

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 12: The Judicial Appointments Commission

Part 1 The Commissioners

222. This part of Schedule 12 sets out the size and balance of membership of the Judicial Appointments Commission.

Paragraphs 1-6 The Commissioners

223. [Paragraph 1](#) requires there to be a chairman and 14 other Commissioners, to be appointed by The Queen on the recommendation of the Lord Chancellor.
224. [Paragraph 2](#) provides for the chairman to be a lay member. Of the other Commissioners, 5 must be judicial members, 2 must be professional members, 5 must be lay members, 1 other must be the holder of an office listed in Part 3 of Schedule 12 (which lists members of tribunals and other similar office holders who will be appointed by the Lord Chancellor), and 1 other must be a lay justice member. The judicial members must be made up of one Lord Justice of Appeal, one puisne judge of the High Court, one judge who is either a Lord Justice of Appeal or a puisne judge of the High Court, one Circuit Judge and one District Judge or a person appointed to an office under section 89 of the Supreme Court Act 1981 (i.e. the offices of Senior Master of the Queen's Bench Division, Chief Chancery Master, Chief Taxing Master, Chief Bankruptcy Registrar and Senior District Judge of the Family Division). The two professional members must be a practising barrister and a practising solicitor. A Commissioner only counts towards the total in the category to which he was appointed, so that a lay member, for example, does not become a professional member if he qualifies as a practitioner.
225. [Paragraph 3](#) specifies that a person cannot be appointed as a Commissioner if he is a civil servant. This is to ensure that the Commission is not subject to any covert or improper Governmental influence.
226. [Paragraph 4](#) details what is meant by judicial, professional, lay and lay justice member. A judicial member holds one of the offices specified in paragraph 2(3) (set out above) and is not a practising lawyer (defined in paragraph 6 as a practising solicitor or barrister in England and Wales, a solicitor or advocate in Scotland and a Solicitor or member of the Bar in Northern Ireland which includes those employed to give legal advice or providing legal advice under a contract for services). A professional member is a barrister or solicitor practising in England and Wales (again further defined in paragraph 6 to include employed lawyers and those who give legal advice under a contract for services). A lay member is an England and Wales resident who has never been a holder of a listed judicial office (by paragraph 6, an office listed in Schedule 14) or a practising lawyer.
227. [Paragraph 5](#) allows the Lord Chancellor to increase the size of the Commission, by increasing the size of any or all of the different categories of Commissioner. He can

do this by order, but only with the agreement of the Lord Chief Justice, and subject to affirmative resolution in both Houses of Parliament (by virtue of section 144(5) (e) of this Act). This is to prevent a Lord Chancellor seeking improperly to influence selections by altering the balance of the Commission in one direction or another at his own unchecked discretion.

228. **Paragraph 6** provides definitions of terms used in the Schedule.

Paragraph 7 Selection of Commissioners

229. **Paragraph 7** provides that in appointing the three senior judicial members of the Commission (the judges drawn from the Court of Appeal and the High Court) the Lord Chancellor may recommend to Her Majesty only people selected by the Judges' Council, which must give reasons for its selection. The Judges' Council is defined as the body designated for that purpose by the Lord Chief Justice. Other Commissioners will be appointed after being selected by a panel convened by the Lord Chancellor. Paragraph 7(2) provides the Lord Chancellor may only recommend people as the other 12 Commissioners if he has appointed a panel for the purposes of selection of Commissioners and they have been selected by that panel. Provision about the composition of the panel is made in paragraph 8.

Paragraph 8 Panels

230. **Paragraph 8** provides for a panel to select the Commissioners, with the exception of the three senior Judges. The panel will comprise four members, unless the appointment being made is that of the chairman of the Judicial Appointments Commission, when there will be no fourth member. The first member (who will be the chairman of the panel) is chosen by the Lord Chancellor with the agreement of the Lord Chief Justice (or if the post of Lord Chief Justice is vacant then with the agreement of the senior Head of Division). The second member will be the Lord Chief Justice or his nominee, unless the office of the Lord Chief Justice is vacant, when it will be the senior Head of Division or his nominee. The third member will be chosen by the chairman. The fourth member will be the chairman of the Judicial Appointments Commission, when there is one and that is not the post being appointed to. Members of the panel must not be civil servants. In addition the chairman of the panel must not be a Commissioner, a member of the Commission's staff, a practising lawyer, a judicial office holder listed in Schedule 14, or a member of the House of Commons. The third member must not be a member of the House of Commons. In selecting the first member, consideration must be given as to whether the person being appointed has previously exercised any judicial functions or has any past service as a civil servant, a Commissioner, a member of the Commission's staff, a practising lawyer, a judicial office holder listed in Schedule 14, or any past or present political activity or affiliations which would make them inappropriate for appointment. The first member must apply the same considerations in nominating the third member. These provisions are intended to ensure the neutrality of the panel, including its political neutrality.
231. **Paragraph 9** provides for the Lord Chancellor to pay the panel fees and expenses.

Paragraph 10 Selection by a panel

232. The panel must take account of any views expressed by the Bar Council and Law Society in appointing the barrister and solicitor members respectively. Before selecting the chairman and the other lay members, the panel must consider the same questions that apply in selecting the first and third members of the panel, in relation to whether they have exercised any functions or have any political affiliations which make them inappropriate for the appointment. Those functions are expressed in broadly the same terms as for the first member as set out above, but also include past employment in the civil service. In selecting lay members, the panel must seek to ensure, as far as practicable, that one of the selected lay members has special knowledge of Wales.

Paragraph 11 Vice-chairman

233. This paragraph provides that the senior judicial member of the Commission will be the vice-chairman. The vice-chairman will be able to exercise the functions of the chairman, other than those of sitting on the panel for selecting members of the Commission and sitting on the selection panels for Heads of Division and for Lords Justices of Appeal, for which, in the absence of the chairman, a lay Commissioner is required.

Paragraphs 12- 15 Term of office etc. of Commissioners

234. Paragraphs 12 to 15 provide for the term of office of the Commissioners. They will serve for two fixed terms of up to five years, meaning that their maximum period of service is 10 years. Commissioners cease to be Commissioners if they cease to qualify for the category of membership under which they were appointed. However, the Lord Chancellor may allow Commissioners to continue in office for a specified period even if they have ceased to fall within the category to which they were appointed. For example, if a member had particular skills or a background which was required for a particular competition that was being run by the Commission, then the Lord Chancellor might allow him to continue in office until the competition was over. Commissioners also lose office if they are appointed to the civil service, but they may not be continued in office where this is the case. If a Commissioner resigns he must do so in writing to The Queen. Commissioners can be removed from office by The Queen on the recommendation of the Lord Chancellor. Paragraph 15 (2) specifies the conditions in which the Lord Chancellor may recommend that a Commissioner be removed from office. They are that the person has failed to exercise their functions for a continuous period of six months; or they have been convicted of an offence; or they have been made bankrupt; or are otherwise unfit to hold office or unable to exercise its functions.

Paragraph 16 Salary, allowances and expenses

235. This paragraph makes provision for the Commission to pay fees, expenses, pensions and any other allowances in respect of Commissioners and former Commissioners. These payments will be determined by the Lord Chancellor.

Paragraph 17 Code of conduct

236. This paragraph provides for the Lord Chancellor to issue and revise a code of conduct to be observed by the Commissioners.