

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Appointment of judges

Section 25: Qualification for Appointment

71. This Section defines eligibility for appointment as a judge of the Supreme Court, which will be the same as eligibility for appointment as a Lord of Appeal in Ordinary.
72. Subsection (1) sets out the qualifying requirements for appointment as a Supreme Court judge. There are two separate possible routes to qualification. First, a person is eligible if he has held high judicial office, as defined in subsections (1) and (2) of section 54, for at least 2 years.
73. Alternatively, to qualify for appointment as a Supreme Court judge, a person would have to have been a qualifying practitioner for at least 15 years.
74. Subsection (2) defines “qualifying practitioner” for the purposes of this section .

Section 26: Selection of members of the Court

75. This section, together with sections 27, 28, 29, 30, and 31 and Schedule 8, provides for the process by which candidates for appointment to the Supreme Court are to be selected and recommended to Her Majesty for appointment.
76. Subsection (1) sets out the offices to which appointments are to be made by this process. Subsection (5) provides that the Lord Chancellor must convene a selection commission if there is a vacancy in one of those offices, or if it appears to the Lord Chancellor that there will soon be such a vacancy. Schedule 8, which is introduced by subsection (6), makes provision about the composition of selection commissions. Sections 27 to 29 set out the details of the process to be followed by a selection commission.
77. At the final stage of that selection process, once sections 27, 28 and 29 (and, if necessary, sections 30 and 31) have been followed, the Lord Chancellor notifies the Prime Minister of the identity of the person selected by the commission. Then, under subsections (2), (3) and (4) of section 26, the Prime Minister must recommend the Queen to appoint the person notified to him by the Lord Chancellor.

Schedule 8: Supreme Court selection commissions

78. This Schedule contains the rules governing the composition of the selection commission for the appointment of judges to the Supreme Court. It sets out who is eligible to sit on the commission, how it is to be convened, and the rules for its operation. This selection commission will put forward candidates for appointment to the Lord Chancellor, for notification to the Prime Minister and eventual recommendation by the Prime Minister to Her Majesty for appointment, according to the procedure set out in sections 26-31.