

## Procedure for Appointing a Justice of The Supreme Court of the United Kingdom

The procedure for appointing a Justice of the Supreme Court of the United Kingdom is governed by Sections 25 to 31 and Schedule 8, of the Constitutional Reform Act 2005, as amended by the Crime and Courts Act 2013. This note sets out a brief resume of the process.

Section 25 of the 2005 Act sets out the statutory qualifications for appointment. Section 25 has been amended by Sections 50-52 of the Tribunals and Enforcement Act 2007 so that the qualifications are:

- "Applicants must have held high judicial office for at least two years. ('High judicial office' is defined to include High Court Judges of England and Wales, and of Northern Ireland; Court of Appeal Judges of England and Wales, and of Northern Ireland; and Judges of the Court of Session).
- Alternatively, applicants must satisfy the judicial-appointment eligibility condition on a 15-year basis, or have been a qualifying practitioner for at least 15 years.
- A person satisfies the judicial-appointment eligibility condition on a 15-year basis if they have been a solicitor of the senior courts of England and Wales, or barrister in England and Wales, for at least 15 years; and have been gaining experience in law during the post-qualification period.
- A person is a qualifying practitioner if they are an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary; or a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.
- The meaning of "gaining experience in law" is set out in section 52(2) to (5) of the Tribunals and Enforcement Act 2007 and relates to a period engaged in law related activities."

It is the responsibility of the Lord Chancellor to convene a selection commission: this is usually done by way of a letter to the President of the Court who chairs the selection commission. Under changes introduced through the Crime and Courts Act 2013 the Deputy President is no longer a member of a selection commission. Instead, the President has to nominate a senior judge from anywhere in the United Kingdom, but that judge cannot be a Justice of the Supreme Court. In addition, there is a member of each of the Judicial Appointments Commission for England and Wales, the Judicial Appointments Board in Scotland, and the Judicial Appointments Commission in Northern Ireland. At least one of those representatives has to be a lay person. Nominations are made by the Chairperson of the relevant Commission/Board.

Under changes introduced in the Crime and Courts Act 2013, if a commission is convened for the selection of a person to be recommended for appointment as President of the Court then the out-going President may not be a member of the commission. In those circumstances the commission is to be chaired by one of its non-legally qualified members.

The Crime and Courts Act 2013 also includes provisions in relation to diversity where candidates for judicial office are of equal merit. Under Section 9 of Schedule 13 of the Act, for appointments to the Supreme Court, where two persons are of equal merit Section 159

of the Equality Act 2010 does not apply, but this does not prevent the commission from preferring one candidate over the other for the purpose of increasing diversity within the group of persons who are judges of the Court.

The legislation does not prescribe a process that a selection commission has to follow, although under Section 27(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 in the Act) in making a selection. In practice each selection commission determines its own process.

But the 2005 Act does prescribe a set of people who must be consulted by the selection commission. These are:

"The senior judges". The senior judges are defined at paragraph 60 (1) of the Act as:

(1) In this Part - "part of the United Kingdom" means England and Wales, Scotland or Northern Ireland;

"the senior judges" means -

- a. the judges of the Supreme Court;
- b. the Lord Chief Justice of England and Wales;
- c. the Master of the Rolls;
- d. the Lord President of the Court of Session;
- e. the Lord Chief Justice of Northern Ireland;
- f. the Lord Justice Clerk;
- g. the President of the Queen's Bench Division;
- h. the President of the Family Division;
- i. the Chancellor of the High Court;

"the Supreme Court" means the Supreme Court of the United Kingdom.

In addition, the selection commission has to consult: the Lord Chancellor, the First Minister in Scotland, the First Minister in Wales and the Judicial Appointments Commission in Northern Ireland.

Paragraph 27 of the 2005 Act sets out a number of requirements:

- i. Selection must be on merit.
- ii. A person may only be selected if they meet the qualifications set out at Section 25.
- iii. A person may not be selected if they are a member of the commission.
- iv. Any selection must be of one person only; and
- v. In making selections the commission must ensure "that between them the Judges will have knowledge of, and experience of practice in, the law of each of each part of the United Kingdom."

In practice this latter requirement is designed to ensure that there is continued representation from both Scotland and Northern Ireland.

The provisions of the Act were used in 2008/09 on a voluntary basis as that part of the Act was not yet in force. Subsequently, seventeen selection commissions have sat using the provisions of the Act. In 2008/09 the selection commission took the decision that the vacancies would be advertised. This was the first time that vacancies at this level had been the subject of open competition and this practice has continued with subsequent commissions. On each occasion an Information Pack is drawn up for potential applicants which is publicly available. From 2009/10 onwards the advertisement and Information Pack have been placed on our website. The Information Pack sets out, amongst other matters, the criteria the selection commission uses to assess applications.

The support for the selection commission is provided by the Chief Executive of the Supreme Court and their office.

## **Role of the Lord Chancellor**

The Constitutional Reform Act 2005 preserves a role for the Lord Chancellor once a selection commission has made its decision. The relevant sections are Sections 28-31 of the Act.

Section 28 requires that the commission must submit a report to the Lord Chancellor which must state: who has been selected; who was consulted; and which contains any other information required by the Lord Chancellor. The provision also allows for the Lord Chancellor to ask for any further information not included in the report.

The Lord Chancellor is under a statutory duty to consult the senior judges (as above), the First Minister of Scotland, the First Minister of Wales and the Chair of the Judicial Appointments Commission of Northern Ireland. Sections 29-31 of the Act then set out the Lord Chancellor's options. In closely defined circumstances the Lord Chancellor can invite a reconsideration or can reject a candidate, though reasons must be given for either of these courses of action.

If, following the consultations above, the Lord Chancellor is content with the recommendation made by the selection commission, the candidate's name is forwarded to the Prime Minister who, in turn, sends the recommendation to Her Majesty The Queen who makes the formal appointment.

**The Supreme Court of the United Kingdom**  
**June 2022**