

POLICY NOTE

THE SCOTTISH COURTS AND TRIBUNALS SERVICE (PROCEDURE FOR APPOINTMENT OF MEMBERS) AMENDMENT REGULATIONS 2020

SSI 2020/112

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

In accordance with paragraph 3(4) of schedule 3 of that Act the Scottish Ministers have consulted the Lord President of the Court of Session.

In accordance with section 71(4) of that Act, a draft of these Regulations 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 (3)(a) of regulation 2 of The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015 to provide that those holding the office of Summary Sheriff may now be notified of relevant vacancies for members of the Scottish Courts and Tribunals Service

By virtue of the Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020 Summary Sheriffs may now be appointed as members of the board 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 (Judicial Members) Amendment Order 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 SCTS 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 Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015, makes no provision for those holding the office of summary sheriff to be notified of vacancies for members of the board of the Scottish Courts and Tribunals Service.

To achieve the policy intention of achieving representation from each level of the Scottish judiciary on the board, summary sheriffs, the Lord President is of the opinion that the law should be changed.

The Scottish Government fully agrees with the opinion of the Lord President. The proposed amendment in the draft Regulations will allow summary sheriffs to be notified of relevant vacancies.

This amendment in conjunction with the Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020 will fulfil the policy intention that each level of the Scottish judiciary will be represented on the SCTS board.

Consultation

The power under which the Regulations will be made (paragraph 3(4) of schedule 3 to the 2008 Act) requires that the Scottish Ministers consult with the LP on the terms of the order before it is made.

The Regulations have been shared with the Lord President and he is content, thus the consulting requirements are complete.

Impact Assessments

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

Financial Effects

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

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