
DRAFT STATUTORY INSTRUMENTS

2013 No.

The Judicial Appointments Regulations 2013

PART 5

Selection of Lords Justice of Appeal

Membership of selection panel

23.—(1) A selection panel appointed under section 79(1) to select a person for appointment as a Lord Justice of Appeal must consist of five members.

(2) The first member is the Lord Chief Justice or the Lord Chief Justice's nominee.

(3) The second member is a person designated by the first member.

(4) Unless paragraph (9) applies, the third member is the chairman of the Commission or the chairman of the Commission's nominee.

(5) The fourth member is a lay member of the Commission designated by the third member.

(6) The fifth member is a person designated by the first member after consulting the third member.

(7) The first member is the chairman of the selection panel.

(8) Only a Head of Division or Lord Justice of Appeal may be a nominee under paragraph (2) or designated under paragraph (3).

(9) If—

(a) there is no chairman of the Commission;

(b) the chairman of the Commission is incapacitated; or

(c) the chairman of the Commission has not nominated a person under paragraph (4),

the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman of the Commission.

(10) Only the following may be designated under paragraph (6)—

(a) an England and Wales Supreme Court judge;

(b) a Head of Division;

(c) the Senior President of Tribunals;

(d) a puisne judge of the High Court;

(e) the holder of an office listed in Schedule 14;

(f) a member of the Commission who is not a Lord Justice of Appeal.

(11) The following also apply to nominees, or those designated, under this regulation—

(a) a person may not be a nominee, or a designated member, if that person is disqualified;

(b) a person may not be appointed to the selection panel as the nominee of, or as a designated member by, more than one person;

(c) a person appointed to the selection panel otherwise than as a nominee, or as a designated member, may not be a nominee or a designated member.

(12) A person is disqualified for the purposes of this regulation if that person is willing to be considered for selection.

(13) Paragraph (14) applies where a person chooses a person to be a member of a selection panel (whether as a nominee, as a designated member or otherwise).

(14) The person making the choice must, in doing so, have regard (alongside all other relevant considerations) to the fact that it is desirable that the members of the selection panel should include—

- (a) both women and men; and
- (b) members drawn from a range of different racial groups (within the meaning of section 9(3) of the Equality Act 2010).

Consultation

24. As part of the selection process under section 79(2), the selection panel must consult the Lord Chancellor.

Report

25.—(1) After complying with section 79(2) the selection panel must submit a report to the Lord Chancellor.

(2) The report must—

- (a) state who has been selected;
- (b) contain any other information required by the Lord Chancellor.

(3) The report must be in a form approved by the Lord Chancellor.

(4) After submitting the report the selection panel must provide any further information which the Lord Chancellor may require.

The Lord Chancellor's options

26.—(1) This regulation refers to the following stages—

- (a) Stage 1 – where a person has been selected under section 79 for appointment as a Lord Justice of Appeal.
- (b) Stage 2 – where a person has been selected following a rejection or reconsideration at stage 1.
- (c) Stage 3 – where a person has been selected following a rejection or reconsideration at stage 2.

(2) At stage 1 the Lord Chancellor must do one of the following—

- (a) accept the selection;
- (b) reject the selection; or
- (c) require the selection panel to reconsider the selection.

(3) At stage 2 the Lord Chancellor must do one of the following—

- (a) accept the selection;
- (b) reject the selection, but only if it was made following a reconsideration at stage 1; or
- (c) require the selection panel to reconsider the selection, but only if it was made following a rejection at stage 1.

(4) At stage 3 the Lord Chancellor must accept the selection, unless paragraph (5) applies and the Lord Chancellor accepts a selection under it.

(5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.

Exercise of powers to reject or require reconsideration

27.—(1) The power of the Lord Chancellor under regulation 26 to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor’s opinion, the person selected is not suitable for the office of Lord Justice of Appeal.

(2) The power of the Lord Chancellor under regulation 26 to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor’s opinion—

- (a) there is not enough evidence that the person is suitable for the office of Lord Justice of Appeal; or
- (b) there is evidence that the person is not the best candidate on merit.

(3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

Selection following rejection or requirement to reconsider

28.—(1) If under regulation 26 the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with this regulation.

(2) If the Lord Chancellor rejects a selection, the selection panel—

- (a) may not select the person rejected; and
- (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.

(3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel—

- (a) may select the same person or a different person; but
- (b) where the requirement to reconsider follows a rejection, may not select the person rejected.

(4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.

(5) Paragraphs (2) and (3) do not prevent a person being selected on a subsequent request under section 78(1).