POLICY NOTE

THE SCOTTISH COURTS AND TRIBUNAL SERVICE (PROCEDURE FOR APPOINTMENT OF MEMBERS) REGULATIONS 2015

SSI 2015/53

1. The above Regulations are made in exercise of the powers conferred by paragraph 3(2) and (3) of schedule 3 to the Judiciary and Courts (Scotland) Act 2008 ("the Act"). They are subject to negative procedure.

Background

2. These Regulations are required, in part, as a result of changes made to the Act by the Court Reform (Scotland) Act 2014 ("the 2014 Act").

3. In particular, the 2014 Act amends the Act to create the Scottish Courts and Tribunal Service ("SCTS") merging the Scottish Tribunals Service into the existing Scottish Court Service. The merger is proposed to take effect on 1 April 2015.

4. The Act sets out the judicial and non-judicial members of SCTS. The 2014 Act amends the Act to provide that once the merger take effect, the members of SCTS must include a Chamber President of the First Tier Tribunal for Scotland or in the interim period until such persons take up position, a President from a specified list of existing tribunals (e.g. the President of the Lands Tribunal for Scotland; the President of the Mental Health Tribunal for Scotland).[1] The office of Chamber President in the First Tier Tribunal for Scotland is created by the Tribunals Act 2014.[2] It is envisaged that the first Chamber President will be in place by December 2016.

5. It is for the Lord President to appoint the Chamber President or in the interim period, a President from the specified list of existing tribunals, in accordance with such procedure as Scottish Ministers may by regulations prescribe.[3] The regulations that are currently in force[4] require to be replaced with regulations which include the process for selecting this new member of SCTS. The entry into force of these Regulations will enable the Lord President to appoint this person on or around the date of the merger.

6. Further background on the content and passage of the 2014 Act may be found here: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/72771.asp .

Policy Objectives

7. These Regulations set out the procedure to be followed by the Lord President in selecting and appointing members of the SCTS (except the Lord President, the Lord Justice Clerk,

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[1] See paragraph 1(8)(c) of schedule 4 (which amends the Judiciary and Courts (Scotland) Act 2008 by adding this person to the list of judicial members) and 3(3) of schedule 3 to the Act (a transitional provision).
[2] Section 21.
[3] See paragraph 3 of schedule 3 to the Judiciary and Courts (Scotland) Act 2008 Act.
[4] SSI 2009/303.

the President of the Scottish Tribunals and the Chief Executive who are members by virtue of their office). The sheriff, justice of the peace, advocate, solicitor, and three lay members are to be selected for appointment by a panel of three appointed by the Lord President. The panel must comprise at least one judicial and one lay member. The procedure set out mirrors existing law[5] although the composition of the panel under these Regulations is more flexibly drawn (under existing law the panel must comprise a judge, a Sheriff Principal and the longest serving lay member whereas under these Regulations it must comprise at least one judicial and one lay member). This will allow the composition of the panel to be adapted according to the nature of the appointment to be made.

8. These Regulations also set out the procedure to be followed in appointing one Chamber President in the First Tier Tribunal for Scotland and one Sheriff-Principal. In essence, the Regulations require the Lord President to notify eligible persons of the vacancy and invite them to nominate themselves or their peers (ie the existing process for the appointment of the Sheriff Principal is unchanged). 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

9. In accordance with paragraph 3(4) of Schedule 3 to the Act, the Lord President has been consulted on terms of these Regulations. We also informally consulted the specified Tribunal Presidents and other relevant stakeholders (e.g. the Law Society of Scotland, the Faculty of Advocates and various disability groups). The Lord President has confirmed he is content and no comments from any other stakeholders were received.

Impact Assessments

10. An equality impact assessment is available as regards these Regulations.

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[5] SSI 303/2009 which sets out the procedures for appointing members of the Scottish Court Service.