



# Constitutional Reform Act 2005

## 2005 CHAPTER 4

### PART 4

#### JUDICIAL APPOINTMENTS AND DISCIPLINE

### CHAPTER 1

#### COMMISSION AND OMBUDSMAN

#### **61 The Judicial Appointments Commission**

- (1) There is to be a body corporate called the Judicial Appointments Commission.
- (2) Schedule 12 is about the Commission.

#### **62 Judicial Appointments and Conduct Ombudsman**

- (1) There is to be a Judicial Appointments and Conduct Ombudsman.
- (2) Schedule 13 is about the Ombudsman.

### CHAPTER 2

#### APPOINTMENTS

#### *General provisions*

#### **63 Merit and good character**

- (1) Subsections (2) and (3) apply to any selection under this Part by the Commission or a selection panel (“the selecting body”).

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- (2) Selection must be solely on merit.
- (3) A person must not be selected unless the selecting body is satisfied that he is of good character.

#### **64 Encouragement of diversity**

- (1) The Commission, in performing its functions under this Part, must have regard to the need to encourage diversity in the range of persons available for selection for appointments.
- (2) This section is subject to section 63.

#### **65 Guidance about procedures**

- (1) The Lord Chancellor may issue guidance about procedures for the performance by the Commission or a selection panel of its functions of—
  - (a) identifying persons willing to be considered for selection under this Part, and
  - (b) assessing such persons for the purposes of selection.
- (2) The guidance may, among other things, relate to consultation or other steps in determining such procedures.
- (3) The purposes for which guidance may be issued under this section include the encouragement of diversity in the range of persons available for selection.
- (4) The Commission and any selection panel must have regard to the guidance in matters to which it relates.

#### **66 Guidance: supplementary**

- (1) Before issuing any guidance the Lord Chancellor must—
  - (a) consult the Lord Chief Justice;
  - (b) after doing so, lay a draft of the proposed guidance before each House of Parliament.
- (2) If the draft is approved by a resolution of each House of Parliament within the 40-day period the Lord Chancellor must issue the guidance in the form of the draft.
- (3) In any other case the Lord Chancellor must take no further steps in relation to the proposed guidance.
- (4) Subsection (3) does not prevent a new draft of the proposed guidance from being laid before each House of Parliament after consultation with the Lord Chief Justice.
- (5) Guidance comes into force on such date as the Lord Chancellor may appoint by order.
- (6) The Lord Chancellor may—
  - (a) from time to time revise the whole or part of any guidance and re-issue it;
  - (b) after consulting the Lord Chief Justice, by order revoke any guidance.
- (7) In this section—
  - “40-day period” in relation to the draft of any proposed guidance means—

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- (a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later day, and
  - (b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,
- no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days;  
“guidance” means guidance issued by the Lord Chancellor under section 65 and includes guidance which has been revised and re-issued.

### *Lord Chief Justice and Heads of Division*

## **67 Selection of Lord Chief Justice and Heads of Division**

- (1) Sections 68 to 75 apply to a recommendation for an appointment to one of the following offices—
  - (a) Lord Chief Justice;
  - (b) Master of the Rolls;
  - (c) President of the Queen’s Bench Division;
  - (d) President of the Family Division;
  - (e) Chancellor of the High Court.
- (2) Any such recommendation must be made in accordance with those sections and section 96.

## **68 Duty to fill vacancies**

- (1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Chief Justice.
- (2) The Lord Chancellor must make a recommendation to fill any vacancy in any other office listed in section 67(1).
- (3) Subsection (2) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

## **69 Request for selection**

- (1) The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation to which this section applies.
- (2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.
- (3) Subsection (2) does not apply where the office of Lord Chief Justice is vacant or where the Lord Chief Justice is incapacitated for the purposes of section 16 (functions during vacancy or incapacity).
- (4) Sections 70 to 75 apply where the Lord Chancellor makes a request under this section.
- (5) Those sections are subject to section 95 (withdrawal and modification of requests).

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## **70 Selection process**

- (1) On receiving a request the Commission must appoint a selection panel.
- (2) The panel must—
  - (a) determine the selection process to be applied,
  - (b) apply the selection process, and
  - (c) make a selection accordingly.
- (3) One person only must be selected for each recommendation to which a request relates.
- (4) Subsection (3) applies to selection under this section and to selection under section 75.
- (5) If practicable the panel must consult, about the exercise of its functions under this section, the current holder of the office for which a selection is to be made.
- (6) A selection panel is a committee of the Commission.

## **71 Selection panel**

- (1) The selection panel must consist of four members.
- (2) The first member is the most senior England and Wales Supreme Court judge who is not disqualified, or his nominee.
- (3) Unless subsection (7) applies, the second member is the Lord Chief Justice or his nominee.
- (4) Unless subsection (9) applies, the third member is the chairman of the Commission or his nominee.
- (5) The fourth member is a lay member of the Commission designated by the third member.
- (6) Subsection (7) applies if—
  - (a) the Lord Chief Justice is disqualified, or
  - (b) there is no Lord Chief Justice.
- (7) In those cases the most senior England and Wales Supreme Court judge who is not disqualified must designate a person (but not a person who is disqualified) as the second member.
- (8) Subsection (9) applies if—
  - (a) there is no chairman of the Commission, or
  - (b) the chairman of the Commission is unavailable and has not nominated a person under subsection (4).
- (9) In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (10) Only the following may be a nominee under subsection (2) or (3) or designated under subsection (7)—
  - (a) an England and Wales Supreme Court judge,
  - (b) a Head of Division, or
  - (c) a Lord Justice of Appeal.

- (11) The following also apply to nominees under this section—
- (a) a person may not be a nominee if he is disqualified;
  - (b) a person may not be appointed to the panel as the nominee of more than one person;
  - (c) a person appointed to the panel otherwise than as a nominee may not be a nominee.
- (12) The first member is the chairman of the panel.
- (13) On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie.
- (14) A person is disqualified for the purposes of this section if—
- (a) he is the current holder of the office for which a selection is to be made, or
  - (b) he is willing to be considered for selection.
- (15) In this section “England and Wales Supreme Court judge” means a judge of the Supreme Court who has held high judicial office in England and Wales before appointment to the Court.

## **72 Report**

- (1) After complying with section 70(2) the selection panel must submit a report to the Lord Chancellor.
- (2) The report must—
- (a) state who has been selected;
  - (b) contain any other information required by the Lord Chancellor.
- (3) The report must be in a form approved by the Lord Chancellor.
- (4) After submitting the report the panel must provide any further information the Lord Chancellor may require.

## **73 The Lord Chancellor’s options**

- (1) This section refers to the following stages—

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<i>Stage 1:</i>	where a person has been selected under section 70
<i>Stage 2:</i>	where a person has been selected following a rejection or reconsideration at stage 1
<i>Stage 3:</i>	where a person has been selected following a rejection or reconsideration at stage 2.

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- (2) At stage 1 the Lord Chancellor must do one of the following—
- (a) accept the selection;
  - (b) reject the selection;
  - (c) require the selection panel to reconsider the selection.
- (3) At stage 2 the Lord Chancellor must do one of the following—

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- (a) accept the selection;
  - (b) reject the selection, but only if it was made following a reconsideration at stage 1;
  - (c) require the selection panel to reconsider the selection, but only if it was made following a rejection at stage 1.
- (4) At stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he accepts a selection under it.
- (5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.

#### **74 Exercise of powers to reject or require reconsideration**

- (1) The power of the Lord Chancellor under section 73 to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned.
- (2) The power of the Lord Chancellor under section 73 to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—
  - (a) there is not enough evidence that the person is suitable for the office concerned, or
  - (b) there is evidence that the person is not the best candidate on merit.
- (3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

#### **75 Selection following rejection or requirement to reconsider**

- (1) If under section 73 the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with this section.
- (2) If the Lord Chancellor rejects a selection, the selection panel—
  - (a) may not select the person rejected, and
  - (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.
- (3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel—
  - (a) may select the same person or a different person, but
  - (b) where the requirement is following a rejection, may not select the person rejected.
- (4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.
- (5) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under section 69.

## *Lords Justices of Appeal*

### **76 Selection of Lords Justices of Appeal**

- (1) Sections 77 to 84 apply to a recommendation for appointment as a Lord Justice of Appeal.
- (2) Any such recommendation must be made in accordance with those sections and section 96.

### **77 Duty to fill vacancies**

- (1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Justice of Appeal.
- (2) Subsection (1) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

### **78 Request for selection**

- (1) The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation for appointment as a Lord Justice of Appeal.
- (2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.
- (3) A request may relate to more than one recommendation.
- (4) Sections 79 to 84 apply where the Lord Chancellor makes a request under this section.
- (5) Those sections are subject to section 95 (withdrawal and modification of requests).

### **79 Selection process**

- (1) On receiving a request the Commission must appoint a selection panel.
- (2) The panel must—
  - (a) determine the selection process to be applied,
  - (b) apply the selection process, and
  - (c) make a selection accordingly.
- (3) One person only must be selected for each recommendation to which a request relates.
- (4) Subsection (3) applies to selection under this section and to selection under section 84.
- (5) A selection panel is a committee of the Commission.

### **80 Selection panel**

- (1) The selection panel must consist of four members.
- (2) The first member is the Lord Chief Justice, or his nominee.
- (3) The second member is a Head of Division or Lord Justice of Appeal designated by the Lord Chief Justice.

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- (4) Unless subsection (7) applies, the third member is the chairman of the Commission or his nominee.
- (5) The fourth member is a lay member of the Commission designated by the third member.
- (6) Subsection (7) applies if—
  - (a) there is no chairman of the Commission, or
  - (b) the chairman of the Commission is unavailable and has not nominated a person under subsection (4).
- (7) In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (8) A nominee of the Lord Chief Justice must be a Head of Division or a Lord Justice of Appeal.
- (9) A person may not be appointed to the panel if he is willing to be considered for selection.
- (10) A person may not be appointed to the panel as the nominee of more than one person.
- (11) A person appointed to the panel otherwise than as a nominee may not be a nominee.
- (12) The first member is the chairman of the panel.
- (13) On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie.

## **81 Report**

- (1) After complying with section 79(2) the selection panel must submit a report to the Lord Chancellor.
- (2) The report must—
  - (a) state who has been selected;
  - (b) contain any other information required by the Lord Chancellor.
- (3) The report must be in a form approved by the Lord Chancellor.
- (4) After submitting the report the panel must provide any further information the Lord Chancellor may require.

## **82 The Lord Chancellor's options**

- (1) This section refers to the following stages—

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<i>Stage 1:</i>	where a person has been selected under section 79
<i>Stage 2:</i>	where a person has been selected following a rejection or reconsideration at stage 1
<i>Stage 3:</i>	where a person has been selected following a rejection or reconsideration at stage 2.

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- (2) At stage 1 the Lord Chancellor must do one of the following—
  - (a) accept the selection;
  - (b) reject the selection;
  - (c) require the selection panel to reconsider the selection.
- (3) At stage 2 the Lord Chancellor must do one of the following—
  - (a) accept the selection;
  - (b) reject the selection, but only if it was made following a reconsideration at stage 1;
  - (c) require the selection panel to reconsider the selection, but only if it was made following a rejection at stage 1.
- (4) At stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he accepts a selection under it.
- (5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.

### **83 Exercise of powers to reject or require reconsideration**

- (1) The power of the Lord Chancellor under section 82 to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned.
- (2) The power of the Lord Chancellor under section 82 to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—
  - (a) there is not enough evidence that the person is suitable for the office concerned, or
  - (b) there is evidence that the person is not the best candidate on merit.
- (3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

### **84 Selection following rejection or requirement to reconsider**

- (1) If under section 82 the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with this section.
- (2) If the Lord Chancellor rejects a selection, the selection panel—
  - (a) may not select the person rejected, and
  - (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.
- (3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel—
  - (a) may select the same person or a different person, but
  - (b) where the requirement is following a rejection, may not select the person rejected.

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- (4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.
- (5) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under section 78.

### *Puisne judges and other office holders*

## **85 Selection of puisne judges and other office holders**

- (1) Sections 86 to 93 apply to—
  - (a) a recommendation for an appointment to the office of puisne judge of the High Court;
  - (b) a recommendation for an appointment to an office listed in Part 1 of Schedule 14 in exercise of Her Majesty’s function under the enactment listed opposite that office;
  - (c) an appointment to an office listed in Part 2 or 3 of that Schedule in exercise of the Lord Chancellor’s function under the enactment listed opposite that office.
- (2) Any such recommendation or appointment must be made in accordance with those sections and section 96.
- (3) The Lord Chancellor may by order make any of the following amendments to Schedule 14—
  - (a) an amendment which adds a reference to an enactment under which appointments are made to an office;
  - (b) an amendment which adds a reference to an office to which appointments are made under an enactment;
  - (c) an amendment consequential on the abolition or change of name of an office;
  - (d) an amendment consequential on the substitution of one or more enactments for an enactment under which appointments are made to an office.

## **86 Duty to fill vacancies**

- (1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of puisne judge of the High Court or in an office listed in Part 1 of Schedule 14.
- (2) The Lord Chancellor must make an appointment to fill any vacancy in an office listed in Part 2 or 3 of that Schedule.
- (3) Subsections (1) and (2) do not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

## **87 Request for selection**

- (1) The Lord Chancellor may request the Commission to select a person for a recommendation or appointment to which this section applies.
- (2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.
- (3) A request may relate to more than one recommendation or appointment.
- (4) Sections 88 to 93 apply where the Lord Chancellor makes a request under this section.

(5) Those sections are subject to section 95 (withdrawal and modification of requests).

## **88 Selection process**

- (1) On receiving a request the Commission must—
  - (a) determine the selection process to be applied,
  - (b) apply the selection process, and
  - (c) make a selection accordingly.
- (2) But if or so far as the Commission decides that the selection process has not identified candidates of sufficient merit for it to comply with subsection (1)(c), section 93 applies and subsection (1)(c) does not apply.
- (3) As part of the selection process the Commission must consult—
  - (a) the Lord Chief Justice; and
  - (b) a person (other than the Lord Chief Justice) who has held the office for which a selection is to be made or has other relevant experience.
- (4) One person only may be selected for each recommendation or appointment to which a request relates.
- (5) Subsection (4) applies to selection under this section and to selection under section 92 or 93.

## **89 Report**

- (1) After complying with section 88 the Commission must submit a report to the Lord Chancellor.
- (2) The report must—
  - (a) describe the selection process;
  - (b) state any selection made;
  - (c) state any decision under section 88(2);
  - (d) state any recommendation made in consultation under section 88(3) by a person consulted;
  - (e) give reasons in any case where the Commission has not followed such a recommendation;
  - (f) contain any other information required by the Lord Chancellor.
- (3) The report must be in a form approved by the Lord Chancellor.
- (4) After submitting the report the Commission must provide any further information the Lord Chancellor may require.

## **90 The Lord Chancellor's options**

- (1) This section refers to the following stages—

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*Stage 1:*

where a person has been selected under section 88

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<i>Stage 2:</i>	where a person has been selected following a rejection or reconsideration at stage 1
<i>Stage 3:</i>	where a person has been selected following a rejection or reconsideration at stage 2.

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- (2) At stage 1 the Lord Chancellor must do one of the following—
  - (a) accept the selection;
  - (b) reject the selection;
  - (c) require the Commission to reconsider the selection.
- (3) At stage 2 the Lord Chancellor must do one of the following—
  - (a) accept the selection;
  - (b) reject the selection, but only if it was made following a reconsideration at stage 1;
  - (c) require the Commission to reconsider the selection, but only if it was made following a rejection at stage 1.
- (4) At stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he accepts a selection under it.
- (5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.
- (6) Before exercising his powers under this section at any stage in relation to a selection for an appointment or recommendation, the Lord Chancellor must—
  - (a) consult any person whom he is required by any enactment to consult before making the appointment or recommendation, and
  - (b) consult the Scottish Ministers if it appears to him to be an appointment, or a recommendation for the appointment, of a person to exercise functions wholly or mainly in Scotland.

## **91 Exercise of powers to reject or require reconsideration**

- (1) The power of the Lord Chancellor under section 90 to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned or particular functions of that office.
- (2) The power of the Lord Chancellor under section 90 to require the Commission to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—
  - (a) there is not enough evidence that the person is suitable for the office concerned or particular functions of that office, or
  - (b) there is evidence that the person is not the best candidate on merit.
- (3) The Lord Chancellor must give the Commission reasons in writing for rejecting or requiring reconsideration of a selection.

## **92 Selection following rejection or requirement to reconsider**

- (1) If under section 90 the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the Commission must select a person in accordance with this section.
- (2) If the Lord Chancellor rejects a selection, the Commission—
  - (a) may not select the person rejected, and
  - (b) where the rejection is following a requirement to reconsider, may not select the person (if different) whose selection it reconsidered.
- (3) If the Lord Chancellor requires a selection to be reconsidered, the Commission—
  - (a) may select the same person or a different person, but
  - (b) where the requirement is following a rejection, may not select the person rejected.
- (4) But if the Commission decides that the selection process has not identified a candidate of sufficient merit for it to make a selection under this section—
  - (a) section 93 applies;
  - (b) subsection (1) does not apply, but subsections (2) and (3) apply to any selection under section 93.
- (5) The Commission must inform the Lord Chancellor of any person selected following a rejection or a requirement to reconsider.
- (6) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under section 87.

## **93 Reconsideration of decision not to select**

- (1) The Lord Chancellor may require the Commission to reconsider a decision that the selection process has not identified candidates of sufficient merit for it to make a selection.
- (2) The Commission must inform the Lord Chancellor of any person selected on reconsideration under this section.
- (3) Sections 90 to 92 apply to such a person as if the Commission had selected him instead of making the decision reconsidered.

## **94 Duty to identify persons for future requests**

- (1) If the Lord Chancellor gives the Commission notice of a request he expects to make under section 87 the Commission must—
  - (a) seek to identify persons it considers would be suitable for selection on the request, and
  - (b) submit a report to the Lord Chancellor containing any information it considers appropriate about—
    - (i) the extent to which it has identified suitable persons, and
    - (ii) other matters likely to assist the Lord Chancellor in exercising his functions relating to appointments and recommendations.
- (2) For the purposes of subsection (1)(a) and (b)(ii), the Commission must in particular have regard to—

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- (a) the number of recommendations and appointments the Lord Chancellor expects to request selections for;
  - (b) the powers of the Lord Chancellor to reject or require reconsideration of a selection.
- (3) As part of the process of identifying persons under subsection (1)(a), the Commission must consult—
  - (a) the Lord Chief Justice, and
  - (b) a person or persons, other than the Lord Chief Justice, with experience in the office or offices to which requests specified in the notice relate, or with other relevant experience.
- (4) A report under subsection (1)(b) must—
  - (a) state any recommendation made in consultation under subsection (3) by a person consulted;
  - (b) give reasons in any case where the Commission has not followed such a recommendation.
- (5) Where the Lord Chancellor makes a request for the purposes of which the Commission has identified persons under subsection (1)(a), the Commission must, in determining the selection process to be applied, consider whether selection should be from among those persons.

*Supplementary provisions about selection*

## **95 Withdrawal and modification of requests**

- (1) This section applies to a request under section 69, 78 or 87.
- (2) The Lord Chancellor may withdraw or modify a request only as follows—
  - (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;
  - (c) he may withdraw a request as respects all recommendations or appointments to which it relates if, after consulting the Lord Chief Justice, he 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.
- (4) The Lord Chancellor may not withdraw a request under subsection (2)(c) if he has exercised any of his powers under section 73(2), 82(2) or 90(2) in relation to a selection made pursuant to the request.
- (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.

## **96 Effect of acceptance of selection**

- (1) This section applies where the Lord Chancellor accepts a selection under this Chapter.
- (2) Subject to the following provisions of this section, the Lord Chancellor—
  - (a) must make the appointment, or recommendation, for which the selection has been made, and
  - (b) must appoint, or recommend, the person selected.
- (3) Before making the appointment or recommendation the Lord Chancellor may direct the Commission to make arrangements in accordance with the direction—
  - (a) for any assessment of the health of the person selected that the Lord Chancellor considers appropriate, and
  - (b) for a report of the assessment to be made to the Lord Chancellor.
- (4) Subsection (5) applies in any of the following circumstances—
  - (a) the Lord Chancellor notifies the Commission that he is not satisfied on the basis of a report under subsection (3)(b), having consulted the Lord Chief Justice, that the health of the person selected is satisfactory for the purposes of the appointment or recommendation;
  - (b) the person selected declines to be appointed or recommended, or does not agree within a time specified to him for that purpose;
  - (c) the person selected is otherwise not available within a reasonable time to be appointed or recommended.
- (5) Where this subsection applies—
  - (a) the selection accepted and any previous selection for the same appointment or recommendation are to be disregarded;
  - (b) the request pursuant to which the selection was made continues to have effect;
  - (c) any subsequent selection pursuant to that request may be made in accordance with the same or a different selection process.

## **97 Scotland and Northern Ireland**

- (1) This section applies to consultation that a person is required to undertake under any of these provisions—
  - (a) section 87(2);
  - (b) section 88(3);

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- (c) section 94(3);
  - (d) section 95(2)(a), (b) or (c),
  - (e) section 96(4)(a).
- (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.

*Assistance in connection with other appointments*

**98 Assistance in connection with other appointments**

- (1) The Commission must provide any assistance requested by the Lord Chancellor under this section.
- (2) The Lord Chancellor may request assistance for the making by him or by another Minister of the Crown of an appointment or recommendation for appointment, other than one to which section 26 or a provision of this Part applies.
- (3) The Lord Chancellor may only request assistance under this section if it appears to him appropriate because of the Commission's other functions under this Part and the nature of the appointment concerned.
- (4) Without limiting the assistance that may be requested, it may include—
- (a) determining a selection process;
  - (b) applying a selection process;
  - (c) selecting a person;
  - (d) selecting a short list;
  - (e) advice on any of those matters.
- (5) Before making a request the Lord Chancellor must consult—
- (a) the Lord Chief Justice, and
  - (b) the Commission.
- (6) In this section “appointment” includes the conferring of any public function.
- (7) In this Part references to selection under this Part include references to selection by the Commission pursuant to a request under this section (and references to a person selected under this Part are to be read accordingly).

*Complaints and references*

**99 Complaints: interpretation**

- (1) This section applies for the purposes of this Part.



- (2) A Commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission.
- (3) A departmental complaint is a complaint by a qualifying complainant of maladministration by the Lord Chancellor or his department in connection with any of the following—
  - (a) selection under this Part;
  - (b) recommendation for or appointment to an office listed in Schedule 14.
- (4) A qualifying complainant is a complainant who claims to have been adversely affected, as an applicant for selection or as a person selected under this Part, by the maladministration complained of.

#### **100 Complaints to the Commission or the Lord Chancellor**

- (1) The Commission must make arrangements for investigating any Commission complaint made to it.
- (2) The Lord Chancellor must make arrangements for investigating any departmental complaint made to him.
- (3) Arrangements under this section need not apply to a complaint made more than 28 days after the matter complained of.

#### **101 Complaints to the Ombudsman**

- (1) Subsections (2) and (3) apply to a complaint which the complainant—
  - (a) has made to the Commission or the Lord Chancellor in accordance with arrangements under section 100, and
  - (b) makes to the Ombudsman not more than 28 days after being notified of the Commission's or Lord Chancellor's decision on the complaint.
- (2) If the Ombudsman considers that investigation of the complaint is not necessary, he must inform the complainant.
- (3) Otherwise he must investigate the complaint.
- (4) The Ombudsman may investigate a complaint which the complainant—
  - (a) has made to the Commission or the Lord Chancellor in accordance with arrangements under section 100, and
  - (b) makes to the Ombudsman at any time.
- (5) The Ombudsman may investigate a transferred complaint made to him, and no such complaint may be made under the Judicial Appointments Order after the commencement of this section.
- (6) The Judicial Appointments Order is the Judicial Appointments Order in Council 2001, which sets out the functions of Her Majesty's Commissioners for Judicial Appointments.
- (7) A transferred complaint is a complaint that lay to those Commissioners (whether or not it was made to them) in respect of the application of appointment procedures before the commencement of this section, but not a complaint that those Commissioners had declined to investigate or on which they had concluded their investigation.

- (8) Any complaint to the Ombudsman under this section must be in a form approved by him.

## **102 Report and recommendations**

- (1) The Ombudsman must prepare a report on any complaint he has investigated under section 101.
- (2) The report must state—
- (a) what findings the Ombudsman has made;
  - (b) whether he considers the complaint should be upheld in whole or part;
  - (c) if he does, what if any action he recommends should be taken by the Commission or the Lord Chancellor as a result of the complaint.
- (3) The recommendations that may be made under subsection (2)(c) include recommendations for the payment of compensation.
- (4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the complainant as a result of maladministration and not as a result of any failure to be appointed to an office to which the complaint related.

## **103 Report procedure**

- (1) This section applies to a report under section 102.
- (2) The Ombudsman must submit a draft of the report—
- (a) to the Lord Chancellor, and
  - (b) if the complaint was a Commission complaint, to the Commission.
- (3) In finalising the report the Ombudsman—
- (a) must have regard to any proposal by the Lord Chancellor or the Commission for changes in the draft report;
  - (b) must include in the report a statement of any such proposal not given effect to.
- (4) The report must be signed by the Ombudsman.
- (5) If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission.
- (6) Otherwise the Ombudsman must send the report to the Lord Chancellor.
- (7) The Ombudsman must send a copy of the report to the complainant, but that copy must not include information—
- (a) which relates to an identified or identifiable individual other than the complainant, and
  - (b) whose disclosure by the Ombudsman to the complainant would (apart from this subsection) be contrary to section 139.

## **104 References by the Lord Chancellor**

- (1) If the Lord Chancellor refers to the Ombudsman any matter relating to the procedures of the Commission or a committee of the Commission, the Ombudsman must investigate it.

- (2) The matter may relate to such procedures generally or in a particular case.
- (3) The Ombudsman must report to the Lord Chancellor on any investigation under this section.
- (4) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) what if any action he recommends should be taken by any person in relation to the matter.
- (5) The report must be signed by the Ombudsman.

## **105 Information**

The Commission and the Lord Chancellor must provide the Ombudsman with such information as he may reasonably require relating to the subject matter of any investigation by him under section 101 or 104.

### *Miscellaneous*

## **106 Consultation on appointment of lay justices**

In section 10 of the Courts Act 2003 (c. 39) (appointment of lay justices etc.) after subsection (2) insert—

“(2A) The Lord Chancellor must ensure that arrangements for the exercise, so far as affecting any local justice area, of functions under subsections (1) and (2) include arrangements for consulting persons appearing to him to have special knowledge of matters relevant to the exercise of those functions in relation to that area.”

## **107 Disclosure of information to the Commission**

- (1) Information which is held by or on behalf of a permitted person (whether obtained before or after this section comes into force) may be disclosed to the Commission or a committee of the Commission for the purposes of selection under this Part.
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (3) But nothing in this section authorises the making of a disclosure—
  - (a) which contravenes the Data Protection Act 1998 (c. 29), or
  - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (4) This section does not affect a power to disclose which exists apart from this section.
- (5) The following are permitted persons—
  - (a) a chief officer of police of a police force in England and Wales;
  - (b) a chief constable of a police force in Scotland;
  - (c) the Chief Constable of the Police Service of Northern Ireland;
  - (d) the Director General of the National Criminal Intelligence Service;

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- (e) the Director General of the National Crime Squad;
  - (f) the Commissioners of Inland Revenue;
  - (g) the Commissioners of Customs and Excise.
- (6) The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which he considers are of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).
- (7) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.
- (8) The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose)—
- (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue,
  - (b) in the case of the Commissioners of Customs and Excise, to a customs officer.
- (9) For the purposes of this section a customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2).

### CHAPTER 3

#### DISCIPLINE

##### *Disciplinary powers*

#### **108 Disciplinary powers**

- (1) Any power of the Lord Chancellor to remove a person from an office listed in Schedule 14 is exercisable only after the Lord Chancellor has complied with prescribed procedures (as well as any other requirements to which the power is subject).
- (2) The Lord Chief Justice may exercise any of the following powers but only with the agreement of the Lord Chancellor and only after complying with prescribed procedures.
- (3) The Lord Chief Justice may give a judicial office holder formal advice, or a formal warning or reprimand, for disciplinary purposes (but this section does not restrict what he may do informally or for other purposes or where any advice or warning is not addressed to a particular office holder).
- (4) He may suspend a person from a judicial office for any period during which any of the following applies—
  - (a) the person is subject to criminal proceedings;
  - (b) the person is serving a sentence imposed in criminal proceedings;
  - (c) the person has been convicted of an offence and is subject to prescribed procedures in relation to the conduct constituting the offence.
- (5) He may suspend a person from a judicial office for any period if—

- (a) the person has been convicted of a criminal offence,
  - (b) it has been determined under prescribed procedures that the person should not be removed from office, and
  - (c) it appears to the Lord Chief Justice with the agreement of the Lord Chancellor that the suspension is necessary for maintaining confidence in the judiciary.
- (6) He may suspend a person from office as a senior judge for any period during which the person is subject to proceedings for an Address.
- (7) He may suspend the holder of an office listed in Schedule 14 for any period during which the person—
  - (a) is under investigation for an offence, or
  - (b) is subject to prescribed procedures.
- (8) While a person is suspended under this section from any office he may not perform any of the functions of the office (but his other rights as holder of the office are not affected).

## **109 Disciplinary powers: interpretation**

- (1) This section has effect for the purposes of section 108.
- (2) A person is subject to criminal proceedings if in any part of the United Kingdom proceedings against him for an offence have been begun and have not come to an end, and the times when proceedings are begun and come to an end for the purposes of this subsection are such as may be prescribed.
- (3) A person is subject to proceedings for an Address from the time when notice of a motion is given in each House of Parliament for an Address for the removal of the person from office, until the earliest of the following events—
  - (a) either notice is withdrawn;
  - (b) either motion is amended so that it is no longer a motion for an address for removal of the person from office;
  - (c) either motion is withdrawn, lapses or is disagreed to;
  - (d) where an Address is presented by each House, a message is brought to each House from Her Majesty in answer to the Address.
- (4) “Judicial office” means—
  - (a) office as a senior judge, or
  - (b) an office listed in Schedule 14;and “judicial office holder” means the holder of a judicial office.
- (5) “Senior judge” means any of these—
  - (a) Master of the Rolls;
  - (b) President of the Queen’s Bench Division;
  - (c) President of the Family Division;
  - (d) Chancellor of the High Court;
  - (e) Lord Justice of Appeal;
  - (f) puisne judge of the High Court.
- (6) “Sentence” includes any sentence other than a fine (and “serving” is to be read accordingly).

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- (7) The times when a person becomes and ceases to be subject to prescribed procedures for the purposes of section 108(4) or (7) are such as may be prescribed.
- (8) “Under investigation for an offence” has such meaning as may be prescribed.

### *Applications for review and references*

## **110 Applications to the Ombudsman**

- (1) This section applies if an interested party makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been—
  - (a) a failure to comply with prescribed procedures, or
  - (b) some other maladministration.
- (2) The Ombudsman must carry out a review if the following three conditions are met.
- (3) The first condition is that the Ombudsman considers that a review is necessary.
- (4) The second condition is that—
  - (a) the application is made within the permitted period,
  - (b) the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or
  - (c) the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made within a reasonable time.
- (5) The third condition is that the application is made in a form approved by the Ombudsman.
- (6) But the Ombudsman may not review the merits of a decision made by any person.
- (7) If any of the conditions in subsections (3) to (5) is not met, or if the grounds of the application relate only to the merits of a decision, the Ombudsman—
  - (a) may not carry out a review, and
  - (b) must inform the applicant accordingly.
- (8) In this section and sections 111 to 113, “regulated disciplinary function” means any of the following—
  - (a) any function of the Lord Chancellor that falls within section 108(1);
  - (b) any function conferred on the Lord Chief Justice by section 108(3) to (7);
  - (c) any function exercised under prescribed procedures in connection with a function falling within paragraph (a) or (b).
- (9) In this section, in relation to an application under this section for a review of the exercise of a regulated disciplinary function—
  - “interested party” means—
    - (a) the judicial office holder in relation to whose conduct the function is exercised, or
    - (b) any person who has made a complaint about that conduct in accordance with prescribed procedures;
  - “permitted period” means the period of 28 days beginning with the latest of—

- (a) the failure or other maladministration alleged by the applicant;
  - (b) where that failure or maladministration occurred in the course of an investigation, the applicant being notified of the conclusion or other termination of that investigation;
  - (c) where that failure or maladministration occurred in the course of making a determination, the applicant being notified of that determination.
- (10) References in this section and section 111 to the exercise of a function include references to a decision whether or not to exercise the function.

## **111 Review by the Ombudsman**

- (1) Where the Ombudsman is under a duty to carry out a review on an application under section 110, he must—
  - (a) on the basis of any findings he makes about the grounds for the application, decide to what extent the grounds are established;
  - (b) decide what if any action to take under subsections (2) to (7).
- (2) If he decides that the grounds are established to any extent, he may make recommendations to the Lord Chancellor and Lord Chief Justice.
- (3) A recommendation under subsection (2) may be for the payment of compensation.
- (4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the applicant as a result of any failure or maladministration to which the application relates.
- (5) If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates, he may set aside the determination.
- (6) If a determination is set aside under subsection (5)—
  - (a) the prescribed procedures apply, subject to any prescribed modifications, as if the determination had not been made, and
  - (b) for the purposes of those procedures, any investigation or review leading to the determination is to be disregarded.
- (7) Subsection (6) is subject to any direction given by the Ombudsman under this subsection—
  - (a) for a previous investigation or review to be taken into account to any extent, or
  - (b) for any investigation or review which may form part of the prescribed procedures to be undertaken, or undertaken again.
- (8) This section is subject to section 112.

## **112 Reports on reviews**

- (1) In this section references to the Ombudsman's response to an application are references to the findings and decisions referred to in section 111(1).
- (2) Before determining his response to an application the Ombudsman must prepare a draft of a report of the review carried out on the application.
- (3) The draft report must state the Ombudsman's proposed response.

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- (4) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.
- (5) If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response to the application should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.
- (6) The Ombudsman must produce a final report that sets out—
  - (a) the Ombudsman's response to the application, including any changes made to it to give effect to a proposal under subsection (5);
  - (b) a statement of any proposal under subsection (5) that is not given effect to.
- (7) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
- (8) The Ombudsman must also send a copy of the final report to the applicant, but that copy must not include information—
  - (a) which relates to an identified or identifiable individual other than the applicant, and
  - (b) whose disclosure by the Ombudsman to the applicant would (apart from this subsection) be contrary to section 139.
- (9) Each copy must be signed by the Ombudsman.
- (10) No part of the Ombudsman's response to an application has effect until he has complied with subsections (2) to (9).

### **113 References to the Ombudsman relating to conduct**

- (1) The Ombudsman must investigate any matter referred to him by the Lord Chancellor or the Lord Chief Justice that relates to the exercise of one or more regulated disciplinary functions.
- (2) A matter referred to the Ombudsman under subsection (1) may relate to the particular exercise of a regulated disciplinary function or to specified descriptions of the exercise of such functions.

### **114 Reports on references**

- (1) Where the Ombudsman carries out an investigation under section 113 he must prepare a draft of a report of the investigation.
- (2) If the investigation relates to a matter which is the subject of a review on an application under section 110, subsection (1) applies only when the Ombudsman has sent a copy of the final report on that review to the Lord Chancellor, the Lord Chief Justice and the applicant.
- (3) The draft report must state the Ombudsman's proposals as to—
  - (a) the findings he will make;
  - (b) any recommendations he will make for action to be taken by any person in relation to the matter subject to investigation.
- (4) Those findings and recommendations are referred to in this section as the Ombudsman's response on the investigation.



- (5) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.
- (6) If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response on the investigation should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.
- (7) The Ombudsman must produce a final report that sets out—
  - (a) the Ombudsman's response on the investigation, including any changes made to it to give effect to a proposal under subsection (6);
  - (b) a statement of any proposal under subsection (6) that is not given effect to.
- (8) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
- (9) Each copy must be signed by the Ombudsman.

### *General*

## **115 Regulations about procedures**

The Lord Chief Justice may, with the agreement of the Lord Chancellor, make regulations providing for the procedures that are to be followed in—

- (a) the investigation and determination of allegations by any person of misconduct by judicial office holders;
- (b) reviews and investigations (including the making of applications or references) under sections 110 to 112.

## **116 Contents of regulations**

- (1) Regulations under section 115(a) may include provision as to any of the following—
  - (a) circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise);
  - (b) steps to be taken by a complainant before a complaint is to be investigated;
  - (c) the conduct of an investigation, including steps to be taken by the office holder under investigation or by a complainant or other person;
  - (d) time limits for taking any step and procedures for extending time limits;
  - (e) persons by whom an investigation or part of an investigation is to be conducted;
  - (f) matters to be determined by the Lord Chief Justice, the Lord Chancellor, the office holder under investigation or any other person;
  - (g) requirements as to records of investigations;
  - (h) requirements as to confidentiality of communications or proceedings;
  - (i) requirements as to the publication of information or its provision to any person.
- (2) The regulations—
  - (a) may require a decision as to the exercise of functions under section 108, or functions mentioned in subsection (1) of that section, to be taken in accordance with findings made pursuant to prescribed procedures;

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- (b) may require that prescribed steps be taken by the Lord Chief Justice or the Lord Chancellor in exercising those functions or before exercising them.
- (3) Where regulations under section 115(a) impose any requirement on the office holder under investigation or on a complainant, a person contravening the requirement does not incur liability other than liability to such procedural penalty if any (which may include the suspension or dismissal of a complaint)—
  - (a) as may be prescribed by the regulations, or
  - (b) as may be determined by the Lord Chief Justice and the Lord Chancellor or either of them in accordance with provisions so prescribed.
- (4) Regulations under section 115 may—
  - (a) provide for any prescribed requirement not to apply if the Lord Chief Justice and the Lord Chancellor so agree;
  - (b) make different provision for different purposes.
- (5) Nothing in this section limits the generality of section 115.

#### **117 Procedural rules**

- (1) Regulations under section 115 may provide for provision of a prescribed description that may be included in the regulations to be made instead by rules made by the Lord Chief Justice with the agreement of the Lord Chancellor.
- (2) But the provision that may be made by rules does not include—
  - (a) provision within section 116(2);
  - (b) provision made for the purposes of section 108(7) or (8) or 116(3).
- (3) The rules are to be published in such manner as the Lord Chief Justice may determine with the agreement of the Lord Chancellor.

#### **118 Extension of discipline provisions to other offices**

- (1) This Chapter applies in relation to an office designated by the Lord Chancellor under this section as it would apply if the office were listed in Schedule 14.
- (2) The Lord Chancellor may by order designate any office, not listed in Schedule 14, the holder of which he has power to remove from office.
- (3) An order under this section may be made only with the agreement of the Lord Chief Justice.

#### **119 Delegation of functions**

- (1) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4)) to exercise any of his functions under the relevant sections.
- (2) The relevant sections are—
  - (a) section 108(3) to (7);
  - (b) section 111(2);
  - (c) section 112;
  - (d) section 116(3)(b).

### *Scotland and Northern Ireland*

#### **120 Scotland**

- (1) In section 108, in relation to a judicial office holder who exercises functions wholly or mainly in Scotland, references to the Lord Chief Justice are to be read as references to the Lord President of the Court of Session.
- (2) Regulations under section 115 and rules under section 117 do not apply in relation to a judicial office holder who exercises functions wholly or mainly in Scotland unless they are made with the agreement of the Lord President of the Court of Session.
- (3) In section 116(1)(f), (3)(b) and (4)(a) the references to the Lord Chief Justice include references to the Lord President of the Court of Session.
- (4) In section 118(3), where the description of offices designated by the order is limited to (or includes) offices in which the holder exercises functions wholly or mainly in Scotland, the reference to the Lord Chief Justice is to be read as (or as including) a reference to the Lord President of the Court of Session.
- (5) The Lord Chief Justice may by regulations provide for sections 110 to 113 to apply in relation to judicial office holders who exercise functions wholly or mainly in Scotland—
  - (a) as if in section 110(8)(b) the reference to the Lord Chief Justice were a reference to the Lord President of the Court of Session, and
  - (b) with any other modifications specified in the regulations.
- (6) Regulations under subsection (5) may be made only with the agreement of the Lord Chancellor and the Lord President of the Court of Session.
- (7) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise any of his functions under the relevant sections.
- (8) The relevant sections are—
  - (a) section 108(3) to (7);
  - (b) section 111(2);
  - (c) section 112;
  - (d) section 116(3)(b).

#### **121 Northern Ireland**

- (1) In section 108, in relation to a judicial office holder who exercises functions wholly or mainly in Northern Ireland, references to the Lord Chief Justice are to be read as references to the Lord Chief Justice of Northern Ireland.
- (2) Regulations under section 115 and rules under section 117 do not apply in relation to a judicial office holder who exercises functions wholly or mainly in Northern Ireland, unless they are made with the agreement of the Lord Chief Justice of Northern Ireland.
- (3) In section 116(1)(f), (3)(b) and (4)(a) the references to the Lord Chief Justice include references to the Lord Chief Justice of Northern Ireland.
- (4) In section 118(3), where the description of offices designated by the order is limited to (or includes) offices in which the holder exercises functions wholly or mainly

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in Northern Ireland, the reference to the Lord Chief Justice is to be read as (or as including) a reference to the Lord Chief Justice of Northern Ireland.

- (5) The Lord Chief Justice may by regulations provide for sections 110 to 113 to apply in relation to judicial office holders who exercise functions wholly or mainly in Northern Ireland—
  - (a) as if in section 110(8)(b) the reference to the Lord Chief Justice were a reference to the Lord Chief Justice of Northern Ireland, and
  - (b) with any other modifications specified in the regulations.
- (6) Regulations under subsection (5) may be made only with the agreement of the Lord Chancellor and the Lord Chief Justice of Northern Ireland.
- (7) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise any of his functions under the relevant sections—
  - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).
- (8) The relevant sections are—
  - (a) section 108(3) to (7);
  - (b) section 111(2);
  - (c) section 112;
  - (d) section 116(3)(b).

## CHAPTER 4

### INTERPRETATION OF PART 4

#### 122 Interpretation of Part 4

In this Part—

“appoint” includes nominate or designate (and “appointment” is to be read accordingly);

the “Commission” means the Judicial Appointments Commission;

“Head of Division” means any of these—

- (a) the Master of the Rolls;
- (b) the President of the Queen’s Bench Division;
- (c) the President of the Family Division;
- (d) the Chancellor of the High Court;

“High Court” means the High Court in England and Wales;

“high judicial office” has the meaning given by section 60;

“lay member” of the Commission has the meaning given by paragraph 4 of Schedule 12;

“Lord Chief Justice”, unless otherwise stated, means the Lord Chief Justice of England and Wales;

“Lord Justice of Appeal” means a Lord Justice of Appeal in England and Wales;

“office” includes a position of any description;

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the “Ombudsman” means the Judicial Appointments and Conduct Ombudsman;

“prescribed” means prescribed by regulations under section 115 or, subject to section 117(2), by rules under section 117;

“vacancy” in relation to an office to which one of sections 68, 77 and 86 applies, means a vacancy arising on a holder of the office vacating it at any time after the commencement of that section.