

SCHEDULES

SCHEDULE 13

JUDICIAL APPOINTMENTS

PART 5

SELECTION OF LORD CHIEF JUSTICE AND HEADS OF DIVISION: TRANSITORY PROVISION

- 82 (1) The Constitutional Reform Act 2005 is amended as follows.
- (2) In section 70 (selection process for appointment of Lord Chief Justice or Head of Division) after subsection (2) insert—
- “(2A) In determining the selection process to be applied, the panel must ensure that the process—
- (a) includes consultation of the Lord Chancellor, and
 - (b) if the request relates to a recommendation for an appointment to the office of Lord Chief Justice, also includes consultation of the First Minister for Wales.”
- (3) For section 71 of the Constitutional Reform Act 2005 (selection panel for appointment of Lord Chief Justice or Head of Division) substitute—

“71 Selection panel for appointment of Lord Chief Justice

- (1) This section applies where the request relates to a recommendation for an appointment to the office of Lord Chief Justice.
- (2) The selection panel must consist of five members.
- (3) The first member is the chairman of the Commission, unless there is no chairman of the Commission or the chairman of the Commission is incapacitated.
- (4) If there is no chairman of the Commission or the chairman of the Commission is incapacitated, the first member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (5) The second member is the most senior England and Wales Supreme Court judge who is neither disqualified nor incapacitated, or that judge’s nominee.
- (6) The third member is a lay member of the Commission designated by the first member.
- (7) The fourth member is a member of the Commission designated by the first member.

Status: This is the original version (as it was originally enacted).

- (8) The fifth member is a person designated by the Lord Chief Justice, unless subsection (10) applies.
- (9) Subsection (10) applies if—
 - (a) there is no Lord Chief Justice, or
 - (b) the Lord Chief Justice is incapacitated.
- (10) In those cases the most senior England and Wales Supreme Court judge who is neither disqualified nor incapacitated must, after consulting the first member, designate a person as the fifth member.
- (11) Only the following may be a nominee under subsection (5) or designated under subsection (8) or (10)—
 - (a) an England and Wales Supreme Court judge,
 - (b) a Head of Division, or
 - (c) an ordinary judge of the Court of Appeal in England and Wales.
- (12) A person may not be a nominee under subsection (5), or be designated under this section, if the person is disqualified.
- (13) Before designating a person under subsection (7) as the fourth member, the first member must, if practicable, consult the Lord Chief Justice.
- (14) The first member is the chairman of the panel.
- (15) A person is disqualified for the purposes of this section if—
 - (a) the person is the Lord Chief Justice,
 - (b) the office of Lord Chief Justice is vacant and the person is the immediate previous holder of that office, or
 - (c) the person is willing to be considered for selection.

71A Selection panel for appointment of Head of Division

- (1) This section applies where the request relates to a recommendation for an appointment to one of the following offices—
 - (a) Master of the Rolls;
 - (b) President of the Queen’s Bench Division;
 - (c) President of the Family Division;
 - (d) Chancellor of the High Court.
- (2) The selection panel must consist of five members.
- (3) The first member is the Lord Chief Justice or the Lord Chief Justice’s nominee, unless subsection (9) applies.
- (4) Unless subsection (9) applies, the second member is the most senior England and Wales Supreme Court judge who is neither disqualified nor incapacitated, or that judge’s nominee.
- (5) The third member is the chairman of the Commission or the chairman’s nominee, unless subsection (11) applies.
- (6) The fourth member is a lay member of the Commission designated by the third member.

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

- (7) The fifth member is a person designated by the first member after consulting the third member.
- (8) Subsection (9) applies if—
- (a) there is no Lord Chief Justice,
 - (b) the Lord Chief Justice is disqualified, or
 - (c) the Lord Chief Justice is incapacitated.
- (9) In those cases—
- (a) the most senior England and Wales Supreme Court judge who is neither disqualified nor incapacitated, or that judge’s nominee, is the first member, and
 - (b) the second member is a person designated by the first member.
- (10) Subsection (11) applies if—
- (a) there is no chairman of the Commission, or
 - (b) the chairman of the Commission is incapacitated.
- (11) In those cases the third member of the Commission is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (12) Only the following may be a nominee under subsection (3), (4) or (9)(a) or designated under subsection (9)(b)—
- (a) an England and Wales Supreme Court judge,
 - (b) a Head of Division, or
 - (c) an ordinary judge of the Court of Appeal in England and Wales.
- (13) Only a lay member of the Commission may be a nominee under subsection (5).
- (14) Only the following may be designated under subsection (7)—
- (a) an England and Wales Supreme Court judge,
 - (b) a senior judge (as defined by section 109(5)),
 - (c) the holder of an office listed in Schedule 14, or
 - (d) a member of the Commission.
- (15) A person may not be a nominee under this section, or be designated under this section, if the person is disqualified.
- (16) The first member is the chairman of the panel.
- (17) A person is disqualified for the purposes of this section if—
- (a) the person is the current holder of the office for which a selection is to be made, or
 - (b) the person is willing to be considered for selection.

71B Sections 71 and 71A: diversity and interpretation

- (1) Subsection (2) applies where a person chooses a person to be a member of a selection panel under section 71 or 71A (whether as a nominee, as a designated member or otherwise).

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

- (2) 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 panel should include—
- (a) both women and men, and
 - (b) members drawn from a range of different racial groups;
- and in this subsection “racial group” has the same meaning as in section 9 of the Equality Act 2010.
- (3) Section 16 does not apply to functions of the Lord Chief Justice under section 71 or 71A; and references in sections 71 and 71A to a person being incapacitated are to the person being incapacitated in the opinion of the Lord Chancellor.
- (4) Seniority amongst the judges of the Supreme Court who are England and Wales Supreme Court judges is to be determined for the purposes of sections 71 and 71A as follows—
- (a) the President of the Supreme Court, if an England and Wales Supreme Court judge, is senior to all other England and Wales Supreme Court judges;
 - (b) the Deputy President of the Supreme Court, if an England and Wales Supreme Court judge, is senior to all ordinary England and Wales Supreme Court judges;
 - (c) one ordinary England and Wales Supreme Court judge is senior to another if that first judge has served longer as a judge of the Supreme Court (whether over one or more periods and whether or not including one or more previous periods as President or Deputy President of the Court).
- (5) In subsection (4) “ordinary England and Wales Supreme Court judge” means an England and Wales Supreme Court judge who is neither the President of the Court nor the Deputy President.
- (6) Service as a Lord of Appeal in Ordinary counts as service as a judge of the Supreme Court for the purposes of subsection (4)(c).
- (7) In sections 71 and 71A and 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.”
- (4) In paragraph 11(3) of Schedule 12 (functions of the chairman of the Judicial Appointments Commission which, in the chairman’s absence, are not exercisable by the vice-chairman) after paragraph (b) insert—
- “(ba) section 71A;”.
- (5) An amendment made by this paragraph does not have effect in relation to a request under section 69 of the Constitutional Reform Act 2005 received by the Judicial Appointments Commission before the amendment comes into force.