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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 225**

**SCOTTISH COURTS AND TRIBUNALS SERVICE**

**The Scottish Sentencing Council (Procedure for  
Appointment of Members) Regulations 2015**

<i>Made</i>	- - - -	<i>27th May 2015</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>29th May 2015</i>
<i>Coming into force</i>	- -	<i>27th June 2015</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraphs 2(3) and 2(4) of schedule 1 to the Criminal Justice and Licensing (Scotland) Act 2010<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with paragraph 2(5) of schedule 1 to that Act the Scottish Ministers have consulted the Lord Justice General.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Scottish Sentencing Council (Procedure for Appointment of Members) Regulations 2015 and come into force on 27th June 2015.

(2) In these Regulations—

“the 2010 Act” means the Criminal Justice and Licensing (Scotland) Act 2010;

“The Council” means the Scottish Sentencing Council<sup>(2)</sup>.

**Selection for appointment: applications**

2.—(1) The Lord Justice General will invite applications from persons eligible for selection as a member of the Council listed at paragraphs 1(3)(b), 1(3)(c), 1(4)(b) and 1(4)(c) of schedule 1 to the 2010 Act.

(2) 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).

(3) The Lord Justice General must appoint a panel, to consider the applications received.

(4) The members of the panel must be selected by the Lord Justice General and comprise a minimum of two persons, one of whom may be the Lord Justice General.

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(1) [2010 asp 13](#).

(2) The Scottish Sentencing Council is established by section 1(1) of the Criminal Justice and Licensing (Scotland) Act 2010.

- (5) The panel must be chaired by—
- (a) where the Lord Justice General sits on the panel, the Lord Justice General; or
  - (b) where the Lord Justice General does not sit on the panel, a panel member selected by the Lord Justice General.
- (6) Subject to paragraph 7, the panel must select persons suitable for appointment on the basis of their application.
- (7) Where the panel is unable to make a selection based on an application, the panel must interview the applicant.
- (8) Where paragraph 7 applies, the panel must select persons suitable for appointment on the basis of that interview.
- (9) The panel may select as suitable for appointment more persons than are required to be appointed in each category of membership.
- (10) Where the Lord Justice General has not been a member of the panel, the panel must notify the Lord Justice General of persons selected as suitable for appointment.
- (11) Where the panel selects more persons than are required to be appointed in each category of membership, if the Lord Justice General has not been a member of the panel, the Lord Justice General must be notified, by the chair of the panel, of the order of preference for appointment.
- (12) Before persons that the panel select as suitable to be members of the Council listed at paragraphs 1(4)(b) and 1(4)(c) of schedule 1 to the 2010 Act, can be appointed, the Lord Justice General must consult with the Dean of the Faculty of Advocates and the President of the Law Society of Scotland, respectively.

### **Selection for appointment: nominations**

- 3.—**(1) Persons holding the office of judge who normally sit as a judge of the Outer House of the Court of Session or the High Court of Justiciary may nominate themselves for appointment as the member listed in paragraph 1(3)(a) of schedule 1 to the 2010 Act.
- (2) Persons holding the office of sheriff principal may nominate themselves for appointment as the member listed in paragraph 1(3)(d)(ii) of schedule 1 to the 2010 Act.
- (3) The Lord Advocate must nominate one prosecutor for appointment as the member listed in paragraph 1(4)(a) of schedule 1 to the 2010 Act.

St Andrew's House, Edinburgh  
27th May 2015

*MICHAEL MATHESON*  
A member of the Scottish Government

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## EXPLANATORY NOTE

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

These Regulations set out the procedure for the selection and nomination for appointment of members of the Scottish Sentencing Council. In terms of paragraph 2(1) of schedule 1 to the Criminal Justice and Licensing (Scotland) Act 2010 (the 2010 Act), it is for the Lord Justice General, following consultation with the Scottish Ministers, to appoint the members of the Council other than the Lord Justice Clerk and the lay members.

The Scottish Ministers, by regulations, have prescribed the procedure by which members, other than the Lord Justice Clerk and the lay members, can be nominated or otherwise selected for appointment and the Lord Justice General may only appoint a person if such procedures have been followed.

The Lord Justice Clerk is the chairing member of the Scottish Sentencing Council by virtue of his office. The Council will also comprise lay members whose appointment rests with the Scottish Ministers and is not the subject of these regulations.

Regulation 2 details the selection process for all members, with the exception of the prosecutor member, the sheriff principal, who is eligible for appointment under paragraph 1(3)(d)(ii) of schedule 1 to the 2010 Act and the 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.

Under paragraph 3 of Regulation 2, the Lord Justice General must appoint a panel, consisting of a minimum of two persons, to consider applications received. Under paragraph 5(a) of regulation 2, if the Lord Justice General sits on the panel, the panel must be chaired by the Lord Justice General. Under paragraph 5(b) of Regulation 2, if the Lord Justice General does not sit on the panel, the Lord Justice General will select one of the panel members to be chair.

An interview must be conducted where the panel is unable to make a selection based on an application. Paragraph 7 of Regulation 2 enables interviews to be held for the sheriff, justice of the peace, stipendiary magistrate, advocate and solicitor members.

Section 128 of the Court Reform (Scotland) Act 2014 abolishes the office of stipendiary magistrate. The provisions of these regulations that apply to stipendiary magistrates will apply to summary sheriffs once the relevant consequential amendments are made to the 2010 Act.

Before a person can be appointed as the advocate or solicitor member of the Scottish Sentencing Council, the Lord Justice General must consult with the Dean of the Faculty of Advocates and the President of the Law Society of Scotland, respectively.

Regulation 3 details the nomination process for the prosecutor member, the sheriff principal, who is eligible for appointment under paragraph 1(3)(d)(ii) of schedule 1 to the 2010 Act and the 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. These members can nominate themselves, with the exception of the prosecutor member, who must be nominated by the Lord Advocate.