



Constitutional Reform Act 2005

2005 CHAPTER 4

PART 3

THE SUPREME COURT

Acting judges

38 Acting judges

- (1) At the request of the President of the Supreme Court any of the following may act as a judge of the Court—
 - (a) a person who holds office as a senior territorial judge;
 - (b) a member of the supplementary panel under section 39.
- (2) A request under subsection (1) may be made by the Deputy President of the Court if there is no President or the President is unable to make that request.
- (3) In section 26(7) of the Judicial Pensions and Retirement Act 1993 (c. 8) (requirement not to act in certain capacities after the age of 75) for paragraph (b) substitute—
 - “(b) act as a judge of the Supreme Court under section 38 of the Constitutional Reform Act 2005;”.
- (4) Every person while acting under this section is, subject to subsections (5) and (6), to be treated for all purposes as a judge of the Supreme Court (and so may perform any of the functions of a judge of the Court).
- (5) A person is not to be treated under subsection (4) as a judge of the Court for the purposes of any statutory provision relating to—
 - (a) the appointment, retirement, removal or disqualification of judges of the Court,
 - (b) the tenure of office and oaths to be taken by judges of the Court, or
 - (c) the remuneration, allowances or pensions of judges of the Court.

Changes to legislation: Constitutional Reform Act 2005, Cross Heading: Acting judges is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (6) Subject to section 27 of the Judicial Pensions and Retirement Act 1993, a person is not to be treated under subsection (4) as having been a judge of the Court if he has acted in the Court only under this section.
- (7) Such remuneration and allowances as the Lord Chancellor may with the agreement of the Treasury determine may be paid out of money provided by Parliament to any person who acts as a judge of the Court under this section.
- (8) In this section “office as a senior territorial judge” means office as any of the following—
 - (a) a judge of the Court of Appeal in England and Wales;
 - (b) a judge of the Court of Session, but only if the holder of the office is a member of the First or Second Division of the Inner House of that Court;
 - (c) a judge of the Court of Appeal in Northern Ireland, unless the holder holds the office only by virtue of being a puisne judge of the High Court.

39 Supplementary panel

- (1) There is to be a panel of persons known as the supplementary panel.
- (2) On the commencement of this section any member of the House of Lords who—
 - (a) meets one of the conditions in subsection (3),
 - (b) does not hold high judicial office,
 - (c) has not attained the age of 75, and
 - (d) is not a person who was appointed to the office of Lord Chancellor on or after 12 June 2003,
 becomes a member of the panel.
- (3) The conditions are—
 - (a) that he ceased to hold high judicial office less than 5 years before the commencement of this section;
 - (b) that he was a member of the Judicial Committee of the Privy Council immediately before that commencement;
 - (c) that he ceased to be a member of that Committee less than 5 years before that commencement.
- (4) A person becomes a member of the supplementary panel on ceasing to hold office as a judge of the Supreme Court or as a senior territorial judge, but only if, while he holds such office [^{F1}or within 2 years of ceasing to hold such office]—
 - (a) his membership of the panel is approved in writing by the President of the Supreme Court, and
 - (b) the President of the Court gives the Lord Chancellor notice in writing of the approval.
- (5) Subsection (4) does not apply to a person who ceases to hold office as a judge of the Supreme Court when he ceases to be President of the Court.
- (6) Such a person becomes a member of the supplementary panel on ceasing to be President of the Court, unless—
 - (a) while President, he gives the Lord Chancellor notice that he is not to become a member of the panel,

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- (b) he ceases to be President on being removed from office as a judge of the Court on the address of both Houses of Parliament, or
 - (c) his office is declared vacant under section 36.
- (7) A person does not become a member of the supplementary panel under subsection (4) or (6) if—
- (a) on ceasing to hold office as a judge of the Supreme Court he takes office as a senior territorial judge, or
 - (b) on ceasing to hold office as a senior territorial judge he takes office as a judge of the Supreme Court.
- (8) A member of the supplementary panel may resign by notice in writing to the President of the Court.
- (9) Unless he resigns (and subject to sections 26(7)(b) and 27 of the Judicial Pensions and Retirement Act 1993 (c. 8)), a person ceases to be a member of the supplementary panel—
- (a) at the end of 5 years after the last day on which he holds his qualifying office, or
 - (b) if earlier, at the end of the day on which he attains the age of 75.
- (10) In this section—
- (a) “office as a senior territorial judge” has the same meaning as in section 38;
 - (b) a person's “qualifying office” is the office (that is, high judicial office, membership of the Judicial Committee of the Privy Council, office as a judge of the Supreme Court or office as a senior territorial judge) that he held before becoming a member of the supplementary panel.

Textual Amendments

F1 Words in s. 39(4) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), ss. 82, 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 67

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 132(4A) words substituted by [2015 c. 2 s. 83\(1\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(2\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(3\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(4\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(6\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(8\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(9\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(10\)\(a\)](#)
- Sch. 7 para. 4Pt. A words substituted by [2007 c. 15 s. 144\(10\)\(b\)](#)