



Constitutional Reform Act 2005

2005 CHAPTER 4

PART 3

THE SUPREME COURT

Appointment of judges

25 Qualification for appointment

- (1) A person is not qualified to be appointed a judge of the Supreme Court unless he has (at any time)—
 - (a) held high judicial office for a period of at least 2 years, or
 - (b) been a qualifying practitioner for a period of at least 15 years.
- (2) A person is a qualifying practitioner for the purposes of this section at any time when—
 - (a) he has a Senior Courts qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
 - (b) he is an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary, or
 - (c) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

26 Selection of members of the Court

- (1) This section applies to a recommendation for an appointment to one of the following offices—
 - (a) judge of the Supreme Court;
 - (b) President of the Court;
 - (c) Deputy President of the Court.
- (2) A recommendation may be made only by the Prime Minister.
- (3) The Prime Minister—

Status: This is the original version (as it was originally enacted).

- (a) must recommend any person whose name is notified to him under section 29;
 - (b) may not recommend any other person.
- (4) A person who is not a judge of the Court must be recommended for appointment as a judge if his name is notified to the Prime Minister for an appointment as President or Deputy President.
- (5) If there is a vacancy in one of the offices mentioned in subsection (1), or it appears to him that there will soon be such a vacancy, the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.
- (6) Schedule 8 is about selection commissions.
- (7) Subsection (5) is subject to Part 3 of that Schedule.
- (8) Sections 27 to 31 apply where a selection commission is convened under this section.

27 Selection process

- (1) The commission must—
- (a) determine the selection process to be applied,
 - (b) apply the selection process, and
 - (c) make a selection accordingly.
- (2) As part of the selection process the commission must consult each of the following—
- (a) such of the senior judges as are not members of the commission and are not willing to be considered for selection;
 - (b) the Lord Chancellor;
 - (c) the First Minister in Scotland;
 - (d) the Assembly First Secretary in Wales;
 - (e) the Secretary of State for Northern Ireland.
- (3) If for any part of the United Kingdom no judge of the courts of that part is to be consulted under subsection (2)(a), the commission must consult as part of the selection process the most senior judge of the courts of that part who is not a member of the commission and is not willing to be considered for selection.
- (4) Subsections (5) to (10) apply to any selection under this section or section 31.
- (5) Selection must be on merit.
- (6) A person may be selected only if he meets the requirements of section 25.
- (7) A person may not be selected if he is a member of the commission.
- (8) In making selections for the appointment of judges of the Court the commission must ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom.
- (9) The commission must have regard to any guidance given by the Lord Chancellor as to matters to be taken into account (subject to any other provision of this Act) in making a selection.
- (10) Any selection must be of one person only.

28 Report

- (1) After complying with section 27 the commission must submit a report to the Lord Chancellor.
- (2) The report must—
 - (a) state who has been selected;
 - (b) state the senior judges consulted under section 27(2)(a) and any judge consulted under section 27(3);
 - (c) 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 commission must provide any further information the Lord Chancellor may require.
- (5) When he receives the report the Lord Chancellor must consult each of the following—
 - (a) the senior judges consulted under section 27(2)(a);
 - (b) any judge consulted under section 27(3);
 - (c) the First Minister in Scotland;
 - (d) the Assembly First Secretary in Wales;
 - (e) the Secretary of State for Northern Ireland.

29 The Lord Chancellor's options

- (1) This section refers to the following stages—

<i>Stage 1:</i>	where a person has been selected under section 27
<i>Stage 2:</i>	where a person has been selected following a rejection or reconsideration at stage 1
<i>Stage 3:</i>	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) notify the selection;
 - (b) reject the selection;
 - (c) require the commission to reconsider the selection.
- (3) At stage 2 the Lord Chancellor must do one of the following—
 - (a) notify the selection;
 - (b) reject the selection, but only if it was made following a reconsideration at stage 1;
 - (c) require the commission to reconsider the selection, but only if it was made following a rejection at stage 1.
- (4) At stage 3 the Lord Chancellor must notify the selection, unless subsection (5) applies and he makes a notification 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 notify that person's name to the Prime Minister.
- (6) In this Part references to the Lord Chancellor notifying a selection are references to his notifying to the Prime Minister the name of the person selected.

30 Exercise of powers to reject or require reconsideration

- (1) The power of the Lord Chancellor under section 29 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 concerned.
- (2) The power of the Lord Chancellor under section 29 to require the commission 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 concerned,
 - (b) there is evidence that the person is not the best candidate on merit, or
 - (c) there is not enough evidence that if the person were appointed the judges of the Court would between them have knowledge of, and experience of practice in, the law of each part of the United Kingdom.
- (3) The Lord Chancellor must give the commission reasons in writing for rejecting or requiring reconsideration of a selection.

31 Selection following rejection or requirement to reconsider

- (1) If under section 29 the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the commission must select a person in accordance with this section.
- (2) If the Lord Chancellor rejects a selection, the commission—
 - (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 commission—
 - (a) may select the same person or a different person, but
 - (b) where the requirement is following a rejection, may not select the person rejected.
- (4) The commission must inform the Lord Chancellor of the person selected following a rejection or requirement to reconsider.