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SCHEDULES

SCHEDULE 2 U.K.

Section 4

JUDGES AND OTHER MEMBERS OF THE FIRST-TIER TRIBUNAL

Power to appoint judges of First-tier Tribunal

1 (1) The **[**[F1]Senior President of Tribunals**]** may appoint a person to be one of the judges of the First-tier Tribunal.

(2) A person is eligible for appointment under sub-paragraph (1) only if the person—

(a) satisfies the judicial-appointment eligibility condition on a 5-year basis,

(b) is an advocate or solicitor in Scotland of at least five years' standing,

(c) is a barrister or solicitor in Northern Ireland of at least five years' standing, or

(d) in the **[**[F2]opinion of the Senior President of Tribunals**]**, has gained experience in law which makes the person as suitable for appointment as if the person satisfied any of paragraphs (a) to (c).

(3) Section 52(2) to (5) (meaning of "gain experience in law") apply for the purposes of sub-paragraph (2)(d), but as if section 52(4)(i) referred to the **[**[F3]Senior President of Tribunals**]** instead of to the relevant decision-maker.

Textual Amendments

F1 Words in Sch. 2 para. 1(1) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 45(2)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

F2 Words in Sch. 2 para. 1(2)(d) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 45(3)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

F3 Words in Sch. 2 para. 1(3) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 45(4)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

Power to appoint other members of First-tier Tribunal

2 (1) The **[**[F4]Senior President of Tribunals**]** may appoint a person to be one of the members of the First-tier Tribunal who are not judges of the tribunal.

(2) A person is eligible for appointment under sub-paragraph (1) only if the person has qualifications prescribed in an order made by the Lord Chancellor with the concurrence of the Senior President of Tribunals.

Textual Amendments

F4 Words in Sch. 2 para. 2(1) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 45(2)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

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Appointed and transferred-in judges and other members: removal from office

3 (1) This paragraph applies to any power by which—

(a) a person appointed under paragraph 1(1) or 2(1),

(b) a transferred-in judge of the First-tier Tribunal, or

(c) a transferred-in other member of the First-tier Tribunal,

may be removed from office.

(2) If the person exercises functions wholly or mainly in Scotland, the power may be exercised only with the concurrence of the Lord President of the Court of Session.

(3) If the person exercises functions wholly or mainly in Northern Ireland, the power may be exercised only with the concurrence of the Lord Chief Justice of Northern Ireland.

(4) If neither of sub-paragraphs (2) and (3) applies, the power may be exercised only with the concurrence of the Lord Chief Justice of England and Wales.

Terms of appointment

4 (1) This paragraph applies—

(a) to a person appointed under paragraph 1(1) or 2(1),

(b) to a transferred-in judge of the First-tier Tribunal, and

(c) to a transferred-in other member of the First-tier Tribunal.

(2) If the terms of the person's appointment provide that he is appointed on a salaried (as opposed to fee-paid) basis, the person may be removed from office—

(a) only by the Lord Chancellor (and in accordance with paragraph 3), and

(b) only on the ground of inability or misbehaviour.

[[F5](2A) If the terms of the person's appointment provide that the person is appointed on a fee-paid basis, the person may be removed from office—

(a) only by the Lord Chancellor (and in accordance with paragraph 3), and

(b) only on—

(i) the ground of inability or misbehaviour, or

(ii) a ground specified in the person's terms of appointment.

(2B) If the period (or extended period) for which the person is appointed ends before—

(a) the day on which the person attains the age of **[**[F6]75**]**

[F7](b) . . . . . .

then, subject to sub-paragraph (2C), the Lord Chancellor must extend the period of the person's appointment (including a period already extended under this sub-paragraph) before it ends.

(2C) Extension under sub-paragraph (2B)—

(a) requires the person's agreement,

(b) is to be for such period as the Lord Chancellor considers appropriate, and

(c) may be refused on—

(i) the ground of inability or misbehaviour, or

(ii) a ground specified in the person's terms of appointment,

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but only with any agreement of a senior judge (see section 46(7)), or a nominee of a senior judge, that may be required by those terms.**]**

(3) Subject to **[**[F8]the preceding provisions of this paragraph (but subject in the first place**]** to the Judicial Pensions and Retirement Act 1993 (c. 8)), the person is to hold and vacate office in accordance with the terms of his appointment**[**[F9], which are to be such as the Lord Chancellor may determine**]**.

Textual Amendments

F5 Sch. 2 para. 4(2A)-(2C) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 45(5)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

F6 Word in Sch. 2 para. 4(2B)(a) substituted (10.3.2022) by Public Service Pensions and Judicial Offices Act 2022 (c. 7), s. 131(1)(4)(a), **Sch. 1 para. 36(2)(a)** (with Sch. 1 para. 43)

F7 Sch. 2 para. 4(2B)(b) omitted (10.3.2022) by virtue of Public Service Pensions and Judicial Offices Act 2022 (c. 7), s. 131(1)(4)(a), **Sch. 1 para. 36(2)(b)** (with Sch. 1 para. 43)

F8 Words in Sch. 2 para. 4(3) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 45(6)(a)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

F9 Words in Sch. 2 para. 4(3) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 45(6)(b)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

Remuneration, allowances and expenses

5 (1) Sub-paragraph (2) applies—

(a) to a person appointed under paragraph 1(1) or 2(1),

(b) to a transferred-in judge of the First-tier Tribunal, and

(c) to a transferred-in other member of the First-tier Tribunal.

(2) The Lord Chancellor may pay to a person to whom this sub-paragraph applies such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Certain judges neither appointed under paragraph 1(1) nor transferred in

6 (1) In this paragraph "judge by request of the First-tier Tribunal" means a person who is a judge of the First-tier Tribunal but who—

(a) is not the Senior President of Tribunals,

(b) is not a judge of the First-tier Tribunal appointed under paragraph 1(1),

(c) is not a transferred-in judge of the First-tier Tribunal,

(d) is not a Chamber President, or Acting Chamber President or Deputy Chamber President, of a chamber of the First-tier Tribunal,

(e) is not a judge of the First-tier Tribunal by virtue of section 4(1)(e) (chairman of employment tribunal),

(f) [F10]. . . and

(g) is not a judge of the First-tier tribunal by virtue of section 4(2) (criminal injuries compensation adjudicator appointed by the Scottish Ministers).

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(2) A judge by request of the First-tier Tribunal may act as a judge of the First-tier Tribunal only if requested to do so by the Senior President of Tribunals.

(3) Such a request made to a person who is a judge of the First-tier Tribunal by virtue of the combination of sections 4(1)(c) and 5(1)(g) may be made only with—

(a) the concurrence of the Lord Chief Justice of England and Wales where the person is—

(i) an ordinary judge of the Court of Appeal in England and Wales,

(ii) a puisne judge of the High Court in England and Wales,

(iii) a circuit judge,

(iv) a district judge in England and Wales, [F11]...

(v) a District Judge (Magistrates' Courts)**[**[F12],

(vi) the Master of the Rolls,

(vii) the President of the Queen's Bench Division of the High Court of England and Wales,

(viii) the President of the Family Division of that court,

(ix) the Chancellor of that court,

(x) a deputy judge of that court, or

(xi) the Judge Advocate General;**]**

(b) the concurrence of the Lord President of the Court of Session where the person is—

(i) a judge of the Court of Session, or

(ii) a sheriff;

(c) the concurrence of the Lord Chief Justice of Northern Ireland where the person is—

(i) a Lord Justice of Appeal in Northern Ireland,

(ii) a puisne judge of the High Court in Northern Ireland,

(iii) a county court judge in Northern Ireland, or

(iv) a district judge in Northern Ireland.

[[F13](3A) A request made under sub-paragraph (2) to a person who is a judge of the First-tier Tribunal by virtue of section 4(1)(ca) may be made only with the concurrence of the Lord Chief Justice of England and Wales.**]**

(4) Sub-paragraph (5) applies—

(a) to a judge by request of the First-tier Tribunal,**[**[F14] and**]**

(b) to a person who is a judge of the First-tier Tribunal by virtue of section 4(1)(e) (chairman of employment tribunal), [F15]. . .

(c) [F15]. . . . . .

(5) The Lord Chancellor may pay to a person to whom this sub-paragraph applies such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

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Textual Amendments

F10 Words in Sch. 2 para. 6(1)(f) omitted (15.2.2010) by virtue of The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), **Sch. 1 para. 45(a)(i)** (with Sch. 4)

F11 Word in Sch. 2 para. 6(3)(a)(iv) omitted (1.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 10(1)**; S.I. 2013/2200, art. 3(g)

F12 Sch. 2 para. 6(3)(a)(vi)-(xi) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 10(1)**; S.I. 2013/2200, art. 3(g)

F13 Sch. 2 para. 6(3A) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 10(2)**; S.I. 2013/2200, art. 3(g)

F14 Word in Sch. 2 para. 4(a) inserted (15.2.2010) by The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), **Sch. 1 para. 45(a)(ii)(aa)** (with Sch. 4)

F15 Sch. 2 para. 4(c) and word omitted (15.2.2010) by virtue of The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), **Sch. 1 para. 45(a)(ii)(bb)** (with Sch. 4)

Other members neither appointed under paragraph 2(1) nor transferred in

7 (1) In this paragraph "ex officio member of the First-tier Tribunal" means a person who is a member of the First-tier Tribunal by virtue of—

(a) section 4(3)(d) (members of employment tribunals who are not **[**[F16]Employment Judges**]**),**[**[F17] or**]**

(b) the combination of sections 4(3)(c) and 5(2)(c) (members of Employment Appeal Tribunal appointed under section 22(1)(c) of the Employment Tribunals Act 1996),[F18]. . .

(c) [F18]. . . . . .

(2) The Lord Chancellor may pay to an ex officio member of the First-tier Tribunal such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Textual Amendments

F16 Words in Sch. 2 para. 7(1)(a) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 13(1)**; S.I. 2013/2200, art. 3(g)

F17 Word in Sch. 2 para. 7(1)(a) inserted (15.2.2010) by The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), **Sch. 1 para. 45(b)(i)** (with Sch. 4)

F18 Sch. 2 para. 7(1)(c) and word omitted (15.2.2010) by virtue of The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), **Sch. 1 para. 45(b)(ii)** (with Sch. 4)

Training etc.

8 The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training, guidance and welfare of judges and other members of the First-tier Tribunal (in their capacities as such judges and other members).

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Oaths

9 (1) Sub-paragraph (2) applies to a person ("J")—

(a) who is appointed under paragraph 1(1) or 2(1), or

(b) who becomes a transferred-in judge, or a transferred-in other member, of the First-tier Tribunal and has not previously taken the required oaths after accepting another office.

(2) J must take the required oaths before—

(a) the Senior President of Tribunals, or

(b) an eligible person who is nominated by the Senior President of Tribunals for the purpose of taking the oaths from J.

(3) A person is eligible for the purposes of sub-paragraph (2)(b) if any one or more of the following paragraphs applies to him—

(a) he holds high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005 (c. 4));

(b) he holds judicial office (as defined in section 109(4) of that Act);

(c) he holds (in Scotland) the office of sheriff.

(4) In this paragraph "the required oaths" means (subject to sub-paragraph (5))—

(a) the oath of allegiance, and

(b) the judicial oath,

as set out in the Promissory Oaths Act 1868 (c. 72).

(5) Where it appears to the Lord Chancellor that J will carry out functions as a judge or other member of the First-tier Tribunal wholly or mainly in Northern Ireland, the Lord Chancellor may direct that in relation to J "the required oaths" means—

(a) the oath as set out in section 19(2) of the Justice (Northern Ireland) Act 2002 (c. 26), or

(b) the affirmation and declaration as set out in section 19(3) of that Act.

Changes to legislation:
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View outstanding changes

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(8)(bza) inserted by 2022 c. 36 s. 23(2)
- s. 13(8)(bzb) inserted by 2022 c. 36 s. 24(9)
- s. 16(3)(a) word inserted by 2015 c. 2 s. 85(3)(a)
- s. 16(3)(b) and word inserted by 2015 c. 2 s. 85(3)(b)
- s. 16(3A)(3B) inserted by 2015 c. 2 s. 85(4)
- s. 22(6) inserted by 2022 c. 35 Sch. 4 para. 4(2)
- s. 23(8) inserted by 2022 c. 35 Sch. 4 para. 4(3)
- s. 25A inserted by 2022 c. 36 s. 80(1)
- s. 29(3A) inserted by 2022 c. 36 s. 81(6)
- Sch. 5 para. 11A and cross-heading inserted by 2022 c. 36 s. 80(2)
- Sch. 7 para. 6(1)(e) words substituted by 2013 c. 22 Sch. 14 para. 13(2) (Sch. 7 was already repealed when this amendment came into force)
- Sch. 7 para. 6(4)(b) words substituted by 2013 c. 22 Sch. 14 para. 13(2) (Sch. 7 was already repealed when this amendment came into force)