



Constitutional Reform Act 2005

2005 CHAPTER 4

PART 4

JUDICIAL APPOINTMENTS AND DISCIPLINE

CHAPTER 2

APPOINTMENTS

Supplementary provisions about selection

[^{F1}94C Selection process

- (1) The Lord Chancellor must by regulations made with the agreement of the Lord Chief Justice—
 - (a) make further provision about the process to be applied in a case where the Commission receives a request under section 87;
 - (b) make further provision about—
 - (i) membership of selection panels appointed under section 70, 75B or 79, and
 - (ii) the process that is to be applied in a case where a selection panel is required to be appointed under section 70, 75B or 79;
 - (c) secure, subject to section 95 and any provision within subsection (2)(d) that is included in the regulations, that in every case referred to paragraph (a) or (b) (i) there will come a point in the process when a selection has to be accepted, either unconditionally or subject only to matters such as the selected person's willingness and availability, by or on behalf of the appropriate authority.
- (2) The regulations may in particular—
 - (a) provide for process additional to the selection process applied under section 70(2), 75B(2), 79(2) or 88(1), including post-acceptance process;
 - (b) make provision as to things that are, or as to things that are not, to be done—

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- (i) as part of the selection process applied under section 70(2), 75B(2), 79(2) or 88(1), or
- (ii) in determining what that process is to be;
- (c) provide for selection on a request under section 87 to be from among persons identified under section 94 in response to advance notice of the request;
- (d) provide for section 88(1)(c) not to apply where, or to the extent that, the Commission decides that the selection process applied under section 88(1) has not identified candidates of sufficient merit for it to comply with section 88(1)(c);
- (e) give functions to the Lord Chancellor, including—
 - (i) power to require a selection panel to reconsider a selection under section 70(2), 75B(2) or 79(2) or any subsequent selection,
 - (ii) power to reject a selection under section 70(2) or any subsequent selection,
 - (iii) power to reject a selection under section 75B(2) or 79(2) or any subsequent selection,
 - (iv) power to reject, or require the reconsideration of, initial or subsequent selections made on a request under section 87, and
 - (v) power to require the reconsideration of a decision mentioned in paragraph (d);
- (f) give functions to the Lord Chief Justice in connection with selection for an office listed in Table 2 of Part 1 or 2 of Schedule 14 or in connection with selection for membership of a pool for requests under section 9(1) of the Senior Courts Act 1981, including—
 - (i) power to reject, or require the reconsideration of, initial or subsequent selections made on a request under section 87, and
 - (ii) power to require the reconsideration of a decision mentioned in paragraph (d);
- (g) give functions to the Senior President of Tribunals in connection with selection for an office listed in Table 3 of Part 1, or Table 2 of Part 3, of Schedule 14, including—
 - (i) power to reject, or require the reconsideration of, initial or subsequent selections made on a request under section 87, and
 - (ii) power to require the reconsideration of a decision mentioned in paragraph (d);
- (h) make provision for or in connection with duties mentioned in section 51 of the Equality Act 2010 being duties of the Lord Chief Justice, or Senior President of Tribunals, in relation to an office within Table 2 or 3 of Part 1 of Schedule 14;
- (i) provide for particular action to be taken by the Commission or a selection panel after the panel has complied with section 70, 75B or 79;
- (j) provide for particular action to be taken by the Commission after a selection has been made on a request under section 87;
- (k) provide for the dissolution of a selection panel appointed under section 70, 75B or 79;
- (l) provide for section 16(2)(a) or (b) not to apply in relation to functions of the Lord Chief Justice—
 - (i) as a member of such a panel (including functions of chairing such a panel), or

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- (ii) in relation to the nomination or appointment of members of such a panel;
 - (m) provide for a person to cease to be a member of such a panel where the person's membership of the panel ceases to contribute to meeting a requirement about the panel's members;
 - (n) provide for a person to become a member of such a panel where another person ceases to be a member of the panel or where another person's membership of the panel ceases to contribute to meeting a requirement about the panel's members;
 - (o) make provision for or in connection with assessments, whether pre-acceptance or post-acceptance, of the health of persons selected;
 - (p) provide for the Lord Chief Justice to nominate a judicial office holder (as defined in section 109(4)) to exercise functions given to the Lord Chief Justice by the regulations (including functions, such as functions as a consultee, given otherwise than in reliance on paragraph (f));
 - (q) make provision prohibiting or restricting delegation by the Senior President of Tribunals of functions given to the Senior President of Tribunals by the regulations (including functions, such as functions as a consultee, given otherwise than in reliance on paragraph (g));
 - (r) make provision as to the meaning of “non-legally-qualified” and “judicial member” in sections 70, 75B and 79.
- (3) Regulations under this section—
- (a) may make different provision for different purposes;
 - (b) may make transitory, transitional or saving provision.
- (4) In subsection (1)(c) “the appropriate authority” means—
- (a) the Lord Chancellor where the selection—
 - (i) is on a request under section 69 or 78,
 - (ii) relates to the office of Senior President of Tribunals or puisne judge of the High Court, or
 - (iii) relates to an office listed in Table 1 of Part 1, 2 or 3 of Schedule 14;
 - (b) the Lord Chief Justice where the selection relates to an office listed in Table 2 of Part 1 or 2 of that Schedule;
 - (c) the Senior President of Tribunals where the selection relates to an office listed in Table 3 of Part 1, or Table 2 of Part 3, of that Schedule.
- (5) This section is subject to section 95.]

Textual Amendments

F1 S. 94C inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(3\)](#); [S.I. 2013/2200](#), art. 3(e) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

95 Withdrawal and modification of requests

- (1) This section applies to a request under section 69, 78 or 87 [^{F2}or paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007].
- (2) The Lord Chancellor may withdraw or modify a request only as follows—

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- [^{F3}(za) the Lord Chancellor may withdraw or modify a request in consequence of a vacancy, or perceived need for an additional office-holder, having been filled or partly filled by change in the amount of time required to be devoted to the duties of office by an existing holder of the office concerned;]
- (a) so far as a request relates to any recommendation or appointment to fill a vacancy, he may withdraw or modify it with the agreement of the Lord Chief Justice;
- (b) so far as a request relates to any recommendation or appointment otherwise than to fill a vacancy, he may withdraw or modify it after consulting the Lord Chief Justice;
- [^{F4}(ba) so far as a request relates to any pool membership, the Lord Chancellor may withdraw or modify it after consulting the Lord Chief Justice;]
- (c) [^{F5}the Lord Chancellor] may withdraw a request as respects all recommendations [^{F6}, appointments or pool memberships] to which it relates if, after consulting the Lord Chief Justice, [^{F5}the Lord Chancellor] considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily.
- (3) If a request is withdrawn in part or modified, the Commission or selection panel may, if it thinks it appropriate because of the withdrawal or modification, change any selection already made pursuant to the request, except a selection already accepted [^{F7}unconditionally or subject only to matters such as the selected person's willingness and availability].
- (4) The Lord Chancellor may not withdraw a request under subsection (2)(c) if [^{F8}a selection made pursuant to the request—
- (a) has been accepted unconditionally or subject only to matters such as the selected person's willingness and availability, or
- (b) in exercise of power conferred by regulations under section 94C, has been rejected or required to be reconsidered.]
- (5) Any withdrawal or modification of a request must be by notice in writing to the Commission.
- (6) The notice must state whether the withdrawal or modification is under subsection (2) (a), (b) or (c).
- (7) In the case of a withdrawal under subsection (2)(c), the notice must state why the Lord Chancellor considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily.
- (8) If or to the extent that a request is withdrawn—
- (a) the preceding provisions of this Part cease to apply in relation to it, and
- (b) any selection made on it is to be disregarded.
- (9) Withdrawal of a request to any extent does not affect the power of the Lord Chancellor to make another request in the same or different terms.

Textual Amendments

- F2** Words in s. 95(1) inserted (19.9.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 2, 148, [Sch. 1 para. 5\(2\)](#); [S.I. 2007/2709](#), [art. 2\(g\)](#)

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- F3** S. 95(2)(za) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 69(2)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F4** S. 95(2)(ba) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 69(3)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F5** Words in s. 95(2)(c) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 69(4)(a)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F6** Words in s. 95(2)(c) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 69(4)(b)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F7** Words in s. 95(3) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 69(5)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F8** Words in s. 95(4) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 69(6)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

F⁹96 **Effect of acceptance of selection**

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Textual Amendments

- F9** S. 96 omitted (1.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 53(2)(e)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

97 **Scotland and Northern Ireland**

- (1) [^{F10}Subsections (2) and (3) apply] to consultation that a person is required to undertake under any of these provisions—
 - (a) section 87(2);
 - ^{F11}(b)
 - ^{F11}(c)
 - ^{F12}(ca)
 - (d) section [^{F13}95(2)(b)] or (c),
 - ^{F14}(e)
- (2) If the consultation appears to that person to relate to the appointment (or a recommendation for the appointment) of a person to exercise functions wholly or mainly in Scotland, any reference in the provision to the Lord Chief Justice is to be read as a reference to the Lord President of the Court of Session.
- (3) If the consultation appears to that person to relate to the appointment (or a recommendation for the appointment) of a person to exercise functions wholly or mainly in Northern Ireland, any reference in the provision to the Lord Chief Justice is to be read as a reference to the Lord Chief Justice of Northern Ireland.
- [^{F15}(4) Subsections (2) and (3) apply to the reference in section ^{F16}... [^{F17}95(2)(a)] to the Lord Chancellor obtaining the concurrence of the Lord Chief Justice as they apply to a reference in a provision specified in subsection (1) to the Lord Chancellor consulting the Lord Chief Justice.]
- ^{F18}(5)
- ^{F18}(6)

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Textual Amendments

- F10** Words in s. 97(1) substituted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), s. 53\(6\)\(a\)](#)
- F11** S. 97(1)(b)(c) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 13 para. 70\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F12** S. 97(1)(ca) omitted (10.3.2022 for specified purposes, 1.10.2022 in so far as not already in force) by virtue of [Public Service Pensions and Judicial Offices Act 2022 \(c. 7\), s. 131\(1\)\(4\)\(c\), Sch. 4 para. 11\(5\)\(a\)](#); S.I. 2022/1014, reg. 2(d) (with reg. 3)
- F13** Word in s. 97(1)(d) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 13 para. 70\(2\)\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F14** S. 97(1)(e) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 13 para. 70\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F15** S. 97(4)-(6) added (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), s. 53\(7\)](#)
- F16** Words in s. 97(4) omitted (10.3.2022 for specified purposes, 1.10.2022 in so far as not already in force) by virtue of [Public Service Pensions and Judicial Offices Act 2022 \(c. 7\), s. 131\(1\)\(4\)\(c\), Sch. 4 para. 11\(5\)\(b\)](#); S.I. 2022/1014, reg. 2(d) (with reg. 3)
- F17** Words in s. 97(4) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 13 para. 70\(3\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F18** S. 97(5)(6) omitted (10.3.2022 for specified purposes, 1.10.2022 in so far as not already in force) by virtue of [Public Service Pensions and Judicial Offices Act 2022 \(c. 7\), s. 131\(1\)\(4\)\(c\), Sch. 4 para. 11\(5\)\(c\)](#); S.I. 2022/1014, reg. 2(d) (with reg. 3)

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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\(10\)\(b\)](#)