



# Constitutional Reform Act 2005

## 2005 CHAPTER 4

### PART 4

#### JUDICIAL APPOINTMENTS AND DISCIPLINE

### CHAPTER 2

#### APPOINTMENTS

##### *General provisions*

#### **63 Merit and good character**

- (1) Subsections (2) [<sup>F1</sup>to (4)] apply to any selection under this Part by the Commission or a selection panel (“the selecting body”).
- (2) Selection must be solely on merit.
- (3) A person must not be selected unless the selecting body is satisfied that he is of good character.
- [<sup>F2</sup>(4) Neither “solely” in subsection (2), nor Part 5 of the Equality Act 2010 (public appointments etc), prevents the selecting body, where two persons are of equal merit, from preferring one of them over the other for the purpose of increasing diversity within—
  - (a) the group of persons who hold offices for which there is selection under this Part, or
  - (b) a sub-group of that group.]

#### **Textual Amendments**

- F1** Words in s. 63(1) substituted (15.7.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 10\(2\)](#); S.I. 2013/1725, art. 2(g)

*Status: Point in time view as at 01/10/2013.*

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**F2** S. 63(4) inserted (15.7.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 13 para. 10(3)**; S.I. 2013/1725, art. 2(g)

## 64 Encouragement of diversity

- (1) The Commission, in performing its functions under this Part, must have regard to the need to encourage diversity in the range of persons available for selection for appointments.
- (2) This section is subject to section 63.

## 65 Guidance about procedures

- (1) The Lord Chancellor may issue guidance about procedures for the performance by the Commission or a selection panel of its functions of—
  - (a) identifying persons willing to be considered for selection under this Part, and
  - (b) assessing such persons for the purposes of selection.
- (2) The guidance may, among other things, relate to consultation or other steps in determining such procedures.
- (3) The purposes for which guidance may be issued under this section include the encouragement of diversity in the range of persons available for selection.
- (4) The Commission and any selection panel must have regard to the guidance in matters to which it relates.

### Commencement Information

**II** S. 65 wholly in force at 3.4.2006; s. 65 not in force at Royal Assent see. s. 148; s. 65(1)-(3) in force at 1.10.2005 by S.I. 2005/2505, art. 2; s. 65(4) in force at 3.4.2006 by S.I. 2006/1014, art. 2(a), Sch. 1 para. 18

## 66 Guidance: supplementary

- (1) Before issuing any guidance the Lord Chancellor must—
  - (a) [<sup>F3</sup>obtain the agreement of] the Lord Chief Justice;
  - (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 Lord Chief Justice.
- (5) Guidance comes into force on such date as the Lord Chancellor may appoint by order.
- (6) The Lord Chancellor may—
  - (a) from time to time revise the whole or part of any guidance and re-issue it;

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(b) after consulting the Lord Chief Justice, by order revoke any guidance.

(7) In this section—

“40-day period” in relation to the draft of any proposed 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;

“guidance” means guidance issued by the Lord Chancellor under section 65 and includes guidance which has been revised and re-issued.

#### Textual Amendments

- F3** Words in s. 66(1)(a) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 55](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

### *Lord Chief Justice and Heads of Division*

#### **67 Selection of Lord Chief Justice and Heads of Division**

(1) Sections 68 to [F470] apply to a recommendation for an appointment to one of the following offices—

- (a) Lord Chief Justice;
- (b) Master of the Rolls;
- (c) President of the Queen's Bench Division;
- (d) President of the Family Division;
- (e) Chancellor of the High Court.

(2) Any such recommendation must be made in accordance with those sections and section [F594C and regulations made under it].

#### Textual Amendments

- F4** Word in s. 67(1) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 56\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F5** Words in s. 67(2) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 56\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

#### **68 Duty to fill vacancies**

(1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Chief Justice.

(2) The Lord Chancellor must make a recommendation to fill any vacancy in any other office listed in section 67(1).

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(3) Subsection (2) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

**69 Request for selection**

- (1) The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation to which this section applies.
- (2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.
- (3) Subsection (2) does not apply where the office of Lord Chief Justice is vacant or where the Lord Chief Justice is incapacitated for the purposes of section 16 (functions during vacancy or incapacity).
- (4) [<sup>F6</sup>Section 70 applies] where the Lord Chancellor makes a request under this section.
- (5) [<sup>F7</sup>That section is] subject to section 95 (withdrawal and modification of requests).

**Textual Amendments**

**F6** Words in s. 69(4) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 57\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**F7** Words in s. 69(5) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 57\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**70 Selection process**

- (1) On receiving a request the Commission must appoint a selection panel.
- [<sup>F8</sup>(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.]
- (2) The panel must—
  - (a) determine the selection process to be applied [<sup>F9</sup>by it],
  - (b) apply the selection process, and
  - (c) make a selection accordingly.

<sup>F10</sup>(2A) .....

(3) One person only must be selected for each recommendation to which a request relates.

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(4) Subsection (3) applies to selection under this section and to selection under [F11regulations under section 94C].

<sup>F12</sup>(5) .....

(6) A selection panel is a committee of the Commission.

**Textual Amendments**

- F8** S. 70(1A)-(1D) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 58\(2\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F9** Words in s. 70(2)(a) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 58\(3\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F10** S. 70(2A) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 58\(4\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F11** Words in s. 70(4) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 58\(5\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F12** S. 70(5) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 58\(6\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

<sup>F13</sup>**71 Selection panel for appointment of Lord Chief Justice**

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**Textual Amendments**

- F13** Ss. 71-75 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

<sup>F13</sup>**71A Selection panel for appointment of Head of Division**

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**Textual Amendments**

- F13** Ss. 71-75 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

<sup>F13</sup>**71B Sections 71 and 71A: diversity and interpretation**

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**Textual Amendments**

- F13** Ss. 71-75 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

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## <sup>F13</sup>72 Report

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### Textual Amendments

**F13** Ss. 71-75 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## <sup>F13</sup>73 The Lord Chancellor's options

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### Textual Amendments

**F13** Ss. 71-75 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## <sup>F13</sup>74 Exercise of powers to reject or require reconsideration

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### Textual Amendments

**F13** Ss. 71-75 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## <sup>F13</sup>75 Selection following rejection or requirement to reconsider

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### Textual Amendments

**F13** Ss. 71-75 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

*<sup>F14</sup>Senior President of Tribunals*

### Textual Amendments

**F14** Ss. 75A-75G and preceding cross-heading inserted (19.9.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 2, 148, [Sch. 1 para. 4](#); S.I. 2007/2709, [art. 2\(g\)](#)

## 75A Sections 75B to 75G apply where request made for selection

- (1) [<sup>F15</sup>Section 75B applies] where the Lord Chancellor makes a request to the Commission under paragraph 2(5) of Schedule 1 to the Tribunals, Courts and

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Enforcement Act 2007 (request for person to be selected for recommendation for appointment to the office of Senior President of Tribunals).

(2) <sup>F16</sup>That section is] subject to section 95 (withdrawal and modification of requests).

#### Textual Amendments

**F15** Words in s. 75A(1) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 59\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**F16** Words in s. 75A(2) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 59\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

### 75B Selection process

(1) On receiving a request the Commission must appoint a selection panel.

<sup>F17</sup>(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.]

(2) The panel must —

- (a) determine the selection process to be applied <sup>F18</sup>by it],
- (b) apply the selection process, and
- (c) make a selection accordingly.

(3) As part of the selection process the panel must consult—

- (a) the Lord Chief Justice, if not a member of the panel,
- (b) the Lord President of the Court of Session, if not a member of the panel, and
- (c) the Lord Chief Justice of Northern Ireland, if not a member of the panel.

(4) One person only must be selected for the recommendation to which a request relates.

(5) Subsection (4) applies to selection under this section and to selection under <sup>F19</sup>regulations under section 94C].

(6) A selection panel is a committee of the Commission.

#### Textual Amendments

**F17** S. 75B(1A)-(1C) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 60\(2\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**F18** Words in s. 75B(2)(a) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 60\(3\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

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**F19** Words in s. 75B(5) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 60\(4\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**F20 75C Selection panel**

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**Textual Amendments**

**F20** Ss. 75C-75G omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**F20 75D Report**

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**Textual Amendments**

**F20** Ss. 75C-75G omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**F20 75E The Lord Chancellor's options**

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**Textual Amendments**

**F20** Ss. 75C-75G omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**F20 75F Exercise of powers to reject or require reconsideration**

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**Textual Amendments**

**F20** Ss. 75C-75G omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**F20 75G Selection following rejection or requirement to reconsider**

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**Textual Amendments**

**F20** Ss. 75C-75G omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)



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## Lords Justices of Appeal

### 76 Selection of Lords Justices of Appeal

- (1) Sections 77 to [F2179] apply to a recommendation for appointment as a Lord Justice of Appeal.
- (2) Any such recommendation must be made in accordance with those sections and section [F2294C and regulations made under it].

#### Textual Amendments

- F21** Word in s. 76(1) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 13 para. 61\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F22** Words in s. 76(2) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 13 para. 61\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

### 77 Duty to fill vacancies

- (1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Justice of Appeal.
- (2) Subsection (1) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

### 78 Request for selection

- (1) The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation for appointment as a Lord Justice of Appeal.
- (2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.
- (3) A request may relate to more than one recommendation.
- (4) [F23Section 79 applies] where the Lord Chancellor makes a request under this section.
- (5) [F24That section is] subject to section 95 (withdrawal and modification of requests).

#### Textual Amendments

- F23** Words in s. 78(4) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 13 para. 62\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F24** Words in s. 78(5) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 13 para. 62\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

### 79 Selection process

- (1) On receiving a request the Commission must appoint a selection panel.  
[F25(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,

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- (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.]
- (2) The panel must—
    - (a) determine the selection process to be applied [<sup>F26</sup>by it],
    - (b) apply the selection process, and
    - (c) make a selection accordingly.
  - (3) One person only must be selected for each recommendation to which a request relates.
  - (4) Subsection (3) applies to selection under this section and to selection under [<sup>F27</sup>regulations under section 94C].
  - (5) A selection panel is a committee of the Commission.

**Textual Amendments**

- F25** S. 79(1A)(1B) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 63\(2\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F26** Words in s. 79(2)(a) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 63\(3\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F27** Words in s. 79(4) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 63\(4\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

<sup>F28</sup>**80 Selection panel**

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**Textual Amendments**

- F28** Ss. 80-84 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(c\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

<sup>F28</sup>**81 Report**

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**Textual Amendments**

- F28** Ss. 80-84 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(c\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

<sup>F28</sup>**82 The Lord Chancellor's options**

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**Textual Amendments**

**F28** Ss. 80-84 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(c\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**F28 83 Exercise of powers to reject or require reconsideration**

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**Textual Amendments**

**F28** Ss. 80-84 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(c\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**F28 84 Selection following rejection or requirement to reconsider**

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**Textual Amendments**

**F28** Ss. 80-84 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(c\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

*Puisne judges and other office holders*

**85 Selection of puisne judges and other office holders**

(1) Sections 86 to [F29 88] apply to—

- (a) a recommendation for an appointment to the office of puisne judge of the High Court;
- (b) a recommendation for an appointment to an office listed in Part 1 of Schedule 14 in exercise of Her Majesty's function under the enactment listed opposite that office;
- (c) an appointment to an office listed in [F30 Table 1 of] Part 2 or 3 of that Schedule in exercise of the Lord Chancellor's function under the enactment listed opposite that office.
- [F31(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.]

(2) Any such recommendation or appointment must be made in accordance with those sections and section [F32 94C and regulations made under it].

[F33(2A)] This section is subject to—

- (a) section 30(4) of the Courts-Martial (Appeals) Act 1951,

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- (b) sections 91(1ZB) and 102(1C) of the Supreme Court Act 1981,
  - (c) section 8(1ZC) of the County Courts Act 1984, and
  - (d) sections 94A [<sup>F34</sup>, 94AA] and 94B below.]
- (3) The Lord Chancellor may by order make any of the following amendments to Schedule 14—
- (a) an amendment which adds a reference to an enactment under which appointments are made to an office;
  - (b) an amendment which adds a reference to an office to which appointments are made under an enactment;
  - (c) an amendment consequential on the abolition or change of name of an office;
  - (d) an amendment consequential on the substitution of one or more enactments for an enactment under which appointments are made to an office.
- [<sup>F35</sup>(4) The Lord Chancellor may by order amend section 94A [<sup>F36</sup>, 94AA] or 94B if he thinks that the amendment is consequential on an amendment made to Schedule 14 by an order under subsection (3).]
- [<sup>F37</sup>(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 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;

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(b) may make consequential, transitory, transitional or saving provision.]

#### Textual Amendments

- F29** Word in s. 85(1) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 64\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F30** Words in s. 85(1)(c) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 64\(2\)\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F31** S. 85(1)(d)(e) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 64\(2\)\(c\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F32** Words in s. 85(2) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 64\(3\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F33** S. 85(2A) inserted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 53(3)
- F34** Word in s. 85(2A)(d) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 3\(4\)](#); S.I. 2013/2200, art. 3(g)
- F35** S. 85(4) inserted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 53(4)
- F36** Word in s. 85(4) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 3\(4\)](#); S.I. 2013/2200, art. 3(g)
- F37** S. 85(5)-(10) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 64\(4\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

#### Modifications etc. (not altering text)

- C1** S. 85 excluded (19.7.2009) by [Supreme Court Act 1981 \(c. 54\)](#), s. 91(1ZB) (as inserted by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), [ss. 57\(3\)](#))
- C2** S. 85 excluded (19.9.2009) by [Courts-Martial \(Appeals\) Act 1951 \(c. 46\)](#), s. 30(4) (as inserted by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), [ss. 58\(3\)](#); S.I. 2007/2709, [art. 2\(a\)](#))

#### Commencement Information

- I2** S. 85 wholly in force at 2.4.2007; s. 85 not in force at Royal Assent see s. 148; s. 85(3) in force 1.10.2005 by [S.I. 2005/2505](#); s. 85(1)(b)(c)(2) in force at 3.4.2006 by [S.I. 2006/1014](#), [art. 2\(a\)](#), [Sch. 1 para. 19](#); s. 85(1)(a) in force at 2.4.2007 by [S.I. 2006/1014](#), [art. 2\(b\)](#), [Sch. 2 para. 2](#)

## 86 Duty to fill vacancies

(1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of puisne judge of the High Court or in an office listed in Part 1 of Schedule 14.

[<sup>F38</sup>(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.]

(2) The Lord Chancellor must make an appointment to fill any vacancy in an office listed in [<sup>F39</sup>Table 1 of] Part 2 or 3 of that Schedule.

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- [<sup>F40</sup>(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.]
- (3) Subsections (1) and (2) do not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.
- [<sup>F41</sup>(4) Subsections (2A) and (2B) do not apply to a vacancy while the Lord Chancellor agrees that it may remain unfilled.]

#### Textual Amendments

- F38** S. 86(1A)(1B) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 13 para. 65(2)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F39** Words in s. 86(2) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 13 para. 65(3)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F40** S. 86(2A)(2B) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 13 para. 65(4)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F41** S. 86(4) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 13 para. 65(5)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## 87 Request for selection

- (1) The Lord Chancellor may request the Commission to select a person for a recommendation or appointment to which this section applies.
- [<sup>F42</sup>(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.]
- (2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.
- (3) A request may relate to more than one recommendation or appointment.
- (4) [<sup>F43</sup>Section 88 applies] where the Lord Chancellor makes a request under this section.
- (5) [<sup>F44</sup>That section is] subject to section 95 (withdrawal and modification of requests).

#### Textual Amendments

- F42** S. 87(1A) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 13 para. 66(2)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F43** Words in s. 87(4) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 13 para. 66(3)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F44** Words in s. 87(5) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 13 para. 66(4)**; S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## 88 Selection process

- (1) On receiving a request the Commission must—

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- (a) determine the selection process to be applied,
- (b) apply the selection process, and
- (c) make a selection accordingly.

<sup>F45</sup>(2) .....

<sup>F46</sup>(3) .....

(4) One person only may be selected for each recommendation [<sup>F47</sup>, appointment or pool membership] to which a request relates.

(5) Subsection (4) applies to selection under this section and to selection under [<sup>F48</sup>regulations under section 94C].

**Textual Amendments**

- F45** S. 88(2) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 67\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F46** S. 88(3) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 67\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F47** Words in s. 88(4) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 67\(c\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F48** Words in s. 88(5) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 67\(d\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

<sup>F49</sup>**89 Report**

.....

**Textual Amendments**

- F49** Ss. 89-93 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(d\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

<sup>F49</sup>**90 The Lord Chancellor's options**

.....

**Textual Amendments**

- F49** Ss. 89-93 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(d\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

<sup>F49</sup>**91 Exercise of powers to reject or require reconsideration**

.....



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**Textual Amendments**

**F49** Ss. 89-93 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(d\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**<sup>F49</sup>92 Selection following rejection or requirement to reconsider**

.....

**Textual Amendments**

**F49** Ss. 89-93 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(d\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**<sup>F49</sup>93 Reconsideration of decision not to select**

.....

**Textual Amendments**

**F49** Ss. 89-93 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(d\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

**[<sup>F50</sup>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.]

**Textual Amendments**

**F50** S. 94 substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 68](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)



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## [<sup>F51</sup>94A Appointments not subject to section 85: courts

- (1) Where this section applies to an appointment—
  - (a) section 85 does not apply, but
  - [<sup>F52</sup>(b) the person who has the power to make the appointment, whether the Lord Chancellor or the Lord Chief Justice, may not make the appointment without the concurrence of the other of them.]
- (2) This section applies to the appointment of a person, on a fee-paid basis, to an office in the table below (the “proposed appointment”) if the person—
  - (a) holds the corresponding qualifying office (or one of them) on a salaried basis, or
  - (b) ceased to hold the corresponding qualifying office (or one of them) within two years ending with the date when the proposed appointment takes effect and, immediately before ceasing to hold that office, held it on a salaried basis.

<i>Proposed appointment (fee-paid)</i>	<i>Qualifying office (salaried)</i>
An office listed in Part 2 of Schedule 14.	The same office.
Deputy District Judge (Magistrates' Courts).	District Judge (Magistrates' Courts), Senior District Judge (Chief Magistrate), or Deputy Senior District Judge (Chief Magistrate).
Assistant Judge Advocate General, or a person appointed temporarily to assist the Judge Advocate General.	Judge Advocate of Her Majesty's Fleet, Judge Advocate General, Vice Judge Advocate General, or Assistant Judge Advocate General.

- (3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4)) to exercise his function [<sup>F53</sup>of concurring] under subsection (1)(b).
- (4) In this section “salaried” and “fee-paid” have the meaning given by paragraph 1(2) of Schedule 7 to the Judicial Pensions and Retirement Act 1993 (c. 8).

### Textual Amendments

- F51** Ss. 94A, 94B inserted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), [s. 53\(2\)](#)
- F52** [S. 94A\(1\)\(b\)](#) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 13 para. 40\(2\)](#); [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)
- F53** Words in [s. 94A\(3\)](#) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 13 para. 40\(3\)](#); [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

## [<sup>F54</sup>94AA Appointments not subject to section 85: High Court deputy judge

- (1) Where this section applies to an appointment, section 85 does not apply.
- (2) This section applies to the appointment of a person as a deputy judge of the High Court if it appears to the Lord Chief Justice, after consulting the Lord Chancellor, that—
  - (a) there is an urgent need to take steps in order to facilitate the disposal of particular business in the High Court or Crown Court,

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- (b) it is expedient as a temporary measure to make the appointment in order to facilitate the disposal of the business, and
  - (c) there are no other reasonable steps that it is practicable to take within the time available in order to facilitate the disposal of the business.
- (3) An appointment to which this section applies is to be made—
- (a) so as not to extend beyond the day on which the particular business concerned is concluded, or
  - (b) so as not to extend beyond the later of—
    - (i) the day on which the business is concluded, or
    - (ii) the day expected when the appointment is made to be the day on which the business is concluded.]

**Textual Amendments**

**F54** S. 94AA inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 3\(3\)](#); [S.I. 2013/2200](#), art. 3(g)

**94B Appointments not subject to section 85: tribunals**

- (1) Where this section applies to a recommendation or appointment—
- (a) section 85 does not apply, but
  - [<sup>F55</sup>(b) the person who has the power to make the appointment, whether the Lord Chancellor or the Senior President of Tribunals, may not make the appointment without the concurrence of the other of them.]
- (2) In the case of the appointment of a person as a deputy judge of the Upper Tribunal, if the person holds or has held an office listed in section 6(1) of the Tribunals, Courts and Enforcement Act 2007, the [<sup>F56</sup>Senior President of Tribunals] must also consult the Lord Chief Justice before making the appointment.
- (3) This section applies to, or to a recommendation to Her Majesty for, the appointment of a person, on a fee-paid basis, to an office in the table below (the “proposed appointment”) if the person—
- (a) holds the corresponding qualifying office (or one of them) on a salaried basis, or
  - (b) subject to subsection (4), ceased to hold the corresponding qualifying office (or one of them) within two years ending with the date when the proposed appointment takes effect and, immediately before ceasing to hold that office, held it on a salaried basis.

***Proposed appointment (fee-paid)***

An office listed in Part 3 of Schedule 14 (other than the office of Chamber President or Deputy Chamber President of a chamber of the Upper Tribunal or the First-tier Tribunal).

F57

***Qualifying office (salaried)***

The same office, or a more senior office, listed in Part 3 of Schedule 14, in the same tribunal or body (but excluding the Upper Tribunal and the First-tier Tribunal).

F57

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F57

F57

.....  
Deputy judge of the Upper Tribunal.

.....  
Ordinary judge of the Court of Appeal in England and Wales,  
Lord Justice of Appeal in Northern Ireland,  
Judge of the Court of Session,  
Puisne judge of the High Court in England and Wales or Northern Ireland,  
Circuit judge,  
Sheriff in Scotland,  
County court judge in Northern Ireland,  
District judge in England and Wales or Northern Ireland,  
District Judge (Magistrates' Courts), or  
Judge of the Upper Tribunal by virtue of any of paragraphs (a) to (f) or (i) of section 5(1) of the Tribunals, Courts and Enforcement Act 2007.

Judge of the First-tier Tribunal by appointment under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007.

Transferred-in judge of the First-tier Tribunal (see section 31(2) of that Act).

Other member of the First-tier Tribunal by appointment under paragraph 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007.

Transferred-in other member of the First-tier Tribunal (see section 31(2) of that Act).

Judge of the Upper Tribunal by appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.

Transferred-in judge of the Upper Tribunal (see section 31(2) of that Act).

Other member of the Upper Tribunal by appointment under paragraph 2(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.

Transferred-in other member of the Upper Tribunal (see section 31(2) of that Act).

Deputy judge of the Upper Tribunal by appointment under paragraph 7(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.

Deputy judge of the Upper Tribunal under section 31(2) of that Act.

- 
- (4) In subsection (3)(b) the words “within two years ending with the date when the proposed appointment takes effect” do not apply if—
- (a) the proposed appointment is to the office of deputy judge of the Upper Tribunal, and
  - (b) the corresponding qualifying office is—
    - (i) ordinary judge of the Court of Appeal in England and Wales,
    - (ii) Lord Justice of Appeal in Northern Ireland,
    - (iii) judge of the Court of Session, or

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(iv) puisne judge of the High Court in England and Wales or Northern Ireland.

(5) In this section “salaried” and “fee-paid” have the meaning given by paragraph 1(2) of Schedule 7 to the Judicial Pensions and Retirement Act 1993.

[ Section 8(1) of the Tribunals, Courts and Enforcement Act 2007 (power of Senior President of Tribunals to delegate functions) does not apply to—

- (a) the Senior President of Tribunals' function of concurring under subsection (1) (b), or
- (b) the Senior President of Tribunals' function under subsection (2).]]

#### Textual Amendments

- F51** Ss. 94A, 94B inserted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 53(2)
- F55** S. 94B(1)(b) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 48\(2\)](#); [S.I. 2013/2200](#), art. 3(e) (with savings in [S.I. 2013/2192](#), regs. 48, 49)
- F56** Words in s. 94B(2) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 48\(3\)](#); [S.I. 2013/2200](#), art. 3(e) (with savings in [S.I. 2013/2192](#), regs. 48, 49)
- F57** S. 94B(3): table entries omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 9, [Sch. 3 para. 218](#)
- F58** S. 94B(6) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 48\(4\)](#); [S.I. 2013/2200](#), art. 3(e) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

#### *Supplementary provisions about selection*

#### [<sup>F59</sup>94C Selection process

- (1) The Lord Chancellor must by regulations made with the agreement of the Lord Chief Justice—
  - (a) make further provision about the process to be applied in a case where the Commission receives a request under section 87;
  - (b) make further provision about—
    - (i) membership of selection panels appointed under section 70, 75B or 79, and
    - (ii) the process that is to be applied in a case where a selection panel is required to be appointed under section 70, 75B or 79;
  - (c) secure, subject to section 95 and any provision within subsection (2)(d) that is included in the regulations, that in every case referred to paragraph (a) or (b) (ii) 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 appropriate authority.
- (2) The regulations may in particular—
  - (a) provide for process additional to the selection process applied under section 70(2), 75B(2), 79(2) or 88(1), including post-acceptance process;
  - (b) make provision as to things that are, or as to things that are not, to be done—
    - (i) as part of the selection process applied under section 70(2), 75B(2), 79(2) or 88(1), or
    - (ii) in determining what that process is to be;

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- (c) provide for selection on a request under section 87 to be from among persons identified under section 94 in response to advance notice of the request;
- (d) provide for section 88(1)(c) not to apply where, or to the extent that, the Commission decides that the selection process applied under section 88(1) has not identified candidates of sufficient merit for it to comply with section 88(1)(c);
- (e) give functions to the Lord Chancellor, including—
  - (i) power to require a selection panel to reconsider a selection under section 70(2), 75B(2) or 79(2) or any subsequent selection,
  - (ii) power to reject a selection under section 70(2) or any subsequent selection,
  - (iii) power to reject a selection under section 75B(2) or 79(2) or any subsequent selection,
  - (iv) power to reject, or require the reconsideration of, initial or subsequent selections made on a request under section 87, and
  - (v) power to require the reconsideration of a decision mentioned in paragraph (d);
- (f) give functions to the Lord Chief Justice in connection with selection for an office listed in Table 2 of Part 1 or 2 of Schedule 14 or in connection with selection for membership of a pool for requests under section 9(1) of the Senior Courts Act 1981, including—
  - (i) power to reject, or require the reconsideration of, initial or subsequent selections made on a request under section 87, and
  - (ii) power to require the reconsideration of a decision mentioned in paragraph (d);
- (g) give functions to the Senior President of Tribunals in connection with selection for an office listed in Table 3 of Part 1, or Table 2 of Part 3, of Schedule 14, including—
  - (i) power to reject, or require the reconsideration of, initial or subsequent selections made on a request under section 87, and
  - (ii) power to require the reconsideration of a decision mentioned in paragraph (d);
- (h) make provision for or in connection with duties mentioned in section 51 of the Equality Act 2010 being duties of the Lord Chief Justice, or Senior President of Tribunals, in relation to an office within Table 2 or 3 of Part 1 of Schedule 14;
- (i) provide for particular action to be taken by the Commission or a selection panel after the panel has complied with section 70, 75B or 79;
- (j) provide for particular action to be taken by the Commission after a selection has been made on a request under section 87;
- (k) provide for the dissolution of a selection panel appointed under section 70, 75B or 79;
- (l) 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 such a panel (including functions of chairing such a panel), or
  - (ii) in relation to the nomination or appointment of members of such a panel;

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- (m) provide for a person to cease to be a member of such a panel where the person's membership of the panel ceases to contribute to meeting a requirement about the panel's members;
  - (n) provide for a person to become a member of such a panel where another person ceases to be a member of the panel or where another person's membership of the panel ceases to contribute to meeting a requirement about the panel's members;
  - (o) make provision for or in connection with assessments, whether pre-acceptance or post-acceptance, of the health of persons selected;
  - (p) provide for the Lord Chief Justice to nominate a judicial office holder (as defined in section 109(4)) to exercise functions given to the Lord Chief Justice by the regulations (including functions, such as functions as a consultee, given otherwise than in reliance on paragraph (f));
  - (q) make provision prohibiting or restricting delegation by the Senior President of Tribunals of functions given to the Senior President of Tribunals by the regulations (including functions, such as functions as a consultee, given otherwise than in reliance on paragraph (g));
  - (r) make provision as to the meaning of “non-legally-qualified” and “judicial member” in sections 70, 75B and 79.
- (3) Regulations under this section—
- (a) may make different provision for different purposes;
  - (b) may make transitory, transitional or saving provision.
- (4) In subsection (1)(c) “the appropriate authority” means—
- (a) the Lord Chancellor where the selection—
    - (i) is on a request under section 69 or 78,
    - (ii) relates to the office of Senior President of Tribunals or puisne judge of the High Court, or
    - (iii) relates to an office listed in Table 1 of Part 1, 2 or 3 of Schedule 14;
  - (b) the Lord Chief Justice where the selection relates to an office listed in Table 2 of Part 1 or 2 of that Schedule;
  - (c) the Senior President of Tribunals where the selection relates to an office listed in Table 3 of Part 1, or Table 2 of Part 3, of that Schedule.
- (5) This section is subject to section 95.]

#### Textual Amendments

**F59** S. 94C inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(3\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## 95 Withdrawal and modification of requests

- (1) This section applies to a request under section 69, 78 or 87 <sup>[F60]</sup> or paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007].
- (2) The Lord Chancellor may withdraw or modify a request only as follows—
  - <sup>[F61]</sup>(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

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- 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;]
- (a) so far as a request relates to any recommendation or appointment to fill a vacancy, he may withdraw or modify it with the agreement of the Lord Chief Justice;
- (b) so far as a request relates to any recommendation or appointment otherwise than to fill a vacancy, he may withdraw or modify it after consulting the Lord Chief Justice;
- [<sup>F62</sup>(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;]
- (c) [<sup>F63</sup>the Lord Chancellor] may withdraw a request as respects all recommendations [<sup>F64</sup>, appointments or pool memberships] to which it relates if, after consulting the Lord Chief Justice, [<sup>F63</sup>the Lord Chancellor] considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily.
- (3) If a request is withdrawn in part or modified, the Commission or selection panel may, if it thinks it appropriate because of the withdrawal or modification, change any selection already made pursuant to the request, except a selection already accepted [<sup>F65</sup>unconditionally or subject only to matters such as the selected person's willingness and availability].
- (4) The Lord Chancellor may not withdraw a request under subsection (2)(c) if [<sup>F66</sup>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.]
- (5) Any withdrawal or modification of a request must be by notice in writing to the Commission.
- (6) The notice must state whether the withdrawal or modification is under subsection (2) (a), (b) or (c).
- (7) In the case of a withdrawal under subsection (2)(c), the notice must state why the Lord Chancellor considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily.
- (8) If or to the extent that a request is withdrawn—
- (a) the preceding provisions of this Part cease to apply in relation to it, and
- (b) any selection made on it is to be disregarded.
- (9) Withdrawal of a request to any extent does not affect the power of the Lord Chancellor to make another request in the same or different terms.

#### Textual Amendments

**F60** Words in s. 95(1) inserted (19.9.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 2, 148, [Sch. 1 para. 5\(2\)](#); [S.I. 2007/2709](#), [art. 2\(g\)](#)

**F61** [S. 95\(2\)\(za\)](#) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 69\(2\)](#); [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

**F62** [S. 95\(2\)\(ba\)](#) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 69\(3\)](#); [S.I. 2013/2200](#), [art. 3\(e\)](#) (with savings in [S.I. 2013/2192](#), regs. 48, 49)



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- F63** Words in s. 95(2)(c) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 69\(4\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F64** Words in s. 95(2)(c) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 69\(4\)\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F65** Words in s. 95(3) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 69\(5\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F66** Words in s. 95(4) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 69\(6\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## **F67** 96 Effect of acceptance of selection

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### **Textual Amendments**

- F67** S. 96 omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 53\(2\)\(e\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## **97 Scotland and Northern Ireland**

- (1) [<sup>F68</sup>Subsections (2) and (3) apply] to consultation that a person is required to undertake under any of these provisions—
- (a) section 87(2);
  - <sup>F69</sup>(b) .....
  - <sup>F69</sup>(c) .....
  - [<sup>F70</sup>(ca) section 94B(2);]
  - (d) section [<sup>F71</sup>95(2)(b)] or (c),
  - <sup>F72</sup>(e) .....
- (2) If the consultation appears to that person to relate to the appointment (or a recommendation for the appointment) of a person to exercise functions wholly or mainly in Scotland, any reference in the provision to the Lord Chief Justice is to be read as a reference to the Lord President of the Court of Session.
- (3) If the consultation appears to that person to relate to the appointment (or a recommendation for the appointment) of a person to exercise functions wholly or mainly in Northern Ireland, any reference in the provision to the Lord Chief Justice is to be read as a reference to the Lord Chief Justice of Northern Ireland.
- [<sup>F73</sup>(4) Subsections (2) and (3) apply to the reference in section 94A(1) [<sup>F74</sup>or 95(2)(a)] to the Lord Chancellor obtaining the concurrence of the Lord Chief Justice as they apply to a reference in a provision specified in subsection (1) to the Lord Chancellor consulting the Lord Chief Justice.
- (5) The Lord President of the Court of Session may nominate any of the following to exercise his function under section 94A(1)(b)—
- (a) a judge who is a member of the First or Second Division of the Inner House of the Court of Session;
  - (b) the Senior President of Tribunals.



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- (6) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his function under section 94A(1)(b)—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act);
  - (c) the Senior President of Tribunals.]

#### Textual Amendments

- F68** Words in s. 97(1) substituted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. [53\(6\)\(a\)](#)
- F69** S. 97(1)(b)(c) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 70\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F70** S. 97(1)(ca) inserted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. [53\(6\)\(b\)](#)
- F71** Word in s. 97(1)(d) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 70\(2\)\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F72** S. 97(1)(e) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 70\(2\)\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F73** S. 97(4)-(6) added (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. [53\(7\)](#)
- F74** Words in s. 97(4) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 70\(3\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

#### *Assistance in connection with other appointments*

### 98 Assistance in connection with other appointments

- (1) The Commission must provide any assistance requested by the Lord Chancellor under this section.
- (2) The Lord Chancellor may request assistance for the making by him or by another Minister of the Crown of an appointment or recommendation for appointment, other than one to which section 26 or a provision of this Part applies.
- (3) The Lord Chancellor may only request assistance under this section if it appears to him appropriate because of the Commission's other functions under this Part and the nature of the appointment concerned.
- (4) Without limiting the assistance that may be requested, it may include—
- (a) determining a selection process;
  - (b) applying a selection process;
  - (c) selecting a person;
  - (d) selecting a short list;
  - (e) advice on any of those matters.
- (5) Before making a request the Lord Chancellor must consult—
- (a) the Lord Chief Justice, and
  - (b) the Commission.
- (6) In this section “appointment” includes the conferring of any public function.

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- (7) In this Part references to selection under this Part include references to selection by the Commission pursuant to a request under this section (and references to a person selected under this Part are to be read accordingly).

### *Complaints and references*

## 99 Complaints: interpretation

- (1) This section applies for the purposes of this Part.
- (2) A Commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission.
- (3) A departmental complaint is a complaint by a qualifying complainant of maladministration by the Lord Chancellor or his department in connection with any of the following—
- (a) selection under this Part;
  - (b) recommendation for or appointment to an office listed in Schedule 14.
- [<sup>F75</sup>(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
  - (b) appointment to an office listed in Table 2 of Part 3 of that Schedule.]
- (4) A qualifying complainant is a complainant who claims to have been adversely affected, as an applicant for selection or as a person selected under this Part, by the maladministration complained of.

#### Textual Amendments

**F75** S. 99(3A)(3B) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 71\(1\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## 100 Complaints to the Commission or the Lord Chancellor

- (1) The Commission must make arrangements for investigating any Commission complaint made to it.

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- (2) The Lord Chancellor must make arrangements for investigating any departmental complaint made to him.
- [<sup>F76</sup>(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.]
- (3) Arrangements under this section need not apply to a complaint made more than 28 days after the matter complained of.

#### Textual Amendments

**F76** S. 100(2A)(2B) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 72](#); [S.I. 2013/2200](#), art. 3(e) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

## 101 Complaints to the Ombudsman

- (1) Subsections (2) and (3) apply to a complaint which the complainant—
  - (a) has made to the Commission [<sup>F77</sup>, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals] in accordance with arrangements under section 100, and
  - (b) makes to the Ombudsman not more than 28 days after being notified of the [<sup>F78</sup> decision of the Commission, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals] on the complaint.
- (2) If the Ombudsman considers that investigation of the complaint is not necessary, he must inform the complainant.
- (3) Otherwise he must investigate the complaint.
- (4) The Ombudsman may investigate a complaint which the complainant—
  - (a) has made to the Commission [<sup>F79</sup>, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals] in accordance with arrangements under section 100, and
  - (b) makes to the Ombudsman at any time.
- (5) The Ombudsman may investigate a transferred complaint made to him, and no such complaint may be made under the Judicial Appointments Order after the commencement of this section.
- (6) The Judicial Appointments Order is the Judicial Appointments Order in Council 2001, which sets out the functions of Her Majesty's Commissioners for Judicial Appointments.
- (7) A transferred complaint is a complaint that lay to those Commissioners (whether or not it was made to them) in respect of the application of appointment procedures before the commencement of this section, but not a complaint that those Commissioners had declined to investigate or on which they had concluded their investigation.
- (8) Any complaint to the Ombudsman under this section must be in a form approved by him.

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### Textual Amendments

- F77** Words in s. 101(1)(a) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 73\(2\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F78** Words in s. 101(1)(b) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 73\(3\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F79** Words in s. 101(4)(a) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 73\(2\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## 102 Report and recommendations

- (1) The Ombudsman must prepare a report on any complaint he has investigated under section 101.
- (2) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) whether he considers the complaint should be upheld in whole or part;
  - (c) if he does, what if any action he recommends should be taken by the Commission [<sup>F80</sup>, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals] as a result of the complaint.
- (3) The recommendations that may be made under subsection (2)(c) include recommendations for the payment of compensation.
- (4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the complainant as a result of maladministration and not as a result of any failure to be appointed to an office [<sup>F81</sup>, or selected for membership of a pool,] to which the complaint related.

### Textual Amendments

- F80** Words in s. 102(2)(c) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 74\(a\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F81** Words in s. 102(4) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 74\(b\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## 103 Report procedure

- (1) This section applies to a report under section 102.
- [<sup>F82</sup>(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 finalising the report the Ombudsman—
  - (a) must have regard to any proposal by the Lord Chancellor [<sup>F83</sup>the Commission, the Lord Chief Justice or the Senior President of Tribunals] for changes in the draft report;
  - (b) must include in the report a statement of any such proposal not given effect to.

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- (4) The report must be signed by the Ombudsman.
- (5) If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission.
- [<sup>F84</sup>(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.]
- (6) Otherwise the Ombudsman must send the report to the Lord Chancellor.
- (7) The Ombudsman must send a copy of the report to the complainant, but that copy must not include information—
  - (a) which relates to an identified or identifiable individual other than the complainant, and
  - (b) whose disclosure by the Ombudsman to the complainant would (apart from this subsection) be contrary to section 139.

#### Textual Amendments

- F82** S. 103(2) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 75\(2\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F83** Words in s. 103(3) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 75\(3\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F84** S. 103(5A)(5B) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 75\(4\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

## 104 References by the Lord Chancellor

- (1) If the Lord Chancellor [<sup>F85</sup>, the Lord Chief Justice or the Senior President of Tribunals] refers to the Ombudsman any matter relating to the procedures of the Commission or a committee of the Commission, the Ombudsman must investigate it.
- (2) The matter may relate to such procedures generally or in a particular case.
- (3) The Ombudsman must report to the Lord Chancellor [<sup>F86</sup>, the Lord Chief Justice and the Senior President of Tribunals] on any investigation under this section.
- (4) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) what if any action he recommends should be taken by any person in relation to the matter.
- (5) The report must be signed by the Ombudsman.

#### Textual Amendments

- F85** Words in s. 104(1) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 76\(2\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)
- F86** Words in s. 104(3) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 76\(3\)](#); S.I. 2013/2200, art. 3(e) (with savings in S.I. 2013/2192, regs. 48, 49)

*Status: Point in time view as at 01/10/2013.*

*Changes to legislation: Constitutional Reform Act 2005, Chapter 2 is up to date with all changes known to be in force on or before 10 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 105 Information

The Commission [<sup>F87</sup>, the Lord Chief Justice, the Senior President of Tribunals] and the Lord Chancellor must provide the Ombudsman with such information as he may reasonably require relating to the subject matter of any investigation by him under section 101 or 104.

### Textual Amendments

**F87** Words in s. 105 inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 13 para. 77](#); [S.I. 2013/2200](#), art. 3(e) (with savings in [S.I. 2013/2192](#), regs. 48, 49)

### *Miscellaneous*

## 106 Consultation on appointment of lay justices

In section 10 of the Courts Act 2003 (c. 39) (appointment of lay justices etc.) after subsection (2) insert—

“(2A) The Lord Chancellor must ensure that arrangements for the exercise, so far as affecting any local justice area, of functions under subsections (1) and (2) include arrangements for consulting persons appearing to him to have special knowledge of matters relevant to the exercise of those functions in relation to that area.”

## 107 Disclosure of information to the Commission

- (1) Information which is held by or on behalf of a permitted person (whether obtained before or after this section comes into force) may be disclosed to the Commission or a committee of the Commission for the purposes of selection under this Part.
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (3) But nothing in this section authorises the making of a disclosure—
  - (a) which contravenes the Data Protection Act 1998 (c. 29), or
  - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (4) This section does not affect a power to disclose which exists apart from this section.
- (5) The following are permitted persons—
  - (a) a chief officer of police of a police force in England and Wales;
  - [<sup>F88</sup>(b) the chief constable of the Police Service of Scotland;]
  - (c) the Chief Constable of the Police Service of Northern Ireland;
  - (d) the Director General of the National Criminal Intelligence Service;
  - (e) the Director General of the National Crime Squad;
  - (f) the Commissioners of Inland Revenue;
  - (g) the Commissioners of Customs and Excise.

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- (6) The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which he considers are of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).
- (7) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.
- (8) The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose)—
- (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue,
  - (b) in the case of the Commissioners of Customs and Excise, to a customs officer.
- (9) For the purposes of this section a customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2).

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**Textual Amendments**

**F88** S. 107(5)(b) substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), [Sch. 2 para. 45](#)

**Status:**

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**Changes to legislation:**

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