

POLICY NOTE

THE SCOTTISH COURTS AND TRIBUNALS SERVICE (JUDICIAL MEMBERS) AMENDMENT ORDER 2020

SSI 2020/111

The Scottish Ministers make the following Order in exercise of the powers conferred by paragraph 2(5) of schedule 3 of the Judiciary and Courts (Scotland) Act 2008(a) and all other powers enabling them to do so.

In accordance with paragraph 2(5) of schedule 3 of that Act, the Scottish Ministers have obtained the consent of the Lord President of the Court of Session.

In accordance with section 71(4) of that Act, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

The instrument is subject to affirmative procedure.

Purpose

The purpose of this instrument is to amend Paragraph 2(2)(e) of Schedule 3 to the Judiciary and Courts (Scotland) Act 2008 to provide that those holding the office of Summary Sheriff may now be appointed to the board of the Scottish Courts and Tribunals Service. Paragraph 2(2)(e) of Schedule 3 to the Judiciary and Courts (Scotland) Act 2008 outlines the categories that are entitled to apply to become members of the SCTS board.

By virtue of The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 summary sheriffs may now be notified of relevant vacancies for members of the Scottish Courts and Tribunals Service.

[This policy note should be read in conjunction with policy note for the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020.]

Background

When the then Scottish Court Service became a non-ministerial department in 2010, a Board Chaired by the Lord President was established by virtue of the provisions of the Judiciary and Courts (Scotland) Act 2008 – specifically schedule 3 which makes detailed provision relating to membership and proceedings. Paragraph 2 of schedule 3 sets out the categories of Board membership, ensuring that there is a judicial majority on the Board.

The Board has fourteen members in total – eight of whom hold judicial office. One of the policy intentions of schedule 3 was to ensure that the Board had a judicial majority in its membership – and that this included representation from each level of the Scottish judiciary.

On 1 April 2015, under the Courts Reform (Scotland) Act 2014, the Scottish Courts and Tribunals Services (SCTS) assumed the responsibilities of the former Scottish Court Service and Scottish Tribunals Service.

Policy Objective:

Ensure that the SCTS board includes representation from each level of Scottish Judiciary

A new level of judicial office that of summary sheriff was established by section 5 of the Courts Reform (Scotland) Act 2014. The 2014 Act distinguishes the office of sheriff from that of summary sheriff (with the office of sheriff established separately under section 4 of that Act). The Judiciary and Courts (Scotland) Act 2008 makes no provision for those holding the office of summary sheriff to be appointed to the board of the Scottish Courts and Tribunals Service.

The Lord President is of the opinion that the law should be changed. It is anomalous that the current regime does not permit those holding the office of summary sheriff to apply for board membership.

The Lord President is of the view that Paragraph 2(2)(e) of Schedule 3 to the 2008 Act might be amended to broaden its current eligibility from those holding “*the office of sheriff*” to those holding “*either the office of sheriff or summary sheriff*”. This would allow future vacancies under this category of membership to be filled by the most appropriate shrieval candidate – irrespective of whether they held the role of sheriff or summary sheriff. It would also ensure that, should a summary sheriff be successful in securing the office of sheriff during their tenure on the Board, they would not be required to demit Board membership as a consequence of that success.

To allow summary sheriffs to be notified of relevant vacancies for members of the SCTS board a further consequential amendment is required to section 2(3)(a) of the 2015 Board appointment regulations – which details the process to be followed when filling vacancies (as this section refers to “*sheriffs*”). This will be achieved by the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020.

The Scottish Government fully agrees with the view of the Lord President. This amendment in conjunction with the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 will rectify the anomaly and fulfil the policy intention that each level of the Scottish judiciary will be represented on the SCTS board.

Consultation

The power under which the order will be made (paragraph 2(5) of schedule 3 to the 2008 Act) requires that the Lord President consent to the order prior to it being made. The draft order was shared with the Lord President and he is content, thus the consenting requirements with the Lord President have been successfully completed.

Impact Assessments

An equality impact assessment was discussed with SCTS and there was agreement that there are no equality impact issues. The amendment to the order will provide a wider pool of candidates for the SCTS board.

Financial Effects

Business and Regulatory Impact Assessment (BRIA) is not required as there are no financial effects.

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