

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 Selection Commissions

Selection Commission

79. Paragraph 1 makes provision for the membership of the Supreme Court selection commission which, under section 27, will select one candidate and put forward that candidate to the Lord Chancellor accordingly. The selection commission will consist of the President of the Supreme Court (who, by virtue of Paragraph 7, will chair the commission), the Deputy President of the Supreme Court and one member from each of the territorial appointing commissions (nominated under paragraph 6), one of whom must (by virtue of paragraph 6(3)) be a person who is not legally qualified.

Special rules where President or Deputy President's place unfilled

80. Paragraphs 2- 4 make provision for the composition of the Selection Commission if the place of the President and / or the Deputy President on the commission is unfilled by reason of one of the situations set out in paragraph 5.
81. Paragraph 2(2) provides for the next most senior ordinary judge in the Supreme Court to take the unfilled position on the selection commission if either the President or Deputy President is unable to sit. Paragraph 3(2) provides for the most senior ordinary judge and the second most senior ordinary judge to take the unfilled position if both the President and Deputy President are unable to sit.
82. If the unfilled place or places are not taken in accordance with paragraph 2(2) or paragraph 3(2) (for example because all of the Supreme Court judges wish to be considered for a vacancy that has arisen) then paragraph 2(3) & (4) and paragraph 3(3), (4) & (5) provide for the most senior judiciary from the three jurisdictions of the UK to be members of the commission, unless one of the jurisdictions is already represented through the presence of the President, Deputy President or one of the ordinary judges (for example, if his "home jurisdiction", as defined in paragraph 4, is Scotland, Scotland is represented). In this event only two of the senior judiciary would be required – those from the jurisdictions not already represented (in the example above, from England and Wales and Northern Ireland, since Scotland is represented).
83. Paragraph 4 provides for the determination of the home jurisdiction of a judge of the Supreme Court. Separate provision is made according to whether the judge in question became a member of the Court by virtue of being a Lord of Appeal in Ordinary at commencement, or was appointed to the Court subsequently, working in the former case by reference to the qualification requirement of the Appellate Jurisdiction Act 1876 (under which Lords of Appeal in Ordinary will have been appointed) rather than those of section 24 of the Act.

Disqualification

84. [Paragraph 5](#) details the circumstances in which judicial members of the commission are disqualified from sitting on the commission.
85. [Paragraph 5\(1\)](#) provides for cases of illness or other incapacity: any judge who might be eligible to sit on the appointing commission is considered to be disqualified if the Lord Chancellor believes that the person is for the time being incapacitated from serving on the commission.
86. [Paragraphs 5\(2\), \(3\) and \(4\)](#) provide for cases where a person is a candidate for appointment to the vacancy under consideration: judges of the Supreme Court below the position of President and judges from territorial jurisdictions will be disqualified from membership of the commission unless they first give the Lord Chancellor notice that they do not wish to be considered for the vacancy being filled.

Non-judicial members of the selection commission

87. [Paragraph 6](#) sets out the rules governing the appointment of members of the territorial appointing commissions to the selection commission.
88. Under [paragraph 6\(2\)](#), the Lord Chancellor will be responsible for nominating one member of each of the territorial appointing commissions; however, under [paragraph 6\(4\)](#) he may only do this on the recommendation of the territorial appointing commission of which the person is a member. [Sub-paragraph \(3\)](#) provides that at least one of the persons nominated from the territorial appointing commissions must be non-legally qualified (defined for the purposes of this paragraph in [paragraph 6\(6\) and \(7\)](#)). In effect this means that if at least one of the territorial commissions does not recommend a non-legally qualified person, the Lord Chancellor will, before the commission can be convened, have to broker a solution with the territorial commissions whereby one of them will agree to recommend a non-legally qualified member.

Chairing of a selection commission

89. [Paragraph 7](#) identifies the President of the Supreme Court as the person who shall normally chair the selection commission for the Supreme Court and provides that, if the President is not available, the most senior member of the commission will chair it.

Interpretation

90. [Paragraph 8](#) defines for the purpose of this Schedule what is meant by a reference to a selection commission for a particular office. . For example ([sub-paragraph \(a\)](#)): ‘Selection commission for the office of President’ means a selection commission convened in the case of a vacancy in the office of President.
91. [Paragraph 9\(1\)](#) defines for the purposes of Part 1 of this Schedule the meaning of “Judicial Appointments Board for Scotland” and “territorial judge”.
92. [Paragraph 9\(2\)](#) defines for the purposes of Part 1 of this Schedule how the seniority of judges of the Supreme Court is to be determined (taking account, where appropriate, of seniority “inherited” from service in the House of Lords) and, in relation to the selection commission, how the seniority of the territorial judges appointed under [paragraph 2\(3\) and Paragraph 3\(3\) & \(4\)](#) is to be determined.