
STATUTORY INSTRUMENTS

2013 No. 2192

The Judicial Appointments Regulations 2013

PART 6

Selection of puisne judges and other office holders

Scope

29. This Part applies to—

- (a) a recommendation for an appointment to the office of puisne judge of the High Court;
- (b) a recommendation for an appointment to an office listed in Part 1 of Schedule 14(1) in exercise of Her Majesty's function under the enactment listed opposite that office;
- (c) an appointment to an office listed in Table 1 of Part 2 or 3 of that Schedule in exercise of the Lord Chancellor's function under the enactment listed opposite that office;
- (d) an appointment to an office listed in Table 2 of Part 2 of that Schedule in exercise of the Lord Chief Justice's function under the enactment listed opposite that office;
- (e) an appointment to an office listed in Table 2 of Part 3 of that Schedule in exercise of the function of the Senior President of Tribunals under the enactment listed opposite that office.

Consultation

30.—(1) As part of the selection process under section 88(2) the Commission must, unless paragraph (4) applies, consult—

- (a) where the selection relates to the office of puisne judge of the High Court, the Lord Chief Justice;
- (b) in all other cases, a person (other than the Lord Chief Justice or Senior President of Tribunals where he or she is the appropriate authority) who has held the office for which a selection is to be made or has other relevant experience.

(2) The Commission may consult another person (apart from the appropriate authority) who has held the office for which selection is to be made or has other relevant experience with the agreement of the persons mentioned in paragraph (3).

(3) The persons referred to in paragraph (2) are—

- (a) where the appropriate authority is the Senior President of Tribunals, the Senior President of Tribunals and the chairman of the Commission;
- (b) in all other cases, the Lord Chief Justice and the chairman of the Commission.

(4) Paragraph (1) does not apply where—

(1) 2005 c.4; Part 1 of Schedule 14 was amended by the Crime and Courts Act 2013(c.22), Schedule 13, paragraph 29; there are other amendments to Part 1 of Schedule 14 but none is relevant.

(2) Section 88 is amended by paragraph 67 of Schedule 13 to the Crime and Courts Act 2013.

- (a) the Lord Chief Justice is the appropriate authority and agrees with the chairman of the Commission that consultation is not required;
 - (b) the Senior President of Tribunals is the appropriate authority and agrees with the chairman of the Commission that consultation is not required;
 - (c) the Lord Chancellor is the appropriate authority and agrees with the chairman of the Commission and the Lord Chief Justice that consultation is not required.
- (5) Where the selection process relates to the appointment (or a recommendation for the appointment) of a person to exercise functions wholly or mainly in Scotland, the Commission must consult the Lord President of the Court of Session unless the Lord President, the appropriate authority and the chairman of the Commission agree that consultation is not required.
- (6) Where the selection process relates to the appointment (or a recommendation for the appointment) of a person to exercise functions wholly or mainly in Northern Ireland, the Commission must consult the Lord Chief Justice of Northern Ireland unless the Lord Chief Justice of Northern Ireland, the appropriate authority and the chairman of the Commission agree that consultation is not required.

Report

31.—(1) After complying with section 88 the Commission must submit a report to the appropriate authority.

- (2) The report must—
 - (a) describe the selection process;
 - (b) state the selection made;
 - (c) state any recommendation made in consultation under regulation 30 by a person consulted;
 - (d) give reasons in any case where the Commission has not followed such a recommendation;
 - (e) contain any other information required by the appropriate authority.
- (3) The report must be in a form approved by the appropriate authority.
- (4) After submitting the report the Commission must provide any further information the appropriate authority may require.

The appropriate authority's options

32.—(1) Before exercising the powers under this regulation at any stage in relation to a selection for an appointment or recommendation the appropriate authority must—

- (a) consult any person whom the appropriate authority is required by any enactment to consult before the appointment or recommendation is made;
 - (b) consult the Scottish Ministers if it appears to the appropriate authority to be an appointment or recommendation for the appointment, of a person to exercise functions wholly or mainly in Scotland.
- (2) This regulation refers to the following stages—
- (a) Stage 1 – where a person has been selected under section 88(1).
 - (b) Stage 2 – where a person has been selected following a rejection or reconsideration at stage 1.
 - (c) Stage 3 – where a person has been selected following a rejection or reconsideration at stage 2.
- (3) At stage 1 the appropriate authority must do one of the following—

- (a) accept the selection;
 - (b) reject the selection; or
 - (c) require the Commission to reconsider the selection.
- (4) At stage 2 the appropriate authority must do one of the following—
- (a) accept the selection;
 - (b) reject the selection, but only if it was made following a reconsideration at stage 1; or
 - (c) require the Commission to reconsider the selection, but only if it was made following a rejection at stage 1.
- (5) At stage 3 the appropriate authority must accept the selection unless paragraph (6) applies and the appropriate authority accepts a selection under it.
- (6) If a person whose selection the appropriate authority required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the appropriate authority may, at stage 3, accept the selection made at that earlier stage.

Exercise of powers to reject or require reconsideration

33.—(1) The appropriate authority’s power under regulation 32 to reject a selection at stage 1 or 2 is exercisable only on the ground that, in the appropriate authority’s opinion, the person selected is not suitable for the office concerned.

(2) The appropriate authority’s power under regulation 32 to require the Commission to reconsider a selection at stage 1 or 2 is exercisable only on the ground that, in the appropriate authority’s opinion—

- (a) there is not enough evidence that the person is suitable for the office concerned; or
- (b) there is evidence that the person is not the best candidate on merit.

(3) The appropriate authority must give the Commission reasons in writing for rejecting or requiring reconsideration of a selection.

Selection following rejection or requirement to reconsider

34.—(1) If under regulation 32 the appropriate authority rejects or requires reconsideration of a selection at stage 1 or 2, the Commission must select a person in accordance with this regulation.

(2) If the appropriate authority rejects a selection, the Commission—

- (a) may not select the person rejected; and
- (b) where the rejection is following a requirement to reconsider, may not select the person (if different) whose selection is reconsidered.

(3) If the appropriate authority requires selection to be reconsidered, the Commission—

- (a) may select the same person or a different person; but
- (b) where the requirement to reconsider follows a rejection, may not select the person rejected.

(4) The Commission must inform the appropriate authority of any person selected following a rejection or a requirement to reconsider.

(5) Paragraphs (2) and (3) do not prevent a person being selected on a subsequent request under section 87(3).

Reconsideration of decision not to select

35.—(1) This regulation applies where the Commission decides that the selection process has not identified a candidate of sufficient merit for it to make a selection.

(2) The appropriate authority may require the Commission to reconsider such a decision.

(3) The Commission must inform the appropriate authority of any person selected on reconsideration under this regulation.

(4) Regulations 32 to 34 apply to a selection under paragraph (2).

Duty to identify persons for future requests

36.—(1) Where section 94(1)(4) applies, the Commission must, when seeking to identify persons, in particular have regard to—

(a) the number of recommendations and appointments for which the Lord Chancellor expects to request selections;

(b) the power of the appropriate authority to reject or require reconsideration of a selection.

(2) Where the Lord Chancellor gives the Commission a notice as part of the process of identifying persons under section 94(1), the Commission must consult a person or persons other than the appropriate authority, with experience in the office or offices to which a request specified in the notice under section 94(1) relates, or with other relevant experience.

(3) Paragraph (2) does not apply where the chairman of the Commission and the appropriate authority agree that consultation is not required.

(4) The Commission must submit a report to the Lord Chancellor and the appropriate authority (where the appropriate authority is not the Lord Chancellor) containing any information which it considers appropriate about —

(a) the extent to which it has identified suitable persons; and

(b) other matters likely to assist the appropriate authority in exercising their functions relating to appointments and recommendations.

(5) A report under paragraph (4) must—

(a) state any recommendation made in consultation under paragraph (2) by a person consulted;

(b) give reasons in any case where the Commission has not followed such a recommendation.

(6) Where the Lord Chancellor makes a request for the purposes of which the Commission has identified persons under section 94(1), the Commission must, in determining the selection process to be applied, consider whether selection should be among those persons.