

## SCHEDULES

### SCHEDULE 8

#### SUPREME COURT SELECTION COMMISSIONS

##### PART 1

##### MEMBERSHIP

###### *General rules*

- 1 (1) A selection commission consists of the following members—
  - (a) the President of the Supreme Court;
  - (b) the Deputy President of the Supreme Court;
  - (c) one member of each of the following bodies—
    - (i) the Judicial Appointments Commission;
    - (ii) the Judicial Appointments Board for Scotland;
    - (iii) the Northern Ireland Judicial Appointments Commission.
- (2) Sub-paragraph (1)(a) does not apply if—
  - (a) the office of President is vacant, or
  - (b) the President is disqualified under paragraph 5.
- (3) References in this Part of this Schedule to the President's place on a selection commission being unfilled are references to a case falling within paragraph (a) or (b) of sub-paragraph (2).
- (4) Sub-paragraph (1)(b) does not apply if—
  - (a) the office of Deputy President is vacant, or
  - (b) the Deputy President is disqualified under paragraph 5.
- (5) References in this Part of this Schedule to the Deputy President's place on a selection commission being unfilled are references to a case falling within paragraph (a) or (b) of sub-paragraph (4).

###### *Special rules where President's or Deputy President's place unfilled*

- 2 (1) This paragraph applies if one (but not both) of the following conditions is met—
  - (a) the President's place on a selection commission is unfilled;
  - (b) the Deputy President's place on a selection commission is unfilled.
- (2) The unfilled place on the selection commission is to be taken by the most senior ordinary judge of the Supreme Court.
- (3) If the unfilled place on the selection commission is not taken in accordance with sub-paragraph (2), the following are to be members of the commission instead—

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- (a) the most senior judge of the courts of England and Wales, unless that jurisdiction is already represented;
  - (b) the most senior judge of the courts of Scotland, unless that jurisdiction is already represented;
  - (c) the most senior judge of the courts of Northern Ireland, unless that jurisdiction is already represented.
- (4) For the purposes of this paragraph a jurisdiction is already represented if—
- (a) in a case where the President’s place on the commission is unfilled, that jurisdiction is the home jurisdiction of the Deputy President;
  - (b) in a case where the Deputy President’s place on the commission is unfilled, that jurisdiction is the home jurisdiction of the President.
- (5) Any person disqualified under paragraph 5 is to be disregarded in determining the most senior judge for the purposes of any provision of this paragraph.
- 3 (1) This paragraph applies if both of the following conditions are met—
- (a) the President’s place on a selection commission is unfilled;
  - (b) the Deputy President’s place on a selection commission is unfilled.
- (2) The unfilled places on the commission are to be taken by the following persons—
- (a) the most senior ordinary judge of the Supreme Court;
  - (b) the second most senior ordinary judge.
- (3) If neither of the unfilled places on the selection commission is taken in accordance with sub-paragraph (2), the following are to be members of the commission instead—
- (a) the most senior judge of the courts of England and Wales;
  - (b) the most senior judge of the courts of Scotland;
  - (c) the most senior judge of the courts of Northern Ireland.
- (4) If only one of the unfilled places on the selection commission is taken in accordance with sub-paragraph (2), the following are also to be members of the commission—
- (a) the most senior judge of the courts of England and Wales, unless that jurisdiction is already represented;
  - (b) the most senior judge of the courts of Scotland, unless that jurisdiction is already represented;
  - (c) the most senior judge of the courts of Northern Ireland, unless that jurisdiction is already represented.
- (5) For the purposes of sub-paragraph (4) a jurisdiction is already represented if it is the home jurisdiction of the judge who has taken a place on the selection commission in accordance with sub-paragraph (2).
- (6) Any person disqualified under paragraph 5 is to be disregarded in determining the most senior or second most senior judge for the purposes of any provision of this paragraph.
- 4 (1) The home jurisdiction of a judge of the Supreme Court is determined for the purposes of paragraphs 2 and 3 in accordance with this paragraph.
- (2) If the judge became, or first became, a member of the Supreme Court by virtue of section 24, his home jurisdiction is—
- (a) the jurisdiction in which he held (or last held) any high judicial office by which he was qualified for appointment as a Lord of Appeal in Ordinary;

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- (b) if he was qualified for that appointment only by a qualification listed in section 6(a) to (c) of the Appellate Jurisdiction Act 1876 (c. 59), the jurisdiction in which he held that qualification;
  - (c) if he held such a qualification in more than one jurisdiction, the jurisdiction with which he was, as the holder of such a qualification, most closely associated.
- (3) Sub-paragraph (4) applies if the following conditions are met—
- (a) the judge became, or first became, a member of the Supreme Court by virtue of sections 25 to 31;
  - (b) he qualified for appointment, or first appointment, to the Supreme Court by virtue—
    - (i) only of section 25(1)(a), or
    - (ii) of section 25(1)(a) and (b).
- (4) In such a case the judge’s home jurisdiction is—
- (a) if he was qualified for appointment, or first appointment, by virtue of holding high judicial office in one jurisdiction, that jurisdiction;
  - (b) if he was so qualified by virtue of holding high judicial office in more than one jurisdiction, the jurisdiction in which he was appointed to high judicial office most recently.
- (5) Sub-paragraph (6) applies if the following conditions are met—
- (a) the judge became, or first became, a member of the Supreme Court by virtue of sections 25 to 31;
  - (b) he qualified for appointment, or first appointment, to the Supreme Court by virtue only of section 25(1)(b).
- (6) In such a case the judge’s home jurisdiction is—
- (a) if he was qualified for appointment, or first appointment, by virtue of being a qualifying practitioner in one jurisdiction, that jurisdiction;
  - (b) if he was so qualified by virtue of being a qualifying practitioner in more than one jurisdiction, the jurisdiction with which he was, as a qualifying practitioner, most closely associated.

### *Disqualification*

- 5
- (1) The President, the Deputy President, an ordinary judge of the Court or a territorial judge is disqualified for the purposes of membership of a selection commission if it appears to the Lord Chancellor that that person is for the time being incapacitated from serving as a member of that commission.
  - (2) The Deputy President is disqualified for the purposes of membership of a selection commission for the office of President unless he gives the Lord Chancellor notice that he is not willing to be appointed to the current vacancy.
  - (3) An ordinary judge of the Court is disqualified for the purposes of membership of a selection commission for the office of President or Deputy President unless he gives the Lord Chancellor notice that he is not willing to be appointed to the current vacancy.

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- (4) A territorial judge is disqualified for the purposes of membership of any selection commission unless he gives the Lord Chancellor notice that he is not willing to be appointed to the current vacancy.

*Non-judicial members of selection commissions*

- 6 (1) This paragraph applies in relation to those persons who are to be members of a selection commission by virtue of paragraph 1(1)(c).
- (2) The Lord Chancellor must nominate one member of each Commission or Board referred to in that provision to be a member of the selection commission.
- (3) At least one of the persons nominated under sub-paragraph (2) to be a member of the selection commission must be non-legally qualified.
- (4) The Lord Chancellor may nominate a person under sub-paragraph (2) only on the recommendation of the Commission or Board of which the person is a member.
- (5) The Lord Chancellor may, out of money provided by Parliament, pay to any person nominated under sub-paragraph (2) such allowances as the Lord Chancellor may determine.
- (6) For the purposes of this paragraph a person is non-legally qualified if—
- (a) he does not hold, and has never held, any of the offices listed in Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (judicial offices disqualifying for membership of the House of Commons), and
  - (b) he is not, and has never been, a practising lawyer.
- (7) In sub-paragraph (6) “practising lawyer” has the same meaning as in paragraph 6 of Schedule 12 to this Act.

*Chairing of selection commissions*

- 7 A selection commission is to be chaired—
- (a) by the President of the Supreme Court, or
  - (b) by the Deputy President of the Supreme Court, if the President is not a member of the commission, or
  - (c) by the senior judge of the Supreme Court who is a member of the commission, if neither the President nor the Deputy President is a member, or
  - (d) by the most senior of the territorial judges who are members of the commission, if no judges of the Supreme Court are members.

*Interpretation*

- 8 In this Schedule—
- (a) “selection commission for the office of President” means a selection commission convened in the case of a vacancy in the office of President;
  - (b) “selection commission for the office of Deputy President” means a selection commission convened in the case of a vacancy in the office of Deputy President;
  - (c) “selection commission for the office of judge” means a selection commission convened in the case of a vacancy among the ordinary judges;

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(d) “current vacancy”, in relation to a selection commission, means the vacancy in relation to which that commission has been convened.

9 (1) In this Part of this Schedule—

“Judicial Appointments Board for Scotland” means the body of persons known collectively by that name (being persons appointed by the Scottish Ministers to carry out in Scotland functions corresponding to those of the Judicial Appointments Commission);

“territorial judge”, in relation to a selection commission, means a judge of the courts of England and Wales, of Scotland or of Northern Ireland who is, or would be, a member of the commission by virtue of paragraph 2(3), 3(3) or 3(4).

(2) For the purposes of this Part of this Schedule—

- (a) the seniority of the judges of the Supreme Court is to be determined according to length of service as a judge of the Court (including for this purpose service over one or more periods);
- (b) in relation to a selection commission, the seniority of the territorial judges is to be determined according to length of service in the office by virtue of which each is, or would be, a member of the commission (including for this purpose service over one or more periods).

(3) Service as a Lord of Appeal in Ordinary counts as service as a judge of the Court for the purposes of sub-paragraph (2).