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

DRAFT STATUTORY INSTRUMENTS

2013 No.

SUPREME COURT OF THE UNITED KINGDOM JUDICIAL APPOINTMENTS AND DISCIPLINE

The Supreme Court (Judicial Appointments) Regulations 2013

Made - - - - ***

Coming into force in accordance with regulation 1

The Lord Chancellor, in exercise of the powers conferred by section 27A of the Constitutional Reform Act 2005(**1**), makes the following Regulations.

The Lord Chancellor has consulted all the persons listed in section 27A(3) of that Act before making these Regulations.

In accordance with section 27A(1) of that Act the President of the Supreme Court of the United Kingdom 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)(za) of the Constitutional Reform Act 2005(**2**).

PART 1

General

Citation and commencement

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

(a) on 1st October 2013; or

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

(**1**) 2005 c.4. Section 27A is inserted by paragraph 5 of Schedule 13 to the Crime and Courts Act 2013 (c.22). Various other amendments have been made to Part 3 of, and Schedule 8 to, the Constitutional Reform Act 2005 by Part 1 of Schedule 13 to the Crime and Courts Act 2013.

(**2**) Section 144(5) is amended by paragraph 7(9) of Schedule 13 to the Crime and Courts Act 2013.

Interpretation

2. In these Regulations—

(a) "the 2005 Act" means the Constitutional Reform Act 2005;

(b) "the Deputy President" means the Deputy President of the Supreme Court;

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

(d) "the President" means the President of the Supreme Court;

(e) "selection commission" means a selection commission convened under section 26(5) or (5A) of the 2005 Act(**4**);

(f) "a senior UK judge" means a judge listed in section 60(1)(b) to (i) of the 2005 Act.

3. In relation a reference in these Regulations to "the most senior ordinary judge"—

(a) the seniority of the ordinary judges of the Supreme Court is to be determined according to length of service as a judge of the Court (including for this purpose service over one or more periods) and service as a Lord of Appeal in Ordinary counts as service as a judge of the Court for this purpose; and

(b) a person disqualified under regulation 16 or who resigns from membership of a selection commission under regulation 17 is to be disregarded in determining who is the most senior ordinary judge for the purposes of any provision of these Regulations.

PART 2

Selection Commission for appointment of President

Application of this Part

4. This Part applies where a selection commission is convened to select a person for appointment to the office of President under section 26(5) of the 2005 Act.

Composition of selection commission

5.—(1) The selection commission must consist of—

(a) the Deputy President;

(b) a senior UK judge nominated in accordance with regulation 7;

(c) one member of each of the following bodies—

(i) the Judicial Appointments Commission;

(ii) the Judicial Appointments Board for Scotland;

(iii) the Northern Ireland Judicial Appointments Commission.

(2) Of the three members mentioned in paragraph (1)(c), at least two must be non-legally qualified.

(3) Paragraph (4) applies where a person nominates a person to be a member of a selection commission under regulation 7 or 9(2).

(**3**) Section 27(11) is inserted into the Constitutional Reform Act 2005 by paragraph 4(2) of Schedule 13 to the Crime and Courts Act 2013.

(**4**) Section 26(5) is amended by paragraph 3(2) of Schedule 13 to the Crime and Courts Act 2013. Section 26(5A) is inserted into the Constitutional Reform Act 2005 by paragraph 3(3) of Schedule 13 to the Crime and Courts Act 2013.

(4) The person making the nomination must, in doing so, have regard (alongside all other relevant considerations) to the fact that it is desirable that the members of the selection commission 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(**5**)).

Provision where Deputy President's place on the selection commission is unfilled

6.—(1) Regulation 5(1)(a) does not apply if—

(a) the office of Deputy President is vacant;

(b) the Deputy President is disqualified under regulation 16; or

(c) the Deputy President is unavailable to be a member of a selection commission.

(2) Where the Deputy President's place on a selection commission is unfilled by virtue of paragraph (1), that place is to be taken by the most senior ordinary judge.

Senior UK judge

7.—(1) Unless paragraph (2) or (3) applies, the President—

(a) must nominate a senior UK judge who is not disqualified under regulation 16; and

(b) when making such a nomination must have due regard to the territorial composition of the selection commission.

(2) Where—

(a) the office of President is already vacant; or

(b) it appears to the Lord Chancellor that the person holding the office of President is for the time being incapacitated,

the Deputy President (unless the Deputy President is disqualified under regulation 16) must nominate a senior UK judge in accordance with paragraph (1) to sit on the selection commission.

(3) Where paragraph (2) applies and the Deputy President is disqualified under regulation 16, the most senior ordinary judge must nominate a senior UK judge in accordance with paragraph (1) to sit on the selection commission.

Chairman of selection commission

8.—(1) The chairman of the selection commission must be—

(a) a member of one of the bodies referred to in regulation 5(1)(c); and

(b) non-legally qualified.

(2) The first selection commission convened on or after the date on which these Regulations come into force must be chaired by a member of the Judicial Appointments Commission who has been nominated by the Judicial Appointments Commission to be chairman of the selection commission.

(3) Thereafter, the chairmanship of any selection commissions subsequently convened must be rotated between the following in the order that they are listed—

(a) the Judicial Appointments Board for Scotland;

(b) the Northern Ireland Judicial Appointments Commission;

(c) the Judicial Appointments Commission.

(**5**) 2010 c.15.

(4) The chairman is to be nominated by the body of which he or she is a member.

Members of selection commission under regulation 5(1)(c)

9.—(1) The chairman of the selection commission must seek one nomination from each of those bodies mentioned in regulation 5(1)(c) of which the chairman of the selection commission is not a member.

(2) The Lord Chancellor may pay to any person nominated under paragraph (1) and to the chairman of the selection commission such allowances as the Lord Chancellor may determine.

PART 3

Selection commissions for appointment of judges of the Supreme Court other than the President

Application of this Part

10. This Part applies where a selection commission is convened for the appointment of a judge of the Supreme Court other than the President under section 26(5) or (5A) of the 2005 Act.

Composition of selection commission

11.—(1) The selection commission must consist of—

(a) the President, who is to be the chairman of the selection commission;

(b) a member of the Judicial Appointments Commission;

(c) a member of the Judicial Appointments Board for Scotland;

(d) a member of the Northern Ireland Judicial Appointments Commission; and

(e) a senior UK judge nominated in accordance with regulation 14.

(2) Paragraph (3) applies where a person nominates a person to be a member of a selection commission under regulation 13(2) or 14.

(3) The person making the nomination must, in doing so, have regard (alongside all other relevant considerations) to the fact that it is desirable that the members of the selection commission 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).

Provision where President's place on the selection commission is unfilled

12.—(1) Regulation 11(1)(a) does not apply if—

(a) the office of President is vacant;

(b) the President is disqualified under regulation 16; or

(c) the President is unavailable to be a member of a selection commission.

(2) Where the President's place on a selection commission is unfilled by virtue of paragraph (1), that place is to be taken by the Deputy President, subject to paragraph (3).

(3) Where—

(a) the office of Deputy President is vacant;

(b) the Deputy President is disqualified under regulation 16; or

(c) the Deputy President is unavailable to be a member of a selection commission,

the unfilled place on the selection commission is to be taken by the most senior ordinary judge.

Members of selection commission under regulation 11(1)(b) to (d)

13.—(1) This regulation applies to those persons who are to be members of a selection commission under regulation 11(1)(b) to (d).

(2) The chairman of the selection commission must seek a nomination from each of the bodies referred to in regulation 11(1)(b) to (d) of one of its members to be a member of the selection commission.

(3) At least two members nominated under paragraph (2) must be non-legally qualified.

(4) The Lord Chancellor may pay to any person nominated under paragraph (2) such allowances as the Lord Chancellor may determine.

Member of selection commission under regulation 11(1)(e)

14.—(1) Unless paragraph (2) or (3) applies, the President—

(a) must nominate a senior UK judge who is not disqualified under regulation 16; and

(b) when making such a nomination must have due regard to the territorial composition of the selection commission.

(2) Where—

(a) the office of President is already vacant; or

(b) it appears to the Lord Chancellor that the person holding the office of President is for the time being incapacitated,

the Deputy President (unless the Deputy President is disqualified under regulation 16) must nominate a senior UK judge in accordance with paragraph (1) to sit on the selection commission.

(3) Where paragraph (2) applies and the Deputy President is disqualified under regulation 16, the most senior ordinary judge must nominate a senior UK judge in accordance with paragraph (1) to sit on the selection commission.

PART 4

Disqualification and replacement

Application of this Part

15. This Part applies to Parts 1, 2 and 3 of these Regulations.

Disqualification

16.—(1) A person is disqualified for the purposes of membership of a selection commission if it appears to the Lord Chancellor that that person is for the time being incapacitated from serving as a member of the selection commission.

(2) A person is disqualified for the purposes of membership of a selection commission if that person intends to apply for appointment to the office selection for which that selection commission has been convened.