

POLICY NOTE

THE SCOTTISH SENTENCING COUNCIL (PROCEDURE FOR APPOINTMENT OF MEMBERS) REGULATIONS 2015

SSI 2015/225

1. The above instrument was made in exercise of the powers conferred by paragraphs 2(3) and 2(4) of schedule 1 to the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”) and all other powers enabling them to do so. The regulations are subject to negative procedure.

Policy Objectives

2. These regulations set out the procedure for the selection and nomination for appointment of judicial and legal members of the Scottish Sentencing Council (“the Council”). These members are appointed to the Council by the Lord Justice General.

Background

3. The 2010 Act provides that the Council will have 12 members. It will be chaired by the Lord Justice Clerk and will consist of five other judicial members, three legal members and three lay members.

4. It is for the Lord Justice General to appoint members of the Council other than the Lord Justice Clerk (who is a member by virtue of his office) and the lay members (who are appointed by the Scottish Ministers). A person can only be appointed by the Lord Justice General if selected or nominated in accordance with the procedure prescribed by Scottish Ministers in regulations.

Selection for appointment

5. The regulations make provision for the Lord Justice General to invite applications, in writing, from sheriffs, stipendiary magistrates, justices of the peace, practicing advocates and practising solicitors for selection as a member of the Council.

6. Applications will be considered by a panel of at least two persons. The Lord Justice General may be part of the panel and if so, will be chair. If the Lord Justice General is not part of the panel, he will choose who should chair the panel.

7. The panel can make a selection based on application alone. Where the panel is unable to make a selection based on an application, interviews must be conducted.

8. The regulations provide that a panel can select for appointment more persons than may be appointed in any given category of membership. In such a situation, the panel should inform the Lord Justice General of their order of preference, unless the Lord Justice General was a member of the panel.

9. The regulations require that before a person can be appointed as the advocate or solicitor member of the 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.

10. It is considered that an application and interview process provided for in the regulations will provide an open, transparent and robust process of selecting various members of the Council and ensure that members have knowledge and skills relevant to the functions of the Council.

Nomination for appointment

11. The regulations provide that any persons holding the office of judge who normally sit as a judge of the Outer House of the Court of Session or the High Court of Justiciary and any persons holding the office of sheriff principal may nominate themselves for selection by the Lord Justice General to be a member of the Council.

12. Self-nomination by these members is believed to be appropriate due to the fact that the selection pool is small and additional process would be disproportionate. It will also have the effect of ensuring flexibility for judicial deployment.

13. The regulations provide that the prosecutor member for appointment will be nominated by the Lord Advocate. This nomination process is considered appropriate as it will ensure appropriate links with the Crown Office and Procurator Fiscal Service as well as ensuring that the most suitable candidate is identified.

Consultation

14. The Scottish Ministers have consulted the Lord Justice General in relation to these regulations as required by the 2010 Act.

Impact Assessments

15. Equality Impact Assessment (EQIA) is a tool to assist in considering how policy may impact, either positively or negatively, on different sectors of the population in different ways.

16. We have considered the impact of policy on particular groups of people (their age, race, gender, sexual orientation, religion or belief or whether disabled or not). We are not aware of any evidence that any of the equality strands will be affected by these regulations.

Criminal Justice Division
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