
Changes to legislation: There are currently no known outstanding effects for the Crime and Courts Act 2013,
Cross Heading: Other changes in relation to selection process and complaints. (See end of Document for details)

SCHEDULES

SCHEDULE 13

JUDICIAL APPOINTMENTS

PART 4

JUDICIAL APPOINTMENTS: SELECTION, AND TRANSFER OF POWERS OF LORD CHANCELLOR

Other changes in relation to selection process and complaints

54 The Constitutional Reform Act 2005 is amended as follows.

Commencement Information

II Sch. 13 para. 54 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

55 In section 66(1)(a) (Lord Chancellor to consult Lord Chief Justice before issuing guidance about selection procedures) for “consult” substitute “ obtain the agreement of”.

Commencement Information

I2 Sch. 13 para. 55 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

56 In section 67 (sections 68 to 75 apply in relation to appointment of Lord Chief Justice or Head of Division)—

- (a) in subsection (1) for “75” substitute “ 70 ”, and
- (b) in subsection (2) for “96” substitute “ 94C and regulations made under it ”.

Commencement Information

I3 Sch. 13 para. 56 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

57 In section 69 (sections 70 to 75 apply where request made under section 69)—

- (a) in subsection (4) for “Sections 70 to 75 apply” substitute “ Section 70 applies ”, and
- (b) in subsection (5) for “Those sections are” substitute “ That section is ”.

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I4 Sch. 13 para. 57 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

58 (1) Section 70 (process for selecting person to be recommended for appointment as Lord Chief Justice or Head of Division) is amended as follows.

(2) After subsection (1) insert—

“(1A) The panel must have an odd number of members not less than five.

(1B) The members of the panel must include—

- (a) at least two who are non-legally-qualified,
- (b) at least two judicial members, and
- (c) at least two members of the Commission,

and contributions to meeting more than one of the requirements may be made by the same person's membership of the panel.

(1C) The members of the panel may not include the current holder of the office for which a selection is to be made.

(1D) If the panel is convened for the selection of a person to be recommended for appointment as Lord Chief Justice, it is to be chaired by one of its non-legally-qualified members.”

(3) In subsection (2)(a) (panel to determine selection process to be applied) after “applied” insert “ by it ”.

(4) Omit subsection (2A) (steps that are to be part of selection process).

(5) In subsection (4) (subsection (3) applies to selection under section 70 or 75) for “section 75” substitute “ regulations under section 94C ”.

(6) Omit subsection (5) (if practicable, panel to consult current holder of office).

Commencement Information

I5 Sch. 13 para. 58 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

59 In section 75A (sections 75B to 75G apply where request made under paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007)—

- (a) in subsection (1) for “Sections 75B to 75G apply” substitute “ Section 75B applies ”, and
- (b) in subsection (2) for “Those sections are” substitute “ That section is ”.

Commencement Information

I6 Sch. 13 para. 59 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

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- 60 (1) Section 75B (process for selecting person to be recommended for appointment as Senior President of Tribunals) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) The panel must have an odd number of members not less than five.
- (1B) The members of the panel must include—
- (a) at least two who are non-legally-qualified,
 - (b) at least two judicial members, and
 - (c) at least two members of the Commission,
- and contributions to meeting more than one of the requirements may be made by the same person's membership of the panel.
- (1C) The members of the panel may not include the Senior President of Tribunals.”
- (3) In subsection (2)(a) (panel to determine selection process to be applied) after “applied” insert “ by it ”.
- (4) In subsection (5) (subsection (4) applies to selection under section 75B or 75G) for “section 75G” substitute “ regulations under section 94C ”.

Commencement Information

I7 Sch. 13 para. 60 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

- 61 In section 76 (sections 77 to 84 apply in relation to appointment of ordinary judges of the Court of Appeal)—
- (a) in subsection (1) for “84” substitute “ 79 ”, and
 - (b) in subsection (2) for “96” substitute “ 94C and regulations made under it ”.

Commencement Information

I8 Sch. 13 para. 61 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

- 62 In section 78 (sections 79 to 84 apply where request made under section 78)—
- (a) in subsection (4) for “Sections 79 to 84 apply” substitute “ Section 79 applies ”, and
 - (b) in subsection (5) for “Those sections are” substitute “ That section is ”.

Commencement Information

I9 Sch. 13 para. 62 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

- 63 (1) Section 79 (process for selecting person to be recommended for appointment as ordinary judge of Court of Appeal) is amended as follows.
- (2) After subsection (1) insert—

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“(1A) The panel must have an odd number of members not less than five.

(1B) The members of the panel must include—

- (a) at least two who are non-legally-qualified,
- (b) at least two judicial members, and
- (c) at least two members of the Commission,

and contributions to meeting more than one of the requirements may be made by the same person's membership of the panel.”

(3) In subsection (2)(a) (panel to determine selection process to be applied) after “applied” insert “ by it ”.

(4) In subsection (4) (subsection (3) applies to selection under section 79 or 84) for “section 84” substitute “ regulations under section 94C ”.

Commencement Information

I10 Sch. 13 para. 63 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

64 (1) Section 85 (sections 86 to 93 apply in relation to appointment of puisne judges of the High Court or to offices listed in Schedule 14) is amended as follows.

(2) In subsection (1)—

- (a) for “93” substitute “ 88 ”,
- (b) in paragraph (c) before “Part 2 or 3” insert “ Table 1 of ”, and
- (c) after paragraph (c) insert—

“(d) an appointment to an office listed in Table 2 of Part 2 of that Schedule in exercise of the Lord Chief Justice's function under the enactment listed opposite that office;

(e) an appointment to an office listed in Table 2 of Part 3 of that Schedule in exercise of the function of the Senior President of Tribunals under the enactment listed opposite that office.”

(3) In subsection (2) for “96” substitute “ 94C and regulations made under it ”.

(4) After subsection (4) insert—

“(5) The Lord Chancellor may by order provide that this section does not apply to appointments to an office listed in Schedule 14 that is specified in the order.

(6) An office may not be specified in an order under subsection (5) if—

- (a) the provisions governing appointment to the office provide that a person is eligible for appointment only where the person satisfies the single condition specified in the provisions, and
- (b) that condition is one of the conditions listed in subsection (8).

(7) An office may not be specified in an order under subsection (5) if—

- (a) the provisions governing appointment to the office provide that a person is eligible for appointment only where the person satisfies one or some other particular number or all, or at least one or at least

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- some other particular number, of several conditions specified in the provisions, and
- (b) at least one of the conditions specified in the provisions is listed in subsection (8).
- (8) The conditions are—
- (a) that the person satisfies the judicial-appointment eligibility condition on an N-year basis (where N is a particular number);
 - (b) that the person is a solicitor in Scotland of at least a particular number of years' standing;
 - (c) that the person is an advocate in Scotland of at least a particular number of years' standing;
 - (d) that the person is a solicitor in Northern Ireland of at least a particular number of years' standing;
 - (e) that the person is a barrister in Northern Ireland of at least a particular number of years' standing.
- (9) Before making an order under subsection (5) the Lord Chancellor must consult the Lord Chief Justice, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland.
- (10) An order under subsection (5)—
- (a) may make different provision for different purposes;
 - (b) may make consequential, transitory, transitional or saving provision.”

Commencement Information

III Sch. 13 para. 64 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

- 65 (1) Section 86 (duty to fill vacancies) is amended as follows.
- (2) After subsection (1) (duty to make a recommendation to fill vacancy for a puisne judge of the High Court or in an office listed in Part 1 of Schedule 14) insert—
- “(1A) The Lord Chancellor must, as soon as is reasonably practicable after being informed by the Lord Chief Justice that a selection under this Chapter for a recommendation for an appointment to an office listed in Table 2 of Part 1 of that Schedule has been accepted unconditionally or subject to conditions that have since been met, make a recommendation of the selected person for an appointment to that office.
- (1B) The Lord Chancellor must, as soon as is reasonably practicable after being informed by the Senior President of Tribunals that a selection under this Chapter for a recommendation for an appointment to an office listed in Table 3 of Part 1 of that Schedule has been accepted unconditionally or subject to conditions that have since been met, make a recommendation of the selected person for an appointment to that office.”
- (3) In subsection (2) (Lord Chancellor must fill vacancy in office listed in Part 2 or 3 of Schedule 14) after “listed in” insert “ Table 1 of ”.
- (4) After that subsection insert—

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“(2A) The Lord Chief Justice must make an appointment to fill any vacancy in an office listed in Table 2 of Part 2 of that Schedule.

(2B) The Senior President of Tribunals must make an appointment to fill any vacancy in an office listed in Table 2 of Part 3 of that Schedule.”

(5) After subsection (3) insert—

“(4) Subsections (2A) and (2B) do not apply to a vacancy while the Lord Chancellor agrees that it may remain unfilled.”

Commencement Information

I12 Sch. 13 para. 65 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

66 (1) Section 87 (request for selection of person to fill vacancy for High Court judge or in an office listed in Schedule 14) is amended as follows.

(2) After subsection (1) insert—

“(1A) The Lord Chancellor may request the Commission to select a person for membership of a pool for requests under section 9(1) of the Senior Courts Act 1981, and a person may become a member of such a pool only by selection on a request under this subsection.”

(3) In subsection (4) (sections 88 to 93 apply where request made under section 87) for “Sections 88 to 93 apply” substitute “ Section 88 applies ”.

(4) In subsection (5) for “Those sections are” substitute “ That section is ”.

Commencement Information

I13 Sch. 13 para. 66 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

67 In section 88 (selection process: puisne judges of High Court and other office holders)—

- (a) omit subsection (2) (insufficient candidates of merit),
- (b) omit subsection (3) (required elements of selection process),
- (c) in subsection (4) (duty to arrange selection of one person for each recommendation or appointment to which a request relates) for “or appointment” substitute “ , appointment or pool membership ”, and
- (d) in subsection (5) (subsection (4) applies to selection under section 88, 92 or 93) for “section 92 or 93” substitute “ regulations under section 94C ”.

Commencement Information

I14 Sch. 13 para. 67 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

68 For section 94 (Commission's duty to identify persons suitable for selection on a future request) substitute—

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“94 Power to require persons to be identified for future requests

- (1) If the Lord Chancellor gives the Commission notice of a request which the Lord Chancellor expects to make under section 87, the Commission must seek to identify persons it considers would be suitable for selection on the request.
- (2) The Lord Chancellor may, by regulations made with the agreement of the Lord Chief Justice, make provision about how the Commission is to comply with a duty imposed on it by subsection (1).
- (3) The regulations may in particular—
 - (a) make provision as to things that are, or as to things that are not, to be done—
 - (i) in complying with such a duty, or
 - (ii) in determining how to comply with such a duty;
 - (b) provide for the making of reports.
- (4) Regulations under this section—
 - (a) may make different provision for different purposes;
 - (b) may make consequential, supplementary, transitory, transitional or saving provision.”

Commencement Information

I15 Sch. 13 para. 68 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

- 69 (1) Section 95 (Lord Chancellor's power to withdraw or modify a request) is amended as follows.
- (2) In subsection (2) before paragraph (a) insert—

“(za) the Lord Chancellor may withdraw or modify a request in consequence of a vacancy, or perceived need for an additional office-holder, having been filled or partly filled by change in the amount of time required to be devoted to the duties of office by an existing holder of the office concerned;”.
 - (3) In that subsection after paragraph (b) insert—

“(ba) so far as a request relates to any pool membership, the Lord Chancellor may withdraw or modify it after consulting the Lord Chief Justice;”.
 - (4) In subsection (2)(c) (withdrawal of request where selection process unsatisfactory)—
 - (a) for “he”, in both places, substitute “ the Lord Chancellor ”, and
 - (b) for “or appointments” substitute “ , appointments or pool memberships ”.
 - (5) In subsection (3) (selection already accepted may not be changed in consequence of modification or part-withdrawal of request) after “accepted” insert “ unconditionally or subject only to matters such as the selected person's willingness and availability ”.

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- (6) In subsection (4) (request may not be withdrawn on ground of unsatisfactory process after exercise of power to accept, reject or require reconsideration of selection) for the words after “if” substitute “a selection made pursuant to the request—
- (a) has been accepted unconditionally or subject only to matters such as the selected person's willingness and availability, or
 - (b) in exercise of power conferred by regulations under section 94C, has been rejected or required to be reconsidered.”

Commencement Information

I16 Sch. 13 para. 69 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

- 70 (1) Section 97 (consultation under certain provisions to be with head of the judiciary in Scotland or Northern Ireland instead of with Lord Chief Justice of England and Wales) is amended as follows.
- (2) In subsection (1) (list of provisions requiring consultation)—
- (a) omit paragraphs (b), (c) and (e), and
 - (b) in paragraph (d) for “95(2)(a), (b)” substitute “ 95(2)(b) ”.
- (3) In subsection (4) (modification where requirement is to obtain concurrence rather than to consult) after “section 94A(1)” insert “ or 95(2)(a) ”.

Commencement Information

I17 Sch. 13 para. 70 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

- 71 (1) In section 99 (judicial appointments: complaints) after subsection (3) insert—
- “(3A) An LCJ complaint is a complaint by a qualifying complainant of maladministration by the Lord Chief Justice or the Lord Chief Justice's nominee, or anyone acting on behalf of either of them, in connection with—
- (a) selection under this Part for an office listed in Table 2 of Part 1 or 2 of Schedule 14,
 - (b) appointment to an office listed in Table 2 of Part 2 of that Schedule, or
 - (c) selection under this Part for membership of a pool for requests under section 9(1) of the Senior Courts Act 1981,
- or of maladministration by the Lord Chief Justice or the Master of the Rolls or the Lord Chief Justice's nominee, or anyone acting on behalf of any of them, in connection with the making of requests under section 9(1) of that Act.
- (3B) An SPT complaint is a complaint by a qualifying complainant of maladministration by the Senior President of Tribunals or a person to whom the Senior President has delegated functions, or anyone acting on behalf of either of them, in connection with—
- (a) selection under this Part for an office listed in Table 3 of Part 1 of Schedule 14 or in Table 2 of Part 3 of that Schedule, or

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(b) appointment to an office listed in Table 2 of Part 3 of that Schedule.”

Commencement Information

I18 Sch. 13 para. 71 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

72 In section 100 (duty to make arrangements to investigate complaints) after subsection (2) insert—

“(2A) The Lord Chief Justice must make arrangements for investigating any LCJ complaint made to the Lord Chief Justice.

(2B) The Senior President of Tribunals must make arrangements for investigating any SPT complaint made to the Senior President of Tribunals.”

Commencement Information

I19 Sch. 13 para. 72 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

73 (1) Section 101 (complaints to the Judicial Conduct and Appointments Ombudsman) is amended as follows.

(2) In subsections (1)(a) and (4)(a) (investigation of complaints previously made to Judicial Appointments Commission or Lord Chancellor) for “or the Lord Chancellor” substitute “, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals ”.

(3) In subsection (1)(b) for “Commission's or Lord Chancellor's decision” substitute “ decision of the Commission, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals ”.

Commencement Information

I20 Sch. 13 para. 73 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

74 In section 102 (Ombudsman's reports and recommendations)—

(a) in subsection (2)(c) (recommended action) for “or the Lord Chancellor” substitute “, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals ”, and

(b) in subsection (4) (compensation not to be recommended for failure to be appointed to an office) after “office” insert “, or selected for membership of a pool, ”.

Commencement Information

I21 Sch. 13 para. 74 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

75 (1) Section 103 (Ombudsman's reports) is amended as follows.

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(2) For subsection (2) (drafts of reports) substitute—

“(2) The Ombudsman must submit a draft of the report to the Lord Chancellor and to—

- (a) the Commission if the complaint was a Commission complaint;
- (b) the Lord Chief Justice if the complaint was an LCJ complaint;
- (c) the Senior President of Tribunals if the complaint was an SPT complaint.”

(3) In subsection (3) (duty to have regard to comments on draft) for “or the Commission” substitute “ the Commission, the Lord Chief Justice or the Senior President of Tribunals ”.

(4) After subsection (5) insert—

“(5A) If the complaint was an LCJ complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Lord Chief Justice.

(5B) If the complaint was an SPT complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Senior President of Tribunals.”

Commencement Information

I22 Sch. 13 para. 75 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

76 (1) Section 104 (referrals to Judicial Conduct and Appointments Ombudsman of matters relating to Judicial Appointments Commission) is amended as follows.

(2) In subsection (1) (duty to investigate matter referred by Lord Chancellor) after “Lord Chancellor” insert “ , the Lord Chief Justice or the Senior President of Tribunals ”.

(3) In subsection (3) (report on referred matter) after “Lord Chancellor” insert “ , the Lord Chief Justice and the Senior President of Tribunals ”.

Commencement Information

I23 Sch. 13 para. 76 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

77 In section 105 (provision of information to Ombudsman) after “The Commission” insert “ , the Lord Chief Justice, the Senior President of Tribunals ”.

Commencement Information

I24 Sch. 13 para. 77 in force at 1.10.2013 by [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

78 In section 144(5) (orders and regulations subject to affirmative procedure) after paragraph (a) insert—

- “(aa) an order under section 85(5);
- (ab) regulations under section 94 or 94C;”.

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I25 Sch. 13 para. 78 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

- 79 In paragraph 2 of Schedule 7 (functions of Lord Chancellor under the Act are protected from transfer to other Ministers etc) after “under this Act” insert “, including any function under provision inserted into this Act by—
- (a) the Crime and Courts Act 2013, or
 - (b) any earlier or later enactment”.

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Commencement Information

I26 Sch. 13 para. 79 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

- 80 In Schedule 12 (the Judicial Appointments Commission) in paragraphs 20(6) and 27(3) (selection panels under section 70 or 79) after “70” insert “, 75B ”.

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Commencement Information

I27 Sch. 13 para. 80 in force at 1.10.2013 by [S.I. 2013/2200](#), **art. 3(e)** (with savings in [S.I. 2013/2192](#), regs. 48, 49)

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