

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 2: Appointments

General Provisions

Lords Justices of Appeal

Section 76: Selection of Lords Justices of Appeal

284. A similar process applies to the appointment of Lords Justices of Appeal. Section 76 provides that a person may only be recommended for appointment to one of these posts in accordance with the procedures in the Act.

Section 77: Duty to fill vacancies

285. [Section 77](#) imposes a duty on the Lord Chancellor to fill any vacancy in the office of Lord Justice of Appeal. The Lord Chancellor can only decide not to fill a vacancy whilst the Lord Chief Justice agrees that it may remain unfilled.

Section 78: Request for selection

286. [Section 78](#) provides for the Lord Chancellor to request the Commission to select someone for appointment as a Lord Justice of Appeal. Before asking the Commission to select someone the Lord Chancellor must consult the Lord Chief Justice. Any request may relate to more than one post and recommendation.

Section 79: Selection Process

287. When the Lord Chancellor makes a request the Commission must appoint a selection panel, which will determine the procedure to be applied, apply the process and make a selection of one person for each vacancy. The panel is a committee of the Commission, which will provide it with administrative support.

Section 80: Selection Panel

288. For the appointment of Lords Justices of Appeal, the selection panel will consist of four members. The first member is the Lord Chief Justice or another senior judge nominated by him, who will chair and have a casting vote; the second member is one of the Heads of Division or a Lord Justice chosen by the Lord Chief Justice; the third member is the Chairman of the Commission or his nominee, or if that post is vacant or the chairman is unavailable and has been unable to make a nomination, one of the lay members of the Commission chosen by themselves; and the fourth member is another lay member of the Commission chosen by the third member. No one who is willing to be considered for selection may be a member of the panel. No nominee may represent more than one person or be a member of the panel in another capacity.

Section 81: Report

289. When the panel has selected someone, it must report to the Lord Chancellor, in a form approved by him, with the name of the person selected and any other information he requires. After submitting the report it must provide any further information the Lord Chancellor requires.

Section 82: The Lord Chancellor's options

290. As in relation to the appointment of the Heads of Division, when the Lord Chancellor receives the report informing him of the person selected by the panel, he has the options of accepting the person selected; rejecting that person and requiring a different name to be put forward; or requiring the selection panel to reconsider its selection. This is stage 1 of the process. If the Lord Chancellor rejects the selection or requires reconsideration, the process moves into stage 2. At this stage the panel puts a name to the Lord Chancellor, and the Lord Chancellor has these options: he may accept the person selected; he may reject the selection (but only if he has not already used that power at stage 1); or he may require reconsideration (but only if he has not already used that power at stage 1). If the Lord Chancellor rejects the selection or requires reconsideration, the process moves into stage 3. At this stage the panel again puts a name to the Lord Chancellor. This time he must accept the selection of the latest selected candidate, or of a candidate selected in stage 1 or stage 2 whose name was not resubmitted by the panel after reconsideration, but who has not been rejected.

Section 83: Exercise of powers to reject or require reconsideration

291. The Lord Chancellor can only reject a selection outright if, in his opinion, the person selected is not suitable for the office concerned. He can only require reconsideration if, in his opinion, there is not enough evidence that the selected person is suitable for the office concerned, or there is evidence that the person is not the best candidate on merit. If the Lord Chancellor either rejects a selection or requires it to be reconsidered, he must give his reasons in writing.

Section 84: Selection following rejection or requirement to reconsider

292. If the Lord Chancellor rejects a selection, the panel cannot put forward the same candidate, or one whose selection has already been withdrawn after being reconsidered. If he requires reconsideration, the panel may reselect the same candidate, but not one who has already been rejected. In either case, the panel must inform the Lord Chancellor of its new or reconsidered selection. A person who has been reconsidered or rejected is not prevented from being selected by the panel in response to a subsequent new request from the Lord Chancellor to select someone for appointment as a Lord Justice.