

Changes to legislation: There are currently no known outstanding effects for the Crime and Courts Act 2013, Part 1. (See end of Document for details)

SCHEDULES

SCHEDULE 13

JUDICIAL APPOINTMENTS

PART 1

JUDGES OF THE SUPREME COURT: NUMBER AND SELECTION

Introductory

1 The Constitutional Reform Act 2005 is amended as follows.

Commencement Information

II Sch. 13 para. 1 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(d\)](#) (with savings in [S.I. 2013/2193](#), reg. 23)

Number of judges to become maximum full-time equivalent number

- 2 (1) Section 23 (establishment of the Supreme Court) is amended as follows.
- (2) In subsection (2) (Supreme Court consists of 12 judges)—
- (a) for “12 judges appointed” substitute “ the persons appointed as its judges ”, and
- (b) after “by letters patent” insert “, but no appointment may cause the full-time equivalent number of judges of the Court at any time to be more than 12 ”.
- (3) In subsection (3) (power to increase number of members of the Court) before “number” insert “ maximum full-time equivalent ”.
- (4) In subsection (7) (Court is duly constituted despite vacancy in membership or presiding offices) omit “among the judges of the Court or”.
- (5) After that subsection insert—

“(8) For the purposes of this section, the full-time equivalent number of judges of the Court is to be calculated by taking the number of full-time judges and adding, for each judge who is not a full-time judge, such fraction as is reasonable.”

Commencement Information

I2 Sch. 13 para. 2 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(d\)](#) (with savings in [S.I. 2013/2193](#), reg. 23)

- 3 (1) Section 26 (selection of members of the Supreme Court) is amended as follows.

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- (2) In subsection (5) (Lord Chancellor to convene selection commission to fill any vacancy among the members, or in the presiding offices, of the Court) for “one of the offices mentioned in subsection (1),” substitute “ the office of President of the Court or in the office of Deputy President of the Court, ”.
- (3) After subsection (5) insert—
- “(5A) If—
- (a) the full-time equivalent number of judges of the Court is less than the maximum specified in section 23(2), or it appears to the Lord Chancellor that the full-time equivalent number of judges of the Court will soon be less than that maximum, and
 - (b) the Lord Chancellor, or the senior judge of the Court, after consulting the other considers it desirable that a recommendation be made for an appointment to the office of judge of the Court,
- the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.
- (5B) In subsection (5A)(b) “the senior judge of the Court” means—
- (a) the President of the Court, or
 - (b) if there is no President, the Deputy President, or
 - (c) if there is no President and no Deputy President, the senior ordinary judge.”

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I3 Sch. 13 para. 3 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(d\)](#) (with savings in [S.I. 2013/2193](#), reg. 23)

Selection of persons to be recommended for appointment to the Court

- 4 (1) In section 27 (selection process) after subsection (1) insert—
- “(1A) The commission must have an odd number of members not less than five.
- (1B) The members of the commission must include—
- (a) at least one who is non-legally-qualified,
 - (b) at least one judge of the Court,
 - (c) at least one member of the Judicial Appointments Commission,
 - (d) at least one member of the Judicial Appointments Board for Scotland, and
 - (e) at least one member of the Northern Ireland Judicial Appointments Commission,
- and more than one of the requirements may be met by the same person's membership of the commission.
- (1C) If the commission is convened for the selection of a person to be recommended for appointment as President of the Court—
- (a) its members may not include the President of the Court, and
 - (b) it is to be chaired by one of its non-legally-qualified members.

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(1D) If the commission is convened for the selection of a person to be recommended for appointment as Deputy President of the Court, its members may not include the Deputy President of the Court.”

(2) At the end of that section insert—

“(11) For the purposes of this section a person is non-legally-qualified if the person—

- (a) does not hold, and has never held, any of the offices listed in Schedule 1 to the House of Commons Disqualification Act 1975 (judicial offices disqualifying for membership of the House of Commons), and
- (b) is not practising or employed as a lawyer, and never has practised or been employed as a lawyer.”

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I4 Sch. 13 para. 4 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(d\)](#) (with savings in [S.I. 2013/2193](#), reg. 23)

5 After section 27 insert—

“27A Regulations about selection process

(1) The Lord Chancellor must by regulations made with the agreement of the senior judge of the Supreme Court—

- (a) make further provision about membership of selection commissions convened under section 26,
- (b) make further provision about the process that is to be applied in any case where a selection commission is required to be convened under section 26, and
- (c) secure that, in every such case, there will come a point in the process when a selection has to be accepted, either unconditionally or subject only to matters such as the selected person's willingness and availability, by or on behalf of the Lord Chancellor.

(2) The regulations may in particular—

- (a) provide for process additional to the selection process applied by a selection commission under section 27(1), including post-acceptance process;
- (b) make provision as to things that are, or as to things that are not, to be done by a selection commission—
 - (i) as part of the selection process applied by it under section 27(1), or
 - (ii) in determining what that process is to be;
- (c) provide for the Lord Chancellor to be entitled to require a selection commission to reconsider a selection under section 27(1) or any subsequent selection;
- (d) provide for the Lord Chancellor to be entitled to reject a selection under section 27(1) or any subsequent selection;
- (e) give other functions to the Lord Chancellor;

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- (f) provide for particular action to be taken by a selection commission after it has complied with section 27;
 - (g) provide for the dissolution of a selection commission;
 - (h) provide for section 16(2)(a) or (b) not to apply in relation to functions of the Lord Chief Justice—
 - (i) as a member of a selection commission (including functions of chairing a selection commission), or
 - (ii) in relation to the nomination or appointment of members of a selection commission;
 - (i) provide for a person to cease to be a member of a selection commission where a requirement about the commission's members ceases to be met by the person's membership of the commission;
 - (j) provide for a person to become a member of a selection commission already convened where another person ceases to be a member of the commission or where a requirement about the commission's members ceases to be met by another person's membership of the commission;
 - (k) provide for payment to a member of a selection commission of amounts by way of allowances or expenses;
 - (l) make provision as to what amounts to practice or employment as a lawyer for the purposes of section 27(11)(b).
- (3) Before making regulations under this section the Lord Chancellor must consult—
- (a) the First Minister in Scotland,
 - (b) the Northern Ireland Judicial Appointments Commission,
 - (c) the First Minister for Wales,
 - (d) the Lord President of the Court of Session,
 - (e) the Lord Chief Justice of Northern Ireland, and
 - (f) the Lord Chief Justice of England and Wales.
- (4) Regulations under this section—
- (a) may make different provision for different purposes;
 - (b) may make transitory, transitional or saving provision.
- (5) In this section “the senior judge”, in relation to the Court, has the meaning given by section 26(5B).”

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I5 Sch. 13 para. 5 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(d\)](#) (with savings in [S.I. 2013/2193](#), reg. 23)

Lord Chancellor's guidance about selection process: procedure

6 After that section 27A insert—

“27B Selection guidance: supplementary

- (1) Before issuing any selection guidance the Lord Chancellor must—
- (a) consult the senior judge of the Supreme Court;

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- (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 senior judge of the Court.
- (5) Selection guidance comes into force on such date as the Lord Chancellor may appoint by order.
- (6) Where selection guidance is in force, the Lord Chancellor may revoke the guidance only by—
- (a) new selection guidance issued in accordance with the previous provisions of this section, or
- (b) an order made after consulting the senior judge of the Court.
- (7) In this section—
- “40-day period” in relation to the draft of any proposed selection guidance means—
- (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;
- “the senior judge”, in relation to the Court, has the meaning given by section 26(5B);
- “selection guidance” means guidance mentioned in section 27(9).”

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16 Sch. 13 para. 6 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(d\)](#) (with savings in [S.I. 2013/2193](#), reg. 23)

Consequential amendments, repeals and revocations

- 7 (1) Omit—
- (a) section 27(2) and (3) and Parts 1 and 2 of Schedule 8 (selection commissions), and
- (b) sections 28 to 31 and 60(5) (detailed provision about selection process).
- (2) In section 26(3)(a) (person whose name is notified under section 29 must be recommended for appointment) for “whose name is notified to him under section 29”

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substitute “ who is selected as a result of the convening of a selection commission under this section ”.

- (3) For section 26(4) (person recommended for appointment as President or Deputy President must also be recommended for appointment as a judge if not already a judge of the Court) substitute—
- “(4) Where a person who is not a judge of the Court is recommended for appointment as President or Deputy President, the recommendation must also recommend the person for appointment as a judge.”
- (4) For section 26(7) (cases where duty to convene a selection commission is suspended) substitute—
- “(7) Subsections (5) and (5A) are subject to Schedule 8 (cases where duty to convene a selection commission are suspended).
- (7A) For the purposes of this section and Schedule 8, a person is selected as a result of the convening of a selection commission if the person's selection is the final outcome of—
- (a) the selection process mentioned in section 27(1) being applied by the commission, and
 - (b) any process provided for by regulations under section 27A being applied in the particular case.”
- (5) In section 26(8) (application of sections 27 to 31) for “Sections 27 to 31 apply” substitute “ Section 27 applies ”.
- (6) In section 27(1)(a) (selection commission to determine selection process to be applied) after “applied” insert “ by it ”.
- (7) In section 27(4) (section 27(5) to (10) apply to selections under section 27 or 31) for “section 31” substitute “ regulations under section 27A ”.
- (8) In section 139(2)(a) (if confidential information is obtained for purposes of sections 26 to 31 it is not to be disclosed without lawful authority) for “to 31” substitute “ and 27 and regulations under section 27A ”.
- (9) In section 144(5) (subordinate legislation which may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament) before paragraph (a) insert—
- “(za) regulations under section 27A;”
- (10) In section 144(6) (certain orders are not subject to parliamentary procedure)) after “an order under section” insert “ 27B(5), ”.
- (11) In paragraph 13(2) of Schedule 8 (end of suspension of duty to convene selection commission for office of Deputy President) for “the Lord Chancellor notifies a selection made by” substitute “ a person has been selected as a result of the convening of ”.
- (12) In paragraph 14(2) of that Schedule (end of suspension of duty to convene selection commission for office of judge) for “the Lord Chancellor notifies a selection made by” substitute “ a person has been selected as a result of the convening of ”.

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I7 Sch. 13 para. 7 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(d\)](#) (with savings in [S.I. 2013/2193](#), reg. 23)

8 In the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388) in Schedule 1 omit paragraph 110(a) and (b).

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I8 Sch. 13 para. 8 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(d\)](#) (with savings in [S.I. 2013/2193](#), reg. 23)

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