
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the procedure for the selection and nomination for appointment of members of the Scottish Sentencing Council. In terms of paragraph 2(1) of schedule 1 to the Criminal Justice and Licensing (Scotland) Act 2010 (the 2010 Act), it is for the Lord Justice General, following consultation with the Scottish Ministers, to appoint the members of the Council other than the Lord Justice Clerk and the lay members.

The Scottish Ministers, by regulations, have prescribed the procedure by which members, other than the Lord Justice Clerk and the lay members, can be nominated or otherwise selected for appointment and the Lord Justice General may only appoint a person if such procedures have been followed.

The Lord Justice Clerk is the chairing member of the Scottish Sentencing Council by virtue of his office. The Council will also comprise lay members whose appointment rests with the Scottish Ministers and is not the subject of these regulations.

Regulation 2 details the selection process for all members, with the exception of the prosecutor member, the sheriff principal, who is eligible for appointment under paragraph 1(3)(d)(ii) of schedule 1 to the 2010 Act and the person holding the office of judge who normally sits as a judge of the Outer House of the Court of Session or the High Court of Justiciary.

Under paragraph 3 of Regulation 2, the Lord Justice General must appoint a panel, consisting of a minimum of two persons, to consider applications received. Under paragraph 5(a) of regulation 2, if the Lord Justice General sits on the panel, the panel must be chaired by the Lord Justice General. Under paragraph 5(b) of Regulation 2, if the Lord Justice General does not sit on the panel, the Lord Justice General will select one of the panel members to be chair.

An interview must be conducted where the panel is unable to make a selection based on an application. Paragraph 7 of Regulation 2 enables interviews to be held for the sheriff, justice of the peace, stipendiary magistrate, advocate and solicitor members.

Section 128 of the Court Reform (Scotland) Act 2014 abolishes the office of stipendiary magistrate. The provisions of these regulations that apply to stipendiary magistrates will apply to summary sheriffs once the relevant consequential amendments are made to the 2010 Act.

Before a person can be appointed as the advocate or solicitor member of the Scottish Sentencing Council, the Lord Justice General must consult with the Dean of the Faculty of Advocates and the President of the Law Society of Scotland, respectively.

Regulation 3 details the nomination process for the prosecutor member, the sheriff principal, who is eligible for appointment under paragraph 1(3)(d)(ii) of schedule 1 to the 2010 Act and the person holding the office of judge who normally sits as a judge of the Outer House of the Court of Session or the High Court of Justiciary. These members can nominate themselves, with the exception of the prosecutor member, who must be nominated by the Lord Advocate.