Draft laid before Parliament under section 144(4) and (5)(ab) 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 Regulations 2013

Made - - - - ***

Coming into force in accordance with regulation 1

The Lord Chancellor, in exercise of the powers conferred by sections 94(2) and 94C of the Constitutional Reform Act 2005(**1**), makes the following Regulations.

In accordance with section 94(2), (3) and (4) and section 94C(1) of that Act the Lord Chief Justice agrees to the making of these Regulations.

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)(ab) of the Constitutional Reform Act 2005(**2**).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Judicial Appointments Regulations 2013 and come into force—

(a) on 1st October 2013; or

(b) if made on or after that date, the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations reference to a section, or Schedule, means unless the contrary is indicated, a section of, or Schedule to, the Constitutional Reform Act 2005.

(**1**) 2005 c.4. Section 94 is amended by paragraph 68 of Schedule 13 to the Crime and Courts Act 2013 (c.22) and section 94C is inserted by paragraph 53(3) of Schedule 13 to the Crime and Courts Act 2013. Various other amendments have been made to Part 4 of, and Schedule 14 to, the Constitutional Reform Act 2005.

(**2**) Section 144(5) is amended by paragraph 78 of Schedule 13 to the Crime and Courts Act 2013.

(2) In these Regulations—

(a) "Judicial Appointments Board for Scotland" means the body established by section 9 of the Judiciary and Courts (Scotland) Act 2008(**3**);

(b) "Northern Ireland Judicial Appointments Commission" means the body established by section 3 of the Justice (Northern Ireland) Act 2002(**4**).

(3) In these Regulations "England and Wales Supreme Court judge" means a judge of the Supreme Court of the United Kingdom who has held office as a judge of the Court of Appeal or the High Court in England and Wales before appointment to the Supreme Court.

(4) Seniority amongst the judges of the Supreme Court who are England and Wales Supreme Court judges is to be determined for the purposes of these Regulations as follows—

(a) the President of the Supreme Court, if an England and Wales Supreme Court judge, is senior to other England and Wales Supreme Court judges;

(b) the Deputy President of the Supreme Court, if an England and Wales Supreme Court judge, is senior to ordinary England and Wales Supreme Court judges;

(c) one ordinary England and Wales Supreme Court judge is senior to another if that first judge has served longer as a judge of the Supreme Court (whether over one or more periods and whether or not including one or more previous periods as President or Deputy President of the Court).

(5) In paragraph (4) "ordinary England and Wales Supreme Court judge" means an England and Wales Supreme Court judge who is neither the President of the Supreme Court nor the Deputy President of the Supreme Court.

(6) Service as a Lord of Appeal in Ordinary counts as service as a judge of the Supreme Court for the purposes of paragraph (4)(c).

(7) References in these Regulations to a person being incapacitated are to the person being incapacitated in the opinion of the Lord Chancellor.

(8) In these Regulations "appropriate authority" has the meaning given in section 94C(4)(**5**).

Section 16 (functions of the Lord Chief Justice during vacancy or incapacity)

3. Section 16(2)(a) or (b) does not apply to functions of the Lord Chief Justice or any requirement to consult the Lord Chief Justice under regulations 5, 6(1) and 11.

Non-legally qualified person

4. For the purposes of sections 70, 75B and 79(**6**) a person is non-legally qualified if that person has never—

(a) held an office listed in Schedule 14;

(b) been a member of a panel appointed under regulation 8(1) or 8(3)(b) or (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(**7**); or

(c) practised as, or been employed as, a lawyer.

(**3**) 2008 asp 6.
(**4**) 2002 c.26. Section 3 is amended by sections 1 and 2 of, and Schedule 1 to, the Justice (Northern Ireland) Act 2004 (c.4) but certain functions of the Lord Chancellor under section 3 have been transferred to the First Minister and deputy First Minister in Northern Ireland acting jointly by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976).
(**5**) 2005 c.4. Section 94C is inserted by paragraph 53(3) of Schedule 13 to the Crime and Courts Act 2013.
(**6**) Sections 70, 75B and 79 are amended by paragraphs 58, 60 and 63 of Schedule 13 to the Crime and Courts Act 2013.
(**7**) S.I. 2004/1861. Regulation 8(3) has been amended by S.I. 2008/3240.

PART 2

Selection of Lord Chief Justice

Membership of selection panel

5.—(1) A selection panel appointed under section 70(1) to select a person for appointment to the office of Lord Chief Justice must consist of five members.

(2) The first member is the chairman of the Commission, unless paragraph (3) applies.

(3) If—

(a) there is no chairman of the Commission;

(b) the chairman of the Commission is incapacitated; or

(c) the chairman of the Commission is unavailable,

the first member is a lay member of the Commission selected by the lay members of the Commission other than the chairman of the Commission.

(4) The first member is the chairman of the selection panel.

(5) The second member is the most senior England and Wales Supreme Court judge who is neither disqualified nor incapacitated, or that judge's nominee.

(6) The third member is a lay member of the Commission designated by the first member.

(7) The fourth member is a member of the Commission designated by the first member.

(8) The fifth member is a person designated by the Lord Chief Justice, unless paragraph (11) applies.

(9) Before designating a person under paragraph (7) as the fourth member, the first member must, if practicable, consult the Lord Chief Justice.

(10) Paragraph (11) applies if—

(a) there is no Lord Chief Justice; or

(b) the Lord Chief Justice is incapacitated.

(11) In that case the most senior England and Wales Supreme Court judge who is neither disqualified nor incapacitated must, after consulting the first member, nominate a holder of one of the offices listed in paragraph (12) to be the fifth member.

(12) Only the following may be a nominee under paragraph (5) or (11) or a designated member under paragraph (8)—

(a) an England and Wales Supreme Court judge;

(b) a Head of Division; or

(c) a Lord Justice of Appeal.

(13) The following also apply to nominees, or those designated, under this regulation—

(a) a person may not be a nominee, or a designated member, if that person is disqualified;

(b) a person may not be appointed to the selection panel as the nominee of, or designated by, more than one person;

(c) a person appointed to the selection panel otherwise than as a nominee or as a designated member may not be a nominee or designated member.

(14) A person is disqualified for the purposes of this regulation if—

(a) the person is the Lord Chief Justice;

(b) the office of Lord Chief Justice is vacant and the person is the immediate previous holder of that office; or

(c) the person is willing to be considered for selection.

(15) Paragraph (16) applies where a person chooses a person to be a member of a selection panel (whether as a nominee, as a designated member or otherwise).

(16) The person making the choice must, in doing so, have regard (alongside all other relevant considerations) to the fact that it is desirable that the members of the selection panel should include—

(a) both women and men; and

(b) members drawn from a range of different racial groups (within the meaning of section 9(3) of the Equality Act 2010(**8**)).

Consultation

6.—(1) If practicable the panel must consult, about the exercise of its functions under section 70, the Lord Chief Justice.

(2) As part of the selection process under section 70(2)(**9**), the selection panel must consult—

(a) the Lord Chancellor; and

(b) the First Minister for Wales.

Report

7.—(1) After complying with section 70(2) the selection panel must submit a report to the Lord Chancellor.

(2) The report must—

(a) state who has been selected;

(b) contain any other information required by the Lord Chancellor.

(3) The report must be in a form approved by the Lord Chancellor.

(4) After submitting the report the selection panel must provide any further information which the Lord Chancellor may require.

The Lord Chancellor's options

8.—(1) This regulation refers to the following stages—

(a) Stage 1 – where a person has been selected under section 70(2) for appointment as Lord Chief Justice.

(b) Stage 2 – where a person has been selected following a rejection or reconsideration at stage 1.

(c) Stage 3 where a person has been selected following a rejection or reconsideration at stage 2.

(2) At stage 1 the Lord Chancellor must do one of the following—

(a) accept the selection;

(b) reject the selection; or

(c) require the selection panel to reconsider the selection.

(3) At stage 2 the Lord Chancellor must do one of the following—

(**8**) 2010 (c.15).
(**9**) Section 70(2) is amended by paragraph 58(3) of Schedule 13 to the Crime and Courts Act 2013.

(a) accept the selection;

(b) reject the selection, but only if it was made following a reconsideration at stage 1; or

(c) require the selection panel to reconsider the selection, but only if it was made following a rejection at stage 1.

(4) At stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and the Lord Chancellor accepts a selection under it.

(5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.

Exercise of power to reject or require reconsideration

9.—(1) The power of the Lord Chancellor under regulation 8 to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned.

(2) The power of the Lord Chancellor under regulation 8 to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the ground that, in the Lord Chancellor's opinion—

(a) there is not enough evidence that the person is suitable for the office of Lord Chief Justice, or

(b) there is evidence that the person is not the best candidate on merit.

(3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

Selection following requirement to reconsider

10.—(1) If under regulation 8 the Lord Chancellor rejects or requires the reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with this regulation.

(2) If the Lord Chancellor rejects a selection, the selection panel—

(a) may not select the person rejected, and

(b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.

(3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel—

(a) may select the same person or a different person, but

(b) where the requirement to reconsider follows a rejection, may not select the person rejected.

(4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.

(5) This regulation does not prevent a person being selected on a subsequent request under section 69(**10**).

(**10**) Section 69 is amended by paragraph 57 of Schedule 13 to the Crime and Courts Act 2013.