

2023 No. 1005

JUDICIAL APPOINTMENTS AND DISCIPLINE

The Judicial Discipline (Prescribed Procedures) Regulations 2023

<i>Made</i> - - - -	<i>13th September 2023</i>
<i>Laid before Parliament</i>	<i>15th September 2023</i>
<i>Coming into force</i> - -	<i>13th October 2023</i>

The Lord Chief Justice of England and Wales, in exercise of powers conferred by sections 115, 116, 117, 120 and 121 of the Constitutional Reform Act 2005^(a), and by 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 Lady 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 2023 and shall come into force on 13th October 2023.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Constitutional Reform Act 2005;

“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);

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

(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.

“complaint” means a complaint made in accordance with rules made under regulation 7 and containing an allegation of misconduct by a person holding an office;

“conduct advisory committee” means one of the Lord Chancellor’s conduct advisory committees on justices of the peace;

“deputy secretary” means a deputy secretary of a conduct advisory committee;

“disciplinary panel” has the meaning given by regulation 11;

“disciplinary sanction” means any of the following actions taken in relation to misconduct—

- (a) the exercise by the Lord Chancellor of any of the Lord Chancellor’s powers 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;

“investigating judge” has the meaning given by regulation 10;

“JCIO” means the Judicial Conduct Investigations Office, as defined in regulation 4(2);

“justice of the peace” means a justice of the peace who is not a District Judge (Magistrates’ Courts);

“nominated committee member” has the meaning given by regulation 9;

“nominated judge” has the meaning given by regulation 8;

“office” means an office listed in regulation 3(2);

“office holder concerned” means an office holder whose conduct is being considered in accordance with these Regulations;

“secretary” means a secretary of a conduct advisory committee;

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

“working 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.

(2) In these Regulations, unless the contrary intention appears, a reference to the Lord Chief Justice must 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 of Regulations

3.—(1) These Regulations apply to any complaint made on or after the date on which these Regulations come into force.

(2) These Regulations apply to—

- (a) a judicial office;

(a) Section 108 was extended by the Coroners and Justice Act 2009, Schedule 3, paragraph 14.

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

(3) The JCIO may undertake such enquiries as are necessary for it to perform its functions under these Regulations or rules made under regulation 7.

(4) The JCIO may provide advice to any person regarding the application of these Regulations or rules made under regulation 7.

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

(6) The JCIO may provide administrative assistance to a nominated judge, an investigating judge or a disciplinary panel in relation to the exercise of their functions under these Regulations or rules made under regulation 7.

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 document shown in the table below—

Method of delivery	Starting day
First class post (or other method which provides for delivery on the next working day).	The second working day after the day on which the document was posted.
Second class post.	The third working 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 working day before 4.30pm, that day; or if delivered at, or after, 4.30pm, the next working day.
Email or other electronic transmission.	If an email or other electronic transmission is sent on a working day before 4.30pm, that day; or if an email or other electronic transmission is sent at, or after, 4.30pm, the next working day.

PART 2

Complaints and investigation of cases

Complaint of misconduct

6.—(1) Subject to paragraph (2), a complaint about an office holder must be made to the JCIO.

(2) A complaint about a justice of the peace must be made to the secretary of the conduct 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).

Investigation process

7.—(1) The Lord Chief Justice, with the agreement of the Lord Chancellor, may make rules about the process to be applied in respect of a complaint.

(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 case may be dismissed;
- (e) the circumstances in which an investigation may be undertaken (on the making of a complaint);
- (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 a case may be investigated by the JCIO, a secretary, a deputy secretary, a nominated judge, a nominated committee member, an investigating judge or a disciplinary panel;
- (h) the circumstances in which a case may be dealt with under a summary process;
- (i) the circumstances in which a case may be dealt with under an expedited process;
- (j) the circumstances in which a case which has initially been dismissed may be reconsidered.

Nominated judge

8.—(1) A nominated judge is an office holder who is nominated by the Lord Chief Justice to deal with a case or cases as a nominated judge 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.

Nominated committee member

9.—(1) A nominated committee member is a person who is nominated by the Lord Chief Justice to deal with a case or cases as a nominated committee member in accordance with rules made under regulation 7.

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

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

(3) A nominated committee member must be a member of a conduct advisory committee.

Investigating judge

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

(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 where the office holder concerned is not a justice of the peace 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; and

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

(i) an office holder; or

(ii) a practising or employed lawyer.

(2) A disciplinary panel where the office holder concerned is a justice of the peace 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) a justice of the peace; and

(c) one other member, who has not been—

(i) an office holder; or

(ii) a practising or employed lawyer.

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

(4) The Lord Chief Justice must nominate persons who may become members of a disciplinary panel under paragraphs (1)(a), (2)(a) and 2(b).

(5) The Lord Chancellor must nominate with the agreement of the Lord Chief Justice persons who may become members of a disciplinary panel under paragraph (1)(b) and (2)(c).

(6) 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.

(7) The office holder who has been nominated under paragraph (1)(a) or (2)(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 investigated a case in accordance with rules made under regulation 7.

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 case to a person or body listed in paragraph (3) to further investigate.

(3) The persons and bodies are—

- (a) where the office holder concerned is not a justice of the peace, a nominated judge;
- (b) where the office holder concerned is a justice of the peace, a nominated committee member;
- (c) an investigating judge; or
- (d) a disciplinary panel.

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

Removal or suspension when other disciplinary power is recommended

14.—(1) This regulation applies where—

- (a) advice has been provided to the Lord Chancellor and the Lord Chief Justice by a person who, or a body that, has investigated a case 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 sanction.

(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 case in accordance with rules made under regulation 7; and
- (b) advise the Lord Chancellor and the Lord Chief Justice whether a disciplinary sanction should be issued, and if so, what disciplinary sanction should be issued.

Decision

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

- (2) The Lord Chancellor and the Lord Chief Justice may agree—
 - (a) to dismiss a case; or
 - (b) to issue a particular disciplinary sanction.
- (3) Where a case is dismissed, the Lord Chancellor and the Lord Chief Justice may agree that—
 - (a) the alleged conduct 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 JCIO must inform the persons listed in paragraph (2) of the decision made by the Lord Chancellor and the 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 justice of the peace, the secretary.

PART 4 Miscellaneous

Interim suspension

17.—(1) Where a person or body investigating a complaint considers that the matter should be referred to the Lord Chief Justice with a view to the exercise of the power under section 108(7) of the Act to suspend the office holder concerned on an interim basis, that person or body must send a report to that effect to the Lord Chancellor and the Lord Chief Justice.

(2) 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 concerned of the suspension, the reasons for it and if the suspension is not immediate, the time when it comes into effect;
- (b) notify the office holder concerned of the factors that will be taken into account in determining when the suspension will end; and
- (c) invite the office holder concerned to make representations.

(3) The office holder concerned must make any representations within ten working days of the notification under paragraph (2).

(4) 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 (2)(b) become operative or cease to apply, or any other matter which the Lord Chancellor and the Lord Chief Justice consider relevant arises, the Lord Chancellor and the Lord Chief Justice must—

- (a) decide whether continuation of the suspension is appropriate;
- (b) notify the office holder concerned of their decision under sub-paragraph (a) and of the reasons for that decision; and
- (c) invite the office holder concerned to make representations.

(5) The office holder concerned must make any representations within ten working days of a notification under paragraph (4).

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 issuing of a disciplinary sanction.

(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 working days of the notification of the request, or within such other period as the Ombudsman indicates, the Ombudsman may—

- (a) prepare the review without regard to that information, and
- (b) 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 7 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 or investigated again in accordance with rules made under regulation 7.

Scotland and Northern Ireland: eligibility to exercise functions

20. 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 8, 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^(c).

Scotland and Northern Ireland: Judicial Appointments and Conduct Ombudsman

21. Sections 110(c) 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.

(a) Section 111 was extended by the Coroners and Justice Act 2009, Schedule 3, paragraph 14.

(b) Section 113 was extended by the Coroners and Justice Act 2009, Schedule 3, paragraph 14.

(c) 2002 c. 26.

Ceasing to hold office

22.—(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 Chancellor and the Lord Chief Justice 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.

Consequential amendments

23.—(1) The Justices of the Peace Rules 2016(a) are amended as follows.

(2) In rule 31(2)(e), for “the Judicial Conduct (Magistrates) Rules 2014” substitute “rules made under regulation 7 of the Judicial Discipline (Prescribed Procedures) Regulations 2014(b) or regulation 7 of the Judicial Discipline (Prescribed Procedures) Regulations 2023”.

(3) In rule 32(2)(i), for “the Judicial Conduct (Magistrates) Rules 2014” substitute “rules made under regulation 7 of the Judicial Discipline (Prescribed Procedures) Regulations 2014 or regulation 7 of the Judicial Discipline (Prescribed Procedures) Regulations 2023”.

8th September 2023

Burnett of Maldon
Lord Chief Justice

I agree

13th September 2023

Alex Chalk
Lord Chancellor
Ministry of Justice

I agree

7th September 2023

CJM Sutherland
Lord President of the Court of Session

I agree

8th September 2023

Siobhan Keegan
Lady Chief Justice of Northern Ireland

(a) S.I. 2016/709; rules 31 and 32 were amended by S.I. 2020/100.

(b) S.I. 2014/1919.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the procedures to be followed under chapter 3 of Part 4 of the Constitutional Reform Act 2005 (c.4.) to investigate and determine possible misconduct by a judicial office holder, a coroner or a holder of an office that has been designated by an order under section 118 of the Constitutional Reform Act 2005 (c.4).

These Regulations replace the Judicial Discipline (Prescribed Procedures) Regulations 2014 (S.I. 2014/1919) for all complaints made on or after the date on which these Regulations come into force.

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 Lady Chief Justice of Northern Ireland in the exercise of their functions (regulation 4).

Part 2 sets out the process for complaints to be investigated. It also sets out the types of provision that can be made in rules made by the Lord Chief Justice with the agreement of the Lord Chancellor (regulation 7).

Part 3 deals with the decision making process, including how the Lord Chancellor and the Lord Chief Justice can consider advice (regulation 12), refer the case for further consideration (regulation 13) and make decisions (regulations 14, 15 and 16).

Part 4 makes various miscellaneous provisions. These include how to deal with the possible interim suspension of an office holder (regulation 17), reviews by the Ombudsman (regulation 19) and the effect of cessation of office by an office holder under the disciplinary process (regulation 22).

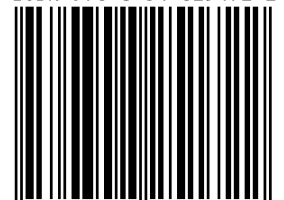
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