



Constitutional Reform Act 2005

2005 CHAPTER 4

PART 4

JUDICIAL APPOINTMENTS AND DISCIPLINE

CHAPTER 2

APPOINTMENTS

Lord Chief Justice and Heads of Division

67 Selection of Lord Chief Justice and Heads of Division

- (1) Sections 68 to 75 apply to a recommendation for an appointment to one of the following offices—
 - (a) Lord Chief Justice;
 - (b) Master of the Rolls;
 - (c) President of the Queen's Bench Division;
 - (d) President of the Family Division;
 - (e) Chancellor of the High Court.
- (2) Any such recommendation must be made in accordance with those sections and section 96.

68 Duty to fill vacancies

- (1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Chief Justice.
- (2) The Lord Chancellor must make a recommendation to fill any vacancy in any other office listed in section 67(1).

Status: This is the original version (as it was originally enacted).

- (3) Subsection (2) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

69 Request for selection

- (1) The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation to which this section applies.
- (2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.
- (3) Subsection (2) does not apply where the office of Lord Chief Justice is vacant or where the Lord Chief Justice is incapacitated for the purposes of section 16 (functions during vacancy or incapacity).
- (4) Sections 70 to 75 apply where the Lord Chancellor makes a request under this section.
- (5) Those sections are subject to section 95 (withdrawal and modification of requests).

70 Selection process

- (1) On receiving a request the Commission must appoint a selection panel.
- (2) The panel must—
- (a) determine the selection process to be applied,
 - (b) apply the selection process, and
 - (c) make a selection accordingly.
- (3) One person only must be selected for each recommendation to which a request relates.
- (4) Subsection (3) applies to selection under this section and to selection under section 75.
- (5) If practicable the panel must consult, about the exercise of its functions under this section, the current holder of the office for which a selection is to be made.
- (6) A selection panel is a committee of the Commission.

71 Selection panel

- (1) The selection panel must consist of four members.
- (2) The first member is the most senior England and Wales Supreme Court judge who is not disqualified, or his nominee.
- (3) Unless subsection (7) applies, the second member is the Lord Chief Justice or his nominee.
- (4) Unless subsection (9) applies, the third member is the chairman of the Commission or his nominee.
- (5) The fourth member is a lay member of the Commission designated by the third member.
- (6) Subsection (7) applies if—
- (a) the Lord Chief Justice is disqualified, or
 - (b) there is no Lord Chief Justice.

- (7) In those cases the most senior England and Wales Supreme Court judge who is not disqualified must designate a person (but not a person who is disqualified) as the second member.
- (8) Subsection (9) applies if—
- (a) there is no chairman of the Commission, or
 - (b) the chairman of the Commission is unavailable and has not nominated a person under subsection (4).
- (9) In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (10) Only the following may be a nominee under subsection (2) or (3) or designated under subsection (7)—
- (a) an England and Wales Supreme Court judge,
 - (b) a Head of Division, or
 - (c) a Lord Justice of Appeal.
- (11) The following also apply to nominees under this section—
- (a) a person may not be a nominee if he is disqualified;
 - (b) a person may not be appointed to the panel as the nominee of more than one person;
 - (c) a person appointed to the panel otherwise than as a nominee may not be a nominee.
- (12) The first member is the chairman of the panel.
- (13) On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie.
- (14) A person is disqualified for the purposes of this section if—
- (a) he is the current holder of the office for which a selection is to be made, or
 - (b) he is willing to be considered for selection.
- (15) In this section “England and Wales Supreme Court judge” means a judge of the Supreme Court who has held high judicial office in England and Wales before appointment to the Court.

72 Report

- (1) After complying with section 70(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 panel must provide any further information the Lord Chancellor may require.

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

73 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 70
<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) accept the selection;
 - (b) reject the selection;
 - (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;
 - (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 subsection (5) applies and he 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.

74 Exercise of powers to reject or require reconsideration

- (1) The power of the Lord Chancellor under section 73 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 73 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 concerned, 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.

75 Selection following rejection or requirement to reconsider

- (1) If under section 73 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 section.

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

- (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 is following 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) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under section 69.