Constitutional Reform Act 2005

2005 CHAPTER 4

PART 3 U.K.

THE SUPREME COURT

Appointment of judges

25 Qualification for appointment U.K.

(1) A person is not qualified to be appointed a judge of the Supreme Court unless he has (at any time)—

(a) held high judicial office for a period of at least 2 years,

(b) been a qualifying practitioner for a period of at least 15 years.

[[F1](b) satisfied the judicial-appointment eligibility condition on a 15-year basis, or

(c) been a qualifying practitioner for a period of at least 15 years.**]**

(2) A person is a qualifying practitioner for the purposes of this section at any time when—

(a) [F2]. . . . . .

(b) he is an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary, or

(c) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

Textual Amendments

F1 S. 25(1)(b)(c) substituted (21.7.2008) for s. 25(1)(b) and preceding word by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50, 148, **Sch. 10 para. 41(2)**; S.I. 2008/1653, **art. 2(d)** (with arts. 3,4)

F2 S. 25(2)(a) omitted (21.7.2008) by virtue of and repealed (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50, 146, 148, Sch. 10 para. 41(3), **Sch. 23 Pt. 2**; S.I. 2008/1653, **art. 2(d)** (with arts. 3, 4); S.I. 2008/2696, **art. 5(j)** (with arts. 3, 4)

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26 Selection of members of the Court U.K.

(1) This section applies to a recommendation for an appointment to one of the following offices—

(a) judge of the Supreme Court;

(b) President of the Court;

(c) Deputy President of the Court.

(2) A recommendation may be made only by the Prime Minister.

(3) The Prime Minister—

(a) must recommend any person **[**[F3]who is selected as a result of the convening of a selection commission under this section**]**;

(b) may not recommend any other person.

[[F4](4) Where a person who is not a judge of the Court is recommended for appointment as President or Deputy President, the recommendation must also recommend the person for appointment as a judge.**]**

(5) If there is a vacancy in **[**[F5]the office of President of the Court or in the office of Deputy President of the Court,**]** or it appears to him that there will soon be such a vacancy, the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.

[[F6](5A) If—

(a) the full-time equivalent number of judges of the Court is less than the maximum specified in section 23(2), or it appears to the Lord Chancellor that the full-time equivalent number of judges of the Court will soon be less than that maximum, and

(b) the Lord Chancellor, or the senior judge of the Court, after consulting the other considers it desirable that a recommendation be made for an appointment to the office of judge of the Court,

the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.

(5B) In subsection (5A)(b) "the senior judge of the Court" means—

(a) the President of the Court, or

(b) if there is no President, the Deputy President, or

(c) if there is no President and no Deputy President, the senior ordinary judge.**]**

(6) Schedule 8 is about selection commissions.

[[F7](7) Subsections (5) and (5A) are subject to Schedule 8 (cases where duty to convene a selection commission are suspended).

(7A) For the purposes of this section and Schedule 8, a person is selected as a result of the convening of a selection commission if the person's selection is the final outcome of—

(a) the selection process mentioned in section 27(1) being applied by the commission, and

(b) any process provided for by regulations under section 27A being applied in the particular case.**]**

(8) **[**[F8]Section 27 applies**]** where a selection commission is convened under this section.

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Textual Amendments

F3 Words in s. 26(3)(a) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(2)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F4 S. 26(4) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(3)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F5 Words in s. 26(5) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 3(2)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F6 S. 26(5A)(5B) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 3(3)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F7 S. 26(7)(7A) substituted for s. 26(7) (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(4)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F8 Words in s. 26(8) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(5)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

27 Selection process U.K.

(1) The commission must—

(a) determine the selection process to be applied **[**[F9]by it**]**,

(b) apply the selection process, and

(c) make a selection accordingly.

[[F10](1A) The commission must have an odd number of members not less than five.

(1B) The members of the commission must include—

(a) at least one who is non-legally-qualified,

(b) at least one judge of the Court,

(c) at least one member of the Judicial Appointments Commission,

(d) at least one member of the Judicial Appointments Board for Scotland, and

(e) at least one member of the Northern Ireland Judicial Appointments Commission,

and more than one of the requirements may be met by the same person's membership of the commission.

(1C) If the commission is convened for the selection of a person to be recommended for appointment as President of the Court—

(a) its members may not include the President of the Court, and

(b) it is to be chaired by one of its non-legally-qualified members.

(1D) If the commission is convened for the selection of a person to be recommended for appointment as Deputy President of the Court, its members may not include the Deputy President of the Court.**]**

[F11](2) . . . . . .

[F11](3) . . . . . .

(4) Subsections (5) to (10) apply to any selection under this section or **[**[F12]regulations under section 27A**]**.

(5) Selection must be on merit.

[[F13](5A) Where two persons are of equal merit—

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(a) section 159 of the Equality Act 2010 (positive action: recruitment etc) does not apply in relation to choosing between them, but

(b) Part 5 of that Act (public appointments etc) does not prevent the commission from preferring one of them over the other for the purpose of increasing diversity within the group of persons who are the judges of the Court.**]**

(6) A person may be selected only if he meets the requirements of section 25.

(7) A person may not be selected if he is a member of the commission.

(8) In making selections for the appointment of judges of the Court the commission must ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom.

(9) The commission must have regard to any guidance given by the Lord Chancellor as to matters to be taken into account (subject to any other provision of this Act) in making a selection.

(10) Any selection must be of one person only.

[[F14](11) For the purposes of this section a person is non-legally-qualified if the person—

(a) does not hold, and has never held, any of the offices listed in Schedule 1 to the House of Commons Disqualification Act 1975 (judicial offices disqualifying for membership of the House of Commons), and

(b) is not practising or employed as a lawyer, and never has practised or been employed as a lawyer.**]**

Textual Amendments

F9 Words in s. 27(1)(a) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(6)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F10 S. 27(1A)-(1D) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 4(1)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F11 S. 27(2)(3) omitted (1.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(1)(a)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23);

F12 Words in s. 27(4) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(7)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F13 S. 27(5A) inserted (15.7.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 9**; S.I. 2013/1725, art. 2(g)

F14 S. 27(11) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 4(2)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

[[F15]**27A Regulations about selection process** U.K.

(1) The Lord Chancellor must by regulations made with the agreement of the senior judge of the Supreme Court—

(a) make further provision about membership of selection commissions convened under section 26,

(b) make further provision about the process that is to be applied in any case where a selection commission is required to be convened under section 26, and

(c) secure that, in every such case, there will come a point in the process when a selection has to be accepted, either unconditionally or subject only to matters

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such as the selected person's willingness and availability, by or on behalf of the Lord Chancellor.

(2) The regulations may in particular—

(a) provide for process additional to the selection process applied by a selection commission under section 27(1), including post-acceptance process;

(b) make provision as to things that are, or as to things that are not, to be done by a selection commission—

(i) as part of the selection process applied by it under section 27(1), or

(ii) in determining what that process is to be;

(c) provide for the Lord Chancellor to be entitled to require a selection commission to reconsider a selection under section 27(1) or any subsequent selection;

(d) provide for the Lord Chancellor to be entitled to reject a selection under section 27(1) or any subsequent selection;

(e) give other functions to the Lord Chancellor;

(f) provide for particular action to be taken by a selection commission after it has complied with section 27;

(g) provide for the dissolution of a selection commission;

(h) provide for section 16(2)(a) or (b) not to apply in relation to functions of the Lord Chief Justice—

(i) as a member of a selection commission (including functions of chairing a selection commission), or

(ii) in relation to the nomination or appointment of members of a selection commission;

(i) provide for a person to cease to be a member of a selection commission where a requirement about the commission's members ceases to be met by the person's membership of the commission;

(j) provide for a person to become a member of a selection commission already convened where another person ceases to be a member of the commission or where a requirement about the commission's members ceases to be met by another person's membership of the commission;

(k) provide for payment to a member of a selection commission of amounts by way of allowances or expenses;

(l) make provision as to what amounts to practice or employment as a lawyer for the purposes of section 27(11)(b).

(3) Before making regulations under this section the Lord Chancellor must consult—

(a) the First Minister in Scotland,

(b) the Northern Ireland Judicial Appointments Commission,

(c) the First Minister for Wales,

(d) the Lord President of the Court of Session,

(e) the Lord Chief Justice of Northern Ireland, and

(f) the Lord Chief Justice of England and Wales.

(4) Regulations under this section—

(a) may make different provision for different purposes;

(b) may make transitory, transitional or saving provision.

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(5) In this section "the senior judge", in relation to the Court, has the meaning given by section 26(5B).**]**

Textual Amendments

F15 S. 27A inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 5**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

[F16 27B Selection guidance: supplementary U.K.

(1) Before issuing any selection guidance the Lord Chancellor must—

(a) consult the senior judge of the Supreme Court;

(b) after doing so, lay a draft of the proposed guidance before each House of Parliament.

(2) If the draft is approved by a resolution of each House of Parliament within the 40-day period the Lord Chancellor must issue the guidance in the form of the draft.

(3) In any other case the Lord Chancellor must take no further steps in relation to the proposed guidance.

(4) Subsection (3) does not prevent a new draft of the proposed guidance from being laid before each House of Parliament after consultation with the senior judge of the Court.

(5) Selection guidance comes into force on such date as the Lord Chancellor may appoint by order.

(6) Where selection guidance is in force, the Lord Chancellor may revoke the guidance only by—

(a) new selection guidance issued in accordance with the previous provisions of this section, or

(b) an order made after consulting the senior judge of the Court.

(7) In this section—

"40-day period" in relation to the draft of any proposed selection guidance means—

(a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later day, and

(b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days;

"the senior judge", in relation to the Court, has the meaning given by section 26(5B);

"selection guidance" means guidance mentioned in section 27(9).**]**

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Textual Amendments

F16 S. 27B inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 6**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F17 28 Report U.K.

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Textual Amendments

F17 Ss. 28-31 omitted (1.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(1)(b)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F17 29 The Lord Chancellor's options U.K.

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Textual Amendments

F17 Ss. 28-31 omitted (1.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(1)(b)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F17 30 Exercise of powers to reject or require reconsideration U.K.

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Textual Amendments

F17 Ss. 28-31 omitted (1.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(1)(b)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

F17 31 Selection following rejection or requirement to reconsider U.K.

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Textual Amendments

F17 Ss. 28-31 omitted (1.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 7(1)(b)**; S.I. 2013/2200, art. 3(d) (with savings in S.I. 2013/2193, reg. 23)

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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. 132(4A) words substituted by 2015 c. 2 s. 83(1)
- Sch. 7 para. 4Pt. A words inserted by 2007 c. 15 s. 144(2)
- Sch. 7 para. 4Pt. A words inserted by 2007 c. 15 s. 144(3)
- Sch. 7 para. 4Pt. A words inserted by 2007 c. 15 s. 144(4)
- Sch. 7 para. 4Pt. A words inserted by 2007 c. 15 s. 144(6)
- Sch. 7 para. 4Pt. A words inserted by 2007 c. 15 s. 144(8)
- Sch. 7 para. 4Pt. A words inserted by 2007 c. 15 s. 144(9)
- Sch. 7 para. 4Pt. A words inserted by 2007 c. 15 s. 144(10)(a)
- Sch. 7 para. 4Pt. A words substituted by 2007 c. 15 s. 144(10)(b)