

APPOINTMENT OF QUEEN'S COUNSEL IN SCOTLAND

GUIDE FOR APPLICANTS

Amended March 2011

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| 1. | INTRODUCTION..... | 1 |
| 2. | THE RANK AND DIGNITY OF QUEEN'S COUNSEL | 1 |
| 3. | CRITERIA FOR RECOMMENDATION | 2 |
| 4. | PROCEDURE..... | 3 |
| 5. | CONTACT DETAILS..... | 6 |

1. Introduction

- 1.1. The purpose of this Guide is to provide information for members of the Faculty of Advocates and solicitor advocates who wish to apply for appointment as Queen's Counsel in Scotland. It is not concerned with appointments on an honorary basis.
- 1.2. The title of Queen's Counsel is primarily a mark of distinction in advocacy, where combined with other qualities. Advocacy refers primarily to advocacy in the higher courts or in a forum of similar standing. However, account is taken of the exercise of advocacy elsewhere.
- 1.3. Applications for appointment as Queen's Counsel will generally not be considered before the applicant has practised in the higher courts for at least thirteen years. However, there may be particular circumstances which make it appropriate to recommend the appointment of an applicant who has practised for less than that time, for example where the applicant has relevant prior experience.
- 1.4. Account is taken of the applicant's career as a whole. However, any recommendation is made on the basis of the applicant's performance as an advocate or, as the case may be, as a solicitor advocate exercising extended rights of audience.
- 1.5. There is no automatic right to appointment as Queen's Counsel after a given number of years' practice. In recommending persons for appointment as Queen's Counsel the Lord Justice General does not discriminate between applicants by reference to their age, race, nationality, gender, sexual orientation, marital status, religion, political association or disability.
- 1.6. There is no fixed quota of Queen's Counsel to be appointed at any time. The Lord Justice General endeavours to ensure, in the interests of clients and the courts, that an adequate supply of Queen's Counsel is maintained.
- 1.7. This Guide will apply from 25 March 2011 until it is superseded.

2. The Rank and Dignity of Queen's Counsel

- 2.1. Before 1868 the position of Queen's Counsel was not recognised in Scotland. The rank of Queen's Counsel was first conferred in Scotland in that year. Initially the status was reserved first for law officers and soon after for the Dean of the Faculty of Advocates.

- 2.2. In 1897 a petition by the Faculty of Advocates for the establishment of a Scottish roll of Queen's Counsel was approved and the first appointments were made later in that year.
- 2.3. In 2002 the first appointment of a solicitor advocate as Queen's Counsel was made following the introduction of extended rights of audience by section 24 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. A solicitor advocate who is so appointed is correctly designated as "Queen's Counsel, Solicitor Advocate".
- 2.4. The appointment of Queen's Counsel is made by Her Majesty The Queen on the recommendation of the First Minister, (formerly the Secretary of State for Scotland) who seeks nominations for that purpose from the Lord Justice General.

3. Criteria for Recommendation

- 3.1. Successful applicants are required to demonstrate that they meet the criteria outlined below and to a standard that marks them out as leaders of their profession.

Advocacy

- 3.2. A successful applicant is expected to have demonstrated to a marked degree an ability to present complex, difficult, and novel cases in court both clearly and cogently.

Legal Ability and Experience

- 3.3. An applicant is expected to have sound intellectual ability and a thorough, comprehensive and up to date knowledge of legal principle and the relevant rules of law and procedure. He or she should have a high quality practice based on demanding cases.

Professional Qualities

- 3.4. Successful applicants are expected to have the highest professional standing, with the respect of the Bench and the profession; a history of honesty, discretion and plain-dealing with professional colleagues, lay and professional clients and the courts; independence of mind and moral courage; and maturity of judgment and balance.

- 3.5. It is essential that there is nothing in the conduct, affairs or circumstances of an applicant which would make his or her appointment inappropriate. A problem in this respect may be a barrier to appointment, either indefinitely or at least until the matter is resolved.

4. Procedure

Application

- 4.1. Applications for appointment are normally invited by advertisement on an annual basis.
- 4.2. Applications for appointment as Queen's Counsel should be submitted to Lesley Macaulay, Judicial Office for Scotland. The applicant should at the same time notify the Dean of Faculty or, as the case may be, the President of the Law Society of Scotland, that he or she has made such application
- 4.3. There are separate application forms for members of the Faculty and solicitor advocates. Copies for the use of applicants can be obtained from the Judiciary of Scotland website at:- <http://www.scotland-judiciary.org.uk>
- 4.4. In the application form the applicant is required to provide information about his or her professional experience and appointments, together with a self-assessment of why he or she considers himself or herself to be suitable for appointment as Queen's Counsel. The Lord Justice General will attach particular importance to this self-assessment. Please take time to complete the self assessment carefully. It should contain a full assessment of the applicant's experience and capabilities against the criteria set out in paragraphs 3.2- 3.5. It is important that you do not simply make statements here, or assume that a particular action or case in which you have appeared "speaks for itself". You need to set out clearly how you meet the criteria, giving if you can an appropriate example. It is preferable to give different examples for each criterion, but if an example provides good evidence against more than one criterion do not avoid using it more than once if you have no better example.
- 4.5. The applicant must provide in the application form full and accurate information in answer to questions which are designed to ascertain whether there is anything in his or her conduct, affairs or circumstances which might make his or her appointment inappropriate.
- 4.6. The information contained in the completed application form in response to the questions referred to in paragraph 4.5 is treated as confidential and exclusively for the information of the Lord Justice General, Lesley Macaulay and the Observer referred to at paragraph 4.16.

- 4.7. An applicant who considers that, by reason of the nature of his or her practice, his or her suitability for appointment may not be fully known to those who are regularly consulted by the Lord Justice General should submit along with his or her application written references by no more than two other persons. They must be members of the judiciary, chairmen of tribunals or senior members of the legal profession who are fully familiar with the applicant's work, and address directly the criteria for nomination set out in paragraphs 3.2 – 3.5. Applicants in this category should draw these criteria specifically to the attention of those whom they ask to provide such references.
- 4.8. You will need to provide evidence of your legal ability and experience by reference to cases in which you have appeared.

Consultation

- 4.9. The extent to which the Lord Justice General consults others in regard to applications is a matter for his discretion
- 4.10. In line with practice in the past the Lord Justice General provides an opportunity for all Senators of the College of Justice to express their views to him in confidence in regard to each of the applicants for appointment as Queen's Counsel in accordance with the following paragraphs. Senators are provided with a copy of the applicant's self-assessment which is referred to in paragraph 4.4.
- 4.11. Senators are requested to indicate, unless in their view the applicant is not sufficiently well known to them or the application is premature, whether the applicant is already well fitted for appointment and sufficiently outstanding to merit immediate appointment or is possibly ready for appointment but not in the front rank of applicants for immediate appointment or is not obviously fitted for immediate appointment or is not fitted for appointment.
- 4.12. Senators are also expected to indicate the extent to which the applicant satisfies the criteria set out in paragraphs 3.2 – 3.5, and are invited to add their comments on the applicant's suitability for appointment.
- 4.13. The Lord Justice General may, in relation to applicants whom he is minded to nominate for appointment, or where he wishes to obtain information in order to assist him to decide whether to nominate for appointment, consult the Dean of Faculty, the President of the Law Society of Scotland and the Lord Advocate. He will do so in particular to confirm that there is nothing about the conduct, affairs or circumstances of the applicant that would make it inappropriate for

him or her to be appointed. The consultation with the Lord Advocate does not extend beyond information known professionally to the Lord Advocates office.

- 4.14. The Lord Justice General takes into account any view which is expressed by the Dean of the Faculty or President of the Law Society of Scotland in relation to the extent of any perceived need to increase the number of Queen's Counsel.

Recommendation

- 4.15. The making of final nominations to the First Minister is a matter solely for the Lord Justice General in the light of information and other material provided by the applicant, his own knowledge of the applicant's qualities and the responses of those whom he has consulted.

The Observer

- 4.16. The process of appointment is overseen by an independent person appointed by the First Minister. The Observer has access at all stages of the process, to the applications, and the assessments made by Senators. He or she also has access to the Lord Justice General and in the past there have been meetings between the Observer and the Lord Justice General during the course of the appointment process. The Observer produces a report at the end of every appointment round. The independent reviewer for the 2010 appointment round was Mr John Neilson QPM and his report can be found at: -
<http://www.scotland.gov.uk/Resource/Doc/254431/0103670.pdf>

Appointment

- 4.17. The First Minister puts forward the names of the prospective applicants to Her Majesty the Queen for approval. Once approval has been given and the Royal Warrants have been signed, the Scottish Government Legal System Division informs the Lord Justice General, the Dean of Faculty and the President of the Law Society of Scotland that the names of the prospective appointees have been approved by Her Majesty the Queen. The Scottish Government Legal System Division then arrange for the preparation of a press release announcing the names of the successful applicants which is issued to the press shortly thereafter.

Fee for registration of Commission

- 4.18. In the case of successful candidates, Her Majesty the Queen grants Warrant for a Commission to be prepared in favour of each new Queen's Counsel. The Keeper of the Registers of Scotland prepares Letters Patent and issues these to the candidate. This act completes the process of an individual's appointment. There is a statutory fee for the registration of Commissions under the Great Seal which includes the cost of preparing the document. The fee is £630.00 and this is payable to the Registers of Scotland by the individual candidate on receipt of the Commission.

Feedback

- 4.19. An applicant who has been unsuccessful may apply to Lesley Macaulay, Judicial Office for Scotland who can provide, with his Lordship's approval, a general indication as to the view which the Lord Justice General took of the application and the respects in which the Lord Justice General regarded the applicant as not satisfying the criteria for appointment.

5. Contact Details

- 5.1. Copies of this Guide may be obtained from the Judiciary of Scotland website at:-
<http://www.scotland-judiciary.org.uk>
- 5.2. Enquiries about this Guide may be addressed to:
- Mrs Lesley Macaulay,
Judicial Office for Scotland,
1 A Parliament Square,
EDINBURGH.
EH1 1RQ.
Telephone: 0131 240 6679
E-mail: lmacaulay@scotcourts.gov.uk
- 5.3. As stated in paragraph 4.3, there are separate application forms for members of Faculty and solicitor advocates which can also be obtained from the website mentioned at 5.1. above