



# Tribunals, Courts and Enforcement Act 2007

## 2007 CHAPTER 15

### PART 2

#### JUDICIAL APPOINTMENTS

#### **50 Judicial appointments: “judicial-appointment eligibility condition”**

- (1) Subsection (2) applies for the purposes of any statutory provision that—
  - (a) relates to an office or other position, and
  - (b) refers to a person who satisfies the judicial-appointment eligibility condition on an N-year basis (where N is the number stated in the provision).
- (2) A person satisfies that condition on an N-year basis if—
  - (a) the person has a relevant qualification, and
  - (b) the total length of the person’s qualifying periods is at least N years.
- (3) In subsection (2) “qualifying period”, in relation to a person, means a period during which the person—
  - (a) has a relevant qualification, and
  - (b) gains experience in law (see section 52).
- (4) For the purposes of subsections (2) and (3), a person has a relevant qualification if the person—
  - (a) is a solicitor or a barrister (but see section 51), or
  - (b) holds a qualification that under section 51(1) is a relevant qualification in relation to the office, or other position, concerned.
- (5) In this section—
  - “barrister” means barrister in England and Wales;
  - “solicitor” means solicitor of the Senior Courts of England and Wales;
  - “statutory provision” means—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) a provision of an Act, or
  - (b) a provision of subordinate legislation (within the meaning given by section 21(1) of the Interpretation Act 1978 (c. 30)).
- (6) Schedule 10, which makes amendments—
- for the purpose of substituting references to satisfying the judicial-appointment eligibility condition in place of references to having a qualification mentioned in section 71 of the Courts and Legal Services Act 1990 (c. 41),
  - for the purpose of reducing qualifying periods for eligibility for appointment to certain judicial offices from ten and seven years to seven and five years respectively, and
  - for connected purposes,
- has effect.
- (7) At any time before the coming into force of section 59(1) of the Constitutional Reform Act 2005 (c. 4) (renaming of Supreme Court), the reference to the Senior Courts in subsection (5) is to be read as a reference to the Supreme Court.

## **51 “Relevant qualification” in section 50: further provision**

- (1) The Lord Chancellor may by order provide for a qualification specified in the order to be a relevant qualification for the purposes of section 50(2) and (3) in relation to an office or other position specified in the order.
- (2) A qualification may be specified under subsection (1) only if it is one awarded—
- (a) by the Institute of Legal Executives, or
  - (b) by a body other than the Institute of Legal Executives that, when the qualification is specified, is designated by Order in Council as an authorised body for the purposes of section 27 or 28 of the Courts and Legal Services Act 1990 (bodies authorised to confer rights of audience or rights to conduct litigation).
- (3) An order under subsection (1) may, in relation to a qualification specified in the order, include provision as to when a person who holds the qualification is, for the purposes of section 50, to be taken first to have held it.
- (4) Where—
- (a) a qualification is specified under subsection (1),
  - (b) the qualification is one awarded by a body such as is mentioned in subsection (2)(b), and
  - (c) after the qualification is specified under subsection (1), it becomes the case that the body —
    - (i) is not designated for the purposes of section 27 of the Courts and Legal Services Act 1990, and
    - (ii) is not designated for the purposes of section 28 of that Act,
- the provision under subsection (1) specifying the qualification ceases to have effect, subject to any provision made under paragraph 33(1) of Schedule 4 to that Act (transitional and incidental provision in connection with revocation of authorised body’s designation).
- (5) For the purposes of section 50 and this section, a person shall be taken first to become a solicitor when the person’s name is entered on the roll kept under section 6 of the

---

*Status: This is the original version (as it was originally enacted).*

---

Solicitors Act 1974 (c. 47) (Law Society to keep list of all solicitors) for the first time after the person's admission as a solicitor.

- (6) For the purposes of section 50 and this section, a person shall be taken first to become a barrister—
- (a) when the person completes pupillage in connection with becoming a barrister, or
  - (b) in the case of a person not required to undertake pupillage in connection with becoming a barrister, when the person is called to the Bar of England and Wales.
- (7) For the purposes of section 50—
- (a) a barrister,
  - (b) a solicitor, or
  - (c) a person who holds a qualification specified under subsection (1),
- shall be taken not to have a relevant qualification at times when, as a result of disciplinary proceedings, he is prevented from practising as a barrister or (as the case may be) as a solicitor or as a holder of the specified qualification.
- (8) The Lord Chancellor may by order make provision supplementing or amending subsections (5) to (7).
- (9) Before making an order under subsection (1) or (8), the Lord Chancellor must consult—
- (a) the Lord Chief Justice of England and Wales, and
  - (b) the Judicial Appointments Commission.
- (10) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise his function under subsection (9)(a).
- (11) In this section—
- “barrister” means barrister in England and Wales;
  - “solicitor” means solicitor of the Senior Courts of England and Wales.
- (12) Power to make an order under this section is exercisable by statutory instrument.
- (13) An order under this section may make different provision for different purposes.
- (14) No order may be made under this section unless a draft of the statutory instrument containing it (whether alone or with other provision) has been laid before, and approved by a resolution of, each House of Parliament.
- (15) At any time before the coming into force of section 59(1) of the Constitutional Reform Act 2005 (renaming of Supreme Court), the reference to the Senior Courts in subsection (11) is to be read as a reference to the Supreme Court.

## **52 Meaning of “gain experience in law” in section 50**

- (1) This section applies for the purposes of section 50.
- (2) A person gains experience in law during a period if the period is one during which the person is engaged in law-related activities.

---

*Status: This is the original version (as it was originally enacted).*

---

- (3) For the purposes of subsection (2), a person’s engagement in law-related activities during a period is to be disregarded if the engagement is negligible in terms of the amount of time engaged.
- (4) For the purposes of this section, each of the following is a “law-related activity”—
- (a) the carrying-out of judicial functions of any court or tribunal;
  - (b) acting as an arbitrator;
  - (c) practice or employment as a lawyer;
  - (d) advising (whether or not in the course of practice or employment as a lawyer) on the application of the law;
  - (e) assisting (whether or not in the course of such practice) persons involved in proceedings for the resolution of issues arising under the law;
  - (f) acting (whether or not in the course of such practice) as mediator in connection with attempts to resolve issues that are, or if not resolved could be, the subject of proceedings;
  - (g) drafting (whether or not in the course of such practice) documents intended to affect persons' rights or obligations;
  - (h) teaching or researching law;
  - (i) any activity that, in the relevant decision-maker’s opinion, is of a broadly similar nature to an activity within any of paragraphs (a) to (h).
- (5) For the purposes of this section, an activity mentioned in subsection (4) is a “law-related activity” whether it—
- (a) is done on a full-time or part-time basis;
  - (b) is or is not done for remuneration;
  - (c) is done in the United Kingdom or elsewhere.
- (6) In subsection (4)(i) “the relevant decision-maker”, in relation to determining whether a person satisfies the judicial-appointment eligibility condition on an N-year basis in a particular case, means—
- (a) where the condition applies in respect of appointment by Her Majesty to an office or other position, the person whose function it is to recommend the exercise of Her Majesty’s function of making appointments to that office or position;
  - (b) where the condition applies in respect of appointment, by any person other than Her Majesty, to an office or other position, that person.
- (7) In subsection (6) “appointment”, in relation to an office or position, includes any form of selection for that office or position (whether called appointment or selection, or not).

### **53 Transfer from salaried to fee-paid judicial office**

- (1) The Constitutional Reform Act 2005 (c. 4) is amended as follows.
- (2) After section 94 insert—

#### **“94A Appointments not subject to section 85: courts**

- (1) Where this section applies to an appointment—
- (a) section 85 does not apply, but

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) the Lord Chancellor may not make the appointment without the concurrence of the Lord Chief Justice.
- (2) This section applies to the appointment of a person, on a fee-paid basis, to an office in the table below (the “proposed appointment”) if the person—
- (a) holds the corresponding qualifying office (or one of them) on a salaried basis, or
- (b) ceased to hold the corresponding qualifying office (or one of them) within two years ending with the date when the proposed appointment takes effect and, immediately before ceasing to hold that office, held it on a salaried basis.

<i>Proposed appointment (fee-paid)</i>	<i>Qualifying office (salaried)</i>
An office listed in Part 2 of Schedule 14.	The same office.
Deputy District Judge (Magistrates' Courts).	District Judge (Magistrates' Courts), Senior District Judge (Chief Magistrate), or Deputy Senior District Judge (Chief Magistrate).
Assistant Judge Advocate General, or a person appointed temporarily to assist the Judge Advocate General.	Judge Advocate of Her Majesty's Fleet, Judge Advocate General, Vice Judge Advocate General, or Assistant Judge Advocate General.

- (3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4)) to exercise his function under subsection (1)(b).
- (4) In this section “salaried” and “fee-paid” have the meaning given by paragraph 1(2) of Schedule 7 to the Judicial Pensions and Retirement Act 1993 (c. 8).

#### **94B Appointments not subject to section 85: tribunals**

- (1) Where this section applies to a recommendation or appointment—
- (a) section 85 does not apply, but
- (b) the Lord Chancellor may not make the recommendation or appointment without the concurrence of the Senior President of Tribunals.
- (2) In the case of the appointment of a person as a deputy judge of the Upper Tribunal, if the person holds or has held an office listed in section 6(1) of the Tribunals, Courts and Enforcement Act 2007, the Lord Chancellor must also consult the Lord Chief Justice before making the appointment.
- (3) This section applies to, or to a recommendation to Her Majesty for, the appointment of a person, on a fee-paid basis, to an office in the table below (the “proposed appointment”) if the person—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) holds the corresponding qualifying office (or one of them) on a salaried basis, or
- (b) subject to subsection (4), ceased to hold the corresponding qualifying office (or one of them) within two years ending with the date when the proposed appointment takes effect and, immediately before ceasing to hold that office, held it on a salaried basis.

<i>Proposed appointment (fee-paid)</i>	<i>Qualifying office (salaried)</i>
An office listed in Part 3 of Schedule 14 (other than the office of Chamber President or Deputy Chamber President of a chamber of the Upper Tribunal or the First-tier Tribunal).	The same office, or a more senior office, listed in Part 3 of Schedule 14, in the same tribunal or body (but excluding the Upper Tribunal and the First-tier Tribunal).
Deputy Child Support Commissioner.	Chief Child Support Commissioner, or Child Support Commissioner.
Deputy Social Security Commissioner.	Chief Social Security Commissioner, or Social Security Commissioner.
Deputy judge of the Upper Tribunal.	Ordinary judge of the Court of Appeal in England and Wales, Lord Justice of Appeal in Northern Ireland, Judge of the Court of Session, Puisne judge of the High Court in England and Wales or Northern Ireland, Circuit judge, Sheriff in Scotland, County court judge in Northern Ireland, District judge in England and Wales or Northern Ireland, District Judge (Magistrates' Courts), or Judge of the Upper Tribunal by virtue of any of paragraphs (a) to (f) or (i) of section 5(1) of the Tribunals, Courts and Enforcement Act 2007.
Judge of the First-tier Tribunal by appointment under paragraph 1(1) of	Transferred-in judge of the First-tier Tribunal (see section 31(2) of that Act).

<i>Proposed appointment (fee-paid)</i>	<i>Qualifying office (salaried)</i>
Schedule 2 to the Tribunals, Courts and Enforcement Act 2007.	
Other member of the First-tier Tribunal by appointment under paragraph 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007.	Transferred-in other member of the First-tier Tribunal (see section 31(2) of that Act).
Judge of the Upper Tribunal by appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.	Transferred-in judge of the Upper Tribunal (see section 31(2) of that Act).
Other member of the Upper Tribunal by appointment under paragraph 2(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.	Transferred-in other member of the Upper Tribunal (see section 31(2) of that Act).
Deputy judge of the Upper Tribunal by appointment under paragraph 7(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.	Deputy judge of the Upper Tribunal under section 31(2) of that Act.

- (4) In subsection (3)(b) the words “within two years ending with the date when the proposed appointment takes effect” do not apply if—
- (a) the proposed appointment is to the office of deputy judge of the Upper Tribunal, and
  - (b) the corresponding qualifying office is—
    - (i) ordinary judge of the Court of Appeal in England and Wales,
    - (ii) Lord Justice of Appeal in Northern Ireland,
    - (iii) judge of the Court of Session, or
    - (iv) puisne judge of the High Court in England and Wales or Northern Ireland.

- (5) In this section “salaried” and “fee-paid” have the meaning given by paragraph 1(2) of Schedule 7 to the Judicial Pensions and Retirement Act 1993.”

- (3) After section 85(2) (restriction on recommendations and appointments) insert—

“(2A) This section is subject to—

- (a) section 30(4) of the Courts-Martial (Appeals) Act 1951,
- (b) sections 91(1ZB) and 102(1C) of the Supreme Court Act 1981,
- (c) section 8(1ZC) of the County Courts Act 1984, and
- (d) sections 94A and 94B below.”

- (4) After section 85(3) (power to amend Schedule 14) add—

“(4) The Lord Chancellor may by order amend section 94A or 94B if he thinks that the amendment is consequential on an amendment made to Schedule 14 by an order under subsection (3).”

- (5) Section 97 (Scotland and Northern Ireland) is amended as follows.

- (6) In subsection (1)—
- (a) for “This section applies” substitute “Subsections (2) and (3) apply”, and
  - (b) after paragraph (c) insert—
    - “(ca) section 94B(2);”.
- (7) After subsection (3) add—
- “(4) Subsections (2) and (3) apply to the reference in section 94A(1) 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.
  - (5) The Lord President of the Court of Session may nominate any of the following to exercise his function under section 94A(1)(b)—
    - (a) a judge who is a member of the First or Second Division of the Inner House of the Court of Session;
    - (b) the Senior President of Tribunals.
  - (6) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his function under section 94A(1)(b)—
    - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
    - (b) a Lord Justice of Appeal (as defined in section 88 of that Act);
    - (c) the Senior President of Tribunals.”

#### **54 Continuation of judicial office after normal retirement date**

- (1) Section 26 of the Judicial Pensions and Retirement Act 1993 (c. 8) (retirement date for holders of certain judicial offices etc.) is amended as follows.
- (2) In subsection (12), in the definition of “the appropriate person”, after paragraph (c) insert “;
- (d) the Senior President of Tribunals in the case of a person who holds a judicial office that—
    - (i) is specified in subsection (12A) below, and
    - (ii) is not in the person’s case an office to which any of paragraphs (a) to (c) above applies;
  - (e) the Lord Chief Justice of England and Wales in the case of a person who holds a judicial office that is not in the person’s case an office to which any of paragraphs (a) to (d) applies;”.
- (3) After subsection (12) insert—
- “(12A) The judicial offices mentioned in paragraph (d) of the definition of “appropriate person” in subsection (12) above are—
- (a) Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal;
  - (b) judge, or other member, of the First-tier Tribunal or of the Upper Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 2 or 3 to the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”);



---

*Status: This is the original version (as it was originally enacted).*

---

- (c) deputy judge of the Upper Tribunal appointed under paragraph 7(1) of Schedule 3 to the 2007 Act, except in a case where the holding of the office by the person in question falls within subsection (7)(ga) above;
- (d) transferred-in judge, or transferred-in other member, of the First-tier Tribunal or of the Upper Tribunal (see section 31(2) of the 2007 Act);
- (e) deputy judge of the Upper Tribunal by virtue of an order under section 31(2) of the 2007 Act;
- (f) an office held by a person if the person's holding of the office results in the person being a member of, or person who is, a tribunal in a list in Schedule 6 to the 2007 Act that has effect for the purposes of section 30 of that Act (but only if the office is specified in Schedule 5 to this Act);
- (g) President or other member of the Asylum and Immigration Tribunal;
- (h) member of the Employment Appeal Tribunal appointed under section 22(1)(c) of the Employment Tribunals Act 1996;
- (i) member of a panel of chairmen of employment tribunals.

(12B) Neither paragraph (d) nor paragraph (e) of the definition of “appropriate person” in subsection (12) above applies to an office held by a person if provision about that person's continuation in the office after the compulsory retirement date for the office—

- (a) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or
- (b) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.”

(4) In subsection (13) (Lord Chief Justices to exercise functions under section with concurrence of Lord Chancellor), after “Northern Ireland” insert “or the Senior President of Tribunals”.

## **55 Appointment of deputy Circuit judges**

In section 24(1) of the Courts Act 1971 (c. 23) (appointment of deputy Circuit judges and assistant recorders) for paragraph (a) substitute—

- “(a) the Lord Chancellor may, with the concurrence of the Lord Chief Justice, appoint to be a deputy Circuit judge, during such period or on such occasions as the Lord Chancellor thinks fit, any person who has held office as a judge of the Court of Appeal or of the High Court or as a Circuit judge;”.

## **56 Appointment of deputy district judges, etc.**

Schedule 11 (which makes amendments to the Supreme Court Act 1981 (c. 54) and the County Courts Act 1984 (c. 28) in connection with the appointment and assignment of deputy district judges and the assignment of district judges) has effect.

## **57 Deputy, and temporary additional, Masters etc.**

(1) Section 91 of the Supreme Court Act 1981 (which provides for persons to be appointed as deputies for holders of, or as temporary additional officers in, certain judicial offices) is amended as set out in subsections (2) to (5).

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) In subsection (1)—
- (a) for “the Lord Chief Justice, after consulting the Lord Chancellor,” substitute “the Lord Chancellor”, and
  - (b) for “the Lord Chief Justice may, after consulting the Lord Chancellor,” substitute “the Lord Chancellor may”.
- (3) After subsection (1) insert—
- “(1ZA) The Lord Chancellor may not appoint a holder of relevant office under subsection (1) without the concurrence of the Lord Chief Justice.
- (1ZB) Section 85 of the Constitutional Reform Act 2005 (selection of certain office holders) does not apply to an appointment to which subsection (1ZA) applies.
- (1ZC) In this section a “holder of relevant office” means a person who holds, or has held within two years ending with the date when his appointment under this section takes effect—
- (a) any office listed in column 1 of Part 2 or 3 of Schedule 2, or
  - (b) the office of district judge.”
- (4) For subsection (3) substitute—
- “(3) An appointment under this section may extend until the day on which a person attains the age of seventy-five years if it is an appointment of a holder of relevant office.”
- (5) In subsection (7) for “subsection (1)” substitute “subsection (1ZA)”.
- (6) In section 92(1) of the Supreme Court Act 1981 after “this section” insert “, to section 91(3)”.
- (7) In Part 2 of Schedule 14 to the Constitutional Reform Act 2005 (c. 4) (which lists appointments to certain offices in relation to which the procedure in sections 86 to 93, and section 96, of that Act applies), after the entry for an assistant recorder appointed under section 24(1) of the Courts Act 1971 (c. 23), insert the following entry—

---

<p>“Person appointed by the Lord Chancellor as a deputy for a holder of, or as a temporary additional officer in, an office listed in column 1 of Part 2 of Schedule 2 to the Supreme Court Act 1981</p>	<p>Section 91(1) of the Supreme Court Act 1981, unless subsection (1ZA) of that section applies to the appointment”</p>
--	---

---

## 58 Appointment of temporary assistants to Judge Advocate General

After section 30(2) of the Courts-Martial (Appeals) Act 1951 (c. 46) (temporary assistants to Judge Advocate General) insert—

- “(3) The Lord Chancellor may not appoint a holder of relevant office under subsection (2) without the concurrence of the Lord Chief Justice of England and Wales.
- (4) Section 85 of the Constitutional Reform Act 2005 (selection of certain office holders) does not apply to an appointment to which subsection (3) applies.

(5) In subsection (3) “holder of relevant office” means a person who has, within the two years ending with the day on which this subsection comes into force, been appointed as judge advocate to a court-martial under—

- (a) section 84B of the Army Act 1955,
- (b) section 84B of the Air Force Act 1955, or
- (c) section 53B of the Naval Discipline Act 1957.”

## **59 Members and chairmen of certain Appeals Commissions**

In Part 3 of Schedule 14 to the Constitutional Reform Act 2005 (c. 4) (which lists appointments to certain offices in relation to which the procedure in sections 86 to 93, and section 96, of that Act applies), omit the entries relating to—

Member of the Special Immigration Appeals Commission (appointed under paragraph 1(1) of Schedule 1 to the Special Immigration Appeals Commission Act 1997 (c. 68));

Chairman of the Special Immigration Appeals Commission (appointed under paragraph 2 of that Schedule);

Member of the Proscribed Organisations Appeal Commission (appointed under paragraph 1(1) of Schedule 3 to the Terrorism Act 2000 (c. 11));

Chairman of the Proscribed Organisations Appeal Commission (appointed under paragraph 1(2) of that Schedule);

Member of the Pathogens Access Appeal Commission (appointed under paragraph 1(1) of Schedule 6 to the Anti-terrorism, Crime and Security Act 2001 (c. 24));

Chairman of the Pathogens Access Appeal Commission (appointed under paragraph 1(2) of that Schedule).

## **60 Appointment as Chairman of Law Commission**

(1) Section 1 of the Law Commissions Act 1965 (c. 22) is amended as follows.

(2) After subsection (1) insert—

“(1A) The person appointed to be the Chairman shall be a person who holds office as a judge of the High Court or Court of Appeal in England and Wales.”

(3) In subsection (2) before “Commissioners” insert “the other”.

## **61 Orders permitting disclosures to Judicial Appointments Commission**

In section 90(5)(a) of the Justice (Northern Ireland) Act 2002 (c. 26) (which provides that certain orders under that Act are subject to annulment in pursuance of a resolution of either House of Parliament), after “section 2(2)(a) or (c),” insert “5A(6),”.