|  |
| --- |
| APPOINTMENT OF KING’S COUNSEL IN SCOTLAND  **GUIDE FOR APPLICANTS** |

Amended February 2024

1. Introduction 1

2. The Rank and Dignity of King’s Counsel 1

3. Criteria for Recommendation 2

4. Procedure 3

5. Contact Details 6

|  |
| --- |
| Introduction |

* 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 King’s Counsel in Scotland. It is not concerned with appointments on an honorary basis.
  2. The title of King’s Counsel is primarily a mark of distinction in advocacy, when combined with other qualities. Advocacy refers primarily to advocacy in the superior courts or in a forum of similar standing. However, account is taken of the exercise of advocacy elsewhere.
  3. Applications will generally not be considered before the applicant has practised in the superior 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.
  4. Although account is taken of the applicant’s career as a whole, any recommendation is made on the basis of the applicant’s performance as an advocate or a solicitor advocate exercising extended rights of audience.
  5. There is no automatic right to appointment after a given number of years in practice. 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.
  6. There is no fixed quota of King’s Counsel to be appointed at any time. The Lord Justice General endeavours to ensure, in the interests of the public, clients and the courts, that an adequate number of King’s Counsel generally, and in specific areas of specialisation, is maintained.
  7. This Guide will apply from 10 March 2023 until it is superseded.

|  |
| --- |
| The Rank and Dignity of King’s Counsel |

* 1. Before 1868 the rank of King’s Counsel was not recognised in Scotland. It was first conferred in that year. Initially the status was reserved first for law officers and soon after for the Dean of Faculty.
  2. In 1897 a petition by the Faculty for the establishment of a Scottish roll of King’s Counsel was approved. The first appointments were made later in that year.
  3. In 2002 the first appointment of a solicitor advocate 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 “King’s Counsel, Solicitor Advocate”.
  4. The appointment of King’s Counsel is made by His Majesty the King on the recommendation of the First Minister, who seeks nominations for that purpose from the Lord Justice General.

|  |
| --- |
| Criteria for Recommendation |

* 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

* 1. A successful applicant is expected to have demonstrated an ability to present complex, difficult, and novel cases in court both clearly and cogently.

### Legal Ability and Experience

* 1. 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. They should have a high quality practice which will include demanding cases. The applicant must have e experience in advocacy at first instance and appellate level. Other relevant factors will include wide experience over a broad range of subjects, or a high degree of specialisation in a specific subject area, and a recent record of contributions to legal literature. Reported cases in which the applicant has appeared will be taken into account. Particular significance will be attached to cases in the official (Session and Justiciary Cases) reports. It is recognised that some applicants may have had limited experience of advocacy in the Civil Divisions of the Court of Session because of the nature of their practices and the absence of opportunities to appear at that level. Applicants in that category should provide a brief account of their experience in that regard.

**Professional Qualities**

* 1. Successful applicants are expected to be of 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.
  2. It is essential that there is nothing in the conduct, affairs or circumstances of an applicant which would make their appointment inappropriate. A problem in this respect may be a barrier to appointment, either indefinitely or at least until the matter is resolved.

|  |
| --- |
| Procedure |

### Application

* 1. Applications are normally invited by advertisement on an annual basis.
  2. Applications should be submitted to Paul Gilmour, the Lord President’s Private Secretary. 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 they have made such application
  3. There are separate application forms for members of the Faculty and solicitor advocates. Copies can be obtained from the Judiciary of Scotland website at:- [https://www.judiciary.scot/](https://www.judiciary.scot/home/media-information/media-hub-news)
  4. In the application form the applicant is required to provide information about their professional experience and appointments, together with a self-assessment of why they consider themselves to be suitable for appointment. The Lord Justice General will attach particular importance to this self-assessment. It should contain a reasonably full assessment of the applicant’s experience and capabilities against the criteria set out in paragraphs 3.2- 3.5. It is important that the applicant does not simply make assertions, or assume that a particular action or case “speaks for itself”. The applicant needs to set out clearly how they meet the criteria, giving appropriate examples. It is preferable to give different examples for each criterion. If an example provides good evidence against more than one criterion, the applicant should not avoid using it more than once if there is no better example.
  5. The applicant must provide 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.
  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 and the Observer referred to at paragraph 4.16.
  7. An applicant is required to obtain two references. It is the responsibility of the applicant to approach their chosen referees, who 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. The references must address directly the criteria for nomination set out in paragraphs 3.2 – 3.5. Applicants should draw these criteria specifically to the attention of those whom they ask to provide such references. A form is now available for completion by referees and applicants should make this available to them. The completed references should be sent directly to Paul Gilmour, the Lord President’s Private Secretary, marked “Private & Confidential”, by the same closing date for applications. These can be submitted by post or by email.

**Consultation**

* 1. The Lord Justice General will appoint a panel consisting of Senators of the College of Justice to consider each of the applications. The panel will be made up of the Lord Justice General, the Lord Justice Clerk, a maximum of three other Inner House Judges and a maximum of four Outer House Judges.
  2. Members of the Panel will be 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.
  3. Members of the panel will be expected to indicate the extent to which the applicant satisfies the criteria set out in paragraphs 3.2 – 3.5. They will be invited to add comments on the applicant’s suitability for appointment. A list of candidates will be sent to all judges, who will be asked to comment on any particular applicant, if they deem that appropriate. The views expressed by the members of the panel or the other judges are strictly confidential and for sole consideration by the Lord Justice General
  4. The Lord Justice General will, in relation to applicants whom he is inclined to nominate for appointment, or where he wishes to obtain further information, 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 Advocate’s office.
  5. The Lord Justice General will take 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 King’s Counsel generally or in particular areas of specialisation.

### Recommendation

* 1. 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**

* 1. 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, the assessments made by members of the panel and the comments of any judge. They will have access to the Lord Justice General. 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 2023 appointment round was Bill Thomson and his report can be found at: -

[Link to report](https://www.gov.scot/publications/appointment-kings-counsel-scotland-2023/)

### Appointment

* 1. The First Minister puts forward the names of the prospective applicants to His Majesty the King for approval. Once approval has been given and the Royal Warrant has 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 His Majesty the King. The SGLSD then arrange for the preparation of a press release announcing the names of the successful applicants which is issued shortly thereafter.

**Registration of Commission**

* 1. In the case of successful candidates, His Majesty the King grants Warrant for a Commission to be prepared in favour of each new King’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 £640.00 and this is payable to the Registers of Scotland by the individual candidate on receipt of the Commission.

Feedback

* 1. An applicant who has been unsuccessful will receive 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. Feedback may be important. Careful consideration should be given to any received when contemplating reapplying in the future.

|  |
| --- |
| Contact Details |

* 1. Copies of this Guide may be obtained from the Judiciary of Scotland website at:- [https://www.judiciary.scot](https://www.judiciary.scot/home/media-information/media-hub-news)
  2. Enquiries about this Guide may be addressed to:

Mr Paul Gilmour,

Lord President’s Private Secretary,

Parliament House,

Parliament Square,

EDINBURGH.

EH1 1RQ

Telephone: 0131 240 6701

E-mail: [pgilmour@scotcourts.gov.uk](mailto:pgilmour@scotcourts.gov.uk)