STATUTORY INSTRUMENTS

2013 No. 1674

JUDICIAL APPOINTMENTS AND DISCIPLINE

The Judicial Discipline (Prescribed Procedures) Regulations 2013

Made - - - -	*4th July 2013*
Laid before Parliament	*15th July 2013*
Coming into force - -	*1st October 2013*

The Lord Chief Justice, in exercise of powers conferred under sections 115, 120 and 121 of the Constitutional Reform Act 2005(**a**), and under paragraph 14 of Schedule 3 to the Coroners and Justice Act 2009(**b**), and with the agreement of the Lord Chancellor, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, makes the following Regulations:

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Judicial Discipline (Prescribed Procedures) Regulations 2013 and shall come into force on 1st October 2013.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Constitutional Reform Act 2005;

"advisory committee" means one of the Lord Chancellor's advisory committees on justices of the peace;

"area coroner" means a person appointed as such under paragraph 2 of Schedule 3 to the Coroners and Justice Act 2009;

"assistant coroner" means a person appointed as such under paragraph 2 of Schedule 3 to the Coroners and Justice Act 2009;

"bank holiday" means a bank holiday under the Banking and Financial Dealings Act 1971(**c**) in the part of the United Kingdom where service is to take place;

"business day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom;

(**a**) 2005 c.4; sections 120 and 121 were extended by the Coroners and Justice Act 2009 (c.25), Schedule 3, paragraph 14.
(**b**) 2009 c.25.
(**c**) 1971 c.80.

"case" means a complaint or issue of misconduct being considered under these Regulations;

"complaint" means a complaint containing an allegation of misconduct by a person holding judicial office or other office;

"disciplinary action" means—

(a) the exercise by the Lord Chancellor of the Lord Chancellor's power to remove a person from office;

(b) the exercise by the Lord Chief Justice of any of the Lord Chief Justice's powers under section 108(3), (4)(b) and (c) and (5) of the Act(**a**); or

(c) a decision that the Lord Chancellor will move an Address for the removal of a senior judge by both Houses of Parliament;

"disciplinary panel" has the meaning given by regulation 11;

"investigating judge" has the meaning given by regulation 10;

"justice of the peace" means a justice of the peace who is not a District Judge (Magistrates' Courts);

"nominated judge" has the meaning given by regulation 9;

"office" means an office listed in regulation 3;

"office holder concerned" means the holder of an office whose conduct is being considered in accordance with these Regulations;

"relevant President" in relation to a tribunal means a President or other office holder with disciplinary responsibility for tribunal members and includes any office holder designated to exercise such disciplinary responsibility under rules made under regulation 7;

"senior coroner" means a person appointed as such under paragraph 1 of Schedule 3 to the Coroners and Justice Act 2009;

"tribunal member" has the meaning given by regulation 8.

(2) In these Regulations, unless the contrary intention appears, a reference to the Lord Chief Justice is to be read—

(a) in relation to an office holder who exercises functions wholly or mainly in Scotland, as a reference to the Lord President of the Court of Session;

(b) in relation to an office holder who exercises functions wholly or mainly in Northern Ireland, as a reference to the Lord Chief Justice of Northern Ireland;

(c) otherwise, as a reference to the Lord Chief Justice of England and Wales.

Application

3. These Regulations apply to—

(a) a judicial office;

(b) the offices of senior coroner, area coroner or assistant coroner;

(c) an office that has been designated by an order under section 118 of the Act.

The Judicial Conduct Investigations Office

4.—(1) The Lord Chancellor must, with the agreement of the Lord Chief Justice, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, designate officials for the purpose of performing functions under these Regulations.

(2) Officials designated by the Lord Chancellor under paragraph (1) are known collectively as the Judicial Conduct Investigations Office.

(**a**) 2005 c.4; section 108 was extended by the Coroners and Justice Act 2009 (c.25), Schedule 3, paragraph 14.

(3) The Judicial Conduct Investigations Office may undertake such enquiries as are necessary for it to perform its functions under these Regulations or under any rules made under these Regulations.

(4) The Judicial Conduct Investigations Office may provide advice to any person regarding the application and interpretation of these Regulations and any rules made under these Regulations.

(5) For the purpose of paragraph (4) advice may include advice regarding any proposed disciplinary action.

(6) The Judicial Conduct Investigations Office may provide administrative assistance to a nominated judge, a relevant President, an investigating judge or a disciplinary panel in relation to the exercise of their functions under these Regulations or rules made under these Regulations.

Measurement of time for doing an act

5. In these Regulations the time for doing any act in response to a notification, invitation or request ("the document") starts on the day that corresponds to the method of delivery used in relation to the notification, invitation or request shown in the table below—

Method of delivery	*Starting day*
First class post (or other method which provides for delivery on the next business day).	The second business day after the day on which the document was posted.
Second class post.	The third business day after the day on which the document was posted.
Delivering the document to or leaving it at a permitted address.	If it is delivered to or left at the permitted address on a business day before 4.30pm, that day; or if delivered at, or after, 4.30pm, the next business day.
Fax.	If the transmission of the fax is completed on a business day before 4.30pm, that day; or if transmitted at, or after, 4.30pm, the next business day.
Other electronic method.	If an e-mail or other electronic transmission is sent on a business day before 4.30pm, that day; or if an e-mail or other electronic transmission is sent at, or after, 4.30pm, the next business day.

PART 2

Complaints and investigation of complaints

Complaint of misconduct

6.—(1) Subject to paragraphs (2) and (3), a complaint about an office holder must be made to the Judicial Conduct Investigations Office.

(2) A complaint about a justice of the peace must be made to the advisory committee for the local justice area to which the justice of the peace is assigned under section 10(2) of the Courts Act 2003(**a**).

(3) A complaint about a tribunal member, other than a President, must be made to the relevant President of the tribunal concerned.

(**a**) 2003 c.39; section 10(2) was amended by the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraphs 308 and 313.

Investigation process

7.—(1) The Lord Chief Justice, with the agreement of the Lord Chancellor, may make rules about the process to be applied when a complaint is made under regulation 6(**a**).

(2) Rules under paragraph (1) shall not apply in relation to an office holder who exercises functions wholly or mainly in Scotland, unless they are made with the agreement of the Lord President of the Court of Session.

(3) Rules under paragraph (1) shall not apply in relation to an office holder who exercises functions wholly or mainly in Northern Ireland, unless they are made with the agreement of the Lord Chief Justice of Northern Ireland.

(4) The rules may include provision as to any of the following—

(a) the form of a complaint;

(b) the information to be contained in a complaint;

(c) time limits for taking any step and procedures for extending or shortening time limits;

(d) the circumstances in which a complaint or a part of a complaint may be dismissed;

(e) the circumstances in which an investigation may be undertaken (on the making of a complaint or otherwise);

(f) the conduct of an investigation, including steps to be taken by the office holder concerned, by a complainant or any other person;

(g) the circumstances in which an investigation may be conducted by the Judicial Conduct Investigations Office, a nominated judge, an investigating judge, a disciplinary panel, a relevant President or a person delegated by a relevant President;

(h) the circumstances in which a complaint may be dealt with under a summary procedure;

(i) the steps to be taken by a person investigating a complaint where they wish to recommend that the Lord Chief Justice should exercise the power to suspend an office holder under section 108(7) of the Act;

(j) the circumstances in which a complaint or part of a complaint which has initially been dismissed may be reconsidered.

Tribunal member

8. A tribunal member for the purposes of these Regulations is a person specified as such under rules made under regulation 7.

Nominated judge

9.—(1) A nominated judge means an office holder who is nominated by the Lord Chief Justice to deal with a case in accordance with rules made under regulation 7.

(2) The Lord Chief Justice may nominate different office holders to deal with different cases or to deal with different aspects of the same case.

(3) In a particular case, a nominated judge must be of at least the same rank as the office holder concerned.

Investigating judge

10.—(1) An investigating judge means an office holder or a former office holder who is nominated by the Lord Chief Justice to investigate a case in accordance with rules made under regulation 7.

(**a**) Section 117 of the Constitutional Reform Act 2005 (c.4) provides the Lord Chief Justice with a power to make rules under the Regulations.

(2) The Lord Chief Justice may nominate different office holders to investigate different cases or to investigate different aspects of the same case.

(3) An investigating judge must be of a higher rank than the office holder concerned.

(4) In relation to a former office holder reference to their rank means the rank they held immediately before they ceased to hold office.

Disciplinary panel

11.—(1) A disciplinary panel is a panel consisting of—

(a) either an office holder or former office holder who is of a higher rank than the office holder concerned;

(b) either an office holder or former office holder who is of the same rank as the office holder concerned; and

(c) two other members, neither of whom has been—

(i) an office holder, or

(ii) a practising or employed lawyer.

(2) In relation to a former office holder, reference to their rank means the rank they held immediately before they ceased to hold office.

(3) The Lord Chief Justice must nominate the members of a disciplinary panel under paragraph (1)(a) and (b).

(4) The Lord Chancellor must nominate with the agreement of the Lord Chief Justice the other members in paragraph (1)(c).

(5) A person is ineligible for membership of a disciplinary panel if that person has had any previous involvement in the disciplinary process relating to the case that is being referred to the disciplinary panel.

(6) The office holder nominated under paragraph (1)(a) must chair the disciplinary panel and must exercise a casting vote if necessary.

PART 3

Decisions

Consideration of advice

12. Before making a decision under regulation 15 in relation to a case, the Lord Chancellor and the Lord Chief Justice must consider any advice provided by a person who or a body that has conducted an investigation into a complaint in accordance with rules made under regulation 6.

Further investigation

13.—(1) This regulation applies where the Lord Chancellor and the Lord Chief Justice have considered advice in accordance with regulation 12 and they require further investigation before making a decision under regulation 15.

(2) If the Lord Chancellor and the Lord Chief Justice agree, they may refer a complaint to a person or body listed in paragraph (3) to investigate further that complaint.

(3) The persons and bodies are—

(a) a nominated judge;

(b) in relation to a tribunal member, a relevant President or their designate;

(c) in relation to a magistrate, an advisory committee;

(d) an investigating judge; or

(e) a disciplinary panel.

(4) Any further investigation must be carried out in accordance with rules made under regulation 7.

Removal when other disciplinary power is recommended

14.—(1) This regulation applies where—

(a) advice has been provided to the Lord Chief Justice and the Lord Chancellor by a person who or a body that has conducted an investigation into a complaint in accordance with rules made under regulation 7; and

(b) that advice does not recommend the removal or suspension of an office holder from office but the Lord Chancellor and the Lord Chief Justice consider removal or suspension to be the appropriate disciplinary action.

(2) The Lord Chancellor and the Lord Chief Justice must constitute a disciplinary panel and refer the complaint to it.

(3) The disciplinary panel must—

(a) investigate the complaint in accordance with rules made under regulation 7; and

(b) advise the Lord Chancellor and the Lord Chief Justice whether disciplinary action should be taken, and if so, what disciplinary action should be taken.

(4) The Lord Chancellor and the Lord Chief Justice must consider the advice provided by the disciplinary panel before making a decision in accordance with regulation 15.

Decision

15.—(1) This regulation applies where the Lord Chancellor and the Lord Chief Justice have considered advice in accordance with regulation 12 and determine not to exercise, or exercise further, their powers in regulation 13 and regulation 14 does not apply.

(2) The Lord Chancellor and the Lord Chief Justice may agree—

(a) to dismiss a complaint; or

(b) to take a particular disciplinary action.

(3) Where a complaint is dismissed, the Lord Chancellor and the Lord Chief Justice may agree that—

(a) the alleged conduct referred to in a complaint took place but did not constitute misconduct; and

(b) the Lord Chief Justice may deal with the matter informally.

Notification of final decision

16.—(1) The Judicial Conduct Investigations Office must inform the persons listed in paragraph (2) of the decision made by the Lord Chancellor and Lord Chief Justice under regulation 15.

(2) The persons referred to in paragraph (1) are—

(a) the office holder concerned;

(b) the complainant;

(c) if the complaint is about a tribunal member, the relevant President;

(d) if the complaint is about a justice of the peace, the chairman of the advisory committee and the bench chairman.

PART 4

Miscellaneous

Interim suspension

17.—(1) If the Lord Chief Justice decides to suspend an office holder from their office under section 108(4)(a), (6) or (7) of the Act, the Lord Chief Justice must—

(a) notify the office holder of the proposed suspension, the reasons for it and the time when it is proposed that it will come into effect;

(b) notify the office holder of the factors that will be taken into account in determining when the suspension will end; and

(c) invite the office holder to make representations.

(2) The office holder must make any representations within ten business days of the notification under paragraph (1).

(3) Where, after a suspension comes into effect, any of the factors which the Lord Chief Justice has indicated would be taken into account in accordance with paragraph (1)(b) become operative, or any other matter which the Lord Chief Justice and the Lord Chancellor consider relevant arises, the Lord Chief Justice and the Lord Chancellor must—

(a) decide whether continuation of the suspension is appropriate;

(b) notify the office holder of their decision under sub-paragraph (a) and of the reasons for that decision; and

(c) invite the office holder to make representations.

(4) The office holder must make any representations within ten business days of a notification under paragraph (3).

Publication of decision

18.—(1) The Lord Chancellor and the Lord Chief Justice may agree to the publication of information about disciplinary proceedings or the taking of disciplinary action.

(2) Publication for this purpose means any form of communication which is addressed to an individual, a section of the public or the public at large.

Requirements in relation to reviews by the Ombudsman

19.—(1) If the Ombudsman requests from any person information for the purposes of a review carried out under section 111 of the Act(**a**), and such information is not provided within ten business days of the notification of the request, or within such other period as the Ombudsman indicates, they may—

(a) prepare their review without regard to that information, and

(b) may disregard any representations made out of time by the person concerned.

(2) The Lord Chancellor, the Lord Chief Justice or any person or body conducting an investigation in accordance with rules made under regulation 6 must provide the Ombudsman with such information as the Ombudsman may reasonably require for the purposes of a review carried out under section 111 or section 113 of the Act(**b**).

(3) Where the Ombudsman directs under section 111(7)(b) of the Act that an investigation should be undertaken or undertaken again, the case must be investigated in accordance with the rules made under regulation 7.

(**a**) 2005 c.4; section 111 was extended by the Coroners and Justice Act 2009 (c.25), Schedule 3, paragraph 14.
(**b**) 2005 c.4; sections 111 and 113 were extended by the Coroners and Justice Act 2009 (c.25), Schedule 3, paragraph 14.

Delegation

20. The Lord Chief Justice may delegate any functions under these Regulations other than those under regulation 7(1).

Scotland and Northern Ireland: eligibility to exercise functions

21. Where the office holder concerned is a member of a tribunal which has jurisdiction throughout Great Britain or the United Kingdom, the following office holders may also be nominated as a nominated judge under regulation 9, as an investigating judge under regulation 10 or as a member of a disciplinary panel under regulation 11—

(a) where the office holder concerned exercises functions wholly or mainly in Scotland, a sheriff, a sheriff principal or a judge of the Court of Session;

(b) where the office holder concerned exercises functions wholly or mainly in Northern Ireland, the holder of an office listed in Schedule 1 to the Justice (Northern Ireland) Act 2002(**a**).

Scotland and Northern Ireland: Judicial Appointments and Conduct Ombudsman

22. Sections 110(**b**) to 113 of the Act apply—

(a) in relation to office holders who exercise functions wholly or mainly in Scotland as if in section 110(8)(b) of the Act the reference to the Lord Chief Justice of England and Wales were a reference to the Lord President of the Court of Session; and

(b) in relation to office holders who exercise functions wholly or mainly in Northern Ireland as if in section 110(8)(b) of the Act the reference to the Lord Chief Justice of England and Wales were a reference to the Lord Chief Justice of Northern Ireland.

Ceasing to hold office

23.—(1) Subject to paragraphs (2) and (4), where the office holder concerned ceases to hold their office, consideration of the complaint under these Regulations or rules made under regulation 7 must cease.

(2) The Lord Chancellor and the Lord Chief Justice may continue to deal with the case and then make a finding of misconduct in relation to the office holder concerned where the circumstances in paragraph (3) apply.

(3) The circumstances are—

(a) the office holder concerned ceases to hold their office;

(b) a disciplinary panel or an investigating judge proposes to advise, or has advised, the Lord Chief Justice and the Lord Chancellor that the office holder concerned should be removed from holding their office; and

(c) no decision has been made under regulation 15.

(4) Paragraph (1) does not apply where—

(a) the office holder concerned has ceased to hold their office; but

(b) the Ombudsman directs under section 111(7)(b) of the Act that an investigation should be undertaken or undertaken again.

Transitional provision

24.—(1) Subject to paragraph (2), these Regulations apply to any complaint made before these Regulations come into force which has not been withdrawn, dismissed or determined.

(**a**) 2002 c.26.
(**b**) 2005 c.4; section 110 was extended by the Coroners and Justice Act 2009 (c.25), Schedule 3, paragraph 14.

(2) Where the circumstances in paragraph (3) apply a complaint is to be considered as though these Regulations had not come into force and the Judicial Discipline (Prescribed Procedures) Regulations 2006(**a**) had not been revoked.

(3) The circumstances are—

(a) a complaint has been made before these Regulations come into force and the complaint has not been dismissed or withdrawn; and

(b) a notification has been made by the Lord Chancellor or the Lord Chief Justice under regulation 27(1)(a) of the Judicial Discipline (Prescribed Procedures) Regulations 2006.

Revocations

25. The following Regulations are revoked—

(a) the Judicial Discipline (Prescribed Procedures) Regulations 2006; and

(b) the Judicial Discipline (Prescribed Procedures) (Amendment) Regulations 2008(**b**).

Judge C.J.
30th June 2013 Lord Chief Justice

I agree

Chris Grayling
Lord Chancellor
3rd July 2013

I agree

Brian Gill
4th July 2013 Lord President of the Court of Session

I agree

Declan Morgan
1st July 2013 Lord Chief Justice of Northern Ireland

(**a**) S.I. 2006/676, amended by S.I. 2008/2098.
(**b**) S.I. 2008/2098.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the investigation and determination of complaints of misconduct by a judicial office holder, a senior coroner, an area coroner, an assistant coroner or an office that has been designated by an order under section 118 of the Constitutional Reform Act 2005 (c4). The term judicial office holder is defined in section 109(4) of the Constitutional Reform Act 2005.

The Regulations replace the Judicial Discipline (Prescribed Procedures) Regulations 2006 and the Judicial Discipline (Prescribed Procedures) (Amendment) Regulations 2008.

Part 1 defines certain terms used in the Regulations (regulation 2) and sets out the offices that the Regulations apply to (regulation 3). It also provides for the designation of dedicated officials in the Judicial Conduct Investigations Office to support the Lord Chancellor, the Lord Chief Justice of England and Wales, the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland in the exercise of their functions of investigating and determining complaints of judicial misconduct (regulation 4). The Judicial Conduct Investigations Office replaces the Office for Judicial Complaints.

Part 2 sets out to whom complaints are to be made (regulation 6). It also makes provision for rules to be made by the Lord Chief Justice with the agreement of the Lord Chancellor setting out the investigation process (regulation 7). Provision is also made for the nomination of nominated judges (regulation 9), investigating judges (regulation 10) and the constitution of disciplinary panels (regulation 11) who may be given functions in the investigation process.

Part 3 deals with the decision-making by the Lord Chancellor and the Lord Chief Justice once an investigation has been carried out.

Part 4 contains various miscellaneous provisions. These include provisions dealing with publication of information about disciplinary proceedings and decisions (regulation 18), the effect of the cessation of office by an office holder upon the disciplinary process (regulation 23) and transitional provision (regulation 24).

© Crown copyright 2013

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£5.75

UK201307057 07/2013 19585

http://www.legislation.gov.uk/id/uksi/2013/1674

ISBN 978-0-11-110111-7

9 780111 101117