

2004 No. 1193

**SUPREME COURT OF ENGLAND AND WALES
COUNTY COURTS, ENGLAND AND WALES
MAGISTRATES' COURTS, ENGLAND AND WALES**

**The Courts Boards (Appointments and Procedure)
Regulations 2004**

Made - - - - - *21st April 2004*

Coming into force - - - *1st June 2004*

The Lord Chancellor, in exercise of the powers conferred upon him by paragraphs 3, 4, 5 and 7 of Schedule 1 to the Courts Act 2003^(a), hereby makes the following Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament:

Citation and commencement

1. These Regulations may be cited as the Courts Boards (Appointments and Procedure) Regulations 2004 and shall come into force on 1st June 2004.

Interpretation

2. In these Regulations—
- “courts board area” means the area to which a courts board relates, as specified and named in an order made under section 4 of the Act;
 - “the Act” means the Courts Act 2003.

Appointment of members of courts boards

3. No courts board may comprise more than twelve members.

Appointment of courts board appointments advisory panels

4.—(1) In any case in which these Regulations indicate that functions are to be discharged in respect of a courts board by or in relation to a courts board appointments advisory panel, the Lord Chancellor shall appoint such a panel in accordance with the provisions of this regulation.

- (2) A courts board appointments advisory panel shall comprise—
- (a) except as provided by paragraph (3), a person in the civil service of the state who appears to the Lord Chancellor to be appropriate for this purpose;
 - (b) a person who has been trained in a manner approved by the Commissioner for Public Appointments to act as an independent appointments assessor; and
 - (c) except as provided by paragraph (4), a member of the courts board in respect of which the functions mentioned in paragraph (1) are to be discharged.

(a) 2003 c. 39.

(3) In any case where an appointment to a courts board appointments advisory panel is to be made prior to the commencement of section 2(1) and of paragraph 13 of Schedule 2 to the Act, a person appointed under paragraph (2)(a) shall be a person either in the civil service of the state or in the employment of a magistrates' courts committee who appears to the Lord Chancellor to be appropriate for this purpose.

(4) In any case in which either there are no members of a courts board for the relevant area or it appears to the Lord Chancellor that no member of the relevant courts board may reasonably be appointed to a courts board appointments advisory panel, he shall instead appoint some other person who appears to him to have appropriate knowledge or experience of the working of the courts in the relevant courts board area.

Appointment of members of courts boards who are not judges

5.—(1) This regulation has effect in relation to the appointment of members of courts boards except for those to which regulation 6 applies, and except as provided by regulation 8.

(2) The Lord Chancellor must not make such appointments otherwise than in accordance with this regulation.

(3) Where he is considering making an appointment, the Lord Chancellor must—

(a) identify, and publish in such manner as he considers appropriate—

- (i) the qualities and abilities which in his view are likely to be the most relevant, and
- (ii) any experience and qualifications which in his view are likely to be relevant, in considering the suitability of candidates to be appointed; and

(b) identify the candidates from among whom the appointment may be made.

(4) Before taking the steps set out in paragraph (3), the Lord Chancellor must consult a person who has been trained in a manner approved by the Commissioner for Public Appointments to act as an independent appointments assessor.

(5) Before making an appointment, the Lord Chancellor must notify a courts board appointments advisory panel of—

- (a) the matters and candidates which he has identified under paragraph (3) above, and
- (b) which of the descriptions mentioned in sub-paragraphs (b) to (d) of paragraph 2 of Schedule 1 to the Act he considers requires to be satisfied in the case of the person to be appointed (the 'relevant description').

(6) On being notified under paragraph (5), a courts board appointments advisory panel must consider the extent to which each candidate—

- (a) satisfies the relevant description, and
- (b) taking into account the matters which the Lord Chancellor has identified under sub-paragraph (3)(a), appears to it to be a suitable person to be appointed,

and must accordingly make such recommendations about appointment to the Lord Chancellor as it considers appropriate.

(7) The Lord Chancellor must supply a courts board appointments advisory panel with such further information as it reasonably requires for the purpose of discharging its functions under paragraph (6).

(8) Before making an appointment, the Lord Chancellor must take into account the recommendations made under paragraph (6).

Appointment of members of courts boards who are judges

6.—(1) This regulation applies in the case of any appointment of a member of a courts board who is a judge.

(2) The Lord Chancellor must not make an appointment to which this regulation applies unless the person to be appointed has been recommended to him by the Lord Chief Justice as suitable for that appointment.

Selection of chairmen of courts boards

7.—(1) The Lord Chancellor is to select one of the members of each courts board to be its chairman.

(2) Where he is considering selecting a chairman, the Lord Chancellor must identify, and publish in such manner as he considers appropriate—

- (a) the qualities and abilities which in his view are likely to be the most relevant, and
- (b) any experience and qualifications which in his view are likely to be relevant,

in considering the suitability of candidates to be appointed.

(3) Before taking the steps set out in paragraph (2), the Lord Chancellor must consult a person who has been trained in a manner approved by the Commissioner for Public Appointments to act as an independent appointments assessor.

(4) Except as provided by regulation 10, before selecting a member of a courts board to be its chairman, the Lord Chancellor must consult a courts board appointments advisory panel.

Term of office of members of courts boards

8.—(1) A courts board member shall be appointed for a fixed term not exceeding three years.

(2) On expiry of a member's term of office, the Lord Chancellor may, subject to paragraph (3), re-appoint that member to serve a further term.

(3) No member of a courts board may be re-appointed more than twice.

(4) Regulation 5 does not apply to a re-appointment under paragraph (2).

Resignation, suspension or removal of members of courts boards

9.—(1) A member of a courts board may resign his office at any time by giving notice in writing to the Lord Chancellor.

(2) The Lord Chancellor may by giving notice in writing suspend or remove from office a member of a courts board on one of the following grounds—

- (a) that he has been charged with or convicted of a criminal offence either—
 - (i) in respect of conduct which is alleged to have taken place since his appointment, or
 - (ii) which was not disclosed, or is in respect of conduct which was not disclosed, in response to any relevant request made by the Lord Chancellor before his appointment;
- (b) that he has failed to attend courts board meetings for a continuous period of six months without the prior approval of the board;
- (c) that he is unable or unfit to carry out his functions as a member of a courts board;
- (d) that he has otherwise failed to carry out his functions as a member of a courts board or acted in a manner incompatible with his membership.

(3) Where the Lord Chancellor gives notice in writing suspending or removing a member from office, that member's term of office shall be suspended or cease, as the case may be, from the date on which the notice is given by the Lord Chancellor.

Tenure of office of chairmen of courts boards

10.—(1) A member selected to be a chairman of a courts board shall be appointed by the Lord Chancellor to hold that office for a fixed term.

(2) On expiry of a member's term of office as chairman, the Lord Chancellor may select and re-appoint that member to serve a further term as chairman.

(3) Regulation 7 does not apply to selection and re-appointment under paragraph (2).

(4) A chairman of a courts board may resign from that office at any time by giving notice in writing to the Lord Chancellor.

(5) Where the Lord Chancellor gives notice in writing under regulation 9 suspending or removing a chairman's membership of a courts board, his term of office as chairman shall also be suspended or cease, as the case may be, from the date on which the notice is given by the Lord Chancellor.

Procedure of courts boards

11.—(1) Each courts board must decide the number of its members, not being fewer than four, which will constitute its quorum.

(2) Where a decision of a courts board is to be made by voting—

(a) each member present at the meeting has one vote; and

(b) where there is an equality of votes, the member presiding at the meeting has an additional, casting vote.

(3) Meetings of a courts board shall be presided over by—

(a) the chairman; or

(b) where no chairman is present, a member elected to preside by those members present at the meeting.

12. Proceedings of a courts board shall not be invalidated by reason of a vacancy among its members or of a defect in the appointment of a member or in the selection of its chairman.

Signed by authority of the Lord Chancellor

Dated 21st April 2004

Christopher Leslie
Parliamentary Under Secretary of State
Department of Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the appointment and tenure of office of members of the courts boards established by section 4 of the Courts Act 2003, and to courts board procedure. The functions of courts boards appear at section 5 of the 2003 Act.

Schedule 1 to the Act provides for the Lord Chancellor to appoint courts board members from among persons of specified descriptions, including a requirement that at least one member should be a judge. Regulation 3 places limitations as to numbers on the appointment of these members, and regulation 5 sets out the procedure to be followed in connection with appointments of members other than judge members. This includes a requirement to take into account the recommendations of an advisory panel, constituted under regulation 4, which in turn is required to consider the suitability of the candidates who have been identified for appointments in the light of considerations which the Lord Chancellor has indicated to be the most relevant. A different procedure applies in the case of the appointment of judge members; regulation 6 provides in this case for each appointment to be on the basis that the Lord Chief Justice has recommended the suitability of the person to be appointed.

Regulation 7 makes provision for the Lord Chancellor, in consultation in each case with an advisory panel, to select a member of each courts board to be its chairman.

Regulations 8, 9 and 10 make provision as to the tenure of office of chairmen and members of courts boards.

Regulation 11 makes provision about the procedure of courts boards (including quorum and voting), and regulation 12 provides for the validation of proceedings notwithstanding a vacancy in the membership or a defect in a member's appointment or a chairman's selection.

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