

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

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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**SUPREME COURT OF THE UNITED KINGDOM  
JUDICIAL APPOINTMENTS AND DISCIPLINE**

**The Supreme Court (Judicial Appointments) Regulations 2013**

*Made* - - - - - **\*\*\***

*Coming into force in accordance with regulation 1*

The Lord Chancellor, in exercise of the powers conferred by section 27A of the Constitutional Reform Act 2005(1), makes the following Regulations.

The Lord Chancellor has consulted all the persons listed in section 27A(3) of that Act before making these Regulations.

In accordance with section 27A(1) of that Act the President of the Supreme Court of the United Kingdom agrees to the making of these Regulations.

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)(za) of the Constitutional Reform Act 2005(2).

**PART 1**

**General**

**Citation and commencement**

**1.** These Regulations may be cited as the Supreme Court (Judicial Appointments) Regulations 2013 and come into force—

- (a) on 1<sup>st</sup> October 2013; or
- (b) if made on or after this date, the day after the day on which they are made.

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(1) [2005 c.4](#). Section 27A is inserted by paragraph 5 of Schedule 13 to the Crime and Courts Act 2013 ([c.22](#)). Various other amendments have been made to Part 3 of, and Schedule 8 to, the Constitutional Reform Act 2005 by Part 1 of Schedule 13 to the Crime and Courts Act 2013.

(2) Section 144(5) is amended by paragraph 7(9) of Schedule 13 to the Crime and Courts Act 2013.

## Interpretation

2. In these Regulations—
  - (a) “the 2005 Act” means the Constitutional Reform Act 2005;
  - (b) “the Deputy President” means the Deputy President of the Supreme Court;
  - (c) “non-legally qualified” has the same meaning as in section 27(11) of the 2005 Act<sup>(3)</sup>;
  - (d) “the President” means the President of the Supreme Court;
  - (e) “selection commission” means a selection commission convened under section 26(5) or (5A) of the 2005 Act<sup>(4)</sup>;
  - (f) “a senior UK judge” means a judge listed in section 60(1)(b) to (i) of the 2005 Act.
3. In relation a reference in these Regulations to “the most senior ordinary judge”—
  - (a) the seniority of the ordinary judges of the Supreme Court is to be determined according to length of service as a judge of the Court (including for this purpose service over one or more periods) and service as a Lord of Appeal in Ordinary counts as service as a judge of the Court for this purpose; and
  - (b) a person disqualified under regulation 16 or who resigns from membership of a selection commission under regulation 17 is to be disregarded in determining who is the most senior ordinary judge for the purposes of any provision of these Regulations.

## PART 2

### Selection Commission for appointment of President

#### Application of this Part

4. This Part applies where a selection commission is convened to select a person for appointment to the office of President under section 26(5) of the 2005 Act.

#### Composition of selection commission

- 5.—(1) The selection commission must consist of—
- (a) the Deputy President;
  - (b) a senior UK judge nominated in accordance with regulation 7;
  - (c) one member of each of the following bodies—
    - (i) the Judicial Appointments Commission;
    - (ii) the Judicial Appointments Board for Scotland;
    - (iii) the Northern Ireland Judicial Appointments Commission.
- (2) Of the three members mentioned in paragraph (1)(c), at least two must be non-legally qualified.
- (3) Paragraph (4) applies where a person nominates a person to be a member of a selection commission under regulation 7 or 9(2).

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(3) Section 27(11) is inserted into the Constitutional Reform Act 2005 by paragraph 4(2) of Schedule 13 to the Crime and Courts Act 2013.

(4) Section 26(5) is amended by paragraph 3(2) of Schedule 13 to the Crime and Courts Act 2013. Section 26(5A) is inserted into the Constitutional Reform Act 2005 by paragraph 3(3) of Schedule 13 to the Crime and Courts Act 2013.

(4) The person making the nomination must, in doing so, have regard (alongside all other relevant considerations) to the fact that it is desirable that the members of the selection commission should include—

- (a) both women and men; and
- (b) members drawn from a range of different racial groups (within the meaning of section 9(3) of the Equality Act 2010<sup>(5)</sup>).

#### **Provision where Deputy President's place on the selection commission is unfilled**

6.—(1) Regulation 5(1)(a) does not apply if—

- (a) the office of Deputy President is vacant;
- (b) the Deputy President is disqualified under regulation 16; or
- (c) the Deputy President is unavailable to be a member of a selection commission.

(2) Where the Deputy President's place on a selection commission is unfilled by virtue of paragraph (1), that place is to be taken by the most senior ordinary judge.

#### **Senior UK judge**

7.—(1) Unless paragraph (2) or (3) applies, the President—

- (a) must nominate a senior UK judge who is not disqualified under regulation 16; and
- (b) when making such a nomination must have due regard to the territorial composition of the selection commission.

(2) Where—

- (a) the office of President is already vacant; or
- (b) it appears to the Lord Chancellor that the person holding the office of President is for the time being incapacitated,

the Deputy President (unless the Deputy President is disqualified under regulation 16) must nominate a senior UK judge in accordance with paragraph (1) to sit on the selection commission.

(3) Where paragraph (2) applies and the Deputy President is disqualified under regulation 16, the most senior ordinary judge must nominate a senior UK judge in accordance with paragraph (1) to sit on the selection commission.

#### **Chairman of selection commission**

8.—(1) The chairman of the selection commission must be—

- (a) a member of one of the bodies referred to in regulation 5(1)(c); and
- (b) non-legally qualified.

(2) The first selection commission convened on or after the date on which these Regulations come into force must be chaired by a member of the Judicial Appointments Commission who has been nominated by the Judicial Appointments Commission to be chairman of the selection commission.

(3) Thereafter, the chairmanship of any selection commissions subsequently convened must be rotated between the following in the order that they are listed—

- (a) the Judicial Appointments Board for Scotland;
- (b) the Northern Ireland Judicial Appointments Commission;
- (c) the Judicial Appointments Commission.

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(5) 2010 c.15.

(4) The chairman is to be nominated by the body of which he or she is a member.

#### **Members of selection commission under regulation 5(1)(c)**

9.—(1) The chairman of the selection commission must seek one nomination from each of those bodies mentioned in regulation 5(1)(c) of which the chairman of the selection commission is not a member.

(2) The Lord Chancellor may pay to any person nominated under paragraph (1) and to the chairman of the selection commission such allowances as the Lord Chancellor may determine.

## **PART 3**

### **Selection commissions for appointment of judges of the Supreme Court other than the President**

#### **Application of this Part**

10. This Part applies where a selection commission is convened for the appointment of a judge of the Supreme Court other than the President under section 26(5) or (5A) of the 2005 Act.

#### **Composition of selection commission**

11.—(1) The selection commission must consist of—

- (a) the President, who is to be the chairman of the selection commission;
- (b) a member of the Judicial Appointments Commission;
- (c) a member of the Judicial Appointments Board for Scotland;
- (d) a member of the Northern Ireland Judicial Appointments Commission; and
- (e) a senior UK judge nominated in accordance with regulation 14.

(2) Paragraph (3) applies where a person nominates a person to be a member of a selection commission under regulation 13(2) or 14.

(3) The person making the nomination must, in doing so, have regard (alongside all other relevant considerations) to the fact that it is desirable that the members of the selection commission should include—

- (a) both women and men; and
- (b) members drawn from a range of different racial groups (within the meaning of section 9(3) of the Equality Act 2010).

#### **Provision where President's place on the selection commission is unfilled**

12.—(1) Regulation 11(1)(a) does not apply if—

- (a) the office of President is vacant;
- (b) the President is disqualified under regulation 16; or
- (c) the President is unavailable to be a member of a selection commission.

(2) Where the President's place on a selection commission is unfilled by virtue of paragraph (1), that place is to be taken by the Deputy President, subject to paragraph (3).

(3) Where—

- (a) the office of Deputy President is vacant;

- (b) the Deputy President is disqualified under regulation 16; or
  - (c) the Deputy President is unavailable to be a member of a selection commission,
- the unfilled place on the selection commission is to be taken by the most senior ordinary judge.

#### **Members of selection commission under regulation 11(1)(b) to (d)**

**13.**—(1) This regulation applies to those persons who are to be members of a selection commission under regulation 11(1)(b) to (d).

(2) The chairman of the selection commission must seek a nomination from each of the bodies referred to in regulation 11(1)(b) to (d) of one of its members to be a member of the selection commission.

(3) At least two members nominated under paragraph (2) must be non-legally qualified.

(4) The Lord Chancellor may pay to any person nominated under paragraph (2) such allowances as the Lord Chancellor may determine.

#### **Member of selection commission under regulation 11(1)(e)**

**14.**—(1) Unless paragraph (2) or (3) applies, the President—

- (a) must nominate a senior UK judge who is not disqualified under regulation 16; and
- (b) when making such a nomination must have due regard to the territorial composition of the selection commission.

(2) Where—

- (a) the office of President is already vacant; or
- (b) it appears to the Lord Chancellor that the person holding the office of President is for the time being incapacitated,

the Deputy President (unless the Deputy President is disqualified under regulation 16) must nominate a senior UK judge in accordance with paragraph (1) to sit on the selection commission.

(3) Where paragraph (2) applies and the Deputy President is disqualified under regulation 16, the most senior ordinary judge must nominate a senior UK judge in accordance with paragraph (1) to sit on the selection commission.

## **PART 4**

### **Disqualification and replacement**

#### **Application of this Part**

**15.** This Part applies to Parts 1, 2 and 3 of these Regulations.

#### **Disqualification**

**16.**—(1) A person is disqualified for the purposes of membership of a selection commission if it appears to the Lord Chancellor that that person is for the time being incapacitated from serving as a member of the selection commission.

(2) A person is disqualified for the purposes of membership of a selection commission if that person intends to apply for appointment to the office selection for which that selection commission has been convened.

### **Provision where a member of a selection commission's place is unfilled**

17.—(1) Where a senior UK judge's place on a selection commission is unfilled by virtue of paragraph (6), unless paragraph (2) or (3) applies, the President must nominate another person who is a senior UK judge and who is not disqualified under regulation 16 to be a member of the selection commission.

(2) Where—

- (a) the office of President is vacant; or
- (b) it appears to the Lord Chancellor that the person holding the office of President is for the time being incapacitated,

the Deputy President must nominate another person who is a senior UK judge and who is not disqualified under regulation 16 to be a member of the selection commission.

(3) Where paragraph (2)(a) or (b) applies and the Deputy President is disqualified under regulation 16, the most senior ordinary judge must nominate another person who is a senior UK judge and who is not disqualified under regulation 16 to be a member of the selection commission.

(4) Where—

- (a) the place of a member of the Judicial Appointments Commission, the Judicial Appointments Board for Scotland or the Northern Ireland Judicial Appointments Commission on a selection commission is unfilled by virtue of paragraph (6); and
- (b) that person is not the chairman of the selection commission,

the chairman of the selection commission must seek a nomination from that body of another of its members to sit on the selection commission.

(5) Where regulation 8 applies but the place of the chairman of a selection commission is unfilled by virtue of paragraph (6), the body that was responsible for nominating that chairman to be a member of the selection commission must nominate another person to be the chairman of the selection commission.

(6) The circumstances referred to in paragraphs (1), (4) and (5) are where—

- (a) a member of the selection commission dies;
- (b) a member of the selection commission resigns his or her membership;
- (c) the Lord Chancellor gives the selection commission notice that it appears to the Lord Chancellor that a member of the commission is incapacitated from continuing to serve as a member;
- (d) a person who is a member of the selection commission by virtue of holding judicial office ceases to hold that office;
- (e) the person who is the chairman of the selection commission under regulation 8 ceases to be a member of the Judicial Appointments Commission, the Judicial Appointments Board for Scotland or the Northern Ireland Judicial Appointments Commission;
- (f) a person nominated in accordance with regulation 9(2) or 13(2) ceases to be a member of the body that nominated him or her;
- (g) a person who is a member of the selection commission by virtue of being non-legally qualified at the time of becoming a member ceases to be non-legally qualified; or
- (h) a person is unavailable to be a member of the selection commission.

(7) Where a person nominates a person to be a member of a selection commission under this regulation, the person making the nomination must, in doing so, have regard (alongside all other relevant considerations) to the fact that it is desirable that the members of the selection commission should include—

- (a) both men and women; and
- (b) members drawn from a range of different racial groups (within the meaning of section 9(3) of the Equality Act 2010).

## PART 5

### Selection process and selection

#### Consultation

**18.**—(1) Subject to paragraph (2), as part of the selection process under section 27(1) of the 2005 Act, a selection commission must consult each of the following—

- (a) such of the senior judges who are not members of the selection commission and who are not willing to be considered for selection;
- (b) the Lord Chancellor;
- (c) the First Minister in Scotland;
- (d) the First Minister for Wales;
- (e) the Northern Ireland Judicial Appointments Commission.

(2) If for any part of the United Kingdom no judge of the courts of that part is to be consulted under paragraph (1)(a), the selection commission must consult as part of the selection process the most senior judge of the courts of that part who is not a member of the selection commission and who is not willing to be considered for selection.

#### Report

**19.**—(1) After complying with section 27 of the 2005 Act the selection commission must submit a report to the Lord Chancellor.

(2) The report must—

- (a) state who has been selected;
- (b) state the judges consulted under regulation 18(1)(a) and (2);
- (c) contain any other information required by the Lord Chancellor.

(3) The report must be in a form approved by the Lord Chancellor.

(4) After submitting the report the selection commission must provide any further information which the Lord Chancellor may require.

(5) Upon receiving the report the Lord Chancellor must consult each of the following—

- (a) the senior judges consulted under regulation 18(1)(a);
- (b) any judge consulted under regulation 18(2);
- (c) the First Minister in Scotland;
- (d) the First Minister for Wales;
- (e) the Northern Ireland Judicial Appointments Commission.

#### The Lord Chancellor's options

**20.**—(1) This regulation refers to the following stages—

- (a) Stage 1 – where a person has been selected under section 27 of the 2005 Act;

- (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.
- (2) At stage 1 the Lord Chancellor must do one of the following—
- (a) notify the selection;
  - (b) reject the selection; or
  - (c) require the selection commission to reconsider the selection.
- (3) At stage 2 the Lord Chancellor must do one of the following—
- (a) notify the selection;
  - (b) reject the selection, but only if it was made following a reconsideration at stage 1; or
  - (c) require the selection commission to reconsider the selection, but only if it was made following a rejection at stage 1.
- (4) At stage 3 the Lord Chancellor must notify the selection, unless paragraph (5) applies and the Lord Chancellor makes a notification under it.
- (5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may at stage 3 notify that person's name to the Prime Minister.
- (6) In this regulation references to the Lord Chancellor notifying a selection are references to the Lord Chancellor notifying to the Prime Minister the name of the person selected.

### **Exercise of powers to reject or require reconsideration**

**21.**—(1) The power of the Lord Chancellor under regulation 20 to reject a selection at stage 1 or 2 is exercisable only on the ground that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned.

(2) The power of the Lord Chancellor under regulation 20 to require the selection commission to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—

- (a) there is not enough evidence that the person is suitable for the office concerned;
- (b) there is evidence that the person is not the best candidate on merit; or
- (c) there is not enough evidence that if the person were appointed the judges of the Supreme Court would between them have knowledge of, and experience of practice in, the law of each part of the United Kingdom.

(3) The Lord Chancellor must give the selection commission reasons in writing for rejecting or requiring reconsideration of a selection.

### **Selection following rejection or requirement to reconsider**

**22.**—(1) If under regulation 20 the Lord Chancellor rejects or requires a reconsideration of a selection, the selection commission must select a person in accordance with this regulation.

(2) If the Lord Chancellor rejects a selection, the selection commission—

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

(3) If the Lord Chancellor requires the selection to be reconsidered, the selection commission—



- (a) may select the same person or a different person; but
  - (b) where the requirement is following a rejection, may not select the person rejected.
- (4) The selection commission must inform the Lord Chancellor of the person selected following a rejection or requirement to reconsider.

## PART 6

### **Transitional provision**

**23.** Where the Lord Chancellor has convened a selection commission under section 26(5)(6) of the 2005 Act before 1<sup>st</sup> October 2013, Part 1 of Schedule 13 to the Crime and Courts Act 2013 is to be treated as if it had not come into force and the enactments which it amends shall continue to have effect as they did immediately before 1<sup>st</sup> October 2013 as if they had not been amended.

Date

Lord Chancellor

I agree

Date

President of the Supreme Court

## EXPLANATORY NOTE

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

Provisions concerning the appointment of persons as judges of the Supreme Court of the United Kingdom are set out in Part 3 of, and Schedule 8 to, the Constitutional Reform Act 2005 (c.4) (“the 2005 Act”). However section 20 of, and Schedule 13 to, the Crime and Courts Act 2013 (c.22) make a number of amendments to Part 3 of, and Schedule 8 to, the 2005 Act. In particular, provisions relating to the membership of selection commissions for the appointment of persons as judges of the Supreme Court and the selection process to be applied are no longer wholly set out in the 2005 Act itself but in regulations made under new section 27A of the 2005 Act.

These Regulations are made under section 27A of the 2005 Act. They contain amended provisions about the selection process for the appointment of persons as judges of the Supreme Court of the United Kingdom.

Part 2 of these Regulations contains provisions about the composition of a selection commission convened to select a person for appointment as the President of the Supreme Court.

Part 3 of these Regulations contains provisions about the composition of a selection commission convened to select a person for appointment as the Deputy President of the Supreme Court or for appointment as an ordinary judge of the Supreme Court.

Part 4 of these Regulations contains provisions about the disqualification of persons from membership of a selection commission under Part 2 or 3 and replacing members of a selection commission which has already been convened.

Part 5 of these Regulations contain provisions about the selection process itself, including consultation by the selection commission, the reporting of a selection to the Lord Chancellor and consultation by the Lord Chancellor. It also sets out the Lord Chancellor’s options in deciding upon the selection. The Lord Chancellor can accept a selection, reject a selection or require the selection commission to reconsider its selection.

Part 6 of these Regulations is a transitional provision. These Regulations only apply where the Lord Chancellor has convened a selection commission on or after 1<sup>st</sup> October 2013. Where the Lord Chancellor has convened a selection commission before this date, Part 1 of Schedule 13 to the Crime and Courts Act 2013 is treated as if it had not come into force and the legislation which it amends shall continue to have effect as if it had not been amended.