Draft laid before Parliament under section 144(4) and (5)(e) of the Constitutional Reform Act 2005 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

JUDICIAL APPOINTMENTS AND DISCIPLINE

The Judicial Appointments Commission Regulations 2013

Made - - - -	***
	in accordance with
Coming into force - -	*regulation 1*

The Lord Chancellor, makes the following Regulations in exercise of the powers conferred by paragraphs 1(b), 3B, 3C, 6A, 11(2), 13, 14 and 17A of Schedule 12 to the Constitutional Reform Act 2005(**1**).

The Lord Chief Justice agrees to the making of these Regulations in accordance with paragraphs 1(b), 3B, 3C, 6A, 11(2), 13 and 14 of Schedule 12 to the Constitutional Reform Act 2005.

A draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 144(4) and (5)(e) of the Constitutional Reform Act 2005(**2**).

Citation and commencement

1. These Regulations may be cited as the Judicial Appointments Commission Regulations 2013 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"the 2005 Act" means the Constitutional Reform Act 2005;

"holder of judicial office" has the meaning given by regulation 7;

"lay member" has the meaning given by regulation 8;

"non-legally qualified judicial member" has the meaning given by regulation 6;

"non-legally qualified person" has the same meaning as in section 27(11) of the 2005 Act(**3**);

"senior tribunal office-holder member" has the meaning given by regulation 5.

(**1**) 2005 c.4; Schedule 12 was amended by the Crime and Courts Act 2013 (c.22), Schedule 13, paragraphs 17, 18, 19, 20, 21, 23 and 24; and by the Tribunals, Courts and Enforcement Act 2007 (c.19), Schedule 8, paragraphs 62 and 65.
(**2**) 2005 c.4; section 144 was amended by the Crime and Courts Act 2013 (c.22), Schedule 13, paragraph 27.
(**3**) 2005 c.4; section 27 was amended by the Crime and Courts Act 2013 (c.22), Schedule 13, paragraph 4(2).

Number of Commissioners

3. There are 15 Commissioners including the chairman.

Composition of the Commission

4.—(1) Of the 14 other Commissioners—

(a) 7 must be holders of judicial office,

(b) 5 must be lay members, and

(c) 2 must be persons practising or employed as lawyers.

(2) Of the 7 Commissioners who are appointed as holders of judicial office—

(a) 1 must be a Lord Justice of Appeal;

(b) 1 must be a puisne judge of the High Court;

(c) 1 must be a senior tribunal office-holder member;

(d) 1 must be a circuit judge;

(e) 1 must be a district judge of a county court, a District Judge (Magistrates' Courts) or a person appointed to an office under section 89 of the Senior Courts Act 1981(**4**);

(f) 1 must be a holder of an office listed in paragraph (3);

(g) 1 must be a non-legally qualified judicial member.

(3) The offices referred to in paragraph (2)(f) are—

(a) judge of the First-tier Tribunal appointed under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007(**5**);

(b) transferred-in judge of the First-tier Tribunal (see section 31(2) of that Act(**6**));

(c) Regional Employment Judge appointed under regulation 6(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(**7**);

(d) Employment Judge (England and Wales) appointed under regulation 8(1) and (3)(a) of those Regulations(**8**).

(4) Of the 2 Commissioners appointed who are persons practising or employed as lawyers—

(a) each person must hold a qualification listed in paragraph (5),

(b) but they must not hold the same qualification as each other.

(5) The qualifications referred to in paragraph (4) are—

(a) barrister in England and Wales;

(b) solicitor of the Senior Courts of England and Wales;

(c) fellow of the Chartered Institute of Legal Executives.

Senior tribunal office-holder member

5. A senior tribunal office-holder member is a person who holds one of the following offices—

(**4**) 1981 c.54; section 89 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 3, paragraph 3 and by Schedule 11, paragraph 26.
(**5**) 2007 c.15.
(**6**) 2007 c.15.
(**7**) S.I. 2004/1861, amended by S.I. 2008/2683.
(**8**) S.I. 2004/1861, amended by S.I. 2008/2683 and 2008/3240.

(a) judge of the Upper Tribunal appointed under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007(**9**);

(b) transferred-in judge of the Upper Tribunal (see section 31(2) of that Act)(**10**);

(c) Chamber President of a chamber of the First-tier Tribunal, or of a chamber of the Upper Tribunal, by appointment under section 7(7) of that Act (but not where appointed in accordance with paragraph 2(2) to (5) of Schedule 4 to that Act)(**11**);

(d) President of Employment Tribunals (England and Wales) appointed under regulation 4(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(**12**);

(e) President of Employment Tribunals (Scotland) appointed under regulation 4(2) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(**13**).

Non-legally qualified judicial member

6.—(1) A non-legally qualified judicial member is a person who—

(a) holds an office referred to in paragraph (2); and

(b) has never practised or been employed as a lawyer.

(2) The offices referred to in paragraph (1)(a) are—

(a) an office listed in Part 3 of Schedule 14 to the 2005 Act (Tribunal-related and other appointments);

(b) justice of the peace;

(c) transferred-in other member of the First-tier Tribunal or of the Upper Tribunal (see section 31(2) of the Tribunals, Courts and Enforcement Act 2007);

(d) member of the Employment Appeal Tribunal appointed under section 22(1)(c) of the Employment Tribunals Act 1996(**14**);

(e) member of a panel appointed under regulation 8(1) and (3)(b) and (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(**15**).

Holder of judicial office

7.—(1) Subject to paragraph (2), a holder of judicial office is a person who holds an office listed in regulation 4(2) and does not include a person who is appointed as a Commissioner as a person who is practising or employed as a lawyer.

(2) For the purposes of sub-paragraph (5) of paragraph 20 (Committees of the Judicial Appointments Commission) of Schedule 12 to the 2005 Act(**16**), a holder of judicial office is a person who holds an office listed in regulation 4(2)(a) to (f) of these Regulations.

Lay member

8. For the purposes of Part 1 of Schedule12 to the 2005 Act and sub-paragraph (5) of paragraph 20 (Committees of the Judicial Appointments Commission) of Schedule 12 to the 2005 Act, a lay member is a person who lives in England or Wales who has never—

(**9**) 2007 c.15.
(**10**) 2007 c.15.
(**11**) 2007 c.15.
(**12**) S.I. 2004/1861, amended by S.I. 2008/2683.
(**13**) S.I. 2004/1861, amended by S.I. 2008/2683.
(**14**) 1996 c.17; section 22 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraphs 245 and 246.
(**15**) S.I. 2004/1861, amended by S.I. 2008/2771 and 2008/3240.
(**16**) 2005 c.4; paragraph 20 of Schedule 12 was amended by the Crime and Courts Act 2013 (c.22), Schedule 13, paragraph 25.

(a) held an office listed in Schedule 14 to the 2005 Act,

(b) been a member of a panel appointed under regulation 8(1) and (3)(b) and (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(**17**), or

(c) practised or been employed as a lawyer.

Selection of Commissioners by a panel

9.—(1) This regulation applies to the selection of a person as the chairman of the Commission and any other Commissioner except a Commissioner who is a Lord Justice of Appeal, a puisne judge of the High Court or a senior tribunal office-holder member.

(2) The Lord Chancellor may recommend a person for appointment as a Commissioner only if—

(a) the Lord Chancellor has requested a panel appointed by him or her to select a person or (as the panel may determine) more than one person for the purposes of such a recommendation, and

(b) the person the Lord Chancellor recommends is the person or one of the persons selected.

(3) The Lord Chancellor may appoint different panels for the purposes of different requests.

Selection of Commissioners by the Judges' Council

10.—(1) This regulation applies to the selection of a person for appointment as a Commissioner who is a Lord Justice of Appeal or a puisne judge of the High Court.

(2) The Lord Chancellor may recommend a person for appointment as a Commissioner only if—

(a) the Lord Chancellor has requested the Judges' Council to select a person to be appointed;

(b) the person has been selected by the Judges' Council in accordance with that request; and

(c) the selection by the Judges' Council has been notified to the Lord Chancellor in a report which gives reasons for the selection.

(3) The Lord Chancellor must recommend for appointment the person selected by the Judges' Council.

(4) In this regulation the Judges' Council means a body designated for the purposes of these Regulations by the Lord Chief Justice.

Selection of Commissioners by the Tribunals' Council

11.—(1) This regulation applies to the selection of a senior tribunal office-holder member as a Commissioner.

(2) The Lord Chancellor may recommend such a person for appointment as a Commissioner only if—

(a) the Senior President of Tribunals has requested the Tribunal Judges' Council to select a person to be appointed;

(b) the person has been selected by the Tribunal Judges' Council in accordance with that request; and

(c) the selection by the Tribunal Judges' Council has been notified to the Lord Chancellor in a report which gives reasons for the selection.

(3) The Lord Chancellor must recommend for appointment the person selected by the Tribunal Judges' Council.

(**17**) S.I. 2004/1861, amended by S.I. 2008/2771 and 2008/3240.

(4) In this regulation the Tribunal Judges' Council means a body designated for the purposes of these Regulations by the Senior President of Tribunals.

Requests

12.—(1) This regulation applies to a request to select a person under regulation 9, 10 or 11.

(2) A request must specify the provision for the purposes of which the appointment is to be made.

(3) A request may specify the time within which a person is to be selected.

Panels

13.—(1) A panel appointed under regulation 9(2) must have four members (subject to paragraph (9)).

(2) Where the selection is for a person within regulation 4(2)(f), the first member must be a person selected by the Lord Chancellor with the agreement of the Senior President of Tribunals.

(3) Where the selection is for a non-legally qualified judicial member, the first member must be a person selected by the Lord Chancellor with the agreement of the Lord Chief Justice (or, if the office of Lord Chief Justice is vacant, with the agreement of the senior Head of Division) and the Senior President of Tribunals.

(4) Where the selection is for any other Commissioner, the first member must be a person selected by the Lord Chancellor with the agreement of the Lord Chief Justice (or, if the office of Lord Chief Justice is vacant, with the agreement of the senior Head of Division).

(5) The first member is to be chairman of the panel.

(6) The second member must be the Lord Chief Justice or a nominee of the Lord Chief Justice, unless the office of Lord Chief Justice is vacant.

(7) If that office is vacant, the second member must be the senior Head of Division or a nominee of the Senior Head of Division.

(8) The third member must be a person nominated by the first member.

(9) The chairman of the Commission is the fourth member of the panel unless his or her office is vacant or it is the office for which a recommendation is to be made.

(10) A person must not be a member of the panel if that person is employed in the civil service of the State.

(11) A person must not be the first member if he or she is one of the following—

(a) a Commissioner;

(b) a member of the staff of the Commission;

(c) a practising or employed—

(i) barrister in England and Wales;

(ii) solicitor of the Senior Courts of England and Wales;

(iii) fellow of the Chartered Institute of Legal Executives;

(iv) advocate in Scotland;

(v) solicitor in Scotland;

(vi) member of the Bar of Northern Ireland;

(vii) solicitor of the Court of Judicature of Northern Ireland;

(d) the holder of an office listed in Schedule 14 to the 2005 Act;

(e) a member of the House of Commons.