

Status: Point in time view as at 01/10/2009. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008, SCHEDULE 3. (See end of Document for details)

SCHEDULE 3

(introduced by section 60(2))

THE SCOTTISH COURT SERVICE

PROSPECTIVE

Status of [F1SCTS]

Textual Amendments

- F1** Word in Act substituted (2.2.2015 for specified purposes, 1.4.2015 in so far as not already in force) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 4 para. 1(2)**; S.S.I. 2015/12, art. 2; S.S.I. 2015/77, art. 2(2)(3), Sch.

F2¹

Textual Amendments

- F2** Sch. 3 para. 1 repealed (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 4 para. 1(7)**; S.S.I. 2015/77, art. 2(2)(3), Sch.

Membership

- 2 (1) The SCS consists of judicial members and non-judicial members.
- (2) The judicial members comprise—
- the Lord President,
 - the Lord Justice Clerk,
 - one other person holding the office of judge of the Court of Session,
 - one person holding the office of sheriff principal,
 - two persons holding the office of sheriff, and
 - one person holding the office of justice of the peace.
- (3) The non-judicial members comprise—
- an advocate practising as such in Scotland,
 - a solicitor practising as such in Scotland,
 - the Chief Executive (appointed under paragraph 14(1)), and
 - three other individuals none of whom is qualified for appointment as a judicial member or for appointment under any of the preceding paragraphs.
- (4) Each of the descriptions of members mentioned in sub-paragraphs (2) and (3) is referred to in this schedule as a “category of membership”.
- (5) Subject to sub-paragraph (6), the Scottish Ministers may, with the consent of the Lord President, by order modify sub-paragraph (2) or (3).
- (6) The Scottish Ministers must not make an order under sub-paragraph (5) if its effect would be that the total number of judicial members would no longer exceed the total number of non-judicial members.

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Procedure for appointment of members

- 3 (1) It is for the Lord President to appoint the members of the SCS (other than the Lord Justice Clerk and the Chief Executive).
- (2) The Lord President may appoint a person to be a member only if the person has been nominated, or otherwise selected for appointment, in accordance with such procedure as the Scottish Ministers may by regulations prescribe.
- (3) Regulations under sub-paragraph (2) may—
- (a) in particular, make provision for or in connection with enabling persons to nominate or select persons suitable for appointment,
 - (b) prescribe different procedures for different categories of membership.
- (4) The Scottish Ministers must consult the Lord President before making regulations under sub-paragraph (2).

Commencement Information

- II** Sch. 3 para. 3 wholly in force at 1.6.2009; Sch. 3 para. 3 not in force at Royal Assent see s. 76; Sch. 3 para. 3(2)(3)(4) in force at 16.3.2009 by S.S.I. 2009/83, art. 2; Sch. 3 para. 3(1) in force at 1.6.2009 by S.S.I. 2009/192, art. 2, Sch.

Persons disqualified from membership

- 4 A person is disqualified from appointment, and from holding office, as a member of the SCS if the person is or becomes—
- (a) a member of the House of Commons,
 - (b) a member of the Scottish Parliament,
 - (c) a member of the European Parliament,
 - (d) a councillor of any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
 - (e) a Minister of the Crown, or
 - (f) a member of the Scottish Executive.

Term of office

- 5 (1) This paragraph applies to a member of the SCS appointed by the Lord President.
- (2) The member holds office for such period not exceeding 4 years as the Lord President may, at the time of appointment, determine.
- (3) The member ceases to hold office—
- (a) on becoming disqualified from holding office as a member,
 - (b) on ceasing to fall within the category of membership under which the member was appointed.

Reappointment

- 6 A person who is, or has been, a member of the SCS appointed by the Lord President may be reappointed (whether under the same or a different category of membership) for further periods.

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Resignation and removal of members

- 7 (1) This paragraph applies to a member of the SCS appointed by the Lord President.
- (2) The member may resign office by giving notice in writing to the Lord President.
- (3) The Lord President may, by notice in writing, remove the member if satisfied that the member is unfit to be a member by reason of inability, neglect of duty or misbehaviour.

Suspension of judicial members

- 8 A judicial member is suspended from acting as such during any period in which the member is suspended from the judicial office which the member holds.

Chairing of the SCS

- 9 (1) The Lord President is to chair meetings of the SCS.
- (2) The Lord Justice Clerk may deputise for the Lord President in chairing meetings.
- (3) Where the Lord President and the Lord Justice Clerk are for any reason unable to attend a meeting the remaining members may elect a member to chair the meeting.

Committees

- 10 (1) The SCS may establish committees.
- (2) A person who is not a member of the SCS may be appointed to be a member of any committee established by it.

Proceedings

- 11 The SCS may determine—
- (a) its own procedure (including the number of members required to constitute a quorum), and
 - (b) the procedure (including the number of members required to constitute a quorum) of any committees established by it.

Validity of actings

- 12 The validity of any proceedings or actings of the SCS is not affected by—
- (a) any vacancy in the membership of the SCS,
 - (b) any defect in the appointment of a member of the SCS, or
 - (c) disqualification of any person from holding office as a member of the SCS.

Remuneration and expenses

- 13 (1) The SCS may pay to—
- (a) its members, and
 - (b) the members of any committee established by it,
- such sums as it may determine by way of reimbursement of expenses in respect of the carrying out of their functions as members.

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- (2) The SCS may pay to—
- (a) the judicial member who is a justice of the peace,
 - (b) the non-judicial members, and
 - (c) the members of any committee established by it,
- such other remuneration, if any, as it may determine.

Chief Executive and other staff

- 14 (1) The SCS must appoint a Chief Executive.
- (2) The SCS may appoint such other staff as it considers appropriate.

VALID FROM 01/04/2010

Ancillary powers

- 15 (1) The SCS may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.
- (2) In particular, the SCS may—
- (a) acquire and dispose of land and other property,
 - (b) enter into contracts,
 - (c) provide information and advice.

VALID FROM 01/04/2010

Power to use local authority premises

- 16 (1) The SCS may, where it considers it necessary for the purposes of carrying out its functions under section 61 or 62, require a local authority to—
- (a) let (or sub-let) premises controlled by the local authority to the SCS, or
 - (b) make such premises available for use for the purposes of the SCS.
- (2) A requirement under sub-paragraph (1)(a) is subject to agreement—
- (a) between the SCS and the local authority as to the rent payable under, and as to the other terms of, the lease (or sub-lease), and
 - (b) with any third party who has an interest in the premises.
- (3) Where a requirement is made under sub-paragraph (1)(b)—
- (a) the SCS is to reimburse the authority for any reasonable expenses incurred by the authority in respect of heating, lighting and cleaning in relation to the use of the premises for the purposes of the SCS, and
 - (b) the SCS is to allow the premises to continue to be used for any business normally conducted there, or for any business for which it may be used under a local enactment (whether a local Act or otherwise), without adversely affecting that business.
- (4) The SCS may allow any premises let, sub-let or used under sub-paragraph (1) to be used by other persons subject to—

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- (a) such conditions as the SCS may impose, and
- (b) sub-paragraph (3)(b).

- (5) Any dispute arising from the operation of this paragraph which the parties are unable to resolve is to be determined by an arbiter appointed—
- (a) by agreement of the parties, or
 - (b) in the absence of such agreement, by the Scottish Ministers on the application of a party.

VALID FROM 01/04/2010

Delegation

- 17 (1) Any function of the SCS may be carried out on its behalf by—
- (a) a member of the SCS,
 - (b) a committee,
 - (c) a member of its staff, or
 - (d) any other person,
- authorised (whether specifically or generally) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the SCS from exercising any function delegated under that sub-paragraph.

Freedom of information

- 18 In the Freedom of Information (Scotland) Act 2002 (asp 13), in schedule 1 (which lists the Scottish public authorities subject to that Act), in Part 2 (non ministerial office holders in the Scottish Administration), after paragraph 18 insert—
- “18A The Scottish Court Service.”.

VALID FROM 01/04/2010

Transfer of staff

- 19 (1) Sub-paragraph (2) applies to persons who, on the coming into force of this paragraph—
- (a) hold any of the offices mentioned in section 63(2), or
 - (b) are members of the staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as the Scottish Court Service Agency (referred to in this paragraph as “the Agency”), other than excepted staff.
- (2) On the coming into force of this paragraph, those officers and staff transfer to, and become members of the staff of, the SCS (as well as, in the case of the holders of the offices referred in sub-paragraph (1)(a), continuing to hold those offices).
- (3) The excepted staff are—
- (a) the Chief Executive of the Agency, and

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- (b) staff on secondment or loan to the Agency from another part of the Scottish Administration.
- (4) The contract of employment of a person who becomes a member of the staff of the SCS by virtue of sub-paragraph (2)—
 - (a) is not terminated by the transfer, and
 - (b) has effect from the date this paragraph comes into force as if originally made between the person and the SCS.
- (5) Without prejudice to sub-paragraph (4)—
 - (a) all the rights, powers, duties and liabilities of the Scottish Ministers under or in connection with the person's contract of employment are by virtue of this sub-paragraph transferred to the SCS on the date on which this paragraph comes into force, and
 - (b) anything done before that date by or in relation to the Scottish Ministers in respect of that contract of employment or that person is to be treated from that date as having been done by or in relation to the SCS.
- (6) This paragraph does not prejudice any right of any person to terminate that person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but such a change is not to be taken to have occurred by reason only that the identity of the person's employer changes by virtue of this paragraph.
- (7) The Scottish Ministers must appoint, on such terms and conditions as they may determine, a person to act as the Chief Executive of the SCS until the first Chief Executive is appointed by the SCS under paragraph 14(1).
- (8) A determination by the Scottish Ministers that any member of their staff is—
 - (a) employed as mentioned in sub-paragraph (1)(b), or
 - (b) excepted staff by virtue of sub-paragraph (3),
 is conclusive of that fact for the purposes of this paragraph.

Transfer of property and liabilities

- 20 (1) The Scottish Ministers may by order provide for the transfer to the SCS of any property or liabilities to which sub-paragraph (2) applies.
- (2) This sub-paragraph applies to—
- (a) property of the Scottish Ministers which is held or used by them for or in connection with—
 - (i) the purposes of the Scottish courts or the judiciary of those courts,
 - (ii) the purposes referred to in section 62(1), and
 - (b) liabilities of the Scottish Ministers incurred in connection with those purposes.
- (3) An order under sub-paragraph (1) may in particular—
- (a) provide for the creation of rights or interests, or the imposition of liabilities or conditions, in relation to property transferred, or rights or interests acquired, by virtue of the order,
 - (b) provide for any property, liabilities or conditions to be determined under the order.

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- (4) An order under sub-paragraph (1) has effect in relation to any property or liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.
- (5) A right of pre-emption, right of irritancy, right of return or other similar right does not operate or become exercisable as a result of any transfer of property by virtue of an order under sub-paragraph (1).
- (6) Any such right has effect in the case of any such transfer as if the SCS were the same person in law as the Scottish Ministers and as if no transfer of the property had taken place.
- (7) Such compensation as is just is to be paid to any person in respect of any such right which—
 - (a) would, apart from sub-paragraph (5), have operated in favour of, or become exercisable by, that person, but
 - (b) in consequence of the operation of that sub-paragraph, cannot subsequently operate in the person's favour or (as the case may be) become exercisable by the person.
- (8) Any compensation payable by virtue of sub-paragraph (7) is to be paid by the Scottish Ministers or by the SCS or by both.
- (9) An order under sub-paragraph (1) may provide for the determination of any disputes as to—
 - (a) whether and, if so, how much, compensation is payable by virtue of sub-paragraph (7), and
 - (b) the person to whom or by whom it is to be paid.
- (10) Sub-paragraphs (4) to (9) apply in relation to the creation of rights or interests, or the doing of anything else, in relation to property as they apply in relation to a transfer of property.
- (11) A certificate issued by the Scottish Ministers that any property or liability has, or has not, been transferred by virtue of an order under sub-paragraph (1) is conclusive evidence of the transfer or (as the case may be) the fact that there has not been a transfer.
- (12) In this paragraph, “right of return” means any right under a provision for the return or reversion of property in specified circumstances.

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