do you expect this to be introduced?	[Redacted.]	
Please confirm that the timetable has been cleared with the Parliament and Legislation Unit (PLU) and the Scottish Government Legal Directorate (SGLD)	[Redacted.]	

**Section 5: Equality, Human Rights and Impacts Overview**

- i. **National Performance Framework:** Which of the [National Outcomes](#) from the National Performance Framework will this policy progress? Please indicate which National Outcomes this policy will progress (either primary or secondary), the evidence behind this and how the impact on National Outcomes will be measured/evaluated.

National Outcome	Primary outcome	Secondary outcome	Evidence for this and how the impact will be measured/evaluated?
 Economy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	[Redacted.]
 International	<input type="checkbox"/>	<input checked="" type="checkbox"/>	We have a long and proud tradition of effective justice in Scotland and an international reputation of which we are justifiably proud. We seek opportunities to strengthen and modernise the justice system, making improvements to ensure we have a system in which individuals and communities have trust. [Redacted.]
 Poverty	<input type="checkbox"/>	<input type="checkbox"/>	
 Communities	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Justice is fundamental in ensuring we live in safe, inclusive and thriving communities. It supports the rule of law and our democracy, and is a core part of our public services. [Redacted.]
 Children	<input type="checkbox"/>	<input type="checkbox"/>	
 Education	<input type="checkbox"/>	<input type="checkbox"/>	
 Fair Work & Business	<input type="checkbox"/>	<input checked="" type="checkbox"/>	[Redacted.]
 Health	<input type="checkbox"/>	<input type="checkbox"/>	
 Environment	<input type="checkbox"/>	<input type="checkbox"/>	
 Culture	<input type="checkbox"/>	<input type="checkbox"/>	

 Human Rights	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Redacted.]
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<b>Will this proposal result in a trade-off between different outcomes (i.e. positively impacting some outcomes, while negatively impacting others)?</b> Please provide details below.	No
[Redacted.]	

**ii. Impact Assessments**

As part of the policy making process, we have a legal duty to carry out a number of impact assessments: Equality Impact Assessment; Strategic Environmental Assessment; Business and Regulatory Impact Assessment; Child Rights and Wellbeing Impact Assessment; Data Protection Impact Assessment; Fairer Scotland Duty Assessment; Island Communities Impact Assessment; and, Human Rights Impact Analysis.

Have the necessary impact assessment been carried – or will be carried out – for your proposal?	Yes	[Redacted.]
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**iii. Differential Impacts by Protected Characteristic (Equality Group) or Socio-Economic disadvantage**

If you have carried out an Equality Impact Assessment, please provide a link to where it can be located
[Redacted.]

In the rows below briefly describe any differences in relevant outcomes depending on the protected characteristic or socio-economic disadvantage (poverty). This should include any **mitigating actions** which aim to (i) advance equality for someone in a protected group(s) (ii) eliminate discrimination for people in protected groups or who are socio-economically disadvantaged (iii) foster good relations between those in a protected group and those outwith the group, (iv) promote human rights and (iv) mitigate any interference or negative impacts on human rights. [Guidance on equality impact assessment](#) and [human rights policy making](#) is available.

	<b>Analysis on how impacts may differ depending on the protected category or socio-economic disadvantage and any mitigating actions.</b>
<b>Age: Older People, Children, Young People</b>	We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of age. However, future further analysis of this will take place on completion of the necessary equality impact assessment.
<b>Sex</b>	We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of sex. However, future further analysis of this will take place on completion of the necessary equality impact assessment.
<b>Sexual Orientation</b>	We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of sexual orientation. However, future further analysis of this will take place on completion of the necessary equality impact assessment.
<b>Gender Reassignment</b>	We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of gender reassignment. However, future further analysis of this will take place on completion of the necessary equality impact assessment.
<b>Race</b>	We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of race. However, future further

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	analysis of this will take place on completion of the necessary equality impact assessment.
<b>Disability</b>	We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of disability. However, future further analysis of this will take place on completion of the necessary equality impact assessment.
<b>Religion and Belief</b>	We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of religion and belief. However, future further analysis of this will take place on completion of the necessary equality impact assessment.
<b>Socio-economic disadvantage</b>	We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of socio-economic disadvantage. However, future further analysis of this will take place on completion of the necessary equality impact assessment and Fairer Scotland Impact Assessment.

- iv. **Impacts on human rights:** All Scottish Government policies must be fully consistent with Scotland's international human rights obligations, as well as being compatible with domestic human rights legislation. Further [guidance on human rights](#) can be found on [Saltire](#).

<b>Compliance with domestic and international obligations</b>	The policy has been assessed against the European Charter of Human Rights (ECHR). [Redacted.]
<b>Potential impacts and how you are responding</b>	N/A