

SCHEDULES

SCHEDULE 13

Section 20

JUDICIAL APPOINTMENTS

PART 1

JUDGES OF THE SUPREME COURT: NUMBER AND SELECTION

Introductory

1 The Constitutional Reform Act 2005 is amended as follows.

Number of judges to become maximum full-time equivalent number

- 2 (1) Section 23 (establishment of the Supreme Court) is amended as follows.
- (2) In subsection (2) (Supreme Court consists of 12 judges)—
- (a) for “12 judges appointed” substitute “the persons appointed as its judges”, and
 - (b) after “by letters patent” insert “, but no appointment may cause the full-time equivalent number of judges of the Court at any time to be more than 12”.
- (3) In subsection (3) (power to increase number of members of the Court) before “number” insert “maximum full-time equivalent”.
- (4) In subsection (7) (Court is duly constituted despite vacancy in membership or presiding offices) omit “among the judges of the Court or”.
- (5) After that subsection insert—
- “(8) For the purposes of this section, the full-time equivalent number of judges of the Court is to be calculated by taking the number of full-time judges and adding, for each judge who is not a full-time judge, such fraction as is reasonable.”
- 3 (1) Section 26 (selection of members of the Supreme Court) is amended as follows.
- (2) In subsection (5) (Lord Chancellor to convene selection commission to fill any vacancy among the members, or in the presiding offices, of the Court) for “one of the offices mentioned in subsection (1),” substitute “the office of President of the Court or in the office of Deputy President of the Court,”.
- (3) After subsection (5) insert—
- “(5A) If—
- (a) the full-time equivalent number of judges of the Court is less than the maximum specified in section 23(2), or it appears to the Lord

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Chancellor that the full-time equivalent number of judges of the Court will soon be less than that maximum, and

- (b) the Lord Chancellor, or the senior judge of the Court, after consulting the other considers it desirable that a recommendation be made for an appointment to the office of judge of the Court,

the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.

(5B) In subsection (5A)(b) “the senior judge of the Court” means—

- (a) the President of the Court, or
- (b) if there is no President, the Deputy President, or
- (c) if there is no President and no Deputy President, the senior ordinary judge.”

Selection of persons to be recommended for appointment to the Court

4 (1) In section 27 (selection process) after subsection (1) insert—

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

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

- (a) at least one who is non-legally-qualified,
- (b) at least one judge of the Court,
- (c) at least one member of the Judicial Appointments Commission,
- (d) at least one member of the Judicial Appointments Board for Scotland, and
- (e) at least one member of the Northern Ireland Judicial Appointments Commission,

and more than one of the requirements may be met by the same person’s membership of the commission.

(1C) If the commission is convened for the selection of a person to be recommended for appointment as President of the Court—

- (a) its members may not include the President of the Court, and
- (b) it is to be chaired by one of its non-legally-qualified members.

(1D) If the commission is convened for the selection of a person to be recommended for appointment as Deputy President of the Court, its members may not include the Deputy President of the Court.”

(2) At the end of that section insert—

“(11) For the purposes of this section a person is non-legally-qualified if the person—

- (a) does not hold, and has never held, any of the offices listed in Schedule 1 to the House of Commons Disqualification Act 1975 (judicial offices disqualifying for membership of the House of Commons), and
- (b) is not practising or employed as a lawyer, and never has practised or been employed as a lawyer.”

5 After section 27 insert—

“27A Regulations about selection process

- (1) The Lord Chancellor must by regulations made with the agreement of the senior judge of the Supreme Court—
 - (a) make further provision about membership of selection commissions convened under section 26,
 - (b) make further provision about the process that is to be applied in any case where a selection commission is required to be convened under section 26, and
 - (c) secure that, in every such case, 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 Lord Chancellor.
- (2) The regulations may in particular—
 - (a) provide for process additional to the selection process applied by a selection commission under section 27(1), including post-acceptance process;
 - (b) make provision as to things that are, or as to things that are not, to be done by a selection commission—
 - (i) as part of the selection process applied by it under section 27(1), or
 - (ii) in determining what that process is to be;
 - (c) provide for the Lord Chancellor to be entitled to require a selection commission to reconsider a selection under section 27(1) or any subsequent selection;
 - (d) provide for the Lord Chancellor to be entitled to reject a selection under section 27(1) or any subsequent selection;
 - (e) give other functions to the Lord Chancellor;
 - (f) provide for particular action to be taken by a selection commission after it has complied with section 27;
 - (g) provide for the dissolution of a selection commission;
 - (h) 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 a selection commission (including functions of chairing a selection commission), or
 - (ii) in relation to the nomination or appointment of members of a selection commission;
 - (i) provide for a person to cease to be a member of a selection commission where a requirement about the commission’s members ceases to be met by the person’s membership of the commission;
 - (j) provide for a person to become a member of a selection commission already convened where another person ceases to be a member of the commission or where a requirement about the commission’s members ceases to be met by another person’s membership of the commission;
 - (k) provide for payment to a member of a selection commission of amounts by way of allowances or expenses;

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- (l) make provision as to what amounts to practice or employment as a lawyer for the purposes of section 27(11)(b).
- (3) Before making regulations under this section the Lord Chancellor must consult—
 - (a) the First Minister in Scotland,
 - (b) the Northern Ireland Judicial Appointments Commission,
 - (c) the First Minister for Wales,
 - (d) the Lord President of the Court of Session,
 - (e) the Lord Chief Justice of Northern Ireland, and
 - (f) the Lord Chief Justice of England and Wales.
- (4) Regulations under this section—
 - (a) may make different provision for different purposes;
 - (b) may make transitory, transitional or saving provision.
- (5) In this section “the senior judge”, in relation to the Court, has the meaning given by section 26(5B).”

Lord Chancellor’s guidance about selection process: procedure

6 After that section 27A insert—

“27B Selection guidance: supplementary

- (1) Before issuing any selection guidance the Lord Chancellor must—
 - (a) consult the senior judge of the Supreme Court;
 - (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 senior judge of the Court.
- (5) Selection guidance comes into force on such date as the Lord Chancellor may appoint by order.
- (6) Where selection guidance is in force, the Lord Chancellor may revoke the guidance only by—
 - (a) new selection guidance issued in accordance with the previous provisions of this section, or
 - (b) an order made after consulting the senior judge of the Court.
- (7) In this section—
 - “40-day period” in relation to the draft of any proposed selection guidance means—

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- (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;

“the senior judge”, in relation to the Court, has the meaning given by section 26(5B);

“selection guidance” means guidance mentioned in section 27(9).”

Consequential amendments, repeals and revocations

7 (1) Omit—

- (a) section 27(2) and (3) and Parts 1 and 2 of Schedule 8 (selection commissions), and
- (b) sections 28 to 31 and 60(5) (detailed provision about selection process).

(2) In section 26(3)(a) (person whose name is notified under section 29 must be recommended for appointment) for “whose name is notified to him under section 29” substitute “who is selected as a result of the convening of a selection commission under this section”.

(3) For section 26(4) (person recommended for appointment as President or Deputy President must also be recommended for appointment as a judge if not already a judge of the Court) substitute—

“(4) Where a person who is not a judge of the Court is recommended for appointment as President or Deputy President, the recommendation must also recommend the person for appointment as a judge.”

(4) For section 26(7) (cases where duty to convene a selection commission is suspended) substitute—

“(7) Subsections (5) and (5A) are subject to Schedule 8 (cases where duty to convene a selection commission are suspended).

(7A) For the purposes of this section and Schedule 8, a person is selected as a result of the convening of a selection commission if the person’s selection is the final outcome of—

- (a) the selection process mentioned in section 27(1) being applied by the commission, and
- (b) any process provided for by regulations under section 27A being applied in the particular case.”

(5) In section 26(8) (application of sections 27 to 31) for “Sections 27 to 31 apply” substitute “Section 27 applies”.

(6) In section 27(1)(a) (selection commission to determine selection process to be applied) after “applied” insert “by it”.

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- (7) In section 27(4) (section 27(5) to (10) apply to selections under section 27 or 31) for “section 31” substitute “regulations under section 27A”.
- (8) In section 139(2)(a) (if confidential information is obtained for purposes of sections 26 to 31 it is not to be disclosed without lawful authority) for “to 31” substitute “and 27 and regulations under section 27A”.
- (9) In section 144(5) (subordinate legislation which may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament) before paragraph (a) insert—
 “(za) regulations under section 27A;”
- (10) In section 144(6) (certain orders are not subject to parliamentary procedure)) after “an order under section” insert “27B(5),”.
- (11) In paragraph 13(2) of Schedule 8 (end of suspension of duty to convene selection commission for office of Deputy President) for “the Lord Chancellor notifies a selection made by” substitute “a person has been selected as a result of the convening of”.
- (12) In paragraph 14(2) of that Schedule (end of suspension of duty to convene selection commission for office of judge) for “the Lord Chancellor notifies a selection made by” substitute “a person has been selected as a result of the convening of”.
- 8 In the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388) in Schedule 1 omit paragraph 110(a) and (b).

PART 2

DIVERSITY

Diversity considerations where candidates for judicial office are of equal merit

- 9 In section 27 of the Constitutional Reform Act 2005 (selection for appointment to Supreme Court to be on merit etc) after subsection (5) insert—
 “(5A) Where two persons are of equal merit—
 (a) section 159 of the Equality Act 2010 (positive action: recruitment etc) does not apply in relation to choosing between them, but
 (b) Part 5 of that Act (public appointments etc) does not prevent the commission from preferring one of them over the other for the purpose of increasing diversity within the group of persons who are the judges of the Court.”
- 10 (1) Section 63 of the Constitutional Reform Act 2005 (judicial appointments to be solely on merit) is amended as follows.
- (2) In subsection (1) (selections to which subsections (2) and (3) apply) for “and (3)” substitute “to (4)”.
- (3) After subsection (3) insert—
 “(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.”

Encouraging diversity

- 11 In Part 6 of the Constitutional Reform Act 2005 (other provisions relating to the judiciary) after section 137 insert—

“137A Encouragement of diversity

Each of the Lord Chancellor and the Lord Chief Justice of England and Wales must take such steps as that office-holder considers appropriate for the purpose of encouraging judicial diversity.”

Maximum numbers of judges to be by reference to full-time equivalent numbers

- 12 The Senior Courts Act 1981 is amended as follows.

- 13 (1) Section 2 (the Court of Appeal) is amended as follows.

(2) In subsection (1) (composition of the Court of Appeal) for “of ex-officio judges and not more than 38 ordinary judges” substitute “of—

- (a) ex-officio judges, and
- (b) ordinary judges, of whom the maximum full-time equivalent number is 38”.

(3) In subsection (4) (power to increase maximum number of ordinary judges) for “maximum number” substitute “maximum full-time equivalent number”.

(4) After subsection (6) insert—

“(7) For the purposes of this section the full-time equivalent number of ordinary judges is to be calculated by taking the number of full-time ordinary judges and adding, for each ordinary judge who is not a full-time ordinary judge, such fraction as is reasonable.”

- 14 (1) Section 4 (the High Court) is amended as follows.

(2) In subsection (1) (High Court to consist of ex-officio judges and not more than 108 puisne judges) for paragraph (e) substitute—

“(e) the puisne judges of that court, of whom the maximum full-time equivalent number is 108.”

(3) In subsection (4) (power to increase maximum number of puisne judges) for “maximum number” substitute “maximum full-time equivalent number”.

(4) After subsection (6) insert—

“(7) For the purposes of this section the full-time equivalent number of puisne judges is to be calculated by taking the number of full-time puisne judges and adding, for each puisne judge who is not a full-time puisne judge, such fraction as is reasonable.”

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- 15 In section 10(2) (power to appoint judges is subject to maximum numbers in sections 2(1) and 4(1)) before “numbers” insert “full-time equivalent”.

PART 3

JUDICIAL APPOINTMENTS COMMISSION

Introductory

- 16 Part 1 of Schedule 12 to the Constitutional Reform Act 2005 (the members of the Judicial Appointments Commission) is amended as follows.

Composition of the Judicial Appointments Commission

- 17 In paragraph 1 (Commission consists of lay chairman and 14 other Commissioners) for paragraph (b) substitute—
- “(b) such number of other Commissioners as the Lord Chancellor may specify by regulations made with the agreement of the Lord Chief Justice.”
- 18 Omit paragraphs 2(2) to (5) and 4 to 6 (Commissioners other than the lay chairman are to be drawn in specified proportions from among judicial office holders, practising lawyers and lay persons).
- 19 After paragraph 3 (civil servants may not be appointed as Commissioners) insert—
- “3A The number of Commissioners who are holders of judicial office must be less than the number of Commissioners (including the chairman) who are not holders of judicial office.
- 3B (1) The Lord Chancellor may, by regulations made with the agreement of the Lord Chief Justice, make provision about the composition of the Commission.
- (2) The power to make regulations under this paragraph is to be exercised so as to ensure that the Commission’s members include—
- (a) holders of judicial office,
- (b) persons practising or employed as lawyers, and
- (c) lay members.
- (3) Regulations under this paragraph may (in particular)—
- (a) make provision about the number, maximum number or minimum number of Commissioners of a particular description;
- (b) make provision about eligibility for appointment as a Commissioner, eligibility for appointment as the chairman or eligibility for appointment as a Commissioner of a particular description.”
- 3C The Lord Chancellor may by regulations made with the agreement of the Lord Chief Justice—
- (a) define “lay member”, in relation to the Commission, for the purposes of this Part of this Act;
- (b) define “holder of judicial office” for the purposes of paragraphs 3A, 3B(2)(a), 11 and 20(5).”

Selection of Commissioners

- 20 For paragraphs 7 to 10 (selection of Commissioners) substitute—
- “6A (1) The Lord Chancellor may, by regulations made with the agreement of the Lord Chief Justice, make provision for or in connection with the selection or nomination of persons to be recommended for appointment under paragraph 1.
- (2) Regulations under this paragraph may (in particular)—
- (a) provide for selection or nomination to be by a person, or body, specified in or appointed under the regulations;
 - (b) make provision about selection procedure, including—
 - (i) provision for a selector to determine the selector’s own procedure or for selection procedure to be otherwise determined under the regulations;
 - (ii) provision as to matters to which a selector is to, or may or may not, have regard;
 - (iii) provision requiring that selection is carried out with a view to ensuring that there is a Commissioner with special knowledge of a particular geographical area or of a particular matter;
 - (c) make provision for the payment to selectors of remuneration, fees or expenses.
- 6B The powers to make regulations under this Part of this Schedule are to be exercised with a view to ensuring, so far as may be practicable, that the Commissioners who are lay members include at any time at least one person who appears to have special knowledge of Wales.”
- 21 (1) Paragraph 11 (vice-chairman) is amended as follows.
- (2) In sub-paragraph (1) (most senior judicial member is vice-chairman) for “Commissioner who is the most senior of the persons appointed as judicial members” substitute “most senior of the holders of judicial office who are Commissioners”.
- (3) In sub-paragraph (2) (meaning of seniority for the purposes of sub-paragraph (1)) for the words after “sub-paragraph (1)” substitute “seniority is to be determined in accordance with regulations made by the Lord Chancellor with the agreement of the Lord Chief Justice.”
- (4) In sub-paragraph (3) (exercise by vice-chairman of functions of chairman) for the words from “other” to the end substitute “other than—
- (a) any functions as a member of a commission convened under section 26(5) or (5A) or of a panel appointed under section 70(1), 75B(1) or 79(1) (including functions of chairing such a commission or panel), and
 - (b) any functions specified in regulations made by the Lord Chancellor with the agreement of the Lord Chief Justice.”

Commissioners’ terms of office

- 22 For paragraph 13 (maximum term of office for a Commissioner) substitute—

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- “13 (1) The Lord Chancellor may, by regulations made with the agreement of the Lord Chief Justice, make provision about the periods for which a Commissioner may be appointed or hold office.
- (2) Regulations under this paragraph may (in particular) make provision about—
- (a) the number of times a person may be appointed as a Commissioner;
 - (b) the length of any particular appointment;
 - (c) the total length of a person’s appointments or the total period for which a person may hold office as a Commissioner.”

23 For sub-paragraphs (1) and (2) of paragraph 14 (person ceases to be a Commissioner on ceasing, for certain reasons, to be eligible for appointment) substitute—

- “(1) The Lord Chancellor may by regulations made with the agreement of the Lord Chief Justice—
- (a) provide for a Commissioner to cease to be a Commissioner on ceasing, or on ceasing for a particular reason, to be eligible for appointment as a Commissioner;
 - (b) provide for a Commissioner other than the chairman to cease to be a Commissioner on ceasing, or on ceasing for a particular reason, to be eligible for appointment as a Commissioner of a particular description;
 - (c) provide for the chairman—
 - (i) to cease to be the chairman without ceasing to be a Commissioner, or
 - (ii) to cease to be the chairman and cease to be a Commissioner,
 on ceasing, or on ceasing for a particular reason, to be eligible for appointment as the chairman;
 - (d) confer power to disapply or suspend the operation of provision under paragraph (a), (b) or (c) in individual cases.”

Supplementary amendments

24 After paragraph 17 insert—

“Regulations

- 17A Regulations under this Part of this Schedule may—
- (a) make different provision for different purposes;
 - (b) include transitional or transitory provision or savings.”

25 In Part 2 of Schedule 12 to the Constitutional Reform Act 2005 (Judicial Appointments Commission) in paragraph 20(5) (committee to which Commission delegates a selection function must include at least one judicial member and one lay member) for “judicial member and” substitute “who is a holder of judicial office and at least”.

26 In section 122 of that Act (interpretation of Part 4) for the definition of “lay member” substitute—

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““lay member”, in relation to the Commission, has such meaning as may be given by regulations under paragraph 3C(a) of Schedule 12;”.

- 27 In section 144(5)(e) of that Act (orders under paragraph 5 of Schedule 12 are subject to affirmative parliamentary procedure) for “an order under paragraph 5” substitute “regulations under Part 1”.

Consequential repeal of other legislation

- 28 In Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 omit paragraph 65 (which amended paragraph 2 of Schedule 12 to the Constitutional Reform Act 2005).

PART 4

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

Appointments by Her Majesty on Lord Chancellor’s recommendation but where selection is to be reported to Lord Chief Justice or Senior President of Tribunals

- 29 (1) Schedule 14 to the Constitutional Reform Act 2005 (Judicial Appointments Commission: relevant offices and enactments) is amended as follows.
- (2) The table in Part 1 (appointments by Her Majesty on the Lord Chancellor’s recommendation) becomes Table 1 of that Part called “Appointments where the Commission reports to the Lord Chancellor”.
- (3) Move the entries for the following offices from Table 1 of Part 1 to form Table 2 of that Part called “Appointments where the Commission reports to the Lord Chief Justice” (and with the same column headings)—
- Circuit judge
 - Recorder
 - Master, Queen’s Bench Division
 - Queen’s Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals
 - Admiralty Registrar
 - Master, Chancery Division
 - Registrar in Bankruptcy of the High Court
 - Taxing Master of the Senior Courts
 - District judge of the principal registry of the Family Division
 - Senior Master of the Queen’s Bench Division
 - Chief Chancery Master
 - Chief Taxing Master
 - Chief Bankruptcy Registrar
 - Senior District Judge of the Family Division
 - District judge
 - District Judge (Magistrates’ Courts) appointed under section 22(1) of the Courts Act 2003
 - Senior District Judge (Chief Magistrate) designated under section 23 of that Act
 - Deputy Senior District Judge (Chief Magistrate) designated under that section

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- (4) In Table 1 of Part 1 omit the entries for the following former offices—
 Senior District Judge (Chief Magistrate) designated under subsection (2) of section 10A of the Justices of the Peace Act 1997
 Deputy Senior District Judge (Chief Magistrate) designated under that subsection
- (5) Move the entry for the following office from Table 1 of Part 1 to form Table 3 of that Part called “Appointments where the Commission reports to the Senior President of Tribunals” (and with the same column headings)—
 Judge of the Upper Tribunal by appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007
- 30 (1) Schedule 3 to the Tribunals, Courts and Enforcement Act 2007 (judges and other members of the Upper Tribunal) is amended as follows.
- (2) In paragraph 1(2)(d) (eligibility for appointment as judge based on experience gained in law) for “Lord Chancellor’s opinion” substitute “opinion of the Senior President of Tribunals”.
- (3) In paragraph 1(3) (meaning of “gain experience in law”) for “Lord Chancellor” substitute “Senior President of Tribunals”.

Recommended appointments: further provisions

- 31 In section 16 of the Courts Act 1971 (appointment of Circuit judges) omit subsection (4) (health).
- 32 (1) Section 21 of the Courts Act 1971 (appointment of Recorders) is amended as follows.
- (2) In subsection (5) (neither initial term nor extension under subsection (4) may extend appointment beyond judicial retirement age) for “(4)” substitute “(4A)”.
- (3) After subsection (7) insert—
 “(8) Subject to the preceding provisions of this section, a person appointed under this section is to hold and vacate office as a Recorder in accordance with the terms of the person’s appointment, and those terms (including the terms specified under subsection (3)) are (subject to subsection (4)) to be such as the Lord Chancellor may determine.
 (9) The Lord Chief Justice may nominate a senior judge (as defined in section 109(5) of the Constitutional Reform Act 2005) to exercise functions of the Lord Chief Justice under subsection (4) or (4C).”
- (4) In list A in paragraph 4 of Schedule 7 to the Constitutional Reform Act 2005 (protected functions of Lord Chancellor) in the entries for the Courts Act 1971 for “Section 21(2), (4) and (7)” substitute “Section 21”.
- 33 In section 89(4) of the Senior Courts Act 1981 (additional offices and duties of Senior Master appointed under subsection (3)(a)) for “under subsection (3)(a)” substitute “of the Queen’s Bench Division”.

Deputy Circuit judges to be appointed by Lord Chief Justice

- 34 (1) Section 24 of the Courts Act 1971 (deputy Circuit judges and assistant Recorders) is amended as follows.

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- (2) In subsection (1) (appointment to facilitate disposal of certain business) for “a county court” substitute “county court or any other court or tribunal to which a person appointed under this subsection may be deployed”.
- (3) In subsection (1)(a) (Lord Chancellor’s power to appoint deputy circuit judges) for “Lord Chancellor may, with the concurrence of the Lord Chief Justice,” substitute “Lord Chief Justice may, with the concurrence of the Lord Chancellor,”.
- (4) In subsection (1A) (appointment as deputy Circuit judge not to be such as to continue beyond person’s 75th birthday) after “such as to” insert “, or be extended under subsection (5B) below so as to,”.
- (5) After subsection (5) (remuneration) insert—
 - “(5A) A person may be removed from office as a deputy Circuit judge—
 - (a) only by the Lord Chancellor with the agreement of the Lord Chief Justice, and
 - (b) only on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment.
 - (5B) Subject to subsections (1A) and (5C), the Lord Chancellor must extend the period of a person’s appointment as a deputy Circuit judge (including a period already extended under this subsection) before its expiry; and for this purpose a person appointed to be a deputy Circuit judge on certain occasions is to be treated as having been appointed for a period that expires when the occasions end.
 - (5C) Extension under subsection (5B)—
 - (a) requires the person’s agreement,
 - (b) is to be for such period as the Lord Chancellor thinks fit, and
 - (c) may be refused on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment,but only with any agreement of the Lord Chief Justice, or a nominee of the Lord Chief Justice, that may be required by those terms.
 - (5D) Subject to the preceding provisions of this section, a person appointed under this section is to hold and vacate office as a deputy Circuit judge in accordance with the terms of the person’s appointment, which are to be such as the Lord Chancellor may determine.”
- (6) In subsection (6) (Lord Chief Justice’s power to delegate under section 24(1)(a))—
 - (a) for “judicial office holder (as defined in section 109(4))” substitute “senior judge (as defined in section 109(5))”, and
 - (b) after “subsection (1)(a)” insert “or (5A)(a)”.
- (7) In Schedule 4 to the Constitutional Reform Act 2005 omit paragraph 71(2)(c) (superseded amendment of section 24(1)(a) of the Courts Act 1971).

Status: This is the original version (as it was originally enacted).

Deputy and temporary Masters etc to be appointed by Lord Chief Justice

- 35 (1) Section 91 of the Senior Courts Act 1981 (deputy and temporary Masters, Registrars etc of the High Court) is amended as follows.
- (2) In subsection (1) (Lord Chancellor’s power of appointment)—
- (a) for “the Lord Chancellor”, in the first place, substitute “the Lord Chief Justice”, and
 - (b) after “to facilitate the disposal of business in the Senior Courts” insert “or any other court or tribunal to which a person appointed under this subsection may be deployed”.
- (3) For subsection (1ZA) (if person to be appointed is a current or former holder of certain judicial offices, Lord Chief Justice must concur) substitute—
- “(1ZA) The Lord Chief Justice may not appoint a holder of relevant office under subsection (1) without the concurrence of the Lord Chancellor.”
- (4) After subsection (6) (remuneration) insert—
- “(6A) A person appointed under subsection (1) may be removed from office—
- (a) only by the Lord Chancellor with the agreement of the Lord Chief Justice, and
 - (b) only on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment.
- (6B) Subject to subsection (6C), the period of a person’s appointment under subsection (1) (including a period already extended under this subsection) must be extended by the Lord Chancellor before its expiry; and for this purpose a person appointed under subsection (1) to act under this section on certain occasions is to be treated as having been appointed for a period that expires when the occasions end.
- (6C) Extension under subsection (6B)—
- (a) requires the person’s agreement,
 - (b) is to be for such period as the Lord Chancellor thinks fit, and
 - (c) may be refused on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment,
but only with any agreement of the Lord Chief Justice, or a nominee of the Lord Chief Justice, that may be required by those terms.
- (6D) Subject to the preceding provisions of this section (but subject in the first place to the Judicial Pensions and Retirement Act 1993), a person appointed under subsection (1) is to hold and vacate office in accordance with the terms of the person’s appointment, which are to be such as the Lord Chancellor may determine.”
- (5) In subsection (7) (delegation of functions by Lord Chief Justice)—
- (a) for “judicial office holder (as defined in section 109(4))” substitute “senior judge (as defined in section 109(5))”, and
 - (b) for “subsection (1ZA)” substitute “subsection (1) or (6A)(a)”.

Status: This is the original version (as it was originally enacted).

- (6) In list A in paragraph 4 of Schedule 7 to the Constitutional Reform Act 2005 (protected functions of Lord Chancellor) in the entries for the Senior Courts Act 1981 for “Section 91(1), (1A) and (6)” substitute “Section 91”.
- (7) In consequence of the previous provisions of this paragraph, in the Tribunals, Courts and Enforcement Act 2007 omit sections 57(2)(a) and (5) and 144(5).

Deputy district judges to be appointed by Lord Chief Justice

- 36 (1) Section 102 of the Senior Courts Act 1981 (deputy district judges for the High Court) is amended as follows.
- (2) In subsection (1) (Lord Chancellor’s power of appointment)—
 - (a) for “Lord Chancellor” substitute “Lord Chief Justice”, and
 - (b) after “to facilitate the disposal of business in the High Court” insert “or any other court or tribunal to which a person appointed under this subsection may be deployed”.
 - (3) In subsection (1B) (Lord Chief Justice’s concurrence needed in certain cases) for “Lord Chancellor may not appoint a person under subsection (1) without the concurrence of the Lord Chief Justice” substitute “Lord Chief Justice may not appoint a person under subsection (1) without the concurrence of the Lord Chancellor”.
 - (4) After subsection (5) (remuneration) insert—
 - “(5ZA) A person appointed under this section may be removed from office as a deputy district judge—
 - (a) only by the Lord Chancellor with the agreement of the Lord Chief Justice, and
 - (b) only on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment.
 - (5ZB) Subject to subsection (5ZC), the term of a person’s appointment under this section (including a term already extended under this subsection) must be extended by the Lord Chancellor before its expiry.
 - (5ZC) Extension under subsection (5ZB)—
 - (a) requires the person’s agreement,
 - (b) is to be for such term as the Lord Chancellor thinks fit, and
 - (c) may be refused on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment,but only with any agreement of the Lord Chief Justice, or a nominee of the Lord Chief Justice, that may be required by those terms.
 - (5ZD) Subject to the preceding provisions of this section (but subject in the first place to the Judicial Pensions and Retirement Act 1993), a person appointed under this section is to hold and vacate office as a deputy district judge in accordance with the terms of the person’s appointment, which are to be such as the Lord Chancellor may determine.

Status: This is the original version (as it was originally enacted).

- (5ZE) The Lord Chief Justice may nominate a senior judge (as defined in section 109(5) of the Constitutional Reform Act 2005) to exercise the Lord Chief Justice’s functions under subsection (1) or (5ZA)(a).”
- (5) In subsection (5A) (delegation of Lord Chief Justice’s functions) omit “(1B) or”.
- (6) In list A in paragraph 4 of Schedule 7 to the Constitutional Reform Act 2005 (protected functions of Lord Chancellor) in the entries for the Senior Courts Act 1981 for “Section 102(1)” substitute “Section 102”.
- 37 (1) Section 8 of the County Courts Act 1984 (deputy district judges for the county court) is amended as follows.
- (2) In subsection (1) (Lord Chancellor’s power of appointment) for “Lord Chancellor” substitute “Lord Chief Justice”.
- (3) In subsection (1ZB) (Lord Chief Justice’s concurrence needed in certain cases) for “Lord Chancellor may not appoint a person under subsection (1) without the concurrence of the Lord Chief Justice” substitute “Lord Chief Justice may not appoint a person under subsection (1) without the concurrence of the Lord Chancellor”.
- (4) In subsection (1A) (ages beyond which appointments may not extend) in each of paragraphs (a) and (b) after “shall not be such as to” insert “, or be extended under subsection (3B) so as to,”.
- (5) After subsection (3) (remuneration) insert—
- “(3A) A person appointed under this section may be removed from office as a deputy district judge—
- (a) only by the Lord Chancellor with the agreement of the Lord Chief Justice, and
- (b) only on—
- (i) the ground of inability or misbehaviour, or
- (ii) a ground specified in the person’s terms of appointment.
- (3B) Subject to subsections (1A) and (3C), the term of a person’s appointment under this section (including a term already extended under this subsection) must be extended by the Lord Chancellor before its expiry.
- (3C) Extension under subsection (3B)—
- (a) requires the person’s agreement,
- (b) is to be for such term as the Lord Chancellor thinks fit, and
- (c) may be refused on—
- (i) the ground of inability or misbehaviour, or
- (ii) a ground specified in the person’s terms of appointment,
- but only with any agreement of the Lord Chief Justice, or a nominee of the Lord Chief Justice, that may be required by those terms.
- (3D) Subject to the preceding provisions of this section, a person appointed under this section is to hold and vacate office as a deputy district judge in accordance with the terms of the person’s appointment, which are to be such as the Lord Chancellor may determine.

Status: This is the original version (as it was originally enacted).

(3E) The Lord Chief Justice may nominate a senior judge (as defined in section 109(5) of the Constitutional Reform Act 2005) to exercise the Lord Chief Justice’s functions under subsection (1) or (3A)(a).”

(6) In subsection (4) (delegation of Lord Chief Justice’s functions) omit “(1ZB) or”.

(7) In list A in paragraph 4 of Schedule 7 to the Constitutional Reform Act 2005 (protected functions of Lord Chancellor) in the entries for the County Courts Act 1984 for “Section 8(1) and (3)” substitute “Section 8”.

Deputy District Judges (Magistrates’ Courts) to be appointed by Lord Chief Justice

38 (1) Section 24 of the Courts Act 2003 (Deputy District Judges (Magistrates’ Courts)) is amended as follows.

(2) In subsection (1) (Lord Chancellor’s power of appointment) for “Lord Chancellor”, in the first place, substitute “Lord Chief Justice”.

(3) For subsection (4) (removal from office to be by Lord Chancellor with concurrence of Lord Chief Justice but only on ground of incapacity or misbehaviour) substitute—

“(4) A person may be removed from office as a Deputy District Judge (Magistrates’ Courts)—

(a) only by the Lord Chancellor with the agreement of the Lord Chief Justice, and

(b) only on—

(i) the ground of inability or misbehaviour, or

(ii) a ground specified in the person’s terms of appointment.

(4A) Subject to subsection (4B), the period of a person’s appointment under this section (including a period already extended under this subsection) must be extended by the Lord Chancellor before its expiry.

(4B) Extension under subsection (4A)—

(a) requires the person’s agreement,

(b) is to be for such period as the Lord Chancellor considers appropriate, and

(c) may be refused on—

(i) the ground of inability or misbehaviour, or

(ii) a ground specified in the person’s terms of appointment,

but only with any agreement of the Lord Chief Justice, or a nominee of the Lord Chief Justice, that may be required by those terms.

(4C) Subject to the preceding provisions of this section (but subject in the first place to the Judicial Pensions and Retirement Act 1993), a person appointed under this section is to hold and vacate office as a Deputy District Judge (Magistrates’ Courts) in accordance with the terms of the person’s appointment, which are to be such as the Lord Chancellor may determine.

(4D) The Lord Chief Justice may nominate a senior judge (as defined in section 109(5) of the Constitutional Reform Act 2005) to exercise the Lord Chief Justice’s functions under subsection (1) or (4)(a).”

Status: This is the original version (as it was originally enacted).

- (4) In list A in paragraph 4 of Schedule 7 to the Constitutional Reform Act 2005 (protected functions of Lord Chancellor) in the entries for the Courts Act 2003 at the appropriate place insert “Section 24”.

Lay justices to be appointed by Lord Chief Justice

- 39 (1) Section 10 of the Courts Act 2003 (justices of the peace who are not District Judges (Magistrates’ Courts)) is amended as follows.
- (2) In subsection (1) (Lord Chancellor’s power of appointment) for “Lord Chancellor” substitute “Lord Chief Justice”.
- (3) After that subsection insert—
- “(1A) Subject to the following provisions of this section and to sections 11 to 15, a person appointed under subsection (1) is to hold and vacate office as a justice of the peace in accordance with the terms of the person’s appointment, which are to be such as the Lord Chancellor may determine.”
- (4) After subsection (2) insert—
- “(2ZA) The Lord Chief Justice must ensure that arrangements for the exercise, so far as affecting any local justice area, of the function under subsection (1) include arrangements for consulting persons appearing to the Lord Chief Justice to have special knowledge of matters relevant to the exercise of that function in relation to that area.”
- (5) In subsection (2A) (Lord Chancellor to ensure local consultation takes place in relation to the exercise of functions under subsections (1) and (2)) for “subsections (1) and” substitute “subsection”.
- (6) After subsection (6) insert—
- “(6A) The Lord Chief Justice may nominate a senior judge (as defined in section 109(5) of the Constitutional Reform Act 2005) to exercise functions of the Lord Chief Justice under subsection (1).”
- (7) In subsection (7) (delegation of Lord Chief Justice’s functions) after “subsection (2)” insert “, (2ZA)”.

Transfer of appointment powers to Lord Chief Justice: further provisions

- 40 (1) Section 94A of the Constitutional Reform Act 2005 (certain appointments by Lord Chancellor not subject to section 85 but require concurrence of Lord Chief Justice) is amended as follows.
- (2) For subsection (1)(b) (concurrence requirement) substitute—
- “(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.”
- (3) In subsection (3) (Lord Chief Justice may delegate function under subsection (1)(b)) after “function” insert “of concurring”.
- 41 (1) Schedule 14 to that Act (Judicial Appointments Commission: relevant offices and enactments) is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) For the title of Part 2 substitute “COURT-RELATED APPOINTMENTS”.
- (3) The table in Part 2 (appointments by the Lord Chancellor) becomes Table 1 of that Part called “Appointments by the Lord Chancellor”.
- (4) Move the entries for the following offices from Table 1 of Part 2 to form Table 2 of that Part called “Appointments by the Lord Chief Justice” (and with the same column headings)—
- Person appointed by the Lord Chancellor as a deputy for a holder of, or as a temporary additional officer in, an office listed in column 1 of Part 2 of Schedule 2 to the Senior Courts Act 1981
 - Deputy district judge appointed under section 102(1) of that Act
 - Deputy district judge appointed under section 8(1) of the County Courts Act 1984
 - Justice of the Peace appointed under section 10(1) of the Courts Act 2003 (justices of the peace other than District Judges (Magistrates’ Courts))
 - Deputy District Judge (Magistrates’ Courts) appointed under section 24(1) of the Courts Act 2003
- (5) In Table 2 of Part 2, in the first of the entries moved by this paragraph to form that table, omit “by the Lord Chancellor”.
- (6) In Table 1 of Part 2 omit the entry for the following former office—
- Justice of the Peace appointed under section 5 of the Justices of the Peace Act 1997

Senior President of Tribunals to make certain appointments to First-tier and Upper Tribunals

- 42 The Tribunals, Courts and Enforcement Act 2007 is amended as follows.
- 43 In section 7(7) (Lord Chancellor’s power to appoint Chamber Presidents for the First-tier Tribunal or the Upper Tribunal) for “Lord Chancellor” substitute “Senior President of Tribunals”.
- 44 (1) In section 8 (power of Senior President of Tribunals to delegate) after subsection (1) insert—
- “(1A) A function under paragraph 1(1) or 2(1) of Schedule 2 may be delegated under subsection (1) only to a Chamber President of a chamber of the Upper Tribunal.”
- (2) In section 8(2) (functions which the Senior President of Tribunals may not delegate) for “under section 7(9)” substitute “under any of the following—
- section 7(7);
 - section 7(9);
 - paragraph 2(1) of Schedule 3;
 - paragraph 7(1) of Schedule 3;
 - paragraph 2 of Schedule 4;
 - paragraph 5(1) and (3) of Schedule 4;
 - paragraph 5(5) to (8) of Schedule 4;
 - paragraph 5A(2)(a) of Schedule 4;
 - paragraph 5A(3)(a) of Schedule 4.”

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- (3) In section 46 (delegation of functions by Lord Chief Justice etc) after subsection (6) insert—
- “(7) In Schedules 2 to 4 “senior judge” means—
- (a) the Lord Chief Justice of England and Wales,
 - (b) the Lord President of the Court of Session,
 - (c) the Lord Chief Justice of Northern Ireland, or
 - (d) the Senior President of Tribunals.”
- 45 (1) Schedule 2 (judges and other members of the First-tier Tribunal) is amended as follows.
- (2) In paragraphs 1(1) and 2(1) (Lord Chancellor’s power to appoint) for “Lord Chancellor” substitute “Senior President of Tribunals”.
- (3) In paragraph 1(2)(d) (eligibility for appointment as judge based on experience gained in law) for “Lord Chancellor’s opinion” substitute “opinion of the Senior President of Tribunals”.
- (4) In paragraph 1(3) (meaning of “gain experience in law”) for “Lord Chancellor” substitute “Senior President of Tribunals”.
- (5) In paragraph 4 (terms of appointment) after sub-paragraph (2) (salaried appointee may be removed from office only by Lord Chancellor and only on ground of inability or misbehaviour) insert—
- “(2A) If the terms of the person’s appointment provide that the person is appointed on a fee-paid basis, the person may be removed from office—
- (a) only by the Lord Chancellor (and in accordance with paragraph 3), and
 - (b) only on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment.
- (2B) If the period (or extended period) for which the person is appointed ends before—
- (a) the day on which the person attains the age of 70, or
 - (b) if different, the day that for the purposes of section 26 of the Judicial Pensions and Retirement Act 1993 is the compulsory retirement date for the office concerned in the person’s case,
- then, subject to sub-paragraph (2C), the Lord Chancellor must extend the period of the person’s appointment (including a period already extended under this sub-paragraph) before it ends.
- (2C) Extension under sub-paragraph (2B)—
- (a) requires the person’s agreement,
 - (b) is to be for such period as the Lord Chancellor considers appropriate, and
 - (c) may be refused on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment,

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but only with any agreement of a senior judge (see section 46(7)), or a nominee of a senior judge, that may be required by those terms.”

- (6) In paragraph 4(3) (subject to sub-paragraph (2), person to hold and vacate office in accordance with terms of appointment)—
- (a) for “sub-paragraph (2) (and)” substitute “the preceding provisions of this paragraph (but subject in the first place”, and
 - (b) after “appointment” insert “, which are to be such as the Lord Chancellor may determine”.
- 46 (1) Schedule 3 (judges and other members of the Upper Tribunal) is amended as follows.
- (2) In paragraph 2(1) (Lord Chancellor’s power to appoint other members of the Upper Tribunal) for “Lord Chancellor” substitute “Senior President of Tribunals”.
- (3) In paragraph 3(1) (removal from office) before the “or” at the end of paragraph (b) insert—
- “(ba) a person who is a deputy judge of the Upper Tribunal (whether by appointment under paragraph 7(1) or as a result of provision under section 31(2)),”.
- (4) In paragraph 4 (terms of appointment) after sub-paragraph (2) (salaried appointee may be removed from office only by Lord Chancellor and only on ground of inability or misbehaviour) insert—
- “(2A) If the terms of the person’s appointment provide that the person is appointed on a fee-paid basis, the person may be removed from office—
 - (a) only by the Lord Chancellor (and in accordance with paragraph 3), and
 - (b) only on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment.
 - (2B) If the period (or extended period) for which the person is appointed ends before—
 - (a) the day on which the person attains the age of 70, or
 - (b) if different, the day that for the purposes of section 26 of the Judicial Pensions and Retirement Act 1993 is the compulsory retirement date for the office concerned in the person’s case,then, subject to sub-paragraph (2C), the Lord Chancellor must extend the period of the person’s appointment (including a period already extended under this sub-paragraph) before it ends.
 - (2C) Extension under sub-paragraph (2B)—
 - (a) requires the person’s agreement,
 - (b) is to be for such period as the Lord Chancellor considers appropriate, and
 - (c) may be refused on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment,

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but only with any agreement of a senior judge (see section 46(7)), or a nominee of a senior judge, that may be required by those terms.”

- (5) In paragraph 4(3) (subject to sub-paragraph (2), person to hold and vacate office in accordance with terms of appointment)—
- (a) for “sub-paragraph (2) (and” substitute “the preceding provisions of this paragraph (but subject in the first place”, and
 - (b) after “appointment” insert “, which are to be such as the Lord Chancellor may determine”.
- (6) In paragraph 7(1) (Lord Chancellor may appoint deputy judge of the Upper Tribunal for such period as the Lord Chancellor considers appropriate) for “Lord Chancellor”, in the first place, substitute “Senior President of Tribunals”.
- (7) In paragraph 7(3) (persons to whom paragraph 7(4) and (5) apply) for “Sub-paragraphs (4) and (5)” substitute “The following provisions of this paragraph”.
- (8) For paragraph 7(4) (person to hold and vacate office in accordance with terms of appointment) substitute—
- “(3A) The person may be removed from office—
- (a) only by the Lord Chancellor (and in accordance with paragraph 3), and
 - (b) only on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment.
- (3B) If the period (or extended period) for which the person is appointed ends before—
- (a) the day on which the person attains the age of 70, or
 - (b) if different, the day that for the purposes of section 26 of the Judicial Pensions and Retirement Act 1993 is the compulsory retirement date for the office concerned in the person’s case,
- then, subject to sub-paragraph (3C), the Lord Chancellor must extend the period of the person’s appointment (including a period already extended under this sub-paragraph) before it ends.
- (3C) Extension under sub-paragraph (3B)—
- (a) requires the person’s agreement,
 - (b) is to be for such period as the Lord Chancellor considers appropriate, and
 - (c) may be refused on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment,
 but only with any agreement of a senior judge (see section 46(7)), or a nominee of a senior judge, that may be required by those terms.
- (4) Subject to the previous provisions of this paragraph (but subject in the first place to the Judicial Pensions and Retirement Act 1993), a person is to hold and vacate office as a deputy judge of the Upper Tribunal in

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- accordance with the person’s terms of appointment, which are to be such as the Lord Chancellor may determine.”
- 47 (1) Schedule 4 (chambers, and chamber presidents, for the First-tier Tribunal or the Upper Tribunal) is amended as follows.
- (2) In the italic headings before each of paragraphs 1 and 2 for “by Lord Chancellor” substitute “under section 7(7)”.
- (3) In paragraph 2(1) (duty to consult before appointing senior court judge as chamber president) for “Lord Chancellor must consult the Senior President of Tribunals before the Lord Chancellor” substitute “Senior President of Tribunals must consult the Lord Chancellor before the Senior President of Tribunals”.
- (4) In paragraph 2(2) to (4) (which relate to the power under section 7(7)) for “Lord Chancellor”, in each place, substitute “Senior President of Tribunals”.
- (5) In paragraph 2 after sub-paragraph (4) insert—
- “(4A) The Senior President of Tribunals may make a request under sub-paragraph (2), (3) or (4) only with the Lord Chancellor’s concurrence.”
- (6) In paragraph 2(5) (judge nominated must be appointed as Chamber President) for “Lord Chancellor” substitute “Senior President of Tribunals”.
- (7) In paragraph 3(1) (Chamber President to hold and vacate office in accordance with terms of appointment)—
- (a) for “(subject)” substitute “but subject to paragraph 5A (and subject in the first place”, and
- (b) at the end insert “, and those terms are to be such as the Lord Chancellor may determine.”
- (8) In paragraph 5(1) (Lord Chancellor’s power to appoint Deputy Chamber Presidents for the First-tier or Upper Tribunal) for “Lord Chancellor” substitute “Senior President of Tribunals”.
- (9) In paragraph 5(3) and (5) to (7) (which relate to the power under paragraph 5(1)) for “Lord Chancellor”, in each place, substitute “Senior President of Tribunals”.
- (10) In paragraph 5(3)(a) (duty to consult Senior President of Tribunals) for “Senior President of Tribunals” substitute “Lord Chancellor”.
- (11) In paragraph 5 after sub-paragraph (7) insert—
- “(7A) The Senior President of Tribunals may make a request under sub-paragraph (5), (6) or (7) only with the Lord Chancellor’s concurrence.”
- (12) In paragraph 5(8) (judge nominated must be appointed as Deputy Chamber President) for “Lord Chancellor” substitute “Senior President of Tribunals”.
- (13) In paragraph 5(9) (Deputy Chamber President to hold and vacate office in accordance with terms of appointment)—
- (a) for “(subject)” substitute “but subject to paragraph 5A (and subject in the first place”, and
- (b) at the end insert “, and those terms are to be such as the Lord Chancellor may determine.”
- (14) After paragraph 5 insert—

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“Chamber Presidents and Deputies: removal from office and extension of appointment

- 5A (1) This paragraph applies to a person—
- (a) appointed under section 7(6) or (7) as a Chamber President, or
 - (b) appointed under paragraph 5(1) or (2) as a Deputy Chamber President of a chamber.
- (2) If the terms of the person’s appointment provide that the person is appointed otherwise than on a fee-paid basis, the person may be removed from office—
- (a) only by the Lord Chancellor with the concurrence of the Senior President of Tribunals, and
 - (b) only on the ground of inability or misbehaviour.
- (3) If the terms of the person’s appointment provide that the person is appointed on a fee-paid basis, the person may be removed from office—
- (a) only by the Lord Chancellor with the concurrence of the Senior President of Tribunals, and
 - (b) only on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment.
- (4) If the period (or extended period) for which the person is appointed ends before—
- (a) the day on which the person attains the age of 70, or
 - (b) if different, the day that for the purposes of section 26 of the Judicial Pensions and Retirement Act 1993 is the compulsory retirement date for the office concerned in the person’s case,
- then, subject to sub-paragraph (5), the Lord Chancellor must extend the period of the person’s appointment (including a period already extended under this sub-paragraph) before it ends.
- (5) Extension under sub-paragraph (4)—
- (a) requires the person’s agreement,
 - (b) is to be for such period as the Lord Chancellor considers appropriate, and
 - (c) may be refused on—
 - (i) the ground of inability or misbehaviour, or
 - (ii) a ground specified in the person’s terms of appointment, but only with any agreement of a senior judge (see section 46(7)), or a nominee of a senior judge, that may be required by those terms.”
- 48 (1) Section 94B of the Constitutional Reform Act 2005 (certain appointments by Lord Chancellor not subject to section 85 but require concurrence of Senior President of Tribunals) is amended as follows.
- (2) For subsection (1)(b) (concurrence requirement) substitute—

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- “(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.”
- (3) In subsection (2) (Lord Chancellor must also consult Lord Chief Justice in certain cases) for “Lord Chancellor” substitute “Senior President of Tribunals”.
- (4) After subsection (5) insert—
- “(6) 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).”
- 49 (1) Schedule 14 to that Act (Judicial Appointments Commission: relevant offices and enactments) is amended as follows.
- (2) For the title of Part 3 substitute “TRIBUNAL-RELATED AND OTHER APPOINTMENTS”.
- (3) The table in Part 3 (appointments by the Lord Chancellor) becomes Table 1 of that Part called “Appointments by the Lord Chancellor”.
- (4) Move the entries for the following offices from Table 1 of Part 3 to form Table 2 of that Part called “Appointments by the Senior President of Tribunals” (and with the same column headings)—
- Chamber President of a chamber of the First-tier Tribunal, or of a chamber of the Upper Tribunal, by appointment under section 7(7) of the Tribunals, Courts and Enforcement Act 2007, but not where appointed in accordance with paragraph 2(2) to (5) of Schedule 4 to that Act
- Judge of the First-tier Tribunal by appointment under paragraph 1(1) of Schedule 2 to that Act
- Other member of the First-tier Tribunal by appointment under paragraph 2(1) of that Schedule
- Other member of the Upper Tribunal by appointment under paragraph 2(1) of Schedule 3 to that Act
- Deputy judge of the Upper Tribunal by appointment under paragraph 7(1) of that Schedule
- Deputy Chamber President of a chamber of the First-tier Tribunal, or of a chamber of the Upper Tribunal, but not where appointed in accordance with paragraph 5(5) to (8) of Schedule 4 to that Act
- (5) In the entry in Part 3 for Deputy Chief Coroner appointed under paragraph 2(5) of Schedule 8 to the Coroners and Justice Act 2009, for “2(5)” substitute “2(6)”.
- (6) In paragraph 51 of Schedule 21 to the Coroners and Justice Act 2009 (which inserts entries at the end of Part 3 of Schedule 14 to the 2005 Act)—
- (a) after “at the end of” insert “Table 1 of”, and
- (b) for “2(5)” substitute “2(6)”.
- (Accordingly, the power to commence that paragraph 51 becomes a power to commence it as amended by this sub-paragraph.)

Status: This is the original version (as it was originally enacted).

Appointments by Lord Chief Justice or Senior President of Tribunals: equalities provisions

- 50 (1) Section 50 of the Equality Act 2010 (public offices: appointments, etc) is amended as follows.
- (2) In subsection (2) (meaning of “public office”) after paragraph (c) insert—
- “(d) an office or post, appointment to which is made by the Lord Chief Justice or the Senior President of Tribunals.”
- (3) In each of subsections (3) to (6), (9) and (11)(b) (offices within subsection (2)(a) or (b)) for “or (b)” substitute “, (b) or (d)”.
- 51 (1) Section 51 of the Equality Act 2010 (public offices: recommendations for appointments, etc) is amended as follows.
- (2) In subsections (1) to (4) (which apply to an office within section 50(2)(a) or (b)) for “or (b)” substitute “, (b) or (d)”.
- (3) In subsection (5) (interpretation) after “50(2)(a)” insert “or (d)”.

Certain deployments to the High Court to be made from pool of selected judges

- 52 In section 9 of the Senior Courts Act 1981 (which includes provision for requesting certain judges to act as judges of other courts) after subsection (2C) insert—
- “(2CA) In the case of a request to a person within entry 5 or 6 in column 1 of the Table to act as a judge of the High Court, the appropriate authority may make the request only if the person is a member of the pool for requests under subsection (1) to persons within that entry.”

Main change in selection process

- 53 (1) The Constitutional Reform Act 2005 is amended as follows.
- (2) Omit—
- (a) sections 71 to 75 (selection for appointment of Lord Chief Justice or Head of Division),
- (b) sections 75C to 75G (selection for appointment of Senior President of Tribunals),
- (c) sections 80 to 84 (selection for appointment of ordinary judge of the Court of Appeal),
- (d) sections 89 to 93 (selection for appointment of puisne judge of the High Court or to an office listed in Schedule 14), and
- (e) section 96 (effect of acceptance of selection).
- (3) Before section 95 (but after the italic heading preceding that section) insert—

“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—

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- (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;
 - (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);

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- (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;
 - (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.

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- (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.”

Other changes in relation to selection process and complaints

- 54 The Constitutional Reform Act 2005 is amended as follows.
- 55 In section 66(1)(a) (Lord Chancellor to consult Lord Chief Justice before issuing guidance about selection procedures) for “consult” substitute “obtain the agreement of”.
- 56 In section 67 (sections 68 to 75 apply in relation to appointment of Lord Chief Justice or Head of Division)—
- (a) in subsection (1) for “75” substitute “70”, and
 - (b) in subsection (2) for “96” substitute “94C and regulations made under it”.
- 57 In section 69 (sections 70 to 75 apply where request made under section 69)—
- (a) in subsection (4) for “Sections 70 to 75 apply” substitute “Section 70 applies”, and
 - (b) in subsection (5) for “Those sections are” substitute “That section is”.
- 58 (1) Section 70 (process for selecting person to be recommended for appointment as Lord Chief Justice or Head of Division) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) The panel must have an odd number of members not less than five.
 - (1B) The members of the panel must include—
 - (a) at least two who are non-legally-qualified,
 - (b) at least two judicial members, and
 - (c) at least two members of the Commission,and contributions to meeting more than one of the requirements may be made by the same person’s membership of the panel.
 - (1C) The members of the panel may not include the current holder of the office for which a selection is to be made.
 - (1D) If the panel is convened for the selection of a person to be recommended for appointment as Lord Chief Justice, it is to be chaired by one of its non-legally-qualified members.”

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- (3) In subsection (2)(a) (panel to determine selection process to be applied) after “applied” insert “by it”.
- (4) Omit subsection (2A) (steps that are to be part of selection process).
- (5) In subsection (4) (subsection (3) applies to selection under section 70 or 75) for “section 75” substitute “regulations under section 94C”.
- (6) Omit subsection (5) (if practicable, panel to consult current holder of office).
- 59 In section 75A (sections 75B to 75G apply where request made under paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007)—
- (a) in subsection (1) for “Sections 75B to 75G apply” substitute “Section 75B applies”, and
- (b) in subsection (2) for “Those sections are” substitute “That section is”.
- 60 (1) Section 75B (process for selecting person to be recommended for appointment as Senior President of Tribunals) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) The panel must have an odd number of members not less than five.
- (1B) The members of the panel must include—
- (a) at least two who are non-legally-qualified,
- (b) at least two judicial members, and
- (c) at least two members of the Commission,
- and contributions to meeting more than one of the requirements may be made by the same person’s membership of the panel.
- (1C) The members of the panel may not include the Senior President of Tribunals.”
- (3) In subsection (2)(a) (panel to determine selection process to be applied) after “applied” insert “by it”.
- (4) In subsection (5) (subsection (4) applies to selection under section 75B or 75G) for “section 75G” substitute “regulations under section 94C”.
- 61 In section 76 (sections 77 to 84 apply in relation to appointment of ordinary judges of the Court of Appeal)—
- (a) in subsection (1) for “84” substitute “79”, and
- (b) in subsection (2) for “96” substitute “94C and regulations made under it”.
- 62 In section 78 (sections 79 to 84 apply where request made under section 78)—
- (a) in subsection (4) for “Sections 79 to 84 apply” substitute “Section 79 applies”, and
- (b) in subsection (5) for “Those sections are” substitute “That section is”.
- 63 (1) Section 79 (process for selecting person to be recommended for appointment as ordinary judge of Court of Appeal) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) The panel must have an odd number of members not less than five.
- (1B) The members of the panel must include—

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- (a) at least two who are non-legally-qualified,
 - (b) at least two judicial members, and
 - (c) at least two members of the Commission,and contributions to meeting more than one of the requirements may be made by the same person's membership of the panel."
- (3) In subsection (2)(a) (panel to determine selection process to be applied) after "applied" insert "by it".
- (4) In subsection (4) (subsection (3) applies to selection under section 79 or 84) for "section 84" substitute "regulations under section 94C".
- 64 (1) Section 85 (sections 86 to 93 apply in relation to appointment of puisne judges of the High Court or to offices listed in Schedule 14) is amended as follows.
 - (2) In subsection (1)—
 - (a) for "93" substitute "88",
 - (b) in paragraph (c) before "Part 2 or 3" insert "Table 1 of", and
 - (c) after paragraph (c) insert—
 - "(d) an appointment to an office listed in Table 2 of Part 2 of that Schedule in exercise of the Lord Chief Justice's function under the enactment listed opposite that office;
 - (e) an appointment to an office listed in Table 2 of Part 3 of that Schedule in exercise of the function of the Senior President of Tribunals under the enactment listed opposite that office."
 - (3) In subsection (2) for "96" substitute "94C and regulations made under it".
 - (4) After subsection (4) insert—
 - "(5) The Lord Chancellor may by order provide that this section does not apply to appointments to an office listed in Schedule 14 that is specified in the order.
 - (6) An office may not be specified in an order under subsection (5) if—
 - (a) the provisions governing appointment to the office provide that a person is eligible for appointment only where the person satisfies the single condition specified in the provisions, and
 - (b) that condition is one of the conditions listed in subsection (8).
 - (7) An office may not be specified in an order under subsection (5) if—
 - (a) the provisions governing appointment to the office provide that a person is eligible for appointment only where the person satisfies one or some other particular number or all, or at least one or at least 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;

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- (c) that the person is an advocate in Scotland of at least a particular number of years' standing;
 - (d) that the person is a solicitor in Northern Ireland of at least a particular number of years' standing;
 - (e) that the person is a barrister in Northern Ireland of at least a particular number of years' standing.
- (9) Before making an order under subsection (5) the Lord Chancellor must consult the Lord Chief Justice, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland.
- (10) An order under subsection (5)—
- (a) may make different provision for different purposes;
 - (b) may make consequential, transitory, transitional or saving provision.”
- 65 (1) Section 86 (duty to fill vacancies) is amended as follows.
- (2) After subsection (1) (duty to make a recommendation to fill vacancy for a puisne judge of the High Court or in an office listed in Part 1 of Schedule 14) insert—
- “(1A) The Lord Chancellor must, as soon as is reasonably practicable after being informed by the Lord Chief Justice that a selection under this Chapter for a recommendation for an appointment to an office listed in Table 2 of Part 1 of that Schedule has been accepted unconditionally or subject to conditions that have since been met, make a recommendation of the selected person for an appointment to that office.
- (1B) The Lord Chancellor must, as soon as is reasonably practicable after being informed by the Senior President of Tribunals that a selection under this Chapter for a recommendation for an appointment to an office listed in Table 3 of Part 1 of that Schedule has been accepted unconditionally or subject to conditions that have since been met, make a recommendation of the selected person for an appointment to that office.”
- (3) In subsection (2) (Lord Chancellor must fill vacancy in office listed in Part 2 or 3 of Schedule 14) after “listed in” insert “Table 1 of”.
- (4) After that subsection insert—
- “(2A) The Lord Chief Justice must make an appointment to fill any vacancy in an office listed in Table 2 of Part 2 of that Schedule.
- (2B) The Senior President of Tribunals must make an appointment to fill any vacancy in an office listed in Table 2 of Part 3 of that Schedule.”
- (5) After subsection (3) insert—
- “(4) Subsections (2A) and (2B) do not apply to a vacancy while the Lord Chancellor agrees that it may remain unfilled.”
- 66 (1) Section 87 (request for selection of person to fill vacancy for High Court judge or in an office listed in Schedule 14) is amended as follows.
- (2) After subsection (1) insert—

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- “(1A) The Lord Chancellor may request the Commission to select a person for membership of a pool for requests under section 9(1) of the Senior Courts Act 1981, and a person may become a member of such a pool only by selection on a request under this subsection.”
- (3) In subsection (4) (sections 88 to 93 apply where request made under section 87) for “Sections 88 to 93 apply” substitute “Section 88 applies”.
- (4) In subsection (5) for “Those sections are” substitute “That section is”.
- 67 In section 88 (selection process: puisne judges of High Court and other office holders)—
- (a) omit subsection (2) (insufficient candidates of merit),
 - (b) omit subsection (3) (required elements of selection process),
 - (c) in subsection (4) (duty to arrange selection of one person for each recommendation or appointment to which a request relates) for “or appointment” substitute “, appointment or pool membership”, and
 - (d) in subsection (5) (subsection (4) applies to selection under section 88, 92 or 93) for “section 92 or 93” substitute “regulations under section 94C”.
- 68 For section 94 (Commission’s duty to identify persons suitable for selection on a future request) substitute—

“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.”
- 69 (1) Section 95 (Lord Chancellor’s power to withdraw or modify a request) is amended as follows.
- (2) In subsection (2) before paragraph (a) insert—
- “(za) the Lord Chancellor may withdraw or modify a request in consequence of a vacancy, or perceived need for an additional office-holder, having been filled or partly filled by change in the

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amount of time required to be devoted to the duties of office by an existing holder of the office concerned.”.

- (3) In that subsection after paragraph (b) insert—
- “(ba) so far as a request relates to any pool membership, the Lord Chancellor may withdraw or modify it after consulting the Lord Chief Justice;”.
- (4) In subsection (2)(c) (withdrawal of request where selection process unsatisfactory)—
- (a) for “he”, in both places, substitute “the Lord Chancellor”, and
- (b) for “or appointments” substitute “, appointments or pool memberships”.
- (5) In subsection (3) (selection already accepted may not be changed in consequence of modification or part-withdrawal of request) after “accepted” insert “unconditionally or subject only to matters such as the selected person’s willingness and availability”.
- (6) In subsection (4) (request may not be withdrawn on ground of unsatisfactory process after exercise of power to accept, reject or require reconsideration of selection) for the words after “if” substitute “a selection made pursuant to the request—
- (a) has been accepted unconditionally or subject only to matters such as the selected person’s willingness and availability, or
- (b) in exercise of power conferred by regulations under section 94C, has been rejected or required to be reconsidered.”
- 70 (1) Section 97 (consultation under certain provisions to be with head of the judiciary in Scotland or Northern Ireland instead of with Lord Chief Justice of England and Wales) is amended as follows.
- (2) In subsection (1) (list of provisions requiring consultation)—
- (a) omit paragraphs (b), (c) and (e), and
- (b) in paragraph (d) for “95(2)(a), (b)” substitute “95(2)(b)”.
- (3) In subsection (4) (modification where requirement is to obtain concurrence rather than to consult) after “section 94A(1)” insert “or 95(2)(a)”.
- 71 (1) In section 99 (judicial appointments: complaints) after subsection (3) insert—
- “(3A) An LCJ complaint is a complaint by a qualifying complainant of maladministration by the Lord Chief Justice or the Lord Chief Justice’s nominee, or anyone acting on behalf of either of them, in connection with—
- (a) selection under this Part for an office listed in Table 2 of Part 1 or 2 of Schedule 14,
- (b) appointment to an office listed in Table 2 of Part 2 of that Schedule, or
- (c) selection under this Part for membership of a pool for requests under section 9(1) of the Senior Courts Act 1981,
- or of maladministration by the Lord Chief Justice or the Master of the Rolls or the Lord Chief Justice’s nominee, or anyone acting on behalf of any of them, in connection with the making of requests under section 9(1) of that Act.
- (3B) An SPT complaint is a complaint by a qualifying complainant of maladministration by the Senior President of Tribunals or a person to whom the Senior President has delegated functions, or anyone acting on behalf of either of them, in connection with—

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- (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.”
- 72 In section 100 (duty to make arrangements to investigate complaints) after subsection (2) insert—
 - “(2A) The Lord Chief Justice must make arrangements for investigating any LCJ complaint made to the Lord Chief Justice.
 - (2B) The Senior President of Tribunals must make arrangements for investigating any SPT complaint made to the Senior President of Tribunals.”
- 73 (1) Section 101 (complaints to the Judicial Conduct and Appointments Ombudsman) is amended as follows.
 - (2) In subsections (1)(a) and (4)(a) (investigation of complaints previously made to Judicial Appointments Commission or Lord Chancellor) for “or the Lord Chancellor” substitute “, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals”.
 - (3) In subsection (1)(b) for “Commission’s or Lord Chancellor’s decision” substitute “decision of the Commission, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals”.
- 74 In section 102 (Ombudsman’s reports and recommendations)—
 - (a) in subsection (2)(c) (recommended action) for “or the Lord Chancellor” substitute “, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals”, and
 - (b) in subsection (4) (compensation not to be recommended for failure to be appointed to an office) after “office” insert “, or selected for membership of a pool,”.
- 75 (1) Section 103 (Ombudsman’s reports) is amended as follows.
 - (2) For subsection (2) (drafts of reports) substitute—
 - “(2) The Ombudsman must submit a draft of the report to the Lord Chancellor and to—
 - (a) the Commission if the complaint was a Commission complaint;
 - (b) the Lord Chief Justice if the complaint was an LCJ complaint;
 - (c) the Senior President of Tribunals if the complaint was an SPT complaint.”
 - (3) In subsection (3) (duty to have regard to comments on draft) for “or the Commission” substitute “the Commission, the Lord Chief Justice or the Senior President of Tribunals”.
 - (4) After subsection (5) insert—
 - “(5A) If the complaint was an LCJ complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Lord Chief Justice.
 - (5B) If the complaint was an SPT complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Senior President of Tribunals.”

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- 76 (1) Section 104 (referrals to Judicial Conduct and Appointments Ombudsman of matters relating to Judicial Appointments Commission) is amended as follows.
- (2) In subsection (1) (duty to investigate matter referred by Lord Chancellor) after “Lord Chancellor” insert “, the Lord Chief Justice or the Senior President of Tribunals”.
- (3) In subsection (3) (report on referred matter) after “Lord Chancellor” insert “, the Lord Chief Justice and the Senior President of Tribunals”.
- 77 In section 105 (provision of information to Ombudsman) after “The Commission” insert “, the Lord Chief Justice, the Senior President of Tribunals”.
- 78 In section 144(5) (orders and regulations subject to affirmative procedure) after paragraph (a) insert—
- “(aa) an order under section 85(5);
 (ab) regulations under section 94 or 94C;”.
- 79 In paragraph 2 of Schedule 7 (functions of Lord Chancellor under the Act are protected from transfer to other Ministers etc) after “under this Act” insert “, including any function under provision inserted into this Act by—
- (a) the Crime and Courts Act 2013, or
 (b) any earlier or later enactment”.
- 80 In Schedule 12 (the Judicial Appointments Commission) in paragraphs 20(6) and 27(3) (selection panels under section 70 or 79) after “70” insert “, 75B”.

Changes in relation to selection process: consequential repeals

- 81 Omit Part 5 of this Schedule (amendments which come into force on the passing of this Act, but which are superseded on amendments made by this Part of this Schedule being brought into force).

PART 5

SELECTION OF LORD CHIEF JUSTICE AND HEADS OF DIVISION: TRANSITORY PROVISION

- 82 (1) The Constitutional Reform Act 2005 is amended as follows.
- (2) In section 70 (selection process for appointment of Lord Chief Justice or Head of Division) after subsection (2) insert—
- “(2A) In determining the selection process to be applied, the panel must ensure that the process—
- (a) includes consultation of the Lord Chancellor, and
 (b) if the request relates to a recommendation for an appointment to the office of Lord Chief Justice, also includes consultation of the First Minister for Wales.”
- (3) For section 71 of the Constitutional Reform Act 2005 (selection panel for appointment of Lord Chief Justice or Head of Division) substitute—

“71 Selection panel for appointment of Lord Chief Justice

- (1) This section applies where the request relates to a recommendation for an appointment to the office of Lord Chief Justice.

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- (2) The selection panel must consist of five members.
- (3) The first member is the chairman of the Commission, unless there is no chairman of the Commission or the chairman of the Commission is incapacitated.
- (4) If there is no chairman of the Commission or the chairman of the Commission is incapacitated, the first member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (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 subsection (10) applies.
- (9) Subsection (10) applies if—
 - (a) there is no Lord Chief Justice, or
 - (b) the Lord Chief Justice is incapacitated.
- (10) In those cases the most senior England and Wales Supreme Court judge who is neither disqualified nor incapacitated must, after consulting the first member, designate a person as the fifth member.
- (11) Only the following may be a nominee under subsection (5) or designated under subsection (8) or (10)—
 - (a) an England and Wales Supreme Court judge,
 - (b) a Head of Division, or
 - (c) an ordinary judge of the Court of Appeal in England and Wales.
- (12) A person may not be a nominee under subsection (5), or be designated under this section, if the person is disqualified.
- (13) Before designating a person under subsection (7) as the fourth member, the first member must, if practicable, consult the Lord Chief Justice.
- (14) The first member is the chairman of the panel.
- (15) A person is disqualified for the purposes of this section 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.

71A Selection panel for appointment of Head of Division

- (1) This section applies where the request relates to a recommendation for an appointment to one of the following offices—

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- (a) Master of the Rolls;
 - (b) President of the Queen’s Bench Division;
 - (c) President of the Family Division;
 - (d) Chancellor of the High Court.
- (2) The selection panel must consist of five members.
- (3) The first member is the Lord Chief Justice or the Lord Chief Justice’s nominee, unless subsection (9) applies.
- (4) Unless subsection (9) applies, the second member is the most senior England and Wales Supreme Court judge who is neither disqualified nor incapacitated, or that judge’s nominee.
- (5) The third member is the chairman of the Commission or the chairman’s nominee, unless subsection (11) applies.
- (6) The fourth member is a lay member of the Commission designated by the third member.
- (7) The fifth member is a person designated by the first member after consulting the third member.
- (8) Subsection (9) applies if—
- (a) there is no Lord Chief Justice,
 - (b) the Lord Chief Justice is disqualified, or
 - (c) the Lord Chief Justice is incapacitated.
- (9) In those cases—
- (a) the most senior England and Wales Supreme Court judge who is neither disqualified nor incapacitated, or that judge’s nominee, is the first member, and
 - (b) the second member is a person designated by the first member.
- (10) Subsection (11) applies if—
- (a) there is no chairman of the Commission, or
 - (b) the chairman of the Commission is incapacitated.
- (11) In those cases the third member of the Commission is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (12) Only the following may be a nominee under subsection (3), (4) or (9)(a) or designated under subsection (9)(b)—
- (a) an England and Wales Supreme Court judge,
 - (b) a Head of Division, or
 - (c) an ordinary judge of the Court of Appeal in England and Wales.
- (13) Only a lay member of the Commission may be a nominee under subsection (5).
- (14) Only the following may be designated under subsection (7)—
- (a) an England and Wales Supreme Court judge,
 - (b) a senior judge (as defined by section 109(5)),

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- (c) the holder of an office listed in Schedule 14, or
 - (d) a member of the Commission.
- (15) A person may not be a nominee under this section, or be designated under this section, if the person is disqualified.
- (16) The first member is the chairman of the panel.
- (17) A person is disqualified for the purposes of this section if—
- (a) the person is the current holder of the office for which a selection is to be made, or
 - (b) the person is willing to be considered for selection.

71B Sections 71 and 71A: diversity and interpretation

- (1) Subsection (2) applies where a person chooses a person to be a member of a selection panel under section 71 or 71A (whether as a nominee, as a designated member or otherwise).
- (2) 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 panel should include—
- (a) both women and men, and
 - (b) members drawn from a range of different racial groups;
- and in this subsection “racial group” has the same meaning as in section 9 of the Equality Act 2010.
- (3) Section 16 does not apply to functions of the Lord Chief Justice under section 71 or 71A; and references in sections 71 and 71A to a person being incapacitated are to the person being incapacitated in the opinion of the Lord Chancellor.
- (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 sections 71 and 71A as follows—
- (a) the President of the Supreme Court, if an England and Wales Supreme Court judge, is senior to all 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 all 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 subsection (4) “ordinary England and Wales Supreme Court judge” means an England and Wales Supreme Court judge who is neither the President of the Court nor the Deputy President.
- (6) Service as a Lord of Appeal in Ordinary counts as service as a judge of the Supreme Court for the purposes of subsection (4)(c).

Status: This is the original version (as it was originally enacted).

- (7) In sections 71 and 71A and this section “England and Wales Supreme Court judge” means a judge of the Supreme Court who has held high judicial office in England and Wales before appointment to the Court.”
- (4) In paragraph 11(3) of Schedule 12 (functions of the chairman of the Judicial Appointments Commission which, in the chairman’s absence, are not exercisable by the vice-chairman) after paragraph (b) insert—
 “(ba) section 71A;”.
- (5) An amendment made by this paragraph does not have effect in relation to a request under section 69 of the Constitutional Reform Act 2005 received by the Judicial Appointments Commission before the amendment comes into force.

PART 6

APPOINTMENT OF JUDGE TO EXERCISE FUNCTIONS OF A HEAD OF DIVISION IN CASE OF INCAPACITY OR A VACANCY ETC

- 83 Where a Head of Division is incapable of exercising relevant functions, or the office of a Head of Division is vacant, the Lord Chief Justice may, with the concurrence of the Lord Chancellor, appoint a judge of the Senior Courts to exercise relevant functions of the Head of Division.
- 84 An appointment under paragraph 83—
 (a) must be in writing,
 (b) must specify the functions that may be exercised by the appointed judge, and
 (c) must set out the duration of the appointment.
- 85 In paragraph 83—
 “Head of Division” means—
 (a) the Master of the Rolls,
 (b) the President of the Queen’s Bench Division,
 (c) the President of the Family Division, or
 (d) the Chancellor of the High Court;
 “the Lord Chief Justice” means the Lord Chief Justice of England and Wales;
 “the Senior Courts” means the Senior Courts of England and Wales.
- 86 In this Part of this Schedule “relevant functions” means functions under any of the following—
 section 5 of the Public Notaries Act 1843 (functions of Chancellor of the High Court in relation to refusal of master of the faculties to grant a faculty to practise as a public notary);
 section 8(5) of the Public Records Act 1958 (President of the Family Division to be consulted in relation to transfer of certain records);
 section 5(2) or (3) of the Senior Courts Act 1981 (concurrence of Heads of Division with transfer of judges between Divisions of High Court etc);
 section 7(1) of the Senior Courts Act 1981 (power of Lord Chancellor, Lord Chief Justice and Heads of Division, acting collectively, to recommend alteration of Divisions of High Court etc);

Status: This is the original version (as it was originally enacted).

section 11(9) of the Senior Courts Act 1981 (concurrence of particular Heads of Division etc with Lord Chancellor's declaration of a vacancy in the office of a judge of the Senior Courts who is permanently incapacitated and unable to resign);

section 54 of the Senior Courts Act 1981 (functions of Master of the Rolls in relation to composition of courts of civil division of Court of Appeal);

section 57 of the Senior Courts Act 1981 (determination by Master of the Rolls with concurrence of Lord Chancellor of sittings of civil division of Court of Appeal during vacation);

section 61(5) of the Senior Courts Act 1981 (concurrence of Heads of Division concerned with assignment of business of one Division of High Court to another Division of High Court);

section 63(3) of the Senior Courts Act 1981 (concurrence of Head of Division concerned with direction that business is to cease to be assigned to specially nominated judge of High Court);

section 71(4)(a) of the Senior Courts Act 1981 (determination by Heads of Division with concurrence of Lord Chancellor of sittings of Divisions of High Court during vacation);

section 109(2) or 110 of the Senior Courts Act 1981 (President of the Family Division may make certain arrangements in relation to documents relating to probate etc);

section 111 of the Senior Courts Act 1981 (President of the Family Division may give directions as to form and content of records of grants made in the Principal Registry or a district probate registry);

section 126 of the Senior Courts Act 1981 (President of the Family Division may, with concurrence of Lord Chancellor, make regulations imposing conditions on deposit of wills);

section 133 of the Senior Courts Act 1981 (functions of Master of the Rolls in relation to enrolment and engrossment of instruments);

section 25(3)(a) of the Administration of Justice Act 1982 (President of the Family Division may, with concurrence of Lord Chancellor, make regulations as to deposit and registration of wills);

section 257(3) of the Inheritance Tax Act 1984 (President of the Family Division may make certain arrangements in relation to delivery of accounts for the purposes of that Act);

section 37 of the Matrimonial and Family Proceedings Act 1984 (President of the Family Division may, with concurrence of Lord Chancellor, give directions with respect to distribution and transfer between High Court and family court of family business and family proceedings);

section 1(9) of the Courts and Legal Services Act 1990 (Heads of Division etc to be consulted in relation to changes to allocation of business of High Court and county court);

section 58A(5)(a), 58AA(6)(a) or 58B(7)(a) of the Courts and Legal Services Act 1990 (Heads of Division etc to be consulted in relation to certain matters relating to agreements for funding of legal services);

section 56(4) of the Access to Justice Act 1999 (Heads of Division etc to be consulted in relation to changes to destination of appeals);

section 57 of the Access to Justice Act 1999 (Master of the Rolls or President of the Family Division etc may assign appeals to the Court of Appeal);

Status: This is the original version (as it was originally enacted).

section 2(7) of the Courts Act 2003 (Heads of Division etc to be consulted in relation to authorisation of contracting-out of administrative work of courts);
 section 64(4) of the Courts Act 2003 (Heads of Division to be consulted in relation to change of judicial title);
 section 66(4)(b) of the Courts Act 2003 (President of the Family Division may nominate Circuit judges etc to sit as members of family proceedings courts);
 section 77(3) of the Courts Act 2003 (President of the Family Division etc to be consulted in relation to certain appointments to Family Procedure Rule Committee);
 section 78(2) of the Courts Act 2003 (President of the Family Division to be consulted in relation to certain changes to Family Procedure Rule Committee);
 section 92(5) of the Courts Act 2003 (Heads of Division etc to be consulted in relation to fees of Senior Courts, family court, county court and magistrates' courts);
 paragraph 12(4) of Schedule 7 to the Courts Act 2003 (Heads of Division etc to be consulted in relation to regulations about enforcement officers);
 section 52(4) of the Constitutional Reform Act 2005 (Heads of Division etc to be consulted in relation to Supreme Court fees);
 section 183(7)(b) of the Legal Services Act 2007 (consent of Master of the Rolls etc in relation to fees for administration of an oath or taking of an affidavit);
 paragraph 1(10) of Schedule 3 to the Legal Services Act 2007 (concurrence of President of the Family Division etc with meaning of "reserved family proceedings" prescribed for the purposes of that paragraph).

- 87 The Lord Chancellor may by order amend the list in paragraph 86 so as to—
- (a) add an entry,
 - (b) remove an entry, or
 - (c) vary an entry.
- 88 After section 10(6) of the Senior Courts Act 1981 (where there is a vacancy in one or more of the offices of the Heads of Division, a newly-appointed Lord Chief Justice is to take the required oaths in the presence of the holders of such of the offices as are not vacant) insert—
- “(6A) Where the holder of an office mentioned in subsection (5) is incapable of exercising the functions of the office, the office is to be treated as vacant for the purposes of subsection (6).”

PART 7

ABOLITION OF OFFICE OF ASSISTANT RECORDER

- 89 (1) In section 24 of the Courts Act 1971 (deputy Circuit judges and assistant Recorders) in subsection (1) omit paragraph (b) (power to appoint assistant Recorders).
- (2) In consequence of that repeal—
- (a) in subsection (1A) of that section (duration of appointments)—
 - (i) omit “in the case of appointment as a deputy Circuit judge,”, and
 - (ii) omit the words after “seventy-five”,
 - (b) in subsection (2) of that section—
 - (i) omit “or assistant Recorder”, and

Status: This is the original version (as it was originally enacted).

- (ii) omit “or a Recorder, as the case may be”,
- (c) in subsection (3) of that section omit the words after “pensions of such judges”,
- (d) in subsection (5) of that section omit “and assistant Recorders”,
- (e) in the title of that section omit “and assistant Recorders”,
- (f) in Schedule 5 to the Judicial Pensions and Retirement Act 1993 omit the entry for Assistant Recorder,
- (g) in Schedule 7 to the Judicial Pensions and Retirement Act 1993 omit paragraph 5(5)(ii),
- (h) in section 9(4) of the Senior Courts Act 1981 omit “and assistant Recorders”,
- (i) in section 64(2) of the Courts Act 2003 omit the entry for Assistant Recorder,
- (j) in Schedule 4 to the Constitutional Reform Act 2005 omit paragraph 71(2)(d),
- (k) in Part 2 of Schedule 14 to that Act omit the entry for Assistant Recorder, and
- (l) in Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 omit paragraph 9(4).