



# Tribunals, Courts and Enforcement Act 2007

## 2007 CHAPTER 15

### PART 2

#### JUDICIAL APPOINTMENTS

##### Modifications etc. (not altering text)

- C1** Pt. 2 applied (E.W.) (7.1.2014) by [Welsh Language \(Wales\) Measure 2011 \(nawm 1\)](#), s. 156(2), [Sch. 11 para. 4\(3\)](#); S.I. 2013/3140, art. 2(k)
- C2** Pt. 2 applied (E.W.) (7.1.2014) by [Welsh Language \(Wales\) Measure 2011 \(nawm 1\)](#), s. 156(2), [Sch. 11 para. 3\(3\)](#); S.I. 2013/3140, art. 2(k)
- C3** 2007 c. 15, Pt. 2 applied (E.W.) (prosp.) by [Welsh Language \(Wales\) Measure 2011 \(nawm 1\)](#), ss. 120, 156, [Sch. 11 para. 3\(3\)](#)
- C4** 2007 c. 15, Pt. 2 applied (E.W.) (prosp.) by [Welsh Language \(Wales\) Measure 2011 \(nawm 1\)](#), ss. 120, 156, [Sch. 11 para. 4\(3\)](#)

#### 50 Judicial appointments: “judicial-appointment eligibility condition”

- (1) Subsection (2) applies for the purposes of any statutory provision that—
- relates to an office or other position, and
  - refers to a person who satisfies the judicial-appointment eligibility condition on an N-year basis (where N is the number stated in the provision).
- (2) A person satisfies that condition on an N-year basis if—
- the person has a relevant qualification, and
  - the total length of the person's qualifying periods is at least N years.
- (3) In subsection (2) “qualifying period”, in relation to a person, means a period during which the person—
- has a relevant qualification, and

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*Status: Point in time view as at 01/10/2022. This version of this part contains provisions that are prospective.*  
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- (b) gains experience in law (see section 52).
- (4) For the purposes of subsections (2) and (3), a person has a relevant qualification if the person—
- (a) is a solicitor or a barrister (but see section 51), or
  - (b) holds a qualification that under section 51(1) is a relevant qualification in relation to the office, or other position, concerned.
- (5) In this section—
- “barrister” means barrister in England and Wales;  
“solicitor” means solicitor of the Senior Courts of England and Wales;  
“statutory provision” means—
- (a) a provision of an Act, or
  - (b) a provision of subordinate legislation (within the meaning given by section 21(1) of the Interpretation Act 1978 (c. 30)).
- (6) Schedule 10, which makes amendments—
- for the purpose of substituting references to satisfying the judicial-appointment eligibility condition in place of references to having a qualification mentioned in section 71 of the Courts and Legal Services Act 1990 (c. 41),
- for the purpose of reducing qualifying periods for eligibility for appointment to certain judicial offices from ten and seven years to seven and five years respectively, and
- for connected purposes,
- has effect.
- (7) At any time before the coming into force of section 59(1) of the Constitutional Reform Act 2005 (c. 4) (renaming of Supreme Court), the reference to the Senior Courts in subsection (5) is to be read as a reference to the Supreme Court.

#### Commencement Information

- II** S. 50 wholly in force at 21.7.2008; s. 50 not in force at Royal Assent see s. 148; s. 50(1)(5)(7) in force at 19.9.2007 by S.I. 2007/2709, art. 2(e) and s. 50 in force 21.7.2008 otherwise by S.I. 2008/1653, art. 2(b) (with arts. 3, 4)

#### 51 “Relevant qualification” in section 50: further provision

- (1) The Lord Chancellor may by order provide for a qualification specified in the order to be a relevant qualification for the purposes of section 50(2) and (3) in relation to an office or other position specified in the order.
- (2) [<sup>F1</sup>awarded by a body which, for the purposes of the Legal Services Act 2007, is an approved regulator in relation to the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).]
- (3) An order under subsection (1) may, in relation to a qualification specified in the order, include provision as to when a person who holds the qualification is, for the purposes of section 50, to be taken first to have held it.
- (4) Where—
  - (a) a qualification is specified under subsection (1),

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- (b) the qualification is one awarded by a body such as is mentioned in subsection [F<sup>2</sup>(2)], and
  - (c) [F<sup>3</sup>, for the purposes of the Legal Services Act 2007, the body—
    - (i) is not an approved regulator in relation to the exercise of a right of audience (within the meaning of that Act), and
    - (ii) is not an approved regulator in relation to the conduct of litigation (within the meaning of that Act),]the provision under subsection (1) specifying the qualification ceases to have effect, subject to any provision made under [F<sup>4</sup>section 46 of the Legal Services Act 2007 (transitional etc. provision in consequence of cancellation of designation as approved regulator)].
- (5) For the purposes of section 50 and this section, a person shall be taken first to become a solicitor when the person's name is entered on the roll kept under section 6 of the Solicitors Act 1974 (c. 47) (Law Society to keep list of all solicitors) for the first time after the person's admission as a solicitor.
- (6) For the purposes of section 50 and this section, a person shall be taken first to become a barrister—
- (a) when the person completes pupillage in connection with becoming a barrister, or
  - (b) in the case of a person not required to undertake pupillage in connection with becoming a barrister, when the person is called to the Bar of England and Wales.
- (7) For the purposes of section 50—
- (a) a barrister,
  - (b) a solicitor, or
  - (c) a person who holds a qualification specified under subsection (1),
- shall be taken not to have a relevant qualification at times when, as a result of disciplinary proceedings, he is prevented from practising as a barrister or (as the case may be) as a solicitor or as a holder of the specified qualification.
- (8) The Lord Chancellor may by order make provision supplementing or amending subsections (5) to (7).
- (9) Before making an order under subsection (1) or (8), the Lord Chancellor must consult—
- (a) the Lord Chief Justice of England and Wales, and
  - (b) the Judicial Appointments Commission.
- (10) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise his function under subsection (9)(a).
- (11) In this section—
- “barrister” means barrister in England and Wales;
  - “solicitor” means solicitor of the Senior Courts of England and Wales.
- (12) Power to make an order under this section is exercisable by statutory instrument.
- (13) An order under this section may make different provision for different purposes.

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- (14) No order may be made under this section unless a draft of the statutory instrument containing it (whether alone or with other provision) has been laid before, and approved by a resolution of, each House of Parliament.
- (15) At any time before the coming into force of section 59(1) of the Constitutional Reform Act 2005 (renaming of Supreme Court), the reference to the Senior Courts in subsection (11) is to be read as a reference to the Supreme Court.

#### Textual Amendments

- F1** Words in s. 51(2) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), ss. 208, 211, **Sch. 21 para. 162(1)(2)**; S.I. 2009/3250, **art. 2(h)** (with art. 9)
- F2** Words in s. 51(4)(b) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), ss. 208, 211, **Sch. 21 para. 162(1)(3)(a)**; S.I. 2009/3250, **art. 2(h)** (with art. 9)
- F3** Words in s. 51(4)(c) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), ss. 208, 211, **Sch. 21 para. 162(1)(3)(b)**; S.I. 2009/3250, **art. 2(h)** (with art. 9)
- F4** Words in s. 51(4) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), ss. 208, 211, **Sch. 21 para. 162(1)(3)(c)**; S.I. 2009/3250, **art. 2(h)** (with art. 9)

#### Modifications etc. (not altering text)

- C5** S. 51(2)-(4) applied (with modifications) (21.7.2008) by 1939 c. xcvi, s. 109(5) (as inserted by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50, 148, **Sch. 10 para. 2(3)**); S.I. 2008/1653, **art. 2(d)** (with arts. 3, 4)
- C6** S. 51(2)-(4) applied (with modifications) (21.7.2008) by 1998 c. 14, s. 7(6B) (as inserted by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50, 148, **Sch. 10 para. 29(4)**); S.I. 2008/1653, **art. 2(d)** (with arts. 3, 4)
- C7** S. 51(9)(10) applied (with modifications) (21.7.2008) by 1939 c. xcvi, s. 109(5) (as inserted by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50, 148, **Sch. 10 para. 2(3)**); S.I. 2008/1653, **art. 2(d)** (with arts. 3, 4)
- C8** S. 51(9)(10) applied (with modifications) (21.7.2008) by 1998 c. 14, s. 7(6B) (as inserted by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50, 148, **Sch. 10 para. 29(4)**); S.I. 2008/1653, **art. 2(d)** (with arts. 3, 4)
- C9** S. 51(12)-(14) applied (with modifications) (21.7.2008) by 1939 c. xcvi, s. 109(5) (as inserted by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50, 148, **Sch. 10 para. 2(3)**); S.I. 2008/1653, **art. 2(d)** (with arts. 3, 4)

#### Commencement Information

- I2** S. 51 wholly in force at 21.7.2008; s. 51 not in force at Royal Assent see s. 148; s. 51 in force for certain purposes at 19.9.2007 by S.I. 2007/2709, **art. 2** and s. 51 in force at 21.7.2008 otherwise by S.I. 2008/1653, **art. 2(a)** (with arts. 3, 4)

## 52 Meaning of “gain experience in law” in section 50

- (1) This section applies for the purposes of section 50.
- (2) A person gains experience in law during a period if the period is one during which the person is engaged in law-related activities.
- (3) For the purposes of subsection (2), a person's engagement in law-related activities during a period is to be disregarded if the engagement is negligible in terms of the amount of time engaged.

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- (4) For the purposes of this section, each of the following is a “law-related activity”—
- (a) the carrying-out of judicial functions of any court or tribunal;
  - (b) acting as an arbitrator;
  - (c) practice or employment as a lawyer;
  - (d) advising (whether or not in the course of practice or employment as a lawyer) on the application of the law;
  - (e) assisting (whether or not in the course of such practice) persons involved in proceedings for the resolution of issues arising under the law;
  - (f) acting (whether or not in the course of such practice) as mediator in connection with attempts to resolve issues that are, or if not resolved could be, the subject of proceedings;
  - (g) drafting (whether or not in the course of such practice) documents intended to affect persons' rights or obligations;
  - (h) teaching or researching law;
  - (i) any activity that, in the relevant decision-maker's opinion, is of a broadly similar nature to an activity within any of paragraphs (a) to (h).
- (5) For the purposes of this section, an activity mentioned in subsection (4) is a “law-related activity” whether it—
- (a) is done on a full-time or part-time basis;
  - (b) is or is not done for remuneration;
  - (c) is done in the United Kingdom or elsewhere.
- (6) In subsection (4)(i) “the relevant decision-maker”, in relation to determining whether a person satisfies the judicial-appointment eligibility condition on an N-year basis in a particular case, means—
- (a) where the condition applies in respect of appointment by Her Majesty to an office or other position, the person whose function it is to recommend the exercise of Her Majesty's function of making appointments to that office or position;
  - (b) where the condition applies in respect of appointment, by any person other than Her Majesty, to an office or other position, that person.
- (7) In subsection (6) “appointment”, in relation to an office or position, includes any form of selection for that office or position (whether called appointment or selection, or not).

**Commencement Information**

**I3** S. 52 wholly in force at 21.7.2008; s. 52 not in force at Royal Assent see s. 148; s. 52 in force for certain purposes at 19.9.2007 by S.I. 2007/2709, art. 2 and s. 52 in force at 21.7.2008 otherwise by S.I. 2008/1653, art. 2(b) (with arts. 3, 4)

**53 Transfer from salaried to fee-paid judicial office**

(1) The Constitutional Reform Act 2005 (c. 4) is amended as follows.

<sup>F5</sup>(2) .....

(3) After section 85(2) (restriction on recommendations and appointments) insert—

“(2A) This section is subject to—

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- (a) section 30(4) of the Courts-Martial (Appeals) Act 1951,
  - (b) sections 91(1ZB) and 102(1C) of the Supreme Court Act 1981,
  - (c) section 8(1ZC) of the County Courts Act 1984, and
  - (d) sections 94A and 94B below.”
- (4) After section 85(3) (power to amend Schedule 14) add—
- “(4) The Lord Chancellor may by order amend section 94A or 94B if he thinks that the amendment is consequential on an amendment made to Schedule 14 by an order under subsection (3).”
- (5) Section 97 (Scotland and Northern Ireland) is amended as follows.
- (6) In subsection (1)—
- (a) for “This section applies” substitute “ Subsections (2) and (3) apply ”, and
  - <sup>F6</sup>(b) .....
- (7) After subsection (3) add—
- “(4) Subsections (2) and (3) apply to the reference in section 94A(1) to the Lord Chancellor obtaining the concurrence of the Lord Chief Justice as they apply to a reference in a provision specified in subsection (1) to the Lord Chancellor consulting the Lord Chief Justice.
- (5) The Lord President of the Court of Session may nominate any of the following to exercise his function under section 94A(1)(b)—
- (a) a judge who is a member of the First or Second Division of the Inner House of the Court of Session;
  - (b) the Senior President of Tribunals.
- (6) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his function under section 94A(1)(b)—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act);
  - (c) the Senior President of Tribunals.”

#### Textual Amendments

- F5** S. 53(2) omitted (10.3.2022 for specified purposes, 1.10.2022 in so far as not already in force) by virtue of [Public Service Pensions and Judicial Offices Act 2022 \(c. 7\)](#), s. 131(1)(4)(c), [Sch. 4 para. 14\(2\)](#); S.I. 2022/1014, reg. 2(d) (with reg. 3)
- F6** S. 53(6)(b) omitted (10.3.2022 for specified purposes, 1.10.2022 in so far as not already in force) by virtue of [Public Service Pensions and Judicial Offices Act 2022 \(c. 7\)](#), s. 131(1)(4)(c), [Sch. 4 para. 14\(2\)](#); S.I. 2022/1014, reg. 2(d) (with reg. 3)

## 54 Continuation of judicial office after normal retirement date

- (1) Section 26 of the Judicial Pensions and Retirement Act 1993 (c. 8) (retirement date for holders of certain judicial offices etc.) is amended as follows.
- (2) In subsection (12), in the definition of “the appropriate person”, after paragraph (c) insert “;

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- (d) the Senior President of Tribunals in the case of a person who holds a judicial office that—
  - (i) is specified in subsection (12A) below, and
  - (ii) is not in the person's case an office to which any of paragraphs (a) to (c) above applies;
- (e) the Lord Chief Justice of England and Wales in the case of a person who holds a judicial office that is not in the person's case an office to which any of paragraphs (a) to (d) applies;”.

(3) After subsection (12) insert—

“(12A) The judicial offices mentioned in paragraph (d) of the definition of “appropriate person” in subsection (12) above are—

- (a) Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal;
- (b) judge, or other member, of the First-tier Tribunal or of the Upper Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 2 or 3 to the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”);
- (c) deputy judge of the Upper Tribunal appointed under paragraph 7(1) of Schedule 3 to the 2007 Act, except in a case where the holding of the office by the person in question falls within subsection (7)(ga) above;
- (d) transferred-in judge, or transferred-in other member, of the First-tier Tribunal or of the Upper Tribunal (see section 31(2) of the 2007 Act);
- (e) deputy judge of the Upper Tribunal by virtue of an order under section 31(2) of the 2007 Act;
- (f) an office held by a person if the person's holding of the office results in the person being a member of, or person who is, a tribunal in a list in Schedule 6 to the 2007 Act that has effect for the purposes of section 30 of that Act (but only if the office is specified in Schedule 5 to this Act);
- (g) President or other member of the Asylum and Immigration Tribunal;
- (h) member of the Employment Appeal Tribunal appointed under section 22(1)(c) of the Employment Tribunals Act 1996;
- (i) member of a panel of chairmen of employment tribunals.

(12B) Neither paragraph (d) nor paragraph (e) of the definition of “appropriate person” in subsection (12) above applies to an office held by a person if provision about that person's continuation in the office after the compulsory retirement date for the office—

- (a) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or
- (b) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.”

(4) In subsection (13) (Lord Chief Justices to exercise functions under section with concurrence of Lord Chancellor), after “Northern Ireland” insert “ or the Senior President of Tribunals ”.

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**55 Appointment of deputy Circuit judges**

In section 24(1) of the Courts Act 1971 (c. 23) (appointment of deputy Circuit judges and assistant recorders) for paragraph (a) substitute—

“(a) the Lord Chancellor may, with the concurrence of the Lord Chief Justice, appoint to be a deputy Circuit judge, during such period or on such occasions as the Lord Chancellor thinks fit, any person who has held office as a judge of the Court of Appeal or of the High Court or as a Circuit judge;”.

**56 Appointment of deputy district judges, etc.**

Schedule 11 (which makes amendments to the Supreme Court Act 1981 (c. 54) and the County Courts Act 1984 (c. 28) in connection with the appointment and assignment of deputy district judges and the assignment of district judges) has effect.

**57 Deputy, and temporary additional, Masters etc.**

(1) Section 91 of the Supreme Court Act 1981 (which provides for persons to be appointed as deputies for holders of, or as temporary additional officers in, certain judicial offices) is amended as set out in subsections (2) to (5).

(2) In subsection (1)—

<sup>F7</sup>(a) .....

(b) for “the Lord Chief Justice may, after consulting the Lord Chancellor,” substitute “ the Lord Chancellor may ”.

(3) After subsection (1) insert—

“(1ZA) The Lord Chancellor may not appoint a holder of relevant office under subsection (1) without the concurrence of the Lord Chief Justice.

(1ZB) Section 85 of the Constitutional Reform Act 2005 (selection of certain office holders) does not apply to an appointment to which subsection (1ZA) applies.

(1ZC) In this section a “holder of relevant office” means a person who holds, or has held within two years ending with the date when his appointment under this section takes effect—

(a) any office listed in column 1 of Part 2 or 3 of Schedule 2, or

(b) the office of district judge.”

(4) For subsection (3) substitute—

“(3) An appointment under this section may extend until the day on which a person attains the age of seventy-five years if it is an appointment of a holder of relevant office.”

<sup>F8</sup>(5) .....

(6) In section 92(1) of the Supreme Court Act 1981 after “this section” insert “ , to section 91(3) ”.

(7) In Part 2 of Schedule 14 to the Constitutional Reform Act 2005 (c. 4) (which lists appointments to certain offices in relation to which the procedure in sections 86 to 93,



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and section 96, of that Act applies), after the entry for an assistant recorder appointed under section 24(1) of the Courts Act 1971 (c. 23), insert the following entry—

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“Person appointed by the Lord Chancellor as a deputy for a holder of, or as a temporary additional officer in, an office listed in column 1 of Part 2 of Schedule 2 to the Supreme Court Act 1981	Section 91(1) of the Supreme Court Act 1981, unless subsection (1ZA) of that section applies to the appointment”
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**Textual Amendments**

- F7** S. 57(2)(a) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 35\(7\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F8** S. 57(5) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 35\(7\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**<sup>F9</sup>58 Appointment of temporary assistants to Judge Advocate General**

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**Textual Amendments**

- F9** S. 58 omitted (10.3.2022 for specified purposes, 1.10.2022 in so far as not already in force) by virtue of [Public Service Pensions and Judicial Offices Act 2022 \(c. 7\)](#), s. 131(1)(4)(c), [Sch. 4 para. 14\(3\)](#); S.I. 2022/1014, reg. 2(d) (with reg. 3)

**59 Members and chairmen of certain Appeals Commissions**

In Part 3 of Schedule 14 to the Constitutional Reform Act 2005 (c. 4) (which lists appointments to certain offices in relation to which the procedure in sections 86 to 93, and section 96, of that Act applies), omit the entries relating to—

- Member of the Special Immigration Appeals Commission (appointed under paragraph 1(1) of Schedule 1 to the Special Immigration Appeals Commission Act 1997 (c. 68));
- Chairman of the Special Immigration Appeals Commission (appointed under paragraph 2 of that Schedule);
- Member of the Proscribed Organisations Appeal Commission (appointed under paragraph 1(1) of Schedule 3 to the Terrorism Act 2000 (c. 11));
- Chairman of the Proscribed Organisations Appeal Commission (appointed under paragraph 1(2) of that Schedule);
- Member of the Pathogens Access Appeal Commission (appointed under paragraph 1(1) of Schedule 6 to the Anti-terrorism, Crime and Security Act 2001 (c. 24));
- Chairman of the Pathogens Access Appeal Commission (appointed under paragraph 1(2) of that Schedule).

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PROSPECTIVE

**60 Appointment as Chairman of Law Commission**

- (1) Section 1 of the Law Commissions Act 1965 (c. 22) is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) The person appointed to be the Chairman shall be a person who holds office as a judge of the High Court or Court of Appeal in England and Wales.”
- (3) In subsection (2) before “Commissioners” insert “ the other ”.

**61 Orders permitting disclosures to Judicial Appointments Commission**

In section 90(5)(a) of the Justice (Northern Ireland) Act 2002 (c. 26) (which provides that certain orders under that Act are subject to annulment in pursuance of a resolution of either House of Parliament), after “section 2(2)(a) or (c),” insert “ 5A(6), ”.

**Status:**

Point in time view as at 01/10/2022. This version of this part contains provisions that are prospective.

**Changes to legislation:**

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