

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 Selection Commissions

##### Selection Commission

##### 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.