

Status: Point in time view as at 01/04/2016.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, SCHEDULE 1. (See end of Document for details)

SCHEDULE 1

(introduced by section 1(2))

THE SCOTTISH SENTENCING COUNCIL

Membership

- 1 (1) The Council consists of a chairing member, other judicial members, legal members and lay members.
- (2) The chairing member is the Lord Justice Clerk.
- (3) The other judicial members comprise—
 - (a) one other 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,
 - (b) one person holding the office of sheriff (other than a sheriff principal),
 - (c) two persons holding the office of [F1summary sheriff or justice of the peace], and
 - (d) one other person holding—
 - (i) any of the offices mentioned in paragraphs (a) to (c), or
 - (ii) the office of sheriff principal.
- (4) The legal members comprise—
 - (a) one prosecutor within the meaning of section 307 of the 1995 Act,
 - (b) one advocate practising as such in Scotland (other than one who is a prosecutor), and
 - (c) one solicitor practising as such in Scotland (other than one who is a prosecutor).
- (5) The lay members comprise—
 - (a) one constable,
 - (b) one person appearing to the Scottish Ministers to have knowledge of the issues faced by victims of crime, and
 - (c) one other person who is not qualified for appointment as a judicial or legal member.

Textual Amendments

F1 Words in sch. 1 para. 1(3)(c) substituted (1.4.2016) by The Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2016 (S.S.I. 2016/142), art. 1, sch. para. 4

Commencement Information

I1 Sch. 1 para. 1 in force at 19.10.2015 by S.S.I. 2015/336, art. 2(b)

Procedure for appointment of members

- 2 (1) It is for the Lord Justice General, after consulting the Scottish Ministers, to appoint the members of the Council other than the Lord Justice Clerk and the lay members.
- (2) It is for the Scottish Ministers, after consulting the Lord Justice General, to appoint the lay members.

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- (3) The Lord Justice General may appoint a person to be a member only if the person has been nominated, or otherwise selected for appointment, in accordance with such procedures as the Scottish Ministers may by regulations prescribe.
- (4) The regulations may—
 - (a) in particular, make provision for or in connection with enabling a person to nominate or select persons suitable for appointment,
 - (b) prescribe different procedures for different categories of membership.
- (5) The Scottish Ministers must consult the Lord Justice General before making the regulations.

Commencement Information

- I2** Sch. 1 para. 2 in force at 7.5.2015 for specified purposes by [S.S.I. 2015/177](#) , **art. 2(c)**
I3 Sch. 1 para. 2 in force at 19.10.2015 in so far as not already in force by [S.S.I. 2015/336](#) , **art. 2(b)**

Persons disqualified from membership

- 3 A person is disqualified from appointment, and from holding office, as a member of the Council 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.

Commencement Information

- I4** Sch. 1 para. 3 in force at 19.10.2015 by [S.S.I. 2015/336](#) , **art. 2(b)**

Term of office

- 4 (1) A member holds office for such period not exceeding 5 years as the Lord Justice General or, as the case may be, the Scottish Ministers may, at the time of appointment, determine.
- (2) A member ceases to hold office—
 - (a) on becoming disqualified from holding office as a member, or
 - (b) on ceasing to fall within the category of membership under which the member was appointed.
- (3) A person who has previously been a member may not be re-appointed.
- (4) In this paragraph, “a member” means a member appointed by the Lord Justice General or the Scottish Ministers.

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I5 Sch. 1 para. 4 in force at 19.10.2015 by [S.S.I. 2015/336](#) , [art. 2\(b\)](#)

Resignation and removal of members

- 5
- (1) A member appointed by the Lord Justice General may resign office by giving notice in writing to the Lord Justice General.
 - (2) A member appointed by the Scottish Ministers may resign office by giving notice in writing to the Scottish Ministers.
 - (3) The Lord Justice General may, by notice in writing, remove a judicial or legal member if satisfied that the member is unfit to be a member by reason of inability, neglect of duty or misbehaviour.
 - (4) The Scottish Ministers may, by notice in writing, remove a lay member if satisfied that the member is unfit to be a member by reason of inability, neglect of duty or misbehaviour.

Commencement Information

I6 Sch. 1 para. 5 in force at 19.10.2015 by [S.S.I. 2015/336](#) , [art. 2\(b\)](#)

Suspension of judicial members

- 6
- 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.

Commencement Information

I7 Sch. 1 para. 6 in force at 19.10.2015 by [S.S.I. 2015/336](#) , [art. 2\(b\)](#)

^{F2}Remuneration and expenses of members

Textual Amendments

F2 Sch. 1 para. 6A inserted (28.11.2015) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Supplementary Provision\) Order 2015 \(S.S.I. 2015/388\)](#) , [arts. 1](#) , [2](#)

- 6A
- (1) A member of the Council is entitled to such remuneration and expenses, if any, as the relevant authority may determine.
 - (2) The “relevant authority” is—
 - (a) in relation to a judicial member or a legal member, the Lord Justice General, or
 - (b) in relation to a lay member, the Scottish Ministers.
 - (3) Different remuneration or expenses may be determined under sub-paragraph (1) for members of different descriptions.

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- (4) It is for the Scottish Courts and Tribunals Service to pay any remuneration or expenses to which a member is entitled by virtue of sub-paragraph (1).]

Chairing of the Council

- 7 (1) The Lord Justice Clerk is to chair meetings of the Council.
- (2) If the Lord Justice Clerk is for any reason unable to chair a meeting, the meeting may be chaired by another judicial member nominated—
- (a) by the Lord Justice Clerk, or
 - (b) if the Lord Justice Clerk is unable to make such a nomination, by the Council.
- (3) The Lord Justice Clerk may nominate another judicial member to chair meetings of the Council for a temporary period.

Commencement Information

I8 Sch. 1 para. 7 in force at 19.10.2015 by [S.S.I. 2015/336](#) , [art. 2\(b\)](#)

Committees

- 8 The Council may establish committees comprising members of the Council.

Commencement Information

I9 Sch. 1 para. 8 in force at 19.10.2015 by [S.S.I. 2015/336](#) , [art. 2\(b\)](#)

Proceedings

- 9 The Council 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.

Commencement Information

I10 Sch. 1 para. 9 in force at 19.10.2015 by [S.S.I. 2015/336](#) , [art. 2\(b\)](#)

Validity of acts

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

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I11 Sch. 1 para. 10 in force at 19.10.2015 by [S.S.I. 2015/336](#) , **art. 2(b)**

Ancillary powers

- 11 The Council may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.

Commencement Information

I12 Sch. 1 para. 11 in force at 19.10.2015 by [S.S.I. 2015/336](#) , **art. 2(b)**

Delegation

- 12 (1) Any function of the Council, other than the function of submitting sentencing guidelines to the High Court of Justiciary for approval, may be carried out on its behalf by—
- (a) a member of the Council,
 - (b) a committee, or
 - (c) any other person,
- authorised (whether specially or generally) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the Council from exercising any function delegated under that sub-paragraph.

Commencement Information

I13 Sch. 1 para. 12 in force at 19.10.2015 by [S.S.I. 2015/336](#) , **art. 2(b)**

Maladministration

- 13 In the Scottish Public Services Ombudsman Act 2002 (asp 11), in schedule 2 (which lists the authorities subject to investigation under that Act), in Part 2 (entries amendable by Order in Council), after paragraph 50 insert—
- “50A The Scottish Sentencing Council.”.

Commencement Information

I14 Sch. 1 para. 13 in force at 19.10.2015 by [S.S.I. 2015/336](#) , **art. 2(b)**

Freedom of information

- 14 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 7 (other authorities), after paragraph 98 insert—
- “98A The Scottish Sentencing Council.”.

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I15 Sch. 1 para. 14 in force at 19.10.2015 by [S.S.I. 2015/336](#) , **art. 2(b)**

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