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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 142**

**CRIMINAL LAW**

**The Stipendiary Magistrates (Scotland) Order 2010**

<i>Made</i>	- - - - -	<i>8th April 2010</i>
<i>Laid before the Scottish Parliament</i>	- - - - -	<i>12th April 2010</i>
<i>Coming into force</i>	- -	<i>4th May 2010</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 74(9) and (10) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(1) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Stipendiary Magistrates (Scotland) Order 2010 and comes into force on 4th May 2010.

(2) In this Order “SMAC” means a Stipendiary Magistrates Advisory Committee.

**Establishment of a SMAC**

2.—(1) When the Scottish Ministers consider, on the advice of a sheriff principal, that it is necessary or expedient to appoint one or more stipendiary magistrates, they shall direct that sheriff principal to establish a SMAC.

(2) A SMAC must be established by the sheriff principal of the sheriffdom for which the stipendiary magistrate or magistrates are to be appointed.

(3) A SMAC may be established for a particular sheriffdom only.

(4) A SMAC shall be disbanded once the stipendiary magistrate appointment or appointments identified in paragraph (1) have been filled.

**Advertisement of stipendiary magistrate vacancy**

3. The Scottish Ministers must advertise a stipendiary magistrate vacancy in the Journal of the Law Society of Scotland and in the Scots Law Times, and after consulting the sheriff principal of the sheriffdom where the vacancy exists, may advertise it in such other manner as they consider appropriate.

## **Membership of a SMAC**

- 4.—(1) A SMAC shall comprise—
- (a) the sheriff principal of the sheriffdom for which the stipendiary magistrate or magistrates are appointed;
  - (b) the holder of a judicial office appointed by the sheriff principal; and
  - (c) one other person appointed by the sheriff principal.
- (2) A person may not be appointed as a member of a SMAC if that person is—
- (a) a member of the House of Commons or the House of Lords;
  - (b) a member of the Scottish Parliament; or
  - (c) a local authority councillor.
- (3) A person shall cease to be a member of a SMAC if they become a person described in paragraph (2).
- (4) In the event of a vacancy arising in a SMAC the sheriff principal must appoint a successor.
- (5) The sheriff principal must be the convenor of a SMAC.
- (6) The sheriff principal may nominate the holder of a judicial office to sit as a member of a SMAC in his or her place, however such a nominee may not carry out the functions in paragraphs (1) (b) and (c) and (4) of appointing the other members of the SMAC.

## **Role of SMAC**

- 5.—(1) The role of a SMAC is to make recommendations to the Scottish Ministers on the appointment of stipendiary magistrates in relation to the sheriffdom for which that SMAC has been established.
- (2) A person may only be appointed as a stipendiary magistrate for a sheriffdom if that person has been recommended for appointment by a SMAC for that sheriffdom.
- (3) A SMAC must consider all applications submitted to it, and may interview any of the applicants.
- (4) Interviews must be conducted by all 3 members of the SMAC.
- (5) Where, after a recruitment process, a SMAC does not make any recommendation for appointment to the Scottish Ministers, the Scottish Ministers may re-advertise the vacancy or vacancies in accordance with article 3.

St Andrew's House,  
Edinburgh  
8th April 2010

*KENNY MACASKILL*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

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

This Order makes provision in connection with the Scottish Ministers' powers in relation to the appointment of stipendiary magistrates under section 74(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

Article 1 defines a "SMAC" as a Stipendiary Magistrates Advisory Committee. Article 2(1) and (2) requires a sheriff principal to establish a SMAC when a stipendiary magistrate vacancy has been identified in that sheriff principal's sheriffdom. Article 2(3) provides that a SMAC is to be established for a particular sheriffdom. Article 2(4) requires that a SMAC must be disbanded after the vacancies identified by article 2(1) have been filled.

Article 3 sets out how a stipendiary magistrate vacancy is advertised. Article 4(1) provides that a SMAC must have 3 members, including the sheriff principal for the sheriffdom for which the stipendiary magistrates are to be appointed and the holder of a judicial office. Article 4(2) excludes members of the House of Commons, the House of Lords, the Scottish Parliament and local authority councillors from being members of a SMAC. Article 4(3) provides that if a member of a SMAC becomes one of the persons described in article 4(2) that person will cease to be a member of the SMAC. Article 4(4) ensures that if a vacancy arises in a SMAC the sheriff principal must appoint a successor. Article 4(5) designates the sheriff principal as the convenor of a SMAC. Article 4(6) gives the sheriff principal the power to nominate the holder of a judicial office to sit as a member of a SMAC in his place. However, the sheriff principal and not the nominee must carry out the function of appointing the other members of that SMAC.

Article 5(1) sets out that the role of a SMAC is to make recommendations to the Scottish Ministers on the appointment of stipendiary magistrates for the sheriffdom for which it has been established. Article 5(2) provides that a person may only be appointed as a stipendiary magistrate if a SMAC has recommended that person for appointment in that sheriffdom. Article 5(3) places a requirement on a SMAC to consider all applications submitted to it and provides that a SMAC may interview any of the applicants. Article 5(4) makes it a requirement that interviews be carried out by all 3 members of a SMAC. Article 5(5) provides that if a SMAC does not make any recommendations for appointment the Scottish Ministers may re-advertise the vacancy in accordance with article 3.