



HOUSE OF LORDS

SELECT COMMITTEE ON THE CONSTITUTION

THE JUDICIAL APPOINTMENTS PROCESS: CALL FOR EVIDENCE

The House of Lords Constitution Committee has decided to launch an inquiry into the judicial appointments process for the courts and tribunals of England and Wales and Northern Ireland (including first instance courts) and for the UK Supreme Court. There appears to be a consensus that all judicial appointments should be made on merit and that the process should respect the constitutional principle of the independence of the judiciary. Beyond this, there is a range of questions including achieving greater diversity of those selected, ensuring appropriate accountability and transparency, the efficiency and effectiveness of the appointments systems, and the respective roles of the independent selection commissions, ministers, the judiciary and Parliament.

Since it was first adopted, the process for the appointment of Supreme Court Justices has been used for seven vacancies on the 12-member court. The conduct of recent selection exercises have been the subject of speculation and criticism.

The appointments system for the courts and tribunals of England and Wales operates on a much larger scale. Whereas appointments to these posts were traditionally made by the executive, the Constitutional Reform Act 2005 introduced an independent statutory body, the Judicial Appointments Commission (JAC), to make recommendations for appointments based solely on merit, with a reduced role for the Lord Chancellor. A recent Government review of judicial arm's length bodies called on the JAC to review its internal processes. In addition, the Advisory Panel on Judicial Diversity reported in February 2010, making recommendations to help ensure that the composition of the judiciary becomes a more adequate reflection of society as a whole.

Wider constitutional developments, particularly the enactment of the Human Rights Act 1998, have significantly enhanced the role of the judiciary. These developments, in turn, have affected the public's perceptions of and confidence in the judicial appointments process. In this context, there is a need to ensure that the judicial appointments system is, and is seen to be, a fair, independent and open process.

13 May 2011

Scope of the Committee's inquiry

In particular, the Committee invites evidence on the following themes:

Overview

1. How would you assess the current operation of the judicial appointments process? Is it an appropriate way to continue to make judicial appointments in view of the evolving constitutional role and position of the judiciary?
2. Is the appointments process sufficiently transparent and accountable?
3. How would you assess current public awareness and understanding of the judicial appointments system? How can it be increased?
4. Does the appointments process give adequate regard to the constitutional principle of the independence of the judiciary?
5. Have reforms introduced in recent years had any discernible effect on the quality of judicial appointments? How best can the quality of applicants be judged?
6. What assessment would you make of the speed and efficiency of the appointments process? How does this compare with the pre-2005 systems in relation to the UK Supreme Court and the courts and tribunals of England and Wales?
7. What effect (if any) have the changes had upon the diversity of the judiciary? Is diversity a legitimate factor to bear in mind as part of the appointments process? If so, what should be done to help deliver greater diversity?
8. What impact have recent constitutional developments (such as the enactment of the Human Rights Act 1998) had on the role of the judiciary within the UK's constitutional arrangements? What are the implications of such developments for the judicial appointments process?
9. Are there lessons that could be learnt from the appointments system in other jurisdictions?

Appointments to the UK Supreme Court

10. Is the system for recommendations made to the Lord Chancellor by a five-member selection commission working well?
11. Is the process for consulting the senior judiciary and heads of the devolved administrations satisfactory?
12. Should the compulsory retirement age for Justices first appointed to full-time judicial office be raised from 70 years?

The role of the Judicial Appointments Commission (JAC) and JACO

13. How would you assess the performance of the Judicial Appointments Commission (JAC) since it was established in 2006?

14. Is the role and remit of the JAC appropriate? How (if at all) should it be altered?
15. What is the most appropriate size and balance of membership of the JAC?
16. How (if at all) should the JAC's process be reformed? What is your assessment of the various proposals for reform set out by the Lord Chancellor in his letter to the Committee Chairman of 4 January 2011?¹
17. How would you assess the role of the Judicial Appointments and Conduct Ombudsman (JACO)? How (if at all) should JACO's role be reformed?

Northern Ireland

18. How would you assess the judicial appointments process in Northern Ireland, in particular in relation to the Northern Ireland Judicial Appointments Board?

The role of the executive

19. Does the Lord Chancellor (and the executive more widely) play an appropriate role in the appointments process? How (if at all) should the executive's role be reformed?
20. What is your opinion of the Lord Chancellor's observation that the appointments process can cost too much? Are the funding arrangements and level of funding for the judicial appointments process adequate and appropriate?

The role of Parliament

21. Given the increasing role of Parliament in scrutinising nominees to other important public offices (such as ombudsmen and regulators), is there a case for introducing confirmation hearings for the most senior judicial posts? Are there any constitutional objections to such a proposal?

The role of the judiciary

22. Do members of the judiciary have an appropriate role in the appointments process?

Those responding to this call for evidence are not necessarily expected to address all these points but instead to focus on those issues on which they have special expertise or about which they are particularly concerned. Respondents should not feel constrained by the above list from drawing attention to any other points about the judicial appointments process thought to be of significance to the United Kingdom constitution.

Written evidence

Evidence should be submitted to the Clerk of the Constitution Committee, House of Lords, London, SW1A 0PW. The deadline for written evidence is 30 June 2011.

Short submissions are preferred. A submission longer than six pages should include a one-page summary.

¹ See <http://www.parliament.uk/documents/lords-committees/constitution/LordChancellor/LetterfromLC040111.pdf>.

Evidence must be clearly printed or typed on single sides of A4 paper, unstapled.

Paragraphs should be numbered. If drawings or charts are included, these must be black-and-white and of camera-ready quality. Evidence should be signed and dated, with a note of the author's name and status, and of whether the evidence is submitted on an individual or corporate basis. Only one copy is required. All submissions will be acknowledged promptly.

PLEASE NOTE: The evidence should also be made available in electronic form as a Word document. This should be sent by e-mail to constitution@parliament.uk. We cannot accept submissions in PDF format.

Evidence becomes the property of the Committee, and may be published by the Committee at any stage. Once you have received acknowledgement that the evidence has been received, you may publicise or publish your evidence yourself, but in doing so you must indicate that it was prepared for the Committee. Parliamentary privilege will not apply to your own publication.

Personal contact details supplied to the Committee will be removed from evidence before publication. However, personal contact details will be retained by the Committee Office and used for specific purposes relating to the Committee's work, for instance to seek additional information or to send copies of the Committee's report.

Persons who submit written evidence, and others, may be invited to give oral evidence. Oral evidence is usually given in public at Westminster, broadcast in audio and often video format on the internet, and transcripts are published. Persons invited to give oral evidence will be notified separately of the procedure to be followed and the topics likely to be discussed.

Written evidence will normally be published online and deposited in the Parliamentary Archives.

Substantive communications to the Committee about the inquiry should be addressed through the Clerk or the Chairman of the Committee, whether or not they are intended to constitute formal evidence to the Committee.

You may follow the progress of the inquiry from the Weekly Bulletin of House of Lords select committees. This is published online and available at <http://www.parliament.uk/business/committees/committees-a-z/lords-select/>.

Committee Membership

Lord Crickhowell
Lord Goldsmith
Lord Hart of Chilton
Lord Irvine of Lairg
Baroness Jay of Paddington (Chairman)
Lord Norton of Louth
Lord Pannick
Lord Powell of Bayswater
Lord Rennard
Lord Renton of Mount Harry
Lord Rodgers of Quarry Bank
Lord Shaw of Northstead