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Judicial appointments in Northern Ireland

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This paper looks at the process of judicial appointments in Northern Ireland, including the changes that have taken place since the Review of Criminal Justice following the Belfast (Good Friday) Agreement. It compares the process in Northern Ireland with that operating in the rest of the UK and in the Republic of Ireland. It also describes the processes in Australia and Canada.

This information is provided to Members in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as legal or professional advice, or as a substitute for it.

Executive summary

Judicial appointments

The process of judicial appointments in the UK has undergone significant change in the last decade. Legislation has sought to remove the executive from the appointments process in an attempt to increase its transparency and accessibility and to encourage a judiciary more reflective of wider society. The impetus for change in Northern Ireland came from the Review of Criminal Justice report in 2000 which recommended the setting up of an independent commission to oversee appointments from the level of High Court judge downwards.

The Justice (Northern Ireland) Acts of 2002 and 2004 established the Northern Ireland Judicial Appointments Commission (NIJAC) with a statutory remit to ensure that appointments to judicial office were based solely on merit. NIJAC was established in June 2005 and is an independent Non-Departmental Public Body. It performs a similar role to that of the Judicial Appointments Commission in England and Wales established under the Constitutional Reform Act 2005. The Northern Ireland Act 2009 extended NIJAC's statutory duties further in that NIJAC became not only a recommending body in respect of Crown appointments, but also an appointing body in respect of non-Crown appointments.

In relation to Crown appointments, NIJAC is responsible for selecting a person for appointment and must notify the Lord Chancellor when the recommendation has been made. The Lord Chancellor must, as soon as is reasonably practicable, recommend the selected person for the office in question.

Furthermore, NIJAC must be consulted on the appointments of the Lord Chief Justice and Justices of Appeal.

The 2009 Act provided for certain functions relating to the office of judicial office holders to be exercised by NIJAC rather than the First and deputy First Ministers as had previously been envisaged under the Justice (Northern Ireland) Act 2002. In addition, removal of listed judicial office holders became primarily the responsibility of the Lord Chief Justice, again rather than the First and deputy First Ministers.

The new Schedule 3 of the 2002 Act (as inserted by the 2009 Act) did not include a provision for the Lord Chancellor to ask NIJAC to reconsider their selection of a candidate. This amended the previous position when, under the 2002 Act, NIJAC would have made a selection for the Lord Chancellor to consider and he could ask NIJAC to review its choice.

Gender and community balance

Research commissioned by NIJAC in 2008 showed that most people who went through an appointments process were happy with the systems put in place by NIJAC and

there was a belief that it had led to an increase in female appointments to judicial office. The under-representation of women had been highlighted in the Review of Criminal Justice. NIJAC said that the findings from the research would be used to inform its future work.

Complaints

The Northern Ireland Judicial Appointments Ombudsman is responsible for handling complaints about the process of judicial appointments, but not the conduct of judicial office holders. This is the responsibility of the Lord Chief Justice. The Ombudsman has dealt with five complaints since the office was established in 2006. In England and Wales, the Office for Judicial Complaints supports the Lord Chancellor and Lord Chief Justice in investigating complaints about judicial conduct.

Republic of Ireland

The Judicial Appointments Advisory Board is responsible for identifying suitable candidates for appointment to judicial office. Recommendations are made to the Government (Minister for Justice), but the Government is not bound to accept the Board's candidates.

Other jurisdictions

The Executive still plays a role in approving judicial appointments at the federal level in Canada and Australia, although mechanisms are in place to try to ensure a transparent appointments process. Australia has recently introduced reforms so that all appointments are based on merit, but stopped short of establishing an independent body to oversee the process. In both countries, the recommendations put forward to the Executive are subject to approval by not only the Cabinet but also subsequently the Governor General.

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1 Introduction

This research paper has been prepared to inform the Committee for Justice's review of the operation of the amendments made by Schedules 2 to 5 to the Northern Ireland Act 2009. The review is required by Section 29C of the Northern Ireland Act 1998 as amended by Schedule 6 of the Northern Ireland Act 2009 and as set out in Standing Order 49A. The Committee must report on its review by 30 April 2012 and include in its report any recommendations it has for changes to the way in which judicial office holders are appointed and removed¹.

The paper also looks at the process of judicial appointments in Northern Ireland and compares it with the processes operating in the rest of the UK and Republic of Ireland. It also describes the processes followed in Canada and Australia.

2 Northern Ireland

This section looks at the background to changes to the process of judicial appointments in Northern Ireland dating back to the Review of Criminal Justice in 2000. One of the key recommendations of this Review was the establishment of a judicial appointments commission for Northern Ireland, and the role and remit of this body is outlined below. Furthermore, it examines the legislative context within which changes to the process of judicial appointments took place.

Review of Criminal Justice

In Northern Ireland, the impetus for change was the Criminal Justice Review Group established under the Belfast (Good Friday) Agreement. Its report *Review of Criminal Justice* in 2000 recommended, among other measures, a Judicial Appointments Commission which would have responsibility for "organising and overseeing...judicial appointments from the level of High Court judge downwards"². The report highlighted concerns about the 'unrepresentative nature of the bench in Northern Ireland in terms of community background', with a 'need to secure Nationalist representation amongst the judiciary'³. Concerns were also expressed about the lack of women, people from ethnic minorities and those from lower socio-economic groups in judicial roles. The Justice (Northern Ireland) Act 2002 (the 2002 Act) gave effect to the recommendations in the Review of Criminal Justice.

Northern Ireland Judicial Appointments Commission

NIJAC is an independent executive Non-Departmental Public Body and has a statutory duty under section 5(8) of the 2002 Act to ensure that appointments to judicial office are based solely on merit.

¹ Standing Orders of the Northern Ireland Assembly

² 'Review of the Criminal Justice System in Northern Ireland', Criminal Justice Review Group, March 2000: http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf retrieved 9 February 2011

³ As above

The 2002 and 2004 Justice (Northern Ireland) Acts set out NIJAC's key statutory responsibilities:

- To conduct the appointments process and to select and recommend for appointment in respect of all listed judicial appointments up to, and including, High Court Judge
- To recommend individuals solely on the basis of merit
- To engage in a programme of action to secure, so far as it is reasonably practicable to do so, that recommendations for appointments to judicial office are reflective of the community in NI
- To engage in a programme of action to secure, as far as it is reasonably practicable to do so, that a range of persons reflective of the community in NI are available for consideration by the Commission whenever it is required to recommend a person for appointment to a listed judicial office
- To publish an annual report setting out the activities and accounts for the period

The 2009 Act extended NIJAC's statutory duties further in that NIJAC became not only a recommending body in respect of Crown appointments, but also an appointing body in respect of non-Crown appointments.

In addition, the 2009 Act also gave NIJAC a say over the judicial complement and determining certain elements (non-financial) of some terms and conditions. NIJAC's new post devolution responsibilities can be summarised as follows⁴:

- agreeing with the Department of Justice the maximum number of persons who may hold a judicial office at any one time;
- agreeing legislative change governing the maximum number of judicial offices;
- deciding elements of terms and conditions for certain judicial offices;
- supporting the Department of Justice in judicial succession planning; and
- providing Commissioners to participate in 'removal tribunals' convened by the Lord Chief Justice or the Judicial Appointments Ombudsman for NI.

The Justice (Northern Ireland) Act 2002 Act provided for the First Minister and deputy First Minister to appoint Commissioners.

What are Judicial appointments?

In its submission to the House of Lords inquiry on judicial appointments, NIJAC stated that:

⁴ NIJAC submission to House of Lords Inquiry on Judicial Appointments, September 2011

There is a varied and wide range of judicial posts to which NIJAC recruits i.e. legal and lay/ordinary and posts which require other experience outside the legal profession i.e. land valuation, medical, finance, HR and health and social care (58% are non-legal posts).

Since inception in June 2005, NIJAC has recommended 234 people for judicial appointment across 43 recruitment campaigns: 88 legally-qualified, 24 medically qualified and 122 others. As at the 1 August 2011, there were 679 judicial post holders – 43% are women. In addition, NIJAC has also overseen 507 judicial appointment renewals⁵.

Crown appointments (appointments by the Queen)	Non-Crown appointments (by NIJAC)
These are mainly full-time substantive posts in various Courts and Tribunals throughout Northern Ireland e.g. High Court Judge, County Court Judge, District Judge, District Judge (Magistrates' Courts) and Chief Social Security Commissioner/Chief Child Support Commissioner ⁶ .	These are mainly fee-paid posts in various Courts and Tribunals throughout Northern Ireland e.g. Deputy District Judge (Magistrates' Courts), Deputy Statutory Officers, fee-paid members of Tribunals including: Appeal Tribunals, Northern Ireland Valuation Tribunal, Health & Safety Tribunal, Charity Tribunal for Northern Ireland, Industrial Tribunals and Fair Employment Tribunal, Northern Ireland Traffic Penalty Tribunal for Northern Ireland etc. It should also be noted that Tribunal membership can consist of legal professionals and people from other professional backgrounds i.e. medical, finance, HR and health and social care ⁷ .

The Lord Chief Justice and Lords Justices of Appeal are appointed by the Queen on the recommendation of the Prime Minister who must consult with the current Lord Chief Justice and NIJAC before making a recommendation.

The legislative context: the Justice (Northern Ireland) Act 2002 and the Justice (Northern Ireland) Act 2004

The purpose of the Justice (Northern Ireland) Act 2002 was to implement the recommendations of the Review of Criminal Justice. The Act provided for the establishment of the Northern Ireland Judicial Appointments Commission (NIJAC) which was established in June 2005. In addition, the Act amended the law relating to the judiciary and courts in Northern Ireland, including provision for the removal of judges, changes to eligibility criteria, a new oath and provisions to make the Lord Chief Justice head of the judiciary in Northern Ireland.

The 2002 Act provided that NIJAC would make recommendations to the First and deputy First Ministers on the appointment of judicial office holders from the High Court downwards.

⁵ NIJAC submission to House of Lords inquiry into Judicial appointments

⁶ NIJAC Information leaflet

⁷ As above

The Justice (Northern Ireland) Act 2004 transferred functions of the First and Deputy First Ministers in relation to the Commission to the Lord Chancellor. These functions were the power to make appointments, or recommendations for appointment, to listed judicial offices. This allowed NIJAC to be brought into operation before the devolution of responsibility for criminal justice. Schedule 1 amended Part I of the 2002 Act to effect this transfer of functions. The Explanatory Memorandum to the 2004 Act stated: “On devolution of criminal justice, these functions will be transferred back to the First and Deputy First Ministers, acting jointly, as provided for in the 2002 Act”.⁸

Northern Ireland Act 2009

The Northern Ireland Act 2009 made amendments to the process of judicial appointments set out in the 2002 and 2004 Acts, giving NIJAC additional responsibilities.

Schedule 2 of the Act replaces Section 12 of the Judicature (Northern Ireland) Act 1978, inserting new sections 12 and 12A relating to the appointment of judges to the High Court and Court of Appeal.

The new section 12 of the 1978 Act inserted by Schedule 2 of the 2009 Act provides for the appointment of the Lord Chief Justice and Lords Justices of Appeal by the Queen on the recommendation of the Prime Minister. The Prime Minister must consult the current Lord Chief Justice and NIJAC before making a recommendation.

The new section 12A of the 1978 Act provides for the appointment of High Court judges by the Queen.

The new sections 12B and 12C deal with tenure of office of the Lord Chief Justice, Lord Justices of Appeal and certain High Court Judges. These sections also provide for the removal of office. The Queen may remove one of these judges on address by both Houses of Parliament. Such an address can only be moved if a tribunal has been convened and recommended the removal from office on grounds of misbehaviour. The 2009 Act also provides that the tribunal must include a lay member of NIJAC.

Schedule 3 of the Northern Ireland Act 2009 made a number of further changes to the appointment of judicial office holders. Schedule 3, paragraphs 5 to 7 amend sections 6 to 8 of the 2002 Act. It provides that the power to remove a person from a listed judicial office is exercisable by the Lord Chief Justice. Previously, the 2002 Act provided that the power was exercisable by the First Minister and Deputy First Minister. The First Minister and Deputy First Minister could act only on the basis of a tribunal recommendation and only on agreement of the Lord Chief Justice. Under the 2009 Act, removal of a listed judicial office holder requires a recommendation to have been made by a specially convened tribunal. The Lord Chief Justice has discretion not to remove or suspend someone even if a recommendation has been made but must notify the person and the tribunal and if a tribunal was convened by the Northern Ireland Judicial

⁸ Explanatory Memorandum to the Justice (Northern Ireland) Act 2004

Ombudsman, the Ombudsman of the reasons for not removing or suspending the person.

Schedule 3, paragraph 13 of the 2009 Act inserted a new Schedule 3 into the 2002 Act. This schedule deals with appointments to listed judicial offices. Listed judicial offices are those offices listed in schedule 1 of the 2002 Act up to and including the High Court.

Part 1 of the new Schedule 3 of the 2002 Act (inserted by Schedule 3 of the 2009 Act) deals with the appointment of listed judicial offices appointed by the Queen, known as Crown appointments. The Queen's power to appoint a person to a listed judicial office is exercisable on the recommendation of the Lord Chancellor. NIJAC is responsible for selecting a person for appointment and must notify the Lord Chancellor when the recommendation has been made. The Lord Chancellor must, as soon as is reasonably practicable, recommend the selected person for the office in question. Crown appointments are mainly full time substantive posts in a number of courts and tribunals in Northern Ireland including: High Court Judge, County Court Judge, District Judge, District Judge in Magistrates Court and the Chief Social Security Commissioner and Child Support Commissioner.⁹

Part 2 of the new Schedule 3 inserted in the 2002 Act by Schedule 3 of the 2009 Act deals with appointments made by NIJAC, known as non-Crown appointments.¹⁰ Under the 2009 provisions, NIJAC makes the appointments to these listed judicial offices, differing from the 2002 Act provision where it was envisaged that the power to make appointments to listed judicial offices would be exercised by the First Minister and Deputy First Minister.¹¹ As highlighted earlier, these functions were transferred under the 2004 Act, from the First and Deputy First Minister to the Lord Chancellor. Appointments made by the Commission are mainly fee paid posts including Deputy District Judge at the Magistrates Court, Deputy Statutory Officers and fee paid members of a number of tribunals¹².

The 2009 Act provided a role for the Department of Justice in respect of the judicial complement. Part 3 of Schedule 3 of the 2009 Act placed a duty on NIJAC to agree with the Department of Justice the maximum number of persons who may hold a judicial office at any one time. NIJAC, with agreement of the Department, may also revise the determination.

Part 4 of Schedule 3 requires selections to be based solely on merit and requires the Commission to pursue a programme of action to ensure that judicial appointments are reflective of the community in Northern Ireland and that a range of persons reflective of the community are available for consideration by the Commission when selecting a

⁹ http://www.nijac.gov.uk/index/what-we-do/general_information_leaflet_2011_amended_191011.pdf

¹⁰ http://www.nijac.gov.uk/index/what-we-do/general_information_leaflet_2011_amended_191011.pdf

¹¹ Explanatory Memorandum to the Northern Ireland Act 2009, para 7; section 5 of the 2002 Act as enacted.

¹² http://www.nijac.gov.uk/index/what-we-do/general_information_leaflet_2011_amended_191011.pdf

person or recommending for appointment. This reflects provisions inserted in the 2002 Act by the 2004 Act.

Parts 1 and 2 of the new Schedule 3 of the 2002 Act did not include a provision for the Lord Chancellor to ask NIJAC to reconsider their selection. This amended the previous position under the 2002 Act, when NIJAC would have made a selection for the Lord Chancellor to consider and he could ask NIJAC to review its choice.

Paragraphs 5 to 7 of Schedule 3 amended sections 6 to 8 of the 2002 Act so that the removal of listed judicial office holders became primarily the responsibility of the Lord Chief Justice, rather than the First and deputy First Ministers as had originally been anticipated.

Schedule 4 of the 2009 Act transferred the power of the Lord Chancellor under specified enactments to NIJAC the power to appoint certain judicial office holders previously appointed by the Lord Chancellor, including tribunals and to agree with the Justice Department to determine terms and conditions of appointment, including payment of fees and allowances.

Schedule 5 of the 2009 Act makes a number of consequential amendments and transitional provisions to the 2002 Act relating to appointments, removals and investigation of complaints of maladministration initiated that commenced before the 2009 Act came into force.

Changes to the 2009 Act

The Department of Justice Act 2010 (Northern Ireland) makes minor amendments to the 2009 Act and legislation amended by the 2009 Act, mainly to harmonise terminology. The 2010 Act changes references in paragraph 5(2) and 5(3) of the new Schedule 3 of the 2002 Act (itself inserted by the Schedule 3 of the 2009 Act) from “justice department” to “Department of Justice” (Paragraph 14, Schedule to the 2010 Act). The 2010 Act also amends some of the legislation amended by the 2009 Act so as to change references from “justice department” to “Department of Justice”. Paragraph 21 and 22 of the Schedule to the 2010 Act removes certain other specified references to the “justice department” in Schedule 3 and Schedule 4 of the 2009 Act.

The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 omitted paragraph 18 of Schedule 4 of the 2009 Act. This concerns making and control of subordinate legislation and does not affect appointments.

Ministerial involvement in judicial appointments

OFMDFM's role is one of oversight, ensuring accountability for NIJAC's governance and finance; it does not have any role in the judicial appointments process. This contrasts with the view of the Criminal Justice Review Group in 2000 which recommended that “On devolution (of policing and justice), political responsibility and

accountability for the judicial appointments process should lie with the First Minister and the Deputy First Minister”¹³.

The Review also recommended that for all judicial appointments, from lay magistrate to High Court judge, and all tribunal appointments, the Commission should submit a report of the selection process to the First Minister and deputy First Minister together with a clear recommendation. The First Minister and deputy First Minister would be required either to accept the recommendation or to ask the Commission to reconsider, giving their reasons for doing so; in the event of their asking for a recommendation to be reconsidered, they would be bound to accept the second recommendation¹⁴.

House of Lords Inquiry on Judicial Appointments

In May 2011 the House of Lords Select Committee on the Constitution launched an inquiry into the judicial appointments process for the courts and tribunals of England and Wales and Northern Ireland and for the UK Supreme Court. The Committee is currently in the process of taking evidence. Among the issues the inquiry is seeking to address are:

- Does the judicial appointments process secure an independent judiciary?
- Should Parliament scrutinise judicial appointments?
- How can public understanding of the appointments process be improved?
- Is the system based on merit?
- Does the UK have a sufficiently diverse judiciary?

The consultation asked the following question relating to Northern Ireland: “How would you assess the judicial appointments process in Northern Ireland, in particular in relation to the Northern Ireland Judicial Appointments Board?”

NIJAC submitted its response to the inquiry in September 2011. To date, the final report of the committee has not been published.

Gender and community balance in judicial appointments

According to NIJAC’s submission to the House of Lords inquiry:

The overall gender breakdown of the NI judiciary is fairly balanced, out of the 679 judicial office holders 292 are women (43%). To date there are no women serving on the High Court Bench. However, there is a better balance at other tiers:

- overall, over 4 out of 10 judicial office holders are women;

¹³ Criminal Justice Review Group (2000) Review of the Criminal Justice System in Northern Ireland”, para 6.96 http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf

¹⁴ Criminal Justice Review Group (2000) Review of the Criminal Justice System in Northern Ireland”, para 6.106 http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf

- almost 1 in 4 of County Court Judges and Magistrates' Courts District Judges are women;
- 4 out of 10 legal tribunal offices are held by women;
- a third of tribunal medical members are women; and
- women represent over 50% of the lay magistracy.¹⁵

Perceptions of the judicial appointments process in Northern Ireland

Since June 2005, NIJAC has recommended 234 people for judicial appointment across 43 recruitment campaigns: 88 legally-qualified, 24 medically qualified and 122 others. Part 1 of Schedule 3 of the Northern Ireland Act 2009 lists the judicial offices under the NIJAC's remit and is reproduced at Annex 1. The website of the Commission sets out clearly the steps involved in the process and an overview of the Northern Ireland process is provided at Annex 2.

In 2008 NIJAC commissioned research¹⁶ to identify potential barriers in the judicial appointments process. The research was carried out primarily via survey followed up with more in-depth discussions with key respondents and in focus groups. Some of the key findings from the research were:

- Religion was perceived as irrelevant as a factor in applying for judicial posts
- The methodology used by NIJAC to assess candidates...was popular primarily with potential applicants who had a public service background. It was generally viewed suspiciously by other respondents such as barristers in private practice, who were used to being assessed by peers in a professional context. It was recognised that the new system required interview skills when most of these respondents had never been interviewed before
- belief that appointments of women to non-High Court judicial posts under the NIJAC system were being viewed as successful and that these people may become role models for other women wishing to undertake this career route
- NIJAC was generally perceived to be a 'good thing'. Most of those who have close contact with it have been happy with the processing of their application for judicial post...Only those concerned with High Court posts felt that NIJAC was either irrelevant to the process or negatively affected the process
- Concern that given the small scale of the legal profession in Northern Ireland, the consultation process undertaken by the NIJAC would mean that it would become widely known who had been unsuccessful for a post

¹⁵ NIJAC submission to House of Lords September 2011

¹⁶ http://www.nijac.gov.uk/index/what-we-do/publications/qub_research_full_version_october_2008.pdf

- Steps could be taken to make the appointments system more appealing to women, in particular to increase the number of female applicants. There were fears among female respondents about fitting in to the judicial culture and one suggestion was the inclusion of female High Court judges within the appointment panels
- Merit was the most important aspect of the appointments process, although few respondents were able to clearly define it. NIJAC, if it wished to encourage a wider professional background in the higher judiciary, should consider what may be done to highlight what it perceives as the requisite elements which make up merit...for each judicial post
- The application process was viewed as fair and open, with minor concerns over the administrative aspects such as form-filling and assessment methods, although there were also problems with consultees leaking information
- There was a disparity of knowledge over the existence, basic purpose and role of NIJAC, especially in the solicitors' profession. It was suggested that NIJAC should be more pro-active in seeking out applicants...outside the greater Belfast area, especially in the west of Northern Ireland.

3 Great Britain

The Labour government elected in 1997 sought to implement fundamental changes to the legal system in England and Wales which culminated in the Constitutional Reform Act 2005. This transferred responsibility of judicial appointments to the independent Judicial Appointments Commission and replaced the Lord Chancellor with the Lord Chief Justice as head of the judiciary: "The...statutory Judicial Appointments Commission has a duty to report to the Lord Chancellor on the selection of judges. It is for the Lord Chancellor to make the appointment or the recommendation for appointment to The Queen. However, in effect, he has only strictly limited powers to challenge the recommendations of the JAC for appointment"¹⁷.

The Constitutional Reform Act was aimed at clarifying the relationship between the three arms of state and increasing the transparency of the system:

- **Reforming the role of the Lord Chancellor:** the CRA removed him as Head of the Judiciary and Speaker of the House of Lords, a move designed to increase the separation of powers and to enhance the independence of the judiciary
- **Provision for a new Supreme Court:** established as a final appeal court for the UK, with judges no longer in the House of Lords
- **Reform of the system for judicial appointments:** the CRA set up the Judicial Appointments Commission which now has key responsibility for selecting judges, and ensures there is a system of checks and balances in place aimed at ensuring a high quality, independent judiciary appointed solely on merit

¹⁷ House of Commons Briefing Paper November 2005

Previously, the “Lord Chancellor had a high level of autonomy over recommending judicial appointments, making selections following confidential, informal discussions with senior judiciary. This was a largely closed system and led to accusations that talented people were being excluded without good reason”¹⁸. The JAC significantly limited the role of the Executive in making judicial appointments. The JAC consists of 15 Commissioners: a lay Chair, five judicial members, two members from the legal professions, a tribunal office holder and a magistrate. The Commissioners are appointed by the Queen on the advice of the Lord Chancellor in accordance with the procedures set out in Schedule 12 of the CRA, which is designed to ensure appointments to the JAC are non-partisan. The appointments process is also regulated by the Commissioner for Public Appointments¹⁹.

The Lord Chancellor retains the right to accept, reject or ask the JAC to reconsider a candidate, but the reasons for doing so are limited and he must provide an explanation in such circumstances²⁰. He can only exercise that power once for each candidate and cannot select an alternative candidate²¹.

The Lord Chancellor can, however, withdraw a vacancy if he considered the process unsatisfactory, for example in the event of a procedural error. The Constitutional Renewal Bill put forward by the previous Labour government would have removed the Lord Chancellor’s discretion to accept or reject a JAC recommendation for appointment to a judicial office below the High Court.

In November 2011 the Ministry of Justice launched a consultation on appointments and diversity relating to the judiciary²². Proposals for change include:

- whether the Lord Chancellor should transfer his decision-making role to the Lord Chief Justice in relation to appointments to the Courts and Tribunals below the level of Court of Appeal or High Court;
- whether the role of the Lord Chancellor should have more meaningful involvement in appointments for the most senior judiciary in England and Wales (Lord Chief Justice, Heads of Division, Senior President of Tribunals and Lords Justices of Appeal) as well as appointments for the President of the UK Supreme Court;
- the role of the Prime Minister in judicial appointments;
- the composition and balance of independent responsibilities on selection panels; and
- the role of the Judicial Appointments Commission.

¹⁸ The Governance of Britain: Judicial Appointments, October 2007

¹⁹ As above

²⁰ House of Commons Justice Committee *Appointment of the Chair of the Judicial Appointments Commission*, January 2011

²¹ Judicial Appointments Commission *Selection Policy* <http://jac.judiciary.gov.uk/about-jac/9.htm>

²² Ministry of Justice ‘A Judiciary for the 21st Century’: <http://www.justice.gov.uk/consultations/judicial-appointments-cp19-2011.htm>

The closing date for responses is 13 February 2012.

Scotland

Scotland was the first jurisdiction within the UK to introduce an independent body for judicial appointments: the Judicial Appointments Board for Scotland. The Board was initially established by virtue of an executive mandate issued in 2001 by the Scottish Ministers to recommend to the First Minister candidates for judicial office. It became an advisory non-departmental public body on 1st June 2009 under the provisions of the Judiciary and Courts (Scotland) Act 2008. The Board is responsible for recommending individuals for appointment to the following offices: Judge of the Court of Session, Chair of the Scottish Land Court, Sheriff Principal, Sheriff and Part-time Sheriff. The Commission stated that the findings from the research would be used to inform its future work.

4 Complaints handling

Northern Ireland Judicial Appointments Ombudsman

The Constitutional Reform Act 2005 provides the statutory framework for the establishment of the Northern Ireland Judicial Appointments Ombudsman (NIJAO), which is a part-time appointment. Sections 124 to 131 of the Act²³ outline the arrangements for investigating complaints which are made to both the Judicial Appointments Commission and to the Ombudsman respectively and how they are to be reported.

The Ombudsman's remit is to investigate complaints where maladministration or unfairness is alleged to have occurred during the judicial appointments process by the Northern Ireland Judicial Appointments Commission or Committees of the Commission, the Northern Ireland Court Service or the Lord Chancellor.

The Ombudsman does not investigate complaints relating to judicial conduct as these are dealt with by the Lord Chief Justice of Northern Ireland:

This difference with the framework as it exists in England and Wales occurs because complaints relating to judicial conduct were identified as a distinct issue in the review of criminal justice, and the current process was formally legislated for in the Justice (Northern Ireland) Act 2002. By contrast, the statutory provision for investigating complaints relating to judicial conduct in England and Wales was established within the Constitutional Reform Act 2005 and included within the remit of the Ombudsman for that jurisdiction²⁴.

In the period September 2006 to 31 March 2010, the NIJAO received three complaints about appointments to judicial offices and two of these came from the same

²³ Constitutional Reform Act 2005

²⁴ Annual report of the NIJAO 2010-2011: http://www.nijao.gov.uk/Documents/NIJAO_AnnualReport_20102011.pdf

complainant regarding one post. Although none of the complaints were upheld, the Ombudsman did make minor recommendations to the NIJAC to improve the administrative process²⁵.

Responsibility of Lord Chief Justice for removal of judicial office holders

The Lord Chief Justice for Northern Ireland is responsible for complaints made against members of the judiciary. He publishes a Code of Conduct which includes the steps that will be taken when a complaint is made about the conduct of an office holder. If the complaint is serious it could be referred to a 'removal tribunal' which could see the office holder dismissed. Removal of a listed judicial office holder will require a recommendation for removal to have been made by a tribunal drawn from the Judicial Appointments Commission's membership and convened by the Lord Chief Justice or the NIJAO.

England and Wales - Office for Judicial Complaints

The Office for Judicial Complaints (OJC) deals with complaints about the personal conduct of judges. This might include use of "insulting, racist or sexist language in court, or inappropriate behaviour outside the court such as a judge using their judicial title for personal advantage or preferential treatment"²⁶.

The Office is an "associated office of the Ministry of Justice (MoJ). Its status, governance and operational objectives are set out in a Memorandum of Understanding between the Department of Courts Administration, the Judicial Office for England and Wales and the Complaints Office"²⁷.

The Complaints Office deals with complaints about the personal conduct of a judge, member of a small tribunal or coroner. Examples of personal misconduct would be the use of insulting, racist or sexist language.

According to the Judiciary of England and Wales: "Both Houses of Parliament have the power to petition The Queen for the removal of a judge of the High Court or the Court of Appeal. This power originates in the 1701 Act of Settlement and is now contained in section 11(3) of the Supreme Court Act 1981. It has never had to be exercised in England and Wales"²⁸.

Other judicial office holders can be removed by the Lord Chief Justice for incapacity or misbehaviour. This is very rare, and the case of a full-time serving judge needing to be removed, has happened just twice - once in 1983 when a judge was caught smuggling

²⁵ As above

²⁶ Office for Judicial Complaints: <http://judicialcomplaints.judiciary.gov.uk/about/about.htm>

²⁷ As above

²⁸ Judiciary of England and Wales: <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/jud-acc-ind/judges-and-parliament>

whisky from Guernsey into England; the other in 2009, for a variety of inappropriate behaviour²⁹.

Fee-paid, or part-time, office holders who are usually appointed for at least five years, may not have their contracts renewed on the following grounds: misbehaviour; incapacity; persistent failure to comply with sitting requirements (without good reason); failure to comply with training requirements; sustained failure to observe the standards reasonably expected from a holder of such office; part of a reduction in numbers because of changes in operational requirements; and part of a structural change to enable recruitment of new appointees.

England and Wales - Judicial Appointments and Conduct Ombudsman

The Judicial Appointments & Conduct Ombudsman investigates complaints from candidates for judicial office, including members of tribunals, about the way in which their application for appointment has been handled³⁰.

The Ombudsman can also consider complaints about how the Judicial Appointments Commission dealt with a complaint about the appointment process. Before the Ombudsman will take up a complaint a person must have already complained to the Judicial Appointments Commission.

Members of the public may also seek the assistance of the Ombudsman if they are unhappy with the service offered by the Office for Judicial Complaints, but only after they have complained to that body in the first instance.

The Ombudsman assumed his responsibilities on 3 April 2006 under the Provisions of the Constitutional Reform Act and is independent of Government and the judiciary.

The Ombudsman can:

- set aside a decision made by the Office for Judicial Complaints, Tribunal President or Magistrates' Advisory Committee and direct that they look at a complaint again
- recommend that an investigation or determination should be reviewed by a Review Body
- ask the Office for Judicial Complaints, Tribunal President or Magistrates' Advisory Committee to write to a person and apologise for what went wrong
- recommend that changes are made in the way the Office for Judicial Complaints, tribunal Presidents or Advisory Committees work in future to prevent the same things happening again
- suggest payment of compensation for loss which appears to the Ombudsman to have been suffered as a direct result of the poor handling of your complaint³¹.

²⁹ As above

³⁰ How to complain about the handling of complaints concerning the personal conduct of the judiciary, Judicial Appointments and Conduct Ombudsman: <http://www.justice.gov.uk/downloads/guidance/inspection-monitoring/jaco/how-to-complain-personal-judiciary.pdf>

The Ombudsman cannot:

- reprimand a judge
- re-open a case
- remove a judge from office; or
- enforce payment of compensation

5 Republic of Ireland

Prior to 1995, all appointments to the courts were made upon recommendation by the Government to the President, as provided for in the Constitution. The system was reformed following controversy about the appointment of the Attorney General to a senior judicial post after his role in delaying bringing charges in a sexual abuse case³². The Courts and Court Officers Act 1995 created the Judicial Appointments Advisory Board, which commenced operation in 1996. The “purpose of the Board is to identify persons and inform the Government (Minister for Justice) of the suitability of those persons for appointment to judicial office”³³. Judicial office encompasses an ordinary judge of the Supreme Court, ordinary judge of the High Court, ordinary judge of the Circuit Court or judge of the District Court.

The Board is made up of:

- the Chief Justice; who is Chairperson of the Board;
- the President of the High Court;
- the President of the Circuit Court;
- the President of the District Court;
- the Attorney General;
- a practising barrister who is nominated by the Chairman for the time being of the Council of the Bar of Ireland;
- a practising solicitor who is nominated by the President for the time being of the Law Society of Ireland; and
- not more than three persons appointed by the Minister for Justice and Law Reform, which are persons engaged in or having knowledge or experience of

³¹ *How to complain about the handling of complaints concerning the personal conduct of the judiciary*, Judicial Appointments and Conduct Ombudsman: <http://www.justice.gov.uk/downloads/guidance/inspection-monitoring/jaco/how-to-complain-personal-judiciary.pdf>

³² http://findarticles.com/p/articles/mi_m1141/is_n6_v31/ai_15985421/

³³ Judicial Appointments Advisory Board, Annual Report 2009: [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/6394D92252CA383F80257749004C012E/\\$FILE/JAAB%20Annual%20Report%202009.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/6394D92252CA383F80257749004C012E/$FILE/JAAB%20Annual%20Report%202009.pdf)

commerce, finance, administration, or persons who have experience as consumers of the service provided by the Courts that the Minister considers appropriate.

The 1995 Act also gives the Board the options to:

- Advertise for applications for judicial appointments
- Require applicants to complete application forms
- Consult persons concerning the suitability of applicants to the Board
- Invite persons, identified by the Board, to submit their names for consideration by the Board
- Arrange for the interviewing of applicants who wish to be considered by the Board for appointment to judicial office (to date the Board has not exercised this power due to the 'serious practical obstacles'³⁴ this would present)
- Do such other things as the Board considers necessary to enable to discharge its functions under the Act³⁵

The procedure for judicial appointments in the Republic of Ireland has come under criticism, especially when compared to recent reforms in the UK. Previous research noted that:

The Board is limited in exercise of its functions to a specific range of judicial offices. These are ordinary judges of the Supreme Court; High Court; Circuit Court and District Court. Thus, the following judicial appointments are not made by the Board: Chief Justice; President of the High Court, Circuit Court or District Court, and any promotion from a lower court... (meaning) there are a significant number of persons elevated where an independent body has no role in advising the Government³⁶.

Furthermore, the Government is obliged only to consider the names put forward by the Board and is not bound to accept any of the nominees. It has also been suggested that:

Beyond the JAAB, there is a lack of transparency in the Government's selection of candidates; both in relation to the Board's recommendations and in relation to those posts over which the Board has no role. The Government does not publish criteria on the process of selection, nor does it publish reports on its deliberations... there is no independent audit of the Government process³⁷.

This was contrasted with the situation in Northern Ireland where:

The Northern Ireland Judicial Appointments Ombudsman is empowered to investigate complaints for judicial appointments where maladministration or unfairness is alleged

³⁴ As above

³⁵ Section 14, Courts and Court Officers Act 1995

³⁶ Dermot Feenan, 'Judicial Appointments in Comparative Perspective' in *Judicial Studies Institute Journal*, volume 1 2008

³⁷ As above

to have occurred...in the Republic of Ireland, the only legal sanction against the Government or JAAB would appear to be judicial review³⁸.

6 Australia and Canada

Australia

The judicial appointments process in Australia was revised in 2008 when the Attorney General introduced new processes for appointing judges and magistrates to federal courts, including:

- broad consultation to identify persons who are suitable for appointment
- notices in national and regional media seeking expressions of interest and nominations
- notification of appointment criteria
- appointing advisory panels to assess expressions of interest and nominations against the appointment criteria to develop a shortlist of highly suitable candidates³⁹

In 2009 the Senate Legal and Constitutional Affairs Committee of the Parliament of Australia produced a report on the Australian judicial system. The report provided an overview of the judicial appointments process:

Appointments to the High Court and the Chief Justice of the Federal Court
<p>Federal judges and magistrates are appointed by the government of the day.</p> <p>The Australian Constitution does not set out specific qualifications required by federal judges and magistrates. However, laws made by the Commonwealth Parliament provide that, to be appointed as a federal judge, a person must have been a legal practitioner for at least five years or be a judge of another court. To be appointed as a federal magistrate, a person must have been a legal practitioner for at least five years. To be appointed as a judge of the Family Court of Australia, a person must also be suitable to deal with family law matters by reason of training, experience and personality.</p> <p>All federal judges and magistrates are appointed to the age of 70. The Australian Constitution provides that a federal judge or magistrate can only be removed from office on the ground of proved misbehaviour or incapacity, on an address from both the House of Representatives and the Senate in the same session.</p> <p>The Attorney General invites nominations from a broad range of individuals and organisations including the heads of federal courts, the Chief Judge of the Family Court of Western Australia, Law Council of Australia, Australian Bar Association, Law Societies and Bar Associations of each State and Territory, Deans of law schools, Australian Women Lawyers, National Association of Community Legal Centres, National Legal Aid, Administrative Appeals Tribunal, Council of Australasian Tribunals and the Veterans' Review Board.</p> <p>Letters inviting nominations are also sent to State Attorneys General (for High Court appointments this is required under section 6 of the High Court Australia Act 1979), Justices of the High Court, State and Territory Chief Justices. Candidates must meet the relevant qualifications set out in section 7 of the High Court Act 1979 or section 6(2) of the</p>

³⁸ As above

³⁹ 'Australia's judicial system and the role of judges', Legal and Constitutional Affairs Committee, December 2009
http://www.aph.gov.au/senate/committee/legcon_ctte/judicial_system/report/report.pdf

<p>Federal Court Act 1976.</p> <p>The Attorney-General considers the candidates nominated and, for each position available, identifies the person whom he considers most suitable, and then recommends this appointment to the Cabinet. Appointments are made by the Governor General in Council.</p>
<p>Appointments to the Federal Court (other than the Chief Justice), Family Court and Federal Magistrates' Court</p> <p>The Attorney General invites nominations from a broad range of individuals and organisations including the Chief Justices of the Federal Court and Family Court, the Chief Federal Magistrate, the Chief Judge of the Family Court of Western Australia, Law Council of Australia, Australian Bar Association, Law Societies and Bar Associations of each State and Territory, Deans of law schools, Australian Women Lawyers, National Association of Community Legal Centres, National Legal Aid, Administrative Appeals Tribunal, Council of Australasian Tribunals and the Veterans' Review Board.</p> <p>Information regarding expressions of interest and nominations for appointment is also published in Public Notices in national and local newspapers and on the Attorney-General's Department's website.</p> <p>Candidates must meet the relevant qualifications set out in section 6(2) of the <i>Federal Court Act 1976</i>, section 22 of the <i>Family Law Act 1975</i> or Schedule 1, Part 1 of the <i>Federal Magistrates Act 1999</i>.</p> <p>Candidates for appointment to the Federal Court and Family Court must also demonstrate the following qualities to the highest degree:</p> <ul style="list-style-type: none"> • legal expertise • conceptual, analytical and organisational skills • decision-making skills • the ability (or the capacity quickly to develop the ability) to deliver clear and concise judgments • the capacity to work effectively under pressure • a commitment to professional development • interpersonal and communication skills • integrity, impartiality, tact and courtesy • the capacity to inspire respect and confidence. <p>Candidates for appointment to the Federal Magistrates Court must also demonstrate the same qualities to a high degree.</p> <p>An Advisory Panel which includes the Chief Justice (or Chief Federal Magistrate) or their nominee, a retired judge or senior member of the Federal or State judiciary and a senior member of the Attorney-General's Department considers the nominations and provides a report to the Attorney-General recommending appropriate candidates for appointment. To assist in preparing its report, the Advisory Panel may conduct interviews of candidates.</p> <p>The Attorney General considers the Advisory Panel's report and, for each position available, identifies the person whom he or she considers most suitable. The Attorney General then recommends this appointment to the Cabinet. Appointments are made by the Governor-General in Council.</p>

The Committee's report said that it was:

appropriate for the Attorney General to retain the final decision making authority, but this point goes to the transparency of the process and, if the

Attorney is making appointments other than based on an assessment against selection criteria, it also goes to the integrity of the process⁴⁰.

The report went on to say:

the concept of merit and what is meant by it was raised with the committee by a number of submitters (of evidence). The overwhelming view put to the committee is that merit should be the fundamental criterion for the selection for judicial appointments.

The Committee found that there was general satisfaction with the appointments process and concluded that the Attorney General's approach is not inconsistent with a selection process based on merit. It considered that the establishment of an independent advisory body could not be justified in terms of cost, but that it was a situation that deserved to be monitored⁴¹.

Canada

The Office of the Commissioner for Federal Judicial Affairs is responsible for the administration of the judicial appointments process at the federal level. The Canadian Judicial Council promotes efficiency, uniformity, and accountability within the superior court system. It also receives complaints about superior court judges. The role and remit of these organisations is outlined below:

Office of the Commissioner for Federal Judicial Affairs⁴²

The Office of the Commissioner for Federal Judicial Affairs Canada (FJA) was created in 1978 under an Act of the Parliament of Canada to safeguard the independence of the judiciary and put federally appointed judges at arm's length from the Department of Justice. Its mandate extends to promoting better administration of justice and providing support for the federal judiciary.

In supporting federal judicial activities, FJA has three key priorities:

- protect the independence of the judiciary
- achieve greater administrative efficiency in the judiciary using up-to-date technology
- support the judiciary and provide central administrative services to judges.

The Judges Act provides for the designation of an officer called the Commissioner for Federal Judicial Affairs Canada. One of the roles and responsibilities of the Commissioner is to act on behalf of the Minister of Justice in matters related to the administration of Part I of the *Judges Act*, which deals with the terms of appointment, age limit and salaries applicable to federally appointed judges. The Commissioner operates through 17 Federal Advisory Committees.

Federal judicial appointments are made by the Governor General acting on the advice of the federal Cabinet. A recommendation for appointment is made to Cabinet by the Minister of Justice with respect to the appointment of ordinary judges, and by the Prime Minister with respect to the appointment of Chief Justices and Associate Chief Justices.

⁴⁰ 'Australia's judicial system and the role of judges', Legal and Constitutional Affairs Committee, December 2009
http://www.aph.gov.au/senate/committee/legcon_cte/judicial_system/report/report.pdf

⁴¹ As above

⁴² Office of the Commissioner for Federal Judicial Affairs <http://www.fja.gc.ca/fja-cmf/role-eng.html>

The recommendation to Cabinet is made from amongst the names which have been previously reported by the committees to the Minister.

Before recommending an appointment to Cabinet, the Minister may consult with members of the judiciary and the bar, with his or her appropriate provincial or territorial counterparts, as well as with members of the public. With respect to provincial and territorial court judges who apply for appointment to a superior court, the Minister may consult with that candidate's current Chief Judge as well as with the Chief Justice of the court for which the candidate is being considered.

Canadian Judicial Council

Parliament created the Canadian Judicial Council in 1971. The objectives of the Council, as mandated by the Judges Act, are to promote efficiency, uniformity, and accountability, and to improve the quality of judicial service in all superior courts of Canada. The Council has authority over the work of more than 1,070 federally appointed judges.

The Council's main purpose is to set policies and provide tools that help the judicial system remain efficient, uniform, and accountable. The Council's powers are set out in Part II of the Judges Act.

The Council asserts that Canadians 'need judges who are independent and able to give judgments in court without fear of retaliation or punishment.' To help achieve this goal, the Canadian Judicial Council was granted power under the *Judges Act* to investigate complaints made by members of the public and the Attorney General about the conduct (as opposed to the decisions) of federally appointed judges. After its investigation of a complaint, the Council can make recommendations, including removing a judge from office. If necessary, an Inquiry Committee may be appointed to hold a public hearing, after which the matter goes on for discussion by the full Council. After considering the report of an Inquiry Committee, the Council may recommend to Parliament (through the Minister of Justice) that the judge be removed from office. The Council's only power is to recommend to Parliament that a judge be removed from office. Where appropriate, the Council may express concerns about a judge's conduct where the matter is not serious enough to recommend that the judge be removed.

According to the Council's website, since its inception in 1971, the Council has referred eight complaints to an Inquiry Committee for formal investigation. The Council asserts that judicial independence is central to its processes and it does not believe that its role undermines the objective of judicial independence.

As part of its functions, the Council has issued a publication outlining *Ethical Principles for Judges*. It includes guidance under the headings judicial independence, integrity, diligence, equality and impartiality

7 Conclusion

The reforms introduced in the last decade have increased the transparency of the judicial appointments process in the UK by significantly reducing the role of the executive in the appointments process. In Northern Ireland, the process is administered by the independent Northern Ireland Judicial Appointments Commission which produces clear guidelines for potential applicants. Overall, the process compares favourably in terms of transparency with those operating in other jurisdictions such as the Republic of Ireland, where the role of the Judicial Appointments Advisory Board is more limited.

The Lord Chief Justice is responsible for the removal of judges in Northern Ireland. In England and Wales, the Office for Judicial Complaints supports the Lord Chancellor and the Lord Chief Justice in their joint responsibility for the system of judicial complaints and discipline. In both Northern Ireland and Great Britain, the most senior judges may only be removed by the Queen after an address to both Houses of Parliament.

Canada and Australia provide interesting international perspectives on the process of judicial appointments. In Canada the Office of the Commissioner for Federal Judicial Affairs is responsible for oversight of the process, with advisory committees making recommendations to the Minister for Justice on suitable candidates. The final decision on appointments is made by the Governor General on advice of the federal Cabinet. The Canadian Judicial Council has responsibility for investigating the conduct of judges and may recommend their removal.

Australia introduced reforms in 2008 aimed at enhancing the transparency of the appointments process which included measures that brought the system more into line with that operating in the UK. The Cabinet must still approve the Attorney General's recommendation with the decision ultimately taken by the Governor General. A Parliamentary review of the new system in 2009 found no need for an independent body to oversee the process, but did not rule the possibility of one at some point in the future.

Annex 1 - Listed judicial office holders under the remit of the NIJAC

Court Appointments	Other appointments
<p>Judge of the High Court</p> <p>Temporary judge of the High Court under section 7(3) of the Judicature (Northern Ireland) Act 1978 (c 23)</p> <p>County court judge</p> <p>Deputy county court judge</p> <p>Resident magistrate</p> <p>Deputy resident magistrate</p> <p>Coroner</p> <p>Deputy coroner</p> <p>Statutory officer (within the meaning of section 70(1) of the Judicature (Northern Ireland) Act 1978)</p> <p>Deputy for a statutory officer under section 74 of that Act</p> <p>Temporary additional statutory officer under that section</p>	<p>Chief Social Security Commissioner for Northern Ireland</p> <p>Social Security Commissioner for Northern Ireland</p> <p>Deputy Social Security Commissioner for Northern Ireland</p> <p>Chief Child Support Commissioner for Northern Ireland</p> <p>Child Support Commissioner for Northern Ireland</p> <p>Deputy Child Support Commissioner for Northern Ireland</p> <p>President of appeal tribunals (within the meaning of Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998)</p> <p>Member of the panel of persons to act as members of such appeal tribunals</p> <p>Member of the panel of persons who may serve as chairmen of the Care Tribunal established by Article 44 of the Health and Personal Social Services (Quality, Improvements and Regulation) (Northern Ireland) Order 2003</p> <p>President of the Industrial Tribunals and the Fair</p>

	<p>Employment Tribunal</p> <p>Acting President of the Industrial Tribunals and the Fair Employment Tribunal under Article 82(6) of the Fair Employment and Treatment (Northern Ireland) Order 1998 (SI 1998/3162 (NI 12))</p> <p>Vice-President of the Industrial Tribunals and the Fair Employment Tribunal</p> <p>Acting Vice-President of the Industrial Tribunals and the Fair Employment Tribunal under Article 82(6) of the Fair Employment and Treatment (Northern Ireland) Order 1998</p> <p>Member of the panel of chairmen of the Industrial Tribunals</p> <p>Member of the panel of chairmen of the Fair Employment Tribunal</p> <p>President of the Lands Tribunal for Northern Ireland</p> <p>Deputy President of the Lands Tribunal for Northern Ireland under section 3(1) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 (c 29 (NI))</p> <p>Other member of the Lands Tribunal for Northern Ireland</p> <p>Temporary member of the Lands Tribunal for Northern Ireland under section 3(2) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964</p> <p>President of the Special Educational Needs and Disability Tribunal for Northern Ireland</p> <p>Member of the panel of persons who may serve as chairman of that Tribunal</p> <p>Member of the tribunal established under section 91 of the Northern Ireland Act 1998 (c 47)</p> <p>Member of the Mental Health Review Tribunal for Northern Ireland</p> <p>Lay magistrate</p> <p>Member of the panel of persons who may serve as chairmen of a tribunal established for the purposes of the Deregulation (Model Appeal Provisions) Order (Northern Ireland) 1997 (SR1997/269)</p> <p>Chairman of a Tribunal appointed under paragraph 1(1)(a) of Schedule 3 to the Misuse of Drugs Act 1971 in</p>
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	<p>its application to Northern Ireland</p> <p>Member of a Tribunal appointed under paragraph 2(1) of the Schedule to the Pensions Appeal Tribunals Act 1943 in its application to Northern Ireland</p> <p>President or Deputy President of Pensions Appeal Tribunals appointed under paragraph 2B of the Schedule to the Pensions Appeal Tribunals Act 1943 in its application to Northern Ireland</p> <p>Chairman of the Plant Varieties and Seeds Tribunal for the purpose of proceedings brought before it in Northern Ireland</p> <p>Member of the panel of persons to act as chairmen of Reinstatement Committees sitting in Northern Ireland (appointed under paragraph 2(1)(a) of Schedule 2 to the Reserve Forces (Safeguard of Employment) Act 1985)</p> <p>President of the Northern Ireland Valuation Tribunal</p> <p>Member of the Northern Ireland Valuation Tribunal</p> <p>President or other member of the Charity Tribunal for Northern Ireland</p> <p>Adjudicator appointed under Article 7(1)(b) of the Criminal Injuries Compensation (Northern Ireland) Order 2002</p> <p>Chairman appointed under Article 7(2)(b) of the Criminal Injuries Compensation (Northern Ireland) Order 2002</p> <p>Adjudicator appointed under Article 29 of the Traffic Management (Northern Ireland) Order 2005</p> <p>Chairman of an Appeal Tribunal for the purposes of the Adoption (Northern Ireland) Order 1987</p>
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Annex 2 Steps in the appointments process for judicial office in Northern Ireland

Jurisdiction	Responsible body	Process
Northern Ireland	Northern Ireland Judicial Appointments Commission	<p>Advertisement - All vacancies for judicial appointment will be publicly advertised. Advertisements also appear on this website and other relevant websites</p> <p>Application - Application forms are available from the Commission and all applicants will be required to lodge completed application and monitoring forms by a given date and time</p> <p>Eligibility Sift - Upon receipt of a completed application form, the Commission checks if each applicant meets the eligibility requirements for the advertised judicial office.</p> <p>Applicant checks for Good Character - Failure to disclose information which subsequently comes to light as a result of the pre-recommendation for appointment enquiries will be likely to disqualify the applicant from recommendation for appointment.</p> <p>Consultation - Views and opinions about the qualities and work of applicants are sought from consultees whose written comments are passed to the Selection Committee to assess. There are two types of consultees, those nominated by the applicant (nominated consultees) and (where appropriate) automatic consultees. Applicants are requested to nominate (normally three) consultees, or in some competitions there will be an automatic consultation process depending on the category of judicial office as follows:-</p>

	<p>Legal - Three consultees, two of whom should be members of the legal profession and one occupational or non-occupational.</p> <p>Medical - Three consultees, two of whom should be members of the medical profession and one occupational or non-occupational.</p> <p>Lay /Other- Two consultees one of whom should a current or previous employer (if applicable) and one occupational or non-occupational. This will vary depending on level and category appointment.</p> <p>Short listing The Selection Committee will consider the information in the application form, consultee comments and particularly the self-assessment form to decide which applicants best demonstrate that they fulfil the required competences and criteria for appointment and should be invited to attend interview. Prior to short listing the Selection Committee set a benchmark for short listing on a competition by competition basis against the judicial selection framework for appointment. Those applicants who achieve the pre-determined benchmark are short listed.</p> <p>Interview and Assessment process At interview and assessment process, Selection Committee members will ask questions to assess the extent to which an applicant demonstrates the published judicial selection framework for appointment. Applicants should also expect to be asked questions intended to elicit evidence that they are suitable for appointment and need to be able to demonstrate their ability to apply fundamental principles to the post they have applied for under the judicial selection framework advertised for the judicial office. The Commission may supplement the interview and assessment process with other methods of assessment, such as case study, role play, presentation, etc where appropriate. Unsuccessful applicants may request feedback, which will generally be provided by the Chairman of the Selection Committee.</p> <p>Following Short listing: written feedback is available upon request.</p> <p>Following the interview and assessment process: both written and a supplementary feedback discussion are available upon request. The aim of both the written feedback and the feedback discussion are to provide applicants with constructive feedback which will assist them when considering any future applications for judicial</p>
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		<p>appointment.</p> <p>Recommendation to the Lord Chancellor The Commission considers all the information gathered on applicants and selects applicant(s) to be recommended to the Lord Chancellor. NIJAC recommends to the Lord Chancellor one applicant for each judicial vacancy.</p>
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