

*Draft laid before Parliament under section 144(4) and (5)(e) of the Constitutional Reform Act 2005
for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2013 No.

JUDICIAL APPOINTMENTS AND DISCIPLINE

The Judicial Appointments Commission Regulations 2013

Made - - - - *****
Coming into force - - *in accordance with*
regulation 1

The Lord Chancellor, makes the following Regulations in exercise of the powers conferred by paragraphs 1(b), 3B, 3C, 6A, 11(2), 13, 14 and 17A of Schedule 12 to the Constitutional Reform Act 2005(1).

The Lord Chief Justice agrees to the making of these Regulations in accordance with paragraphs 1(b), 3B, 3C, 6A, 11(2), 13 and 14 of Schedule 12 to the Constitutional Reform Act 2005.

A draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 144(4) and (5)(e) of the Constitutional Reform Act 2005(2).

Citation and commencement

1. These Regulations may be cited as the Judicial Appointments Commission Regulations 2013 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

“the 2005 Act” means the Constitutional Reform Act 2005;

“holder of judicial office” has the meaning given by regulation 7;

“lay member” has the meaning given by regulation 8;

“non-legally qualified judicial member” has the meaning given by regulation 6;

“non-legally qualified person” has the same meaning as in section 27(11) of the 2005 Act(3);

“senior tribunal office-holder member” has the meaning given by regulation 5.

(1) 2005 c.4; Schedule 12 was amended by the Crime and Courts Act 2013 (c.22), Schedule 13, paragraphs 17, 18, 19, 20, 21, 23 and 24; and by the Tribunals, Courts and Enforcement Act 2007 (c.19), Schedule 8, paragraphs 62 and 65.
(2) 2005 c.4; section 144 was amended by the Crime and Courts Act 2013 (c.22), Schedule 13, paragraph 27.
(3) 2005 c.4; section 27 was amended by the Crime and Courts Act 2013 (c.22), Schedule 13, paragraph 4(2).

Number of Commissioners

3. There are 15 Commissioners including the chairman.

Composition of the Commission

- 4.—(1) Of the 14 other Commissioners—
- (a) 7 must be holders of judicial office,
 - (b) 5 must be lay members, and
 - (c) 2 must be persons practising or employed as lawyers.
- (2) Of the 7 Commissioners who are appointed as holders of judicial office—
- (a) 1 must be a Lord Justice of Appeal;
 - (b) 1 must be a puisne judge of the High Court;
 - (c) 1 must be a senior tribunal office-holder member;
 - (d) 1 must be a circuit judge;
 - (e) 1 must be a district judge of a county court, a District Judge (Magistrates' Courts) or a person appointed to an office under section 89 of the Senior Courts Act 1981(4);
 - (f) 1 must be a holder of an office listed in paragraph (3);
 - (g) 1 must be a non-legally qualified judicial member.
- (3) The offices referred to in paragraph (2)(f) are—
- (a) judge of the First-tier Tribunal appointed under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007(5);
 - (b) transferred-in judge of the First-tier Tribunal (see section 31(2) of that Act(6));
 - (c) Regional Employment Judge appointed under regulation 6(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(7);
 - (d) Employment Judge (England and Wales) appointed under regulation 8(1) and (3)(a) of those Regulations(8).
- (4) Of the 2 Commissioners appointed who are persons practising or employed as lawyers—
- (a) each person must hold a qualification listed in paragraph (5),
 - (b) but they must not hold the same qualification as each other.
- (5) The qualifications referred to in paragraph (4) are—
- (a) barrister in England and Wales;
 - (b) solicitor of the Senior Courts of England and Wales;
 - (c) fellow of the Chartered Institute of Legal Executives.

Senior tribunal office-holder member

5. A senior tribunal office-holder member is a person who holds one of the following offices—

(4) 1981 c.54; section 89 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 3, paragraph 3 and by Schedule 11, paragraph 26.
(5) 2007 c.15.
(6) 2007 c.15.
(7) S.I. 2004/1861, amended by S.I. 2008/2683.
(8) S.I. 2004/1861, amended by S.I. 2008/2683 and 2008/3240.

- (a) judge of the Upper Tribunal appointed under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007⁽⁹⁾;
- (b) transferred-in judge of the Upper Tribunal (see section 31(2) of that Act)⁽¹⁰⁾;
- (c) Chamber President of a chamber of the First-tier Tribunal, or of a chamber of the Upper Tribunal, by appointment under section 7(7) of that Act (but not where appointed in accordance with paragraph 2(2) to (5) of Schedule 4 to that Act)⁽¹¹⁾;
- (d) President of Employment Tribunals (England and Wales) appointed under regulation 4(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004⁽¹²⁾;
- (e) President of Employment Tribunals (Scotland) appointed under regulation 4(2) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004⁽¹³⁾.

Non-legally qualified judicial member

- 6.—(1) A non-legally qualified judicial member is a person who—
- (a) holds an office referred to in paragraph (2); and
 - (b) has never practised or been employed as a lawyer.
- (2) The offices referred to in paragraph (1)(a) are—
- (a) an office listed in Part 3 of Schedule 14 to the 2005 Act (Tribunal-related and other appointments);
 - (b) justice of the peace;
 - (c) transferred-in other member of the First-tier Tribunal or of the Upper Tribunal (see section 31(2) of the Tribunals, Courts and Enforcement Act 2007);
 - (d) member of the Employment Appeal Tribunal appointed under section 22(1)(c) of the Employment Tribunals Act 1996⁽¹⁴⁾;
 - (e) member of a panel appointed under regulation 8(1) and (3)(b) and (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004⁽¹⁵⁾.

Holder of judicial office

7.—(1) Subject to paragraph (2), a holder of judicial office is a person who holds an office listed in regulation 4(2) and does not include a person who is appointed as a Commissioner as a person who is practising or employed as a lawyer.

(2) For the purposes of sub-paragraph (5) of paragraph 20 (Committees of the Judicial Appointments Commission) of Schedule 12 to the 2005 Act⁽¹⁶⁾, a holder of judicial office is a person who holds an office listed in regulation 4(2)(a) to (f) of these Regulations.

Lay member

8. For the purposes of Part 1 of Schedule 12 to the 2005 Act and sub-paragraph (5) of paragraph 20 (Committees of the Judicial Appointments Commission) of Schedule 12 to the 2005 Act, a lay member is a person who lives in England or Wales who has never—

(9) 2007 c.15.

(10) 2007 c.15.

(11) 2007 c.15.

(12) S.I. 2004/1861, amended by S.I. 2008/2683.

(13) S.I. 2004/1861, amended by S.I. 2008/2683.

(14) 1996 c.17; section 22 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraphs 245 and 246.

(15) S.I. 2004/1861, amended by S.I. 2008/2771 and 2008/3240.

(16) 2005 c.4; paragraph 20 of Schedule 12 was amended by the Crime and Courts Act 2013 (c.22), Schedule 13, paragraph 25.

- (a) held an office listed in Schedule 14 to the 2005 Act,
- (b) been a member of a panel appointed under regulation 8(1) and (3)(b) and (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004⁽¹⁷⁾, or
- (c) practised or been employed as a lawyer.

Selection of Commissioners by a panel

9.—(1) This regulation applies to the selection of a person as the chairman of the Commission and any other Commissioner except a Commissioner who is a Lord Justice of Appeal, a puisne judge of the High Court or a senior tribunal office-holder member.

- (2) The Lord Chancellor may recommend a person for appointment as a Commissioner only if—
 - (a) the Lord Chancellor has requested a panel appointed by him or her to select a person or (as the panel may determine) more than one person for the purposes of such a recommendation, and
 - (b) the person the Lord Chancellor recommends is the person or one of the persons selected.
- (3) The Lord Chancellor may appoint different panels for the purposes of different requests.

Selection of Commissioners by the Judges' Council

10.—(1) This regulation applies to the selection of a person for appointment as a Commissioner who is a Lord Justice of Appeal or a puisne judge of the High Court.

- (2) The Lord Chancellor may recommend a person for appointment as a Commissioner only if—
 - (a) the Lord Chancellor has requested the Judges' Council to select a person to be appointed;
 - (b) the person has been selected by the Judges' Council in accordance with that request; and
 - (c) the selection by the Judges' Council has been notified to the Lord Chancellor in a report which gives reasons for the selection.
- (3) The Lord Chancellor must recommend for appointment the person selected by the Judges' Council.
- (4) In this regulation the Judges' Council means a body designated for the purposes of these Regulations by the Lord Chief Justice.

Selection of Commissioners by the Tribunals' Council

11.—(1) This regulation applies to the selection of a senior tribunal office-holder member as a Commissioner.

- (2) The Lord Chancellor may recommend such a person for appointment as a Commissioner only if—
 - (a) the Senior President of Tribunals has requested the Tribunal Judges' Council to select a person to be appointed;
 - (b) the person has been selected by the Tribunal Judges' Council in accordance with that request; and
 - (c) the selection by the Tribunal Judges' Council has been notified to the Lord Chancellor in a report which gives reasons for the selection.
- (3) The Lord Chancellor must recommend for appointment the person selected by the Tribunal Judges' Council.

⁽¹⁷⁾ S.I. 2004/1861, amended by S.I. 2008/2771 and 2008/3240.

(4) In this regulation the Tribunal Judges' Council means a body designated for the purposes of these Regulations by the Senior President of Tribunals.

Requests

- 12.**—(1) This regulation applies to a request to select a person under regulation 9, 10 or 11.
- (2) A request must specify the provision for the purposes of which the appointment is to be made.
- (3) A request may specify the time within which a person is to be selected.

Panels

13.—(1) A panel appointed under regulation 9(2) must have four members (subject to paragraph (9)).

(2) Where the selection is for a person within regulation 4(2)(f), the first member must be a person selected by the Lord Chancellor with the agreement of the Senior President of Tribunals.

(3) Where the selection is for a non-legally qualified judicial member, the first member must be a person selected by the Lord Chancellor with the agreement of the Lord Chief Justice (or, if the office of Lord Chief Justice is vacant, with the agreement of the senior Head of Division) and the Senior President of Tribunals.

(4) Where the selection is for any other Commissioner, the first member must be a person selected by the Lord Chancellor with the agreement of the Lord Chief Justice (or, if the office of Lord Chief Justice is vacant, with the agreement of the senior Head of Division).

(5) The first member is to be chairman of the panel.

(6) The second member must be the Lord Chief Justice or a nominee of the Lord Chief Justice, unless the office of Lord Chief Justice is vacant.

(7) If that office is vacant, the second member must be the senior Head of Division or a nominee of the Senior Head of Division.

(8) The third member must be a person nominated by the first member.

(9) The chairman of the Commission is the fourth member of the panel unless his or her office is vacant or it is the office for which a recommendation is to be made.

(10) A person must not be a member of the panel if that person is employed in the civil service of the State.

(11) A person must not be the first member if he or she is one of the following—

- (a) a Commissioner;
- (b) a member of the staff of the Commission;
- (c) a practising or employed—
 - (i) barrister in England and Wales;
 - (ii) solicitor of the Senior Courts of England and Wales;
 - (iii) fellow of the Chartered Institute of Legal Executives;
 - (iv) advocate in Scotland;
 - (v) solicitor in Scotland;
 - (vi) member of the Bar of Northern Ireland;
 - (vii) solicitor of the Court of Judicature of Northern Ireland;
- (d) the holder of an office listed in Schedule 14 to the 2005 Act;
- (e) a member of the House of Commons.

(12) A person must not be the third member if that person is a member of the House of Commons.

(13) The Lord Chancellor, before selecting a person to be appointed as the first member, and the Lord Chief Justice or the Senior President of Tribunals, before agreeing to the selection, must consider these questions—

- (a) whether the person has exercised functions that appear to be of a judicial nature and such as to make the person inappropriate for the appointment;
- (b) whether any past service in a capacity listed in paragraph (10) or (11) appears to make the person inappropriate for the appointment;
- (c) whether the extent of any present or past party political activity or affiliations appears to make the person inappropriate for the appointment.

(14) The first member must consider the same questions before nominating a person to be appointed as the third member.

(15) In this regulation “senior Head of Division” means—

- (a) the Master of the Rolls,
- (b) if that office is vacant, the President of the Queen’s Bench Division;
- (c) if both those offices are vacant, the President of the Family Division;
- (d) if all of those offices are vacant, the Chancellor of the High Court.

Remuneration

14. The Lord Chancellor may pay to a member of a panel appointed under regulation 9(2) such remuneration, fees or expenses as he or she may determine.

Considerations by a selection panel

15.—(1) This regulation applies to selection by a panel appointed under regulation 9(2).

(2) Before selecting a person for the purpose of regulation 4(1)(c) the panel must consult—

- (a) the General Council of the Bar where the person is qualified as a barrister in England and Wales;
- (b) the Law Society where the person is qualified as a solicitor of the Senior Courts of England and Wales;
- (c) the Chartered Institute of Legal Executives where the person is qualified as a fellow of the Chartered Institute of Legal Executives.

(3) Before selecting a person for appointment as the chairman or one of the other lay members, the panel must consider—

- (a) whether the person has exercised functions that appear to the panel to be of a judicial nature and such as to make the person inappropriate for the appointment;
- (b) whether any past service in a capacity listed in regulation 13(11)(a), (b) or (e) or as a person employed in the civil service of the State appears to the panel to make the person inappropriate for the appointment;
- (c) whether the extent of any present or past party political activity or affiliations appears to the panel to make the person inappropriate for the appointment.

(4) The panel must select persons for appointment as lay members (including the chairman) with a view to securing, so far as practicable, that the persons so appointed include at any time at least one who appears to the panel to have special knowledge of Wales.

Vice-chairman

16. For the purposes of sub-paragraph (1) of paragraph 11 (Vice-chairman) of Schedule 12 to the 2005 Act **(18)** seniority is by office held at the time (first Lord Justice of Appeal, then puisne judge, then the offices mentioned in regulation 5, then circuit judge, then the offices mentioned in regulation 4(2)(e), then the offices mentioned in regulation 4(3) and then the offices mentioned in regulation 6(2) but only where the office-holder has never practised or been employed as a lawyer).

Term of office of Commissioners

17. A person—

- (a) may not be appointed as a Commissioner for more than 5 years at a time, and
- (b) may not hold office as a Commissioner for periods (whether or not consecutive) totalling more than 10 years.

Cessation of office

18.—(1) A Commissioner—

- (a) in the case of the chairman, ceases to be a Commissioner (and chairman) on ceasing to be a lay member;
- (b) in the case of a holder of judicial office, ceases to be a Commissioner on ceasing to fall within the sub-paragraph of paragraph (2) of regulation 4 for the purpose of which he or she was appointed.
- (c) in the case of a Commissioner who is practising or employed as a lawyer, ceases to be a Commissioner on ceasing to practice or be employed as a lawyer or on ceasing to fall within paragraphs (4) and (5) of regulation 4 for the purpose of which he or she was appointed;
- (d) in the case of a lay member, ceases to be a Commissioner on ceasing to be a lay member.

(2) But if (before or after an event within paragraph (1)) the Lord Chancellor directs in a particular case that that paragraph is to be disregarded for a period specified in the direction, the person continues to be a Commissioner until the end of that period, subject to the terms of his or her appointment.

Transitional provision

19.—(1) Each Commissioner (including the chairman) holding office as at the commencement of these Regulations is to continue to hold their office until they complete their term of office as a Commissioner to which they were appointed or where they cease to be a Commissioner for any other reason.

(2) Regulation 4 does not apply until all the Commissioners referred to in paragraph (1) have completed their term of office as a Commissioner or they have ceased to be a Commissioner for any other reason.

(3) Paragraph (4) applies where—

- (a) immediately before the commencement of Part 3 of Schedule 13 to the Crime and Courts Act 2013 **(19)** there are two members of the Commission who are Lord Justices of Appeal and one member who is a puisne judge of the High Court; and

(18) 2005 c.4; paragraph 11 of Schedule 12 was amended by the Crime and Courts Act 2013 (c.22), Schedule 13, paragraph 21.
(19) 2013 c.22.

- (b) a vacancy in the membership of the Commission arises following the commencement of Part 3 of Schedule 13 to the Crime and Courts Act 2013 when one of those Commissioners completes their term of office as a Commissioner or where they cease to be a Commissioner for any other reason.
- (4) In those circumstances—
- (a) when the first vacancy arises in relation to the Commissioners who are Lords Justice of Appeal that vacancy must be filled by a Lord Justice of Appeal as described in regulation 4(2)(a) of these Regulations;
 - (b) when the second vacancy arises in relation to the Commissioners who are Lords Justice of Appeal that vacancy must be filled by a senior tribunal office-holder member as described in regulation 4(2)(c) of these Regulations; and
 - (c) when the vacancy arises in relation to the Commissioner who is a puisne judge of the High Court that vacancy must be filled by a puisne judge of the High Court as described in regulation 4(2)(b) of these Regulations.
- (5) Paragraph (5) applies where—
- (a) immediately before the commencement of Part 3 of Schedule 13 to the Crime and Courts Act 2013(20) there are two members of the Commission who are puisne judges of the High Court and one member who is a Lord Justice of Appeal; and
 - (b) a vacancy in the membership of the Commission arises following the commencement of Part 3 of Schedule 13 to the Crime and Courts Act 2013 when one of those Commissioners completes their term of office as a Commissioner or where they cease to be a Commissioner for any other reason.
- (6) In those circumstances—
- (a) when the first vacancy arises in relation to the Commissioners who are puisne judges of the High Court that vacancy must be filled by a puisne judge of the High Court as described in regulation 4(2)(b) of these Regulations;
 - (b) when the second vacancy arises in relation to the Commissioners who are puisne judges of the High Court that vacancy must be filled by a senior tribunal office-holder member as described in regulation 4(2)(c) of these Regulations; and
 - (c) when the vacancy arises in relation to the Commissioner who is a Lord Justice of Appeal that vacancy must be filled by a Lord Justice of Appeal as described in regulation 4(2)(a) of these Regulations.
- (7) Paragraph (8) applies to a vacancy in the membership of the Commission arising when one of the other Commissioners referred to in paragraph (1) completes their term of office as a Commissioner or where they cease to be a Commissioner for any other reason.
- (8) A vacancy as a Commissioner described in an entry in the first column of the Schedule to these Regulations must be filled by a person who qualifies as a Commissioner described in the corresponding entry in the second column of the Schedule.
- (9) The descriptions of the type of Commissioners referred to in the first column of the Schedule to these Regulations are the descriptions referred to in Schedule 12 to the 2005 Act as it was in force immediately before the commencement of Part 3 of Schedule 13 to the Crime and Courts Act 2013.

Date

Lord Chancellor

I agree

Lord Chief Justice

SCHEDULE

Regulation 19(8)

Transitional provision

<i>Commissioner vacancy</i>	<i>new Commissioner</i>
1. The Chairman appointed under paragraph 1(a) of Schedule 12 to the 2005 Act	The Chairman appointed under paragraph 1(a) of Schedule 12 to the 2005 Act;
2. A circuit judge as described in paragraph 2(3)(d) of Schedule 12 to the 2005 Act	A circuit judge as described in regulation 4(2)(d) of these Regulations;
3. A district judge of a county court, a District Judge (Magistrates' Courts) or a person appointed to an office under section 89 of the Senior Courts Act 1981 ⁽²¹⁾ as described in paragraph 2(3)(e) of Schedule 12 to the 2005 Act	A district judge of a county court, a District Judge (Magistrates' Courts) or a person appointed to an office under section 89 of the Senior Courts Act 1981 as described in regulation 4(2)(e) of these Regulations;
4. A holder of an office referred to in paragraphs 2(2)(d) or 2(2A) of Schedule 12 to the 2005 Act	A holder of an office listed in regulation 4(3) of these Regulations;
5. A lay justice member as described in paragraph 2(2)(e) of Schedule 12 to the 2005 Act	A non-legally qualified judicial member as described in regulation 4(2)(g);
6. A lay member as described in paragraph 2(2)(c) of Schedule 12 to the 2005 Act	A lay member as described in regulation 4(1)(b) of these Regulations;
7. A professional member as described by paragraph 2(2)(b) of Schedule 12 to the 2005 Act	A person practising or employed as a lawyer as described in regulation 4(1)(c) of these Regulations.

EXPLANATORY NOTE*(This note is not part of the Regulations)*

These Regulations are made under paragraphs 1B, 3B, 3C, 6A, 11, 13, 14 and 17A of Schedule 12 to the Constitutional Reform Act 2005 (c.4). They contain provisions providing for the composition of the Judicial Appointments Commission, the selection of Commissioners (including the vice-chairman) and the tenure of Commissioners. Section 20 of, and Schedule 13 to, the Crime and Courts Act 2013 (c.22) make a number of amendments to Schedule 12 to the 2005 Act. In particular, provisions relating to the composition of the Judicial Appointments Commission, the selection of Commissioners and the tenure of Commissioners are no longer wholly set out in Schedule 12 to the 2005 Act and are replaced by regulation making powers.

Regulations 3 and 4 provide for the number of Commissioners and composition of the Judicial Appointments Commission.

Regulations 5 to 8 define what is meant by senior tribunal office-holder, non-legally qualified judicial member, holder of judicial office and lay member for the purposes of the Regulations.

⁽²¹⁾ 1981 c.54; section 89 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 3, paragraph 3 and by Schedule 11, paragraph 26.

Regulations 9 to 16 provide provisions concerning the selection process of Commissioners and determination of seniority of judicial office for the purposes of selecting the vice-chairman of the Commission under paragraph 11(1) of Schedule 12 to the Constitutional Reform Act 2005.

Regulation 17 provides provision concerning the length of term and number of terms to which Commissioners may be appointed. Regulation 18 sets out the circumstances in which a person ceases to be a Commissioner.

Regulation 19 provides for transitional provision. All Commissioners in office at the time these Regulations are commenced continue in office until their term of appointment comes to an end or they cease to be a Commissioner for any other reason. When those Commissioners cease to be a Commissioner for any reason provision is made for their replacement.