

**2009 No. 303**

**SCOTTISH COURT SERVICE**

**The Scottish Court Service (Procedure for Appointment of  
Members) Regulations 2009**

*Made* - - - - - *31st August 2009*

*Laid before the Scottish Parliament* *1st September 2009*

*Coming into force* - - - *23rd September 2009*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 71(2) of, and paragraph 3(2) and (3) of schedule 3 to, the Judiciary and Courts (Scotland) Act 2008(a) and all other powers enabling them to do so.

In accordance with paragraph 3(4) of schedule 3 to that Act they have consulted the Lord President.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Scottish Court Service (Procedure for Appointment of Members) Regulations 2009 and come into force on 23rd September 2009.

(2) In these Regulations “the Act” means the Judiciary and Courts (Scotland) Act 2008.

**Selection for appointment**

2.—(1) The first appointed members of the Scottish Court Service listed in paragraph 2(2)(e) and (f) and (3)(a), (b) and (d) of schedule 3 to the Act shall be selected for appointment by a panel comprising —

- (a) the most senior judge of the Inner House of the Court of Session after the Lord President and the Lord Justice Clerk;
- (b) the Sheriff Principal of Lothian and Borders; and
- (c) the Chairing Member of the Judicial Appointments Board for Scotland.

(2) Where any of the panel members in paragraph (1) is unavailable he or she shall be substituted by the person acting in that position in his or her absence.

(3) Thereafter those members of the Scottish Court Service shall be selected for appointment by a panel comprising the following members of the Scottish Court Service—

- (a) the judge;
- (b) the Sheriff Principal; and
- (c) the longest serving member listed in paragraph 2(3)(d) of schedule 3 to the Act.

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(a) 2008 asp 6. See section 71(1) as to the power to make regulations.

(4) Where either of the members listed in paragraphs (3)(a) and (b) is unavailable he or she shall be substituted by the longer serving sheriff member.

(5) Where the member listed in paragraph (3)(c) is unavailable he or she shall be substituted by the second longest serving member listed in paragraph 2(3)(d) of schedule 3 to the Act.

(6) The Lord President shall invite applications to be made to the panel by—

- (a) notifying all sheriffs of a vacancy for a member listed in paragraph 2(2)(e) of schedule 3 to the Act;
- (b) notifying all justices of the peace of a vacancy for a member listed in paragraph 2(2)(f) of schedule 3 to the Act;
- (c) notifying the Faculty of Advocates of a vacancy for a member listed in paragraph 2(3)(a) of schedule 3 to the Act;
- (d) notifying the Law Society of Scotland of a vacancy for a member listed in paragraph 2(3)(b) of schedule 3 to the Act;
- (e) advertising the vacancies for the members listed in paragraph 2(3)(a) and (b) of schedule 3 to the Act in the appropriate professional journal;
- (f) publicly advertising the vacancies for the members listed in paragraph 2(3)(d) of schedule 3 to the Act.

(7) An application must be in writing (including email, fax or by other electronic means which is legible and capable of being used for subsequent reference).

(8) The panel shall consider the applications and select persons for interview.

(9) The panel shall select persons suitable for appointment on the basis of an interview.

(10) For the avoidance of doubt the panel may select for appointment more persons than are required to be appointed in each category of membership.

(11) The panel shall notify the Lord President of persons selected for appointment.

(12) Where the panel selects for appointment more persons than are required to be appointed in each category of membership they shall notify the Lord President of their order of preference for appointment.

### **Nomination for appointment**

3.—(1) The Lord President shall notify persons holding the office of judge of the Court of Session and of sheriff principal of their respective vacancies in the Scottish Court Service.

(2) Persons holding the office of judge of the Court of Session may nominate themselves or others for appointment as the member listed in paragraph 2(2)(c) of schedule 3 to the Act.

(3) Persons holding the office of sheriff principal may nominate themselves or others for appointment as the member listed in paragraph 2(2)(d) of schedule 3 to the Act.

*FERGUS EWING*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
31st August 2009

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations set out the procedure for the appointment of members of the Scottish Court Service (“the SCS”). In terms of paragraph 3 of schedule 3 to the Judiciary and Courts (Scotland) Act 2008 it is for the Lord President to appoint the members of the SCS and for the Scottish Ministers, by regulations, to prescribe the procedure for nomination or selection for appointment.

The Lord President, the Lord Justice Clerk and the Chief Executive are members by virtue of their office. Regulation 2 provides that the sheriff, justice of the peace, advocate, solicitor and the three lay members are to be selected for appointment by a panel. Paragraphs (1) and (2) provide for the constitution of the selection panel for the first appointment of these SCS members. Paragraphs (3), (4) and (5) provide for the constitution of subsequent selection panels. Paragraphs (6) to (12) set out procedural requirements.

Paragraphs (2) and (3) of regulation 3 provide that the remaining members of the SCS, namely the judge and sheriff principal members, are to be nominated by themselves or their peers. Paragraph (1) sets out the procedural requirement, namely notification of the vacancies.

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