

## SCHEDULE 1

*(introduced by section 1(2))*

### THE SCOTTISH SENTENCING COUNCIL

#### *Membership*

- 1 (1) The Council consists of a chairing member, other judicial members, legal members and lay members.
- (2) The chairing member is the Lord Justice Clerk.
- (3) The other judicial members comprise—
  - (a) one other 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,
  - (b) one person holding the office of sheriff (other than a sheriff principal),
  - (c) two persons holding the office of justice of the peace or stipendiary magistrate, and
  - (d) one other person holding—
    - (i) any of the offices mentioned in paragraphs (a) to (c), or
    - (ii) the office of sheriff principal.
- (4) The legal members comprise—
  - (a) one prosecutor within the meaning of section 307 of the 1995 Act,
  - (b) one advocate practising as such in Scotland (other than one who is a prosecutor), and
  - (c) one solicitor practising as such in Scotland (other than one who is a prosecutor).
- (5) The lay members comprise—
  - (a) one constable,
  - (b) one person appearing to the Scottish Ministers to have knowledge of the issues faced by victims of crime, and
  - (c) one other person who is not qualified for appointment as a judicial or legal member.

#### *Procedure for appointment of members*

- 2 (1) It is for the Lord Justice General, after consulting the Scottish Ministers, to appoint the members of the Council other than the Lord Justice Clerk and the lay members.
- (2) It is for the Scottish Ministers, after consulting the Lord Justice General, to appoint the lay members.
- (3) The Lord Justice General may appoint a person to be a member only if the person has been nominated, or otherwise selected for appointment, in accordance with such procedures as the Scottish Ministers may by regulations prescribe.
- (4) The regulations may—
  - (a) in particular, make provision for or in connection with enabling a person to nominate or select persons suitable for appointment,
  - (b) prescribe different procedures for different categories of membership.

- (5) The Scottish Ministers must consult the Lord Justice General before making the regulations.

*Persons disqualified from membership*

- 3 A person is disqualified from appointment, and from holding office, as a member of the Council if the person is or becomes—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a councillor of any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),
  - (e) a Minister of the Crown, or
  - (f) a member of the Scottish Executive.

*Term of office*

- 4 (1) A member holds office for such period not exceeding 5 years as the Lord Justice General or, as the case may be, the Scottish Ministers may, at the time of appointment, determine.
- (2) A member ceases to hold office—
- (a) on becoming disqualified from holding office as a member, or
  - (b) on ceasing to fall within the category of membership under which the member was appointed.
- (3) A person who has previously been a member may not be re-appointed.
- (4) In this paragraph, “a member” means a member appointed by the Lord Justice General or the Scottish Ministers.

*Resignation and removal of members*

- 5 (1) A member appointed by the Lord Justice General may resign office by giving notice in writing to the Lord Justice General.
- (2) A member appointed by the Scottish Ministers may resign office by giving notice in writing to the Scottish Ministers.
- (3) The Lord Justice General may, by notice in writing, remove a judicial or legal member if satisfied that the member is unfit to be a member by reason of inability, neglect of duty or misbehaviour.
- (4) The Scottish Ministers may, by notice in writing, remove a lay member if satisfied that the member is unfit to be a member by reason of inability, neglect of duty or misbehaviour.

*Suspension of judicial members*

- 6 A judicial member is suspended from acting as such during any period in which the member is suspended from the judicial office which the member holds.

### *Chairing of the Council*

- 7 (1) The Lord Justice Clerk is to chair meetings of the Council.
- (2) If the Lord Justice Clerk is for any reason unable to chair a meeting, the meeting may be chaired by another judicial member nominated—
- (a) by the Lord Justice Clerk, or
  - (b) if the Lord Justice Clerk is unable to make such a nomination, by the Council.
- (3) The Lord Justice Clerk may nominate another judicial member to chair meetings of the Council for a temporary period.

### *Committees*

- 8 The Council may establish committees comprising members of the Council.

### *Proceedings*

- 9 The Council may determine—
- (a) its own procedure (including the number of members required to constitute a quorum), and
  - (b) the procedure (including the number of members required to constitute a quorum) of any committees established by it.

### *Validity of acts*

- 10 The validity of proceedings or actings of the Council is not affected by—
- (a) any vacancy in the membership of the Council,
  - (b) any defect in the appointment of a member of the Council, or
  - (c) disqualification of any person from holding office as a member of the Council.

### *Ancillary powers*

- 11 The Council may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.

### *Delegation*

- 12 (1) Any function of the Council, other than the function of submitting sentencing guidelines to the High Court of Justiciary for approval, may be carried out on its behalf by—
- (a) a member of the Council,
  - (b) a committee, or
  - (c) any other person,
- authorised (whether specially or generally) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the Council from exercising any function delegated under that sub-paragraph.

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*Status: This is the original version (as it was originally enacted).*

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*Maladministration*

- 13 In the Scottish Public Services Ombudsman Act 2002 ([asp 11](#)), in schedule 2 (which lists the authorities subject to investigation under that Act), in Part 2 (entries amendable by Order in Council), after paragraph 50 insert—

“50A The Scottish Sentencing Council.”.

*Freedom of information*

- 14 In the Freedom of Information (Scotland) Act 2002 ([asp 13](#)), in schedule 1 (which lists the Scottish public authorities subject to that Act), in Part 7 (other authorities), after paragraph 98 insert—

“98A The Scottish Sentencing Council.”.