

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Chapter 2: Appointments

#### *General Provisions*

#### **Lord Chief Justice and Heads of Division**

#### ***Section 67: Selection of Lord Chief Justice and Heads of Division***

275. **Section 67** provides that recommendations to The Queen to appoint candidates to the senior judicial posts of the Lord Chief Justice and the Heads of Division (the Master of the Rolls, President of the Queen's Bench Division, President of the Family Division and Chancellor of the High Court) can only be made in accordance with the procedures set out in the Act.

#### ***Section 68: Duty to fill vacancies***

276. **Section 68** imposes a duty on the Lord Chancellor to fill any vacancies in the offices of Lord Chief Justice or the Heads of Division. But, for as long as the Lord Chief Justice agrees, he may leave a vacancy in any of the offices of the Heads of Division unfilled.

#### ***Section 69: Request for selection***

277. **Section 69** provides for the Lord Chancellor to request the Commission to select someone for appointment as Lord Chief Justice or as one of the Heads of Division. Before making a request the Lord Chancellor must consult the Lord Chief Justice unless that post is vacant, or the holder of that post is incapacitated.

#### ***Section 70: Selection Process***

278. **Section 70** provides that on receiving a request to select a person for appointment as Lord Chief Justice or one of the Heads of Division, the Commission must appoint a selection panel, which will decide the process to be followed and make the selection of one person for each vacant post. The panel must consult the current holder of the relevant office, if that is practicable, and will be given administrative support by the Commission, of which it will be a committee. Selection panels for senior appointments are a special form of committee of the Commission.

#### ***Section 71: Selection Panel***

279. The selection panel will have four members. The first member will be the most senior judge of the Supreme Court established by the Act who was a judge of England and Wales before being appointed to the Supreme Court and who is not disqualified, or another senior judge nominated by him. He will chair and will have a casting vote. The second member will be the Lord Chief Justice or his nominee, except where the Lord Chief Justice is disqualified or there is no Lord Chief Justice, in which case it will be another senior judge chosen by the most senior Supreme Court Judge. The third

member will be the chairman of the Commission or his nominee, or if that post is vacant or the chairman is unavailable and has been unable to make a nomination, one of the lay members of the Commission chosen by themselves. The fourth member will be a lay member of the Commission chosen by the third member. A person is disqualified from being a member of the panel if that person is the current holder of the office being selected for, or if that person is willing to be considered for selection for that office.

### ***Section 72: Report***

280. After making its selection the panel must report to the Lord Chancellor, in a form approved by him, telling him who has been selected and providing him with any other information he requires. After submitting its report the panel must provide any further information the Lord Chancellor requires.

### ***Section 73: The Lord Chancellor's options***

281. When the Lord Chancellor receives the report informing him of the person selected by the panel, he has the options of accepting the selection; rejecting that person and requiring a different name to be put forward; or requiring the selection panel to reconsider its selection. This is stage 1 of the process. If the Lord Chancellor rejects the selection or requires reconsideration, the process moves into stage 2. At this stage the panel puts a name to the Lord Chancellor, and the Lord Chancellor has these options: he may accept the selection; he may reject the selection (but only if he has not already used that power at stage 1); or he may require reconsideration (but only if he has not already used that power at stage 1). If the Lord Chancellor rejects the selection or requires reconsideration, the process moves into stage 3. At this stage the panel again puts a name to the Lord Chancellor. This time he must accept the selection of the latest selected candidate, or of a candidate selected in stage 1 or stage 2 whose name was not resubmitted by the panel after reconsideration, but who has not been rejected.

### ***Section 74: Exercise of powers to reject or require reconsideration***

282. The Lord Chancellor can only reject a selection outright if, in his opinion, the person selected is not suitable for the office concerned. He can only require reconsideration if, in his opinion, there is not enough evidence that the selected person is suitable for the office concerned, or there is evidence that the person is not the best candidate on merit. If the Lord Chancellor either rejects a selection or requires it to be reconsidered, he must give his reasons in writing.

### ***Section 75: Selection following rejection or requirement to reconsider***

283. If the Lord Chancellor rejects a candidate at stage 1 or stage 2, the panel must make a new selection, and may not reselect the rejected candidate, or reselect a candidate whose selection it previously withdrew after reconsideration. If the Lord Chancellor requires reconsideration at stage 1 or stage 2, the panel may confirm its selection, or may select a different person, but may not select a candidate who has already been rejected. The panel must inform the Lord Chancellor of its selection. These provisions do not prevent a rejected candidate, or one whose selection was withdrawn after reconsideration, from being selected for appointment on a subsequent occasion when the Lord Chancellor makes a request for a selection.