EXECUTIVE NOTE

THE SCOTTISH COURT SERVICE (PROCEDURE FOR APPOINTMENT OF MEMBERS) REGULATIONS 2009

SSI 2009/303

1. These Regulations are being made in exercise of the powers conferred by section 71(2) of and paragraphs 3(2) and (3) of Schedule 3 to the Judiciary and Courts (Scotland) Act 2008.

Policy Objectives and Background

2. The purpose of the Scottish Court Service (Procedure for Appointment of Members) Regulations 2009 ("the 2009 regulations") is to prescribe the procedure by which certain members of the Scottish Court Service ("the SCS") are selected for appointment and by which others are nominated for appointment. The Judiciary and Courts (Scotland) Act 2008 ("the 2008 Act") provides in paragraph 3(1) of Schedule 3 that the Lord President appoints members of the SCS (other than the Lord Justice Clerk and the Chief Executive who are members by virtue of their offices). The Lord President is chair of the SCS.

3. Part 4 of the 2008 Act establishes the SCS as a body corporate. The Judiciary and Courts (Scotland) Act 2008 (Consequential Provisions) Order 2009 was made under section 104 of the Scotland Act 1998 and laid in the UK Parliament on 20 August. It provides for the SCS to be part of the Scottish Administration.

The Regulations

4. Regulation 2 provides that the sheriff, justice of the peace, advocate, solicitor and three lay members are all to be recommended for appointment by a selection panel. The Panel may recommend more than one person for each post leaving the final decision of who to appoint for the Lord President. Regulation 2(1) provides that the most senior judge of the Inner House (after the Lord President and the Lord Justice Clerk), the Sheriff Principal for Lothian and Borders and the Chairing Member of the Judicial Appointments Board for Scotland are to form the selection panel for the first appointment of these SCS members. This selection panel is ascertainable, has a judicial majority, brings sufficient and appropriate skills to the task and provides a pragmatic approach to the first selection panel's composition.

5. Paragraphs (3), (4) and (5) provide for the constitution of subsequent selection panels. The subsequent panel will be ascertainable members of the serving corporate body. The judicial majority is maintained with assured lay representation provided by the most experienced of the suitably skilled lay members. Paragraphs (6) to (12) set out procedural requirements which ensure the process is for making recommendations is open and transparent.

6. Regulation 3 proves that the judge and sheriff principal members are to be nominated by themselves or their peers. Paragraph (3) sets out the procedural requirement, namely

notification of the vacancies. These members are not subject to the selection for appointment by the panel as the constituency from which they will be selected is suitably small to make nomination the most efficient and effective means of providing candidates which the Lord President may then appoint.

Consultation

7. The Scottish Ministers consulted on the method for selection or nomination of the SCS (which included draft regulations) between 23 April and 19 June 2009. As noted above the regulations must list ascertainable individuals that will make up the selection panel. Individuals were listed in the draft regulations that formed part of the consultation for illustrative purposes only. The consultation paper asked eight questions in relation to the draft regulations. Consultees were asked to comment on the method of appointing the different categories of members, the composition of the selection panel making the first appointments to the Board and the composition of the selection panel making all subsequent appointments to the Board.

8. Six responses were received. The responses were broadly in favour of the draft regulations. A summary of the responses can be viewed on the Scottish Government website http://www.scotland.gov.uk/Publications/2009/08/05142019/0.

9. Following the analysis of the consultation exercise the regulations remained unchanged except for the specification of an ascertainable lay member of the first selection panel. Scottish Ministers proposed the Director General of Justice and Communities of the Scottish Government for that position.

Consultation of the Lord President

10. In term of paragraph 3(4) of Schedule 3 to the 2008 Act Scottish Ministers must consult the Lord President before making the regulations.

11. Following that consultation, and taking account of the Lord President's views, the Chairing Member of the Judicial Appointments Board for Scotland is specified in the regulation (2(1)(c) as the third member of the first selection panel in preference to the Director General of Justice and Communities of the Scottish Government. Apart from minor drafting changes the regulations remain otherwise unchanged from those issued in draft form for public consultation.

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