

## **EXECUTIVE NOTE**

### **THE STIPENDIARY MAGISTRATES (SCOTLAND) ORDER 2010**

#### **SSI/2010/ 142**

1. The above Order was made in exercise of the powers conferred by section 74(9) and (10) of the Criminal Proceedings etc. (Reform)(Scotland) Act 2007 (“the 2007 Act”). The instrument is subject to negative resolution procedure.
2. This Order provides for the appointment of full-time and part-time Stipendiary Magistrates. The Order makes provision in relation to:
  - The establishment of a Stipendiary Magistrates Advisory Committee (SMAC) including the role and membership
  - The advertising of a Stipendiary Magistrates vacancy

#### **Policy Objectives**

3. The 2007 Act makes provision for the appointment of Stipendiary Magistrates.
4. Stipendiary Magistrates are appointed for a Sheriffdom and sit in the Justice of the Peace Courts. While they exercise judicial and signing functions in the same manner as a Justice of the Peace, they have a professional legal background. They work without the support of a legally-qualified clerk, sit alone and have a wider range of sentencing powers.
5. Stipendiary Magistrates are appointed by Her Majesty the Queen at the hand of the Scottish Ministers, however there is an imperative to maintain some distance between Ministers and the Judiciary in order to protect the independence of the latter. This is achieved by placing much of the responsibility for the recruitment process with the Sheriff Principal or his nominee who will use the SMAC to make an independent and transparent recommendation to the Scottish Ministers. The Scottish Ministers can only make an appointment on behalf of the Queen if the Sheriff Principal advises that an appointment is necessary or expedient for the purposes of the efficient administration of any or all of the JP courts in that Sheriff Principal’s sheriffdom.

#### Establishment of a SMAC

6. A SMAC will oversee the sifting and interviewing of candidates. It will be chaired by the Sheriff Principal (or a person nominated by the Sheriff Principal) and may consider one or more vacancies. It will not be a standing committee and therefore any future vacancies will mean that a new SMAC will have to be established. This is because with a current total strength of 9 full-time and part-time Stipendiary Magistrates, vacancies are expected to be infrequent and therefore the work required to maintain a standing committee would not be proportionate give the infrequent work that they will do. If the relevant persons continue to meet the qualifying criteria then there is nothing

to prevent a SMAC being established using the same members that were used on previous occasions.

#### Advertising of Vacancies

7. Stipendiary Magistrate posts are open to advocates and solicitors who have been qualified for at least 5 years. Accordingly, vacancies should as a minimum be advertised in the Journal of the Law Society of Scotland and the Scots Law Times. Additional advertising may be undertaken after consulting the Sheriff Principal.

#### Membership of a SMAC

8. A stipendiary magistrate is a judicial office holder. In order to properly test the qualities required to be a judicial office holder, the SMAC panel will consist of three people the majority of whom will be judicial office holders. Certain categories of persons who are politically active are not permitted to participate in the sifting and interviewing of candidates for judicial appointment.

#### Role of SMAC

9. The SMAC, chaired by the Sheriff Principal (or his nominee), will submit recommendations to the Scottish Ministers after the sifting and interviewing has been concluded. The Scottish Ministers may only appoint a candidate who has been so recommended. If no suitable candidates are identified then the SMAC will make no recommendations and the Scottish Ministers may decide to restart the process with a fresh advertisement.

#### **Consultation**

10. In March 2010 the Government conducted a short consultation with the Law Society of Scotland, the six Sheriffs Principal and the Judicial Office of the Lord President.

#### **Financial Effects**

11. The Order is made in accordance with the original policy intention of the relevant provisions of the Criminal Proceedings etc. (Reform)(Scotland) Act 2007. It therefore has no financial effects beyond those which were set out in the Financial Memorandum to the Act.

Neil MacLennan  
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