

Judicial Independence (2015)

Objective

The objective of this updated questionnaire is to collect factual information on structural guarantees for judicial independence, which cover certain guarantees for the independence of judges and for the independence of the judiciary.

The updated judicial independence questionnaire maintains almost all questions from the 2014 questionnaire and is already prefilled with the replies you have provided. If a reply was later adapted following clarifications you have provided, these replies are highlighted. Please review these modifications and feel free to adapt other 2014 replies, if the legislation or practice in your country has changed or if you believe the replies should be clarified. Please highlight any such additional changes red.

New or modified questions are highlighted. These mostly concern questions regarding the composition and powers of Councils (prefilled with your replies in 2014), and the appointment of judges. The questionnaire containing replies could later be published.

Respondent's Information

Member State	Council for the Judiciary
UK Scotland	Judicial Council for Scotland

Additional Information

For additional information regarding the questionnaire, please contact the Directorate-General for Justice and Consumers of the European Commission.

1. AUTHORITIES WITH POWER TO DELIVER THE MAIN DECISIONS ON HUMAN AND FINANCIAL RESOURCES IN THE JUDICIARY¹

Which authorities or bodies have the power to deliver the following decisions in the judiciary?

1.1. Selection, appointment and dismissal of judges and court presidents

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country;

if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the proposal to appoint or dismiss a judge.]

- x) decision establishing there is a vacant judicial position
- a) proposal of candidates for the appointment as first or second instance judges
- b) decision on the appointment of a first or second instance judge
- c) proposal for the dismissal of a first or second instance judge
- d) decision on the dismissal of a first or second instance judge
- e) proposal of candidates for the appointment as court presidents
- f) decision on the appointment of a court president
- g) proposal for the dismissal of a court president
- h) decision on the dismissal of a court president

	x)	a)	b)	c)	d)	e)	f)	g)	h)
President of a court:	x		CA(i)				CA(i)		
Special chamber of a court:									
Higher court:									
Supreme Court:									
Council for the Judiciary²:									
Judicial inspection body:									
Other independent body: JABS (ii)		X				X			
Ministry/Minister of justice:									
Other ministry than min. of justice(iii)			FS(iii)	X(iii)	D(iii)		D(iii)		D(iii)
Parliament:				MA*	D*			MA	
Head of state: on advice of First			X		X		X		
Other:									

Notes: (i) Lord President of the Court of Session, Head of the Scottish Judiciary (consultation is mandatory); (ii) Judicial Appointments Board for Scotland following open competition among applicants; (iii) First Minister of Scotland; * Depends of the level of judge.

¹ Cf. European Network of Councils for the Judiciary, [Resolution of Budapest on Self-Governance for the Judiciary: Balancing Independence and Accountability](#), May 2008, at 2).

² Council for the Judiciary is a national institution that is independent of the executive and legislature, or which is autonomous, and that ensures the final responsibility for the support of the judiciary in the independent delivery of justice.

1.1.1. If any other authority, body or agency is involved in the procedure for appointment of judges, please describe its involvement:

As noted above, the selection of a candidate to be recommended for appointment is made by the Judicial Appointments Board for Scotland, a body independent of the legislature, executive and judiciary.

1.1.2. What is the procedure for selecting candidates for becoming judges? [several answers possible]

- Recruitment through a specific exam or a competition, which includes a specific exam for becoming a judge
- Recruitment through a vacancy notice without a specific exam
- Other (specify): ...

1.1.3. If a candidate judge is not appointed, is the appointing authority/body required to provide him/her the reasons (e.g. a reasoned explanation)?

- Yes
- No

1.1.4. If a candidate judge is not appointed, can he/she appeal or request a review?

- Yes
- No

1.1.4.1. If yes, which authority or body decides on such an appeal/review?

- Council for the Judiciary
- Other independent body (specify): ...
- Court responsible for disciplinary measures for judges (e.g. disciplinary senate, civil service court...)
- Another court / President of another court
- Higher court / President of a higher court
- Administrative court / President of the Administrative Court
- Supreme Court / President of the Supreme Court
- Constitutional Court / President of the Constitutional Court
- Other (specify): ...

1.1.4.2. What was the total number of appeals or requests for a review by unsuccessful candidate judges in 2014?

[If only an estimate is available, add "approx. ..." or "fewer than ...".]

All requests for appeal/review: :..... / N/A

If possible, specify this number for candidate judges in different areas (civil, administrative...):

... : :..... / N/A
... : :..... / N/A

1.2. Selection, appointment and dismissal of Supreme Court judges and the President of the Supreme Court

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country;

if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the proposal to appoint or dismiss a judge.]

- a) proposal of candidates for the appointment as Supreme Court judges
- b) decision on the appointment of a Supreme Court judge
- c) proposal for the dismissal of a Supreme Court judge
- d) decision on the dismissal of a Supreme Court judge

- e) proposal of the candidate(s) for the appointment of the President of the Supreme Court
- f) decision on the appointment of the President of the Supreme Court
- g) proposal for the dismissal of the President of the Supreme Court
- h) decision on the dismissal of the President of the Supreme Court

	a)	b)	c)	d)	e)	f)	g)	h)
President of a court: Lord President(i)	CA	CA			CA	CA		
Special chamber of a court:								
Supreme Court:								
Council for the Judiciary:								
Judicial inspection body:								
Other independent body: (ii)	X				X			
Ministry/Minister of justice: (iii)		X				X		
Other minister than min. of justice (specify):	CA(iv)	CA(iv)			CA(iv)	CA(iv)		
Parliament:			X	D			X	D
Head of state: on advice of (v)		X				X		
Other:								

1.2.1. If the procedures mentioned above are different for the judges and/or the President of the Supreme administrative court or the Council of State, please describe these differences:

Notes: (i) Senior judges must be consulted, including the Lord President of the Court of Session, Head of the Scottish Judiciary; (ii) Independent Selection Commission, following open competition among candidates; (iii) Lord Chancellor; (iv) those who must be consulted include the First Minister of Scotland; (v) recommendation of the Prime Minister

1.3. What was the total number of all judges that were dismissed in 2014 (e.g. as a consequence of disciplinary proceedings or criminal conviction; excluding other grounds such as incompatibility, illness, resignation, retirement)?

[if only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: :None... / N/A

If possible, specify this number for judges in different areas (civil, administrative...):

... : :..... / N/A

... : :..... / N/A

1.4. Can a judge appeal if he/she is dismissed?

Yes via employment tribunal process

No

1.4.1. If yes, which authority or body decides on such an appeal?

Council for the Judiciary

Other independent body (specify): Scottish Courts and Tribunal Service

Court responsible for disciplinary measures for judges (e.g. disciplinary senate, civil service court...)

Another court / President of another court

Higher court / President of a higher court

Administrative court / President of the Administrative Court

Supreme Court / President of the Supreme Court

Constitutional Court / President of the Constitutional Court

Other (specify): ...

1.4.2. What was the total number of appeals against dismissals of judges in 2014?

[If only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: :None... / N/A

If possible, specify this number for judges in different areas (civil, administrative...):

... : :..... / N/A

... : :..... / N/A

1.5. Evaluation, promotion, disciplinary measures and training of judges

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country;

if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or

not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given.]

- a) decision on the evaluation of a judge **N/A**
- b) evaluation of the performance management of courts **N/A**
- c) decision on the promotion of a judge
- d) adoption of ethical standards
- e) application of ethical standards
- f) proposal for the appointment of a member of the disciplinary body for judges **N/A**
- g) decision on the appointment of a member of the disciplinary body for judges
- h) proposal for a disciplinary decision regarding a judge
- i) disciplinary decision regarding a judge (all bodies issuing disciplinary decisions)
- j) decision on the follow-up to a complaint against the judiciary/a judge
- k) decision on the program/content of training for judges

	a)	b)	c)	d)	e)	f)	g)	h)	i)	j)	k)
President of a court: <i>Lord President(i)</i>			X(ii)	D	D		X(iii)		X	X	
Special chamber of a court:											
Higher court:											
Supreme Court:											
Council for the Judiciary:				CA	CA						
Judicial inspection body:											
Other independent body (specify): ...											
Ministry/Minister of justice:											
Other ministry than min. of justice											
Parliament:											
Head of state: if applicable- on advice											
Other (specify): ...								X(iv)			X(v)

(i) Lord President of the Court of Session, Head of the Scottish Judiciary

(ii) In limited circumstances concerning the appeal chamber of the Court of Session and appointment of Temporary Judges of the court. Otherwise appointment to higher judicial office is by the open competition process referred to in Q.1.1

(iii) Appoints Disciplinary Judge

(iv) Disciplinary Judge

(v) Judicial Institute

1.6. Financial resources

1.6.1. Authorities and bodies responsible for financial resources

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country;

if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding

or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given]

- a) involvement in the preparation of the "budget allocated to courts"³
- b) formal proposal on the budget allocated to courts
- c) adoption of the budget allocated to courts
- d) management of the budget allocated to courts
- e) evaluation/audit of the budget allocated to courts
- f) definition of criteria for determining financial resources (see 1.6.2.)

	a)	b)	c)	d)	e)	f)
President of a court:						
Special chamber of a court:						
Higher court / President of the Higher court: Lord President(i)	X		CA			
Supreme Court / President of the Supreme Court:						
Council for the Judiciary:						
Judicial inspection body:						
Other independent body (specify): ...				X (ii)	X(iii)	
Ministry/Minister of justice:	x	X				
Other ministry than min. of justice (specify): ...						
Parliament:			D			D
Head of state: if applicable- on advice of ...						

1.6.2. What are the prescribed methods or criteria for determining financial resources for the judiciary? [several answers possible] [Please electronically tick the checkbox ("☑") next to the corresponding reply (by clicking on it in Microsoft Word for Windows), or (in case of difficulties with the checkboxes) by marking relevant reply in bold or highlighting it.]

- amount based on historic and/or realised costs
- number of incoming cases: specify for which instance: 1st / 2nd / all / N/A
- number of resolved cases: specify for which instance: 1st / 2nd / all / N/A
- number of resolved cases - based on an evaluation of the cost for courts
- other (specify): ...

1.6.3. Where have these criteria been defined? [several answers possible]

- In well-established practice
- In law
- Other (specify): ...

Notes-

³ General government total expenditure on COFOG (classification of the functions of government) group 03.30 'Law courts', which includes "financial resources allocated to the "administration, operation or support of civil and criminal law courts and the judicial system, including enforcement of fines and legal settlements imposed by the courts and operation of parole and probation systems; legal representation and advice on behalf of government or on behalf of others provided by government in cash or in services. Includes: administrative tribunals, ombudsmen and the like. Excludes: prison administration." This is National Accounts data currently provided under the ESA95 framework.

(i) Lord President of the Court of Session, Head of the Scottish Judiciary

(ii) The Scottish Court Service: an independent, judicially-led body corporate established by statute

(iii) Audit Scotland

1.7. Governance of the Judiciary

[Please insert an “x” into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country;

if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given.]

- a) general management of a court
- b) adopting press guidelines for relations between courts and the media
- c) communicating with the media (e.g. on questions regarding judgments, court functioning)
- d) decisions regarding the implementation and use of Information and Communication Technology in courts
- e) decisions regarding court buildings
- f) decisions regarding court security

	a)	b)	c)	d)	e)	f)
President of a court:	X	CA	CA	CA	CA	CA
Higher court / President of the Higher court:	X			CA	CA	CA
Supreme Court / President of the Supreme Court:						
Court service governed by the Judiciary:	X	X	X	X	X	X
Council for the Judiciary:		CA	CA	CA		CA
Judicial inspection body:						
Other independent body (specify): ...						
Court service governed by the Ministry of justice:						
Ministry/Minister of justice:						
Other ministry than min. of justice (specify): ...						
Other (specify): ...						
Judge responsible for media relations						
Press officer at a court		*	*			

1.7.1. Authorities and bodies responsible for court staff (other than judges)

[Please insert an “x” into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country;

if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given.]

- a) decision regarding the total number of court staff (other than judges) at all courts
- b) decision regarding the number of court staff at particular courts

- c) appointment and dismissal of court staff
- d) decisions regarding the transfer of court staff from one court to another
- e) decisions regarding the promotion/disciplinary matters concerning court staff
- f) other human resource management decisions on court staff (e.g. holidays)

	a)	b)	c)	d)	e)	f)
President of a court:						
Higher court / President of the Higher court:						
Supreme Court / President of the Supreme Court:						
Court service governed by the Judiciary:	x	x	x	x	x	x
Council for the Judiciary:						
Judicial inspection body:						
Other independent body (specify): ...						
Court service governed by the Ministry of justice:						
Ministry/Minister of justice:						
Other ministry than min. of justice (specify): ...						
Other (specify): ...						

1.8.1 Composition of the Councils for the Judiciary according to the nomination process

	Total	Court presidents (ex officio)	Judges (appointed or proposed by their peers)	Judges (elected by their peers)	Prosecutors (elected by their peers)	Prosecutor General (ex officio)	Appointed by associations of lawyers / legal practitioners	Elected/appointed by the Parliament	Appointed by the Head of State / Prime Minister / Government / Minister of justice	Minister of justice (ex officio)	Appointed/nominated by other bodies/authorities
BE	44			22				22			
BG	25	2		6	5	1		11			
DK	11		6				1				4
IE	18	5		5			2		3		3
ES	21	1	12					8			
FR	22	1		6	6	1	1	4	2		1
HR	11			7				2			2
IT CSM	27	1		12	4	1		8	1		
IT CPGA	15	1		10				4			
LV	15	2		7		1	3	1		1	
LT	23	3		20							
HU	15	1		14							
MT	10	1		4		1	1		2		1
NL	4		2						2		
PL	25	2		15				6	1	1	
PT	17	1		7				7	2		
RO	19	1		9	5	1		2		1	
SI	11			6				5			
SK	18			9				3	6		
UK (EN + WL)	29	9	19								1
UK (NI)	11		11								
UK (SC)	16	4	12								

1.8.2. Powers of the Councils for the Judiciary

	Providing opinion on draft laws relating to the judiciary	Training of judges (providing guidelines/supervising or deciding on the program/content)	Proposing candidates for appointment as judges (courts of first instance)	Appointing judges (1st instance courts)	Proposing dismissal of judges (courts of first instance)	Dismissing judges (courts of first instance)	Transferring judges (without their consent)	Taking disciplinary decisions on judges	Adopting ethical standards	Promoting a judge	Advisory body / court management	Deciding on evaluation of a judge	Decision regarding number of court staff at particular courts	Allocating budget to particular courts	Decisions on implementation & use of ICT in courts
BE	1	1	1						1						
BG	1	1		1	1	1	1	1	1	1		1	1	1	1
DK	1	1									1		1	1	1
IE	1										1		1		1
ES	1	1	1		1		1	1	1	1		1			1
FR	1		1	1	1	1	1	1	1	1					
HR	1	1		1		1	1	1		1		1			
IT	1	1	1	1	1	1	1	1		1	1	1			1
LV	1	1			1										
LT	1	1		1		1	1			1	1	1	1	1	1
HU	1	1	1						1	1					
MT	1				1				1			1			
NL	1	1							1	1				1	1
PL	1	1	1		1				1						
PT	1	1	1	1	1	1	1	1	1	1		1			
RO	1	1	1	1	1		1	1	1	1		1	1		
SI	1	1	1	1	1	1	1		1	1		1			
SK	1	1	1		1				1	1					
UK (EN+WL)										1	1				
UK (NI)											1				1
UK (SC)											1				

2. PROCEDURES AND SANCTIONS FOR PROTECTING JUDICIAL INDEPENDENCE⁴

2.1. When a judge or an authority considers that independence of an individual judge or of the judiciary is threatened, are there any specific procedures, other remedies or sanctions⁵ for protecting it?

Yes

No

2.1.1. If yes, who can launch such a request or a procedure?

A judge who believes his/her independence is threatened

President of a court

Judicial inspection body

Council for the Judiciary

Other independent body (specify): ...

Public Prosecution Service

Minister of justice

Other (specify): ...

2.1.2. What was the total number of such complaints in 2014?

[If only an estimate is available, add "approx. ..." or "fewer than ...";

Please specify for each authority or body (please add more than two, if necessary)]

Complaints from judges: :None..... / N/A

Complaints from the Council for the Judiciary: :None..... / N/A

Complaints from ...: :..... / N/A

2.1.3. If yes, which authority or body has the power to react to such complaints from judges or authorities for protecting judicial independence? [several answers possible]

Council for the Judiciary

Other independent body (specify): ...

Judicial inspection body

Court

President of a court

Higher court / President of a higher court

Supreme Court / President of the Supreme Court

Public Prosecution Service – If the judge considers that the interference with independence may constitute a criminal offence

Other (specify): ... If the person threatening the independence of a judge is a member of a profession, there may be a possibility of disciplinary action against the person attempting to interfere by the relevant regulatory body.

⁴ [Recommendation CM/Rec\(2010\)12](#) of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, paras. 8, 13 and 14. See also European Network of Councils for the Judiciary, Distillation of ENCJ Guidelines, Recommendations and Principles, Report 2012-2-13, para. 7.

⁵ "Sanctions against persons seeking to influence judges in an improper manner", Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 14.

2.1.4. If yes, what are the measures that these authorities can take on the basis of a request in order to protect judicial independence?

What was the total number of such measures in 2014?

[[several answers possible; if only an estimate is available, add "approx. ..." or "fewer than ...".]

- Notification to other authorities:, from (specify): ...
- Sanctions (**criminal**, **administrative**, at first instance)⁶:, from (specify): ...
- Press releases / formal declarations on judicial independence:, from (specify): ...
- Other (specify):, from (specify): ...
- N/A

3. IMPARTIALITY – WITHDRAWAL AND RECUSAL⁷

3.1. Is a judge obliged to withdraw from adjudicating a case if the judge believes that impartiality is in question or compromised or that there is a reasonable perception of bias?

- Yes
- No

3.1.1. If yes, what is the source of the obligation to withdraw from adjudicating a case?

- A well-established practice of judges
- Set in an act adopted by a court
- Set in an act adopted by the Council for the Judiciary
- Set in an act adopted by the Minister of justice
- Set in law
- Other (specify): ...Judicial Code of Ethics published by Lord President

3.1.2. If a judge disrespects the obligation to withdraw from adjudicating a case, could the judge be subject to a sanction?

- Yes (specify; e.g. type of disciplinary measure): ... If a complaint is made under the Complaints About the Judiciary (Scotland) Rules 2015 and is found to be substantiated, the President of the Court of Session may issue formal advice, a formal warning or a reprimand. This does not restrict what the President of the Court of Session may do informally, otherwise than by way of advice or warning to a particular judicial office holder. Further, if the situation were to merit it, the President of the Court of Session may request that the First Minister of Scotland constitute a tribunal to consider fitness for office.
- No

3.2. Which authority or body takes the first decision on a request for recusal by a party who considers that a judge is partial / biased? [several answers possible]

⁶ "Sanctions against persons seeking to influence judges in an improper manner", Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 14.

⁷ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, paras. 59-61. See also European Network of Councils for the Judiciary, [London declaration on judicial ethics](#), June 2010; and European Network of Councils for the Judiciary, [Judicial Ethics Report](#) 2009-2010

- The single-judge who is adjudicating in the same case (when a recusal request is directed against this judge)
- The panel of judges adjudicating in the same case (when a recusal request is directed against a member of this panel or against the whole panel)
- Another judge at the same court (e.g. selected on seniority or appointed)
- A special chamber of the same court
- President of the same court
- Another court / President of another court
- Higher court / President of a higher court
- Supreme Court / President of the Supreme Court
- Council for the Judiciary
- Other independent body (specify): ...
- Ministry of justice / Minister of justice
- Other (specify): ...

3.2.1. In case a different authority or body decides in different types of proceedings (civil, administrative...), please describe the differences and specify for which proceedings the replies under 3.2. refer to:

3.3. If available what was the total number of successful recusal challenges by parties in 2014 in which a lack of impartiality or a reasonable perception of bias was established?

[If only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: :..... / N/A

If possible, specify this number for different types of proceedings (civil, administrative...):

... : :..... / N/A

... : :..... / N/A

3.4. Is an appeal against a decision on a request for recusal possible?

- Yes
- No

3.4.1. If yes, which authority or body decides on such an appeal?

- Another judge at the same court (e.g. selected on seniority or appointed)
- A special chamber of the same court
- President of the same court
- Another court / President of another court
- Higher court / President of a higher court
- Supreme Court / President of the Supreme Court
- Council for the Judiciary

- Other independent body (specify): ...
- Minister of justice
- Other (specify): ...

3.4.2. What was the total number of appeals against decisions on recusal requests in 2014?

[for example, when a party to the case requested a judge to be recused but this request was rejected, and then this party appealed against the rejection; if only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: :..... / N/A

If possible, specify this number for different types of proceedings (civil, administrative...):

... : :..... / N/A

... : :..... / N/A

4. IRREMOVABILITY - TRANSFER OF JUDGES WITHOUT THEIR CONSENT⁸

4.1. Can a judge be transferred (temporarily or permanently) to another judicial office (to other judicial duties, court or location) without his/her consent?

- Yes*
- No

4.1.1. If yes, which authority or body decides on a (temporary or permanent) transfer of a judge without his/her consent? [if several authorities are responsible and have different powers depending on the ground for transfer, please write "for disciplinary reasons", "for organisational reasons" or "for other reasons" next to the relevant authority]

- Council for the Judiciary
- Other independent body (specify): ...
- Court responsible for disciplinary measures for judges (e.g. disciplinary senate, civil service court...)
- President of the same court
- Another court / President of another court
- Higher court / President of a higher court (**Lord President**)
- Supreme Court / President of the Supreme Court
- Constitutional Court / President of the Constitutional Court
- Ministry of justice / Minister of justice
- Head of state
- Other (specify): ...

***Note – this applies only to the judges who sit in the lower courts located around Scotland. It does not apply to judges of the Court of Session (the higher civil court) which is located only in Edinburgh.**

⁸ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 52. See also European Network of Councils for the Judiciary, Development of Minimal Judicial Standards III, Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary, Report 2012-2013, pp. 18-20, 23 (point 4.21.)

4.2. For what reasons can a judge be transferred without his/her consent? [several answers possible]

- For disciplinary reasons
- For organisational reasons (*reflecting the statutory responsibility of the Head of the Scottish Judiciary and court presidents for making arrangements to ensure the efficient disposal of business of the Scottish courts.*)
- For other reasons (specify): ...

4.2.1. At what level are these reasons prescribed?

- In law
- Other (specify):

4.3. In case a judge is transferred without his/her consent is he/she guaranteed an equivalent post (in terms of a position, salary...)?

- Yes
- No

4.4. What was the total number of judges transferred without their consent in 2014?

[if only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: :..... / N/A

If possible, specify this number depending on the reason for transfer without consent:

For disciplinary reasons:0

For organisational reasons:1

For other reasons:0

If possible, specify this number for judges in different areas (civil, administrative...):

civil... :1 :..... / N/A

... : :..... / N/A

4.5. Can a judge appeal if he/she is transferred without his/her consent?

- Yes (*But only by application for judicial review; there is no specific appeal provision.*)
- No

4.5.1. If yes, which authority or body decides on such an appeal?

- Council for the Judiciary
- Other independent body (specify): ...
- Court responsible for disciplinary measures for judges (e.g. disciplinary senate, civil service court...)
- President of the same court
- Another court / President of another court

- Higher court / President of a higher court
- Supreme Court / President of the Supreme Court
- Constitutional Court / President of the Constitutional Court
- Minister of justice
- Head of state
- Other (specify): ...

4.5.2. What was the total number of appeals against transfers of judges without their consent in 2014?

[If only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: :None..... / N/A

If possible, specify the number of appeals depending on the reason for transfer without consent:

For disciplinary reasons:

For organisational reasons:

For other reasons:

If possible, specify the number of appeals by judges in different areas (civil, administrative...):

... : :..... / N/A

... : :..... / N/A

5. ALLOCATION OF CASES⁹

5.1. Are the criteria for allocating cases within a court defined?

- Yes
- No

5.1.1. If yes, where have these criteria been defined? [several answers possible]

- In well-established practice of the court
- In an act adopted by the court
- In implementing regulations
- In law
- Other (specify): ...

5.2. How are cases assigned to judges at the first instance courts?

- President of the court assigns cases
- A member of the court staff assigns cases (e.g. listing officer)
- A special chamber of the court assigns cases

⁹ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 24.

- The cases are assigned randomly (e.g. through a computerized system)
- The cases are assigned according to a pre-defined order (e.g. alphabetic, subject matter)
- Other (specify): ...

5.3. Is the allocation of cases subject to supervision (e.g. regular checks of the practice of allocation)?

- Yes
- No

5.3.1. If yes, by whom? [several answers possible]

- By court staff
- By the President of the court
- By the Council for the Judiciary
- By another independent body (specify): ...
- By the Judicial inspection body
- Other (specify): ...

5.3.2. In the last five years, has the system for the allocation of cases been subject to a general review or assessment to check for any potential deficiencies?

- Yes processes are under review on a regular basis by Scottish Court Service operational staff to ensure efficient allocation of business
- No

5.3.2.1. If yes, what was the follow-up to the findings of such a general review/assessment? [several answers possible]

- Changes to the system of allocation of cases
- Changes to the practices concerning the allocation of cases
- Other (specify): ...

6. INTERNAL INDEPENDENCE¹⁰

6.1. In your system, are there hierarchically superior courts/judges with the power to ensure on their own initiative the uniformity or consistency of judicial decisions delivered by the courts/judges under their supervision (outside of an appeal system, the precedent doctrine or a preliminary ruling system)?

Yes

No

6.1.1. If yes, which courts/judges have such a power?

Division heads at particular courts

Presidents of the courts

Appeal courts / Presidents of appeal courts

Supreme Court / President of the Supreme Court

Other (specify): ...

6.1.2. If yes, what kind of decisions can hierarchically superior courts/judges deliver on their own initiative to ensure the uniformity or consistency of judicial decisions outside of an appeal system or the precedent doctrine?

An advisory opinion of general application (for all courts/judges) Occasionally an appeal court may take an opportunity afforded by an appeal to provide guidance of a general nature to first instance judges. An example from criminal procedure would be the appropriate reduction in the length of a sentence where an accused pleads guilty at an early stage of the proceedings. The appeal court would expect its guidance to be followed.

An obligatory decision of general application (for all courts/judges)

An advisory opinion of concrete application (to a specific judicial decision)

An obligatory decision of concrete application (to a specific judicial decision)

A practice statement or direction applicable to particular kinds of cases

Other (specify): ...

6.1.3. If yes, what was the total number of such decisions in 2014?

[If only an estimate is available, add "approx. ..." or "fewer than ..."]

In all courts: :..... / N/A

If possible, specify this number for different types of proceedings (civil, administrative...):

... : :..... / N/A

... : :..... / N/A

¹⁰ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 22.