

MINISTRY OF JUSTICE

TERMS AND CONDITIONS OF APPOINTMENT

DEPUTY STATUTORY OFFICER

1. APPOINTMENT

1.1 The Northern Ireland Judicial Appointments Commission is responsible for the appointment of Deputy Statutory Officers¹ of the Court of Judicature of Northern Ireland under section 74(1) of the Judicature (Northern Ireland) Act 1978 as amended. Section 70(2) and Schedule 3 of the 1978 Act, as amended state that a person shall not be qualified to be appointed as a statutory officer unless he/she is:

- (i) a member of the Bar of Northern Ireland of a least seven years' standing; or
- (ii) a solicitor of the Court of Judicature of Northern Ireland of at least seven years' standing.

2. TENURE

2.1 Appointment as a Deputy Statutory Officer is for a (renewable) period of five years.

2.2 At the end of the initial five-year appointment, renewal of appointment for a further period of five years is automatic, subject to:-

- the individual's agreement,
- the upper age of 75 years not being exceeded,
- the individual still satisfying the conditions or qualifications for appointment; and
- there being no grounds for non-renewal.

2.3 Grounds for non-renewal include:

- (a) misbehaviour;
- (b) incapacity;
- (c) persistent failure to comply with sitting requirements (without good reason);
- (d) failure to comply with training requirements;
- (e) sustained failure to observe the standards reasonably expected from a holder of such office;
- (f) part of a reduction in numbers because of changes in operational requirements;
- (g) part of a structural change to enable recruitment of new part-time judicial office-holders.

¹ Schedule 3 to the Judicature (Northern Ireland) Act 1978 lists the statutory offices as: Master (King's Bench and Appeals), Master (Chancery), Master (Bankruptcy), Master (Probate and Matrimonial), Master (Care and Protection), Master (High Court), Master (Taxing Office), Master (Enforcement of Judgments) and District Judge.

- 2.4 All decisions not to renew are taken in consultation with the Lady Chief Justice. At the time of renewal confirmation will be sought to determine if the Deputy Statutory Officer wishes to be considered for re-appointment and if they are aware of any reason that their appointment should not be renewed.
- 2.5 All decisions not to renew on grounds (f) or (g) will be subject to the requirements of the Lady Chief Justice. The decision to use such grounds and the extent to which they will be used will be taken with the concurrence of the Lady Chief Justice.
- 2.6 A Deputy Statutory Officer may choose to end their appointment by resignation giving twelve months' notice in writing to the Commission (with a cause assigned) or by declining to accept renewal on completion of a term. In cases of ill health this notice period is waived.
- 2.7 Appointment as a Deputy Statutory Officer carries with it no guarantee of future appointment as a Master or District Judge.

3. CONFLICTS OF INTEREST

- 3.1 A person shall not be qualified to serve as a Deputy Statutory Officer for the purpose of any proceedings where they are a member, director or officer of the responsible authority or they have a personal connection with the case.
- 3.2 The governing principle is that no person should sit in a judicial capacity, in any circumstances, which would lead an objective onlooker with knowledge of all the material facts reasonably to suspect that the person might be biased.
- 3.3 A Deputy Statutory Officer
 - should not sit in cases involving their own practices or clients or otherwise where to do so could give rise to the perception of prejudice in the administration of justice;
 - should comply with the existing case law governing pecuniary or other interests in deciding whether to declare an interest in, or stand down from, a particular case e.g. *Locabail (UK) Ltd v Bayfield Properties Ltd and Another* [2000 2 WLR 870]; *Director General of Fair Trading v Proprietary Association of Great Britain and Another* [CA, 21 December 2000]; and *Lawal v Northern Spirit Limited* [2003] UKHL 35;
 - should not sit on a case if they have a personal, professional or pecuniary interest in that case; or if any businesses or practices of which they are members in any capacity has such an interest.
- 3.4 A Deputy Statutory Officer is expected to refrain from any activity, political or otherwise, which would conflict with their judicial office or be seen to compromise their impartiality, having regard for example to the comments of the Court of Appeal in the case of *Locabail*. They should also be aware of the risk of a perceived lack of impartiality arising from published articles or public pronouncements, etc. (*Timmins v Gormley* [2000] Q.B. 451).
- 3.5 A Deputy Statutory Officer should exercise caution in any reference to their appointment on, for example, letterheads or in advertising literature. They hold

office only when exercising the functions of the office and should not use their office as a means of pursuing personal, professional or commercial advantage. In the event of any doubt an office holder should contact the Judicial Office for advice.

4. JUDICIAL CONDUCT

- 4.1 Where a Deputy Statutory Officer is charged with any criminal offence, other than a parking or speeding offence without aggravating circumstances, they should report the matter at once to the Lady Chief Justice's Office and should keep them informed of the progress and outcome of the case. Failure to do so could itself in some cases amount prima facie to misbehaviour. Convictions for some offences need not necessarily be regarded as incompatible with continuing to sit on the Bench. If a Deputy Statutory Officer was convicted of a grave offence however, for instance one involving violence to persons, dishonesty or moral turpitude, the Lady Chief Justice would regard to having cause to consider exercise of the Lady Chief Justice's powers to remove the Deputy Statutory Officer from office on grounds of misbehaviour. The Lady Chief Justice regards a conviction for an offence of driving while under the influence of alcohol or drugs as so grave as to amount prima facie to misbehaviour.
- 4.2 The Lady Chief Justice believes that the public must be entitled to expect all Deputy Statutory Officers to maintain at all times proper standards of courtesy and consideration. Behaviour which could cause offence, particularly on racial or religious grounds, or amounting to sexual harassment, is not consistent with the standards expected of those who hold judicial office. A substantiated complaint of conduct of this kind, whether or not previous complaints have been made, is in the view of the Lady Chief Justice capable of being regarded as misbehaviour.
- 4.3 A Deputy Statutory Officer should also notify the Lady Chief Justice if they get into serious financial difficulties, particularly if legal proceedings appear likely to be, or have actually been, initiated. The Lady Chief Justice also considers it appropriate that if any Deputy Statutory Officer is aware of matters relating to conduct which may affect their position, or which reflects on the reputation and standing of the judiciary at large, they will advise the Lady Chief Justice at the earliest opportunity. The Lady Chief Justice will in that event have full regard to any observations which the Deputy Statutory Officer wishes to make on the matter. Indeed, while the Lady Chief Justice believes that the public both deserves and expects the highest standards of conduct from those in judicial office, the Lady Chief Justice will not consider the exercise of powers vested in the Lady Chief Justice in respect of judicial conduct without serious cause and the most careful deliberation.
- 4.4 The requirements for Judicial Conduct set out in the paragraphs below are supplemented by the Guide to Judicial Conduct, issued by the Lady Chief Justice and the Senior President of Tribunals. The guide offers assistance to the Judiciary when considering issues of conduct. A copy can be obtained from <https://www.judiciary.uk/publications/guide-to-judicial-conduct/>

5. REMOVAL/SUSPENSION

- 5.1 The Lady Chief Justice may remove from office (and suspend from office pending a decision whether to remove or not) a Deputy Statutory Officer on specified grounds. These are:
- (a) Misbehaviour;
 - (b) Inability to perform the functions of the office.
- 5.2 All decisions to remove or suspend are taken by the Lady Chief Justice, and only on the recommendation of a tribunal convened under section 8 of the Justice (NI) Act 2002.

6. DISQUALIFICATION

- 6.1 A Deputy Statutory Officer is precluded by statute from serving concurrently as Members of Parliament etc. A Deputy Statutory Officer is expected to submit their resignation to the Commission in the event of nomination or adoption as a prospective candidate for election to Parliament, the European Parliament or a Member of the Legislative Assembly for Northern Ireland. The Lady Chief Justice's Office should be consulted if there are any doubts about any particular circumstances.

7. REMUNERATION

- 7.1 Your appointment is non-salaried. You will receive a fee for the day(s) you have sat and for those days you attend training. The daily fee has been calculated taking into account holiday entitlement, public holidays and privilege days. The fees are set out in the Judicial Fees Schedule and can be obtained from the gov.uk website.
- 7.2 It is a general principle that Crown servants in receipt of a salary will not normally receive additional remuneration for public offices held, or work undertaken, concurrently on a fee paid basis. Former Crown Servants' attention is drawn to any rules relating to abatement of pension contained in their pension scheme. Office holders who are practitioners or private sector employees are expected to be open and transparent with their primary employer in terms of the arrangements including financial arrangements relating to their judicial appointment.

8. PENSION

- 8.1 Membership to the Judicial Pension Scheme 2022 (JPS 22) is open to all eligible fee-paid and salaried judicial office holders, whose offices are included in the Public Service Pensions Act 2013 (Judicial Offices) Order 2015, as amended, except where terms and conditions are specifically non-pensionable.
- As of 1st April 2022, JPS 22 is the only judicial pension scheme open to pension accruals. All previous judicial pension schemes are now closed for further accrual, but any benefits already accrued in predecessor schemes will be protected.
- JPS 22 is a career average judicial pension scheme with unreduced benefits payable from your State Pension Age and no service cap. JPS 22 is non-registered for tax purposes
- Membership of JPS 22 will not affect any remedy to which you may be entitled in relation to historical or ongoing service, for example, as a result of the McCloud or O'Brien/Miller litigation.
- It is possible to opt out of JPS 22 membership and you should contact the Pensions team within 1 month of the date of your appointment to do so. Please note, on accepting the appointment unless the Pensions team hear from you within 1 month of

the date of your appointment the default option of joining JPS 22 will be applied from your date of appointment and contributions will be deducted from salary/fees earned. A Scheme Guide has been produced that sets out the details of JPS 22. It can be accessed at <https://www.mypension.com/moj/documents/> If you have any queries about your pension options please contact the MoJ Pensions Team direct at judicialpensions@justice.gov.uk.

9. INCOME TAX AND NATIONAL INSURANCE

- 9.1 A Deputy Statutory Officer is regarded as the holder of an office for tax and National Insurance purposes. Fees payable will, as a result, be chargeable to tax under Parts 2 to 7 of the Income Tax (Earnings and Pensions) Act 2003 and subject to Class 1 National Insurance contributions. These liabilities will be deducted at source and the net fee paid to the judicial office holder. Fees are not subject to VAT.

10. TRAVEL AND SUBSISTENCE ALLOWANCES

- 10.1 Travel and subsistence allowances may be claimed by Deputy Statutory Officers where they are required to attend sessions in accordance with Northern Ireland Civil Service Policy.

11. LOCATION AND TAKING UP APPOINTMENT

- 11.1 No assistance is available from public funds towards any costs incurred on appointment as a Deputy Statutory Officer.
- 11.2 Deputy Statutory Officers when sitting as a Master of the Supreme Court will be located in the Royal Courts of Justice and when sitting as a Deputy District Judge will be required to travel to County Courts situated in Laganside Courts and Court Offices throughout Northern Ireland.

12. RELATIONS WITH THE PRESS, RADIO AND TELEVISION

- 12.1 The question arises from time to time whether a Deputy Statutory Officer should communicate with the press or appear on a television or radio programme. If a Deputy Statutory Officer is contacted by the media, directly or otherwise, they should refer the journalist or reporter to the Communication Officer in the Lady Chief Justice's Office. The Lady Chief Justice's view is that judicial office holders should, given the nature of their office, be cautious about their exposure to the media, and about making any public statements, whether on general issues or particular cases, which might be interpreted as raising any doubt on their impartiality; the Lady Chief Justice also expects that they would avoid any involvement, either direct or indirect, in issues which are or might become politically controversial. When a case has been dealt with, the Lady Chief Justice does not believe it is appropriate for that Deputy Statutory Officer or any other Judge to discuss it publicly out of hearing, whether or not the matter has finally been disposed of on appeal. Different considerations clearly apply where the object of any article or programme is to secure a wider public understanding of the workings of the law. The value of such programmes may be enhanced by the

participation of a Deputy Statutory Officer and there may well be a case for those who wish to do so, to take part in them.

- 12.2 A Deputy Statutory Officer should feel free to discuss any matters concerning contact with the media with the Lady Chief Justice. Likewise if the Deputy Statutory Officer has any query concerning the media they should not hesitate to contact the Lady Chief Justice's Communication Officer - telephone on 028 9072 5921. The Lady Chief Justice's Office can also provide guidance regarding contact with the media.

13. JUDICIAL STUDIES BOARD

- 13.1 Newly appointed Deputy Statutory Officers will be required to attend and satisfactorily complete an initial induction course before they are eligible to sit.
- 13.2 The Lady Chief Justice expects all Deputy Statutory Officers from time to time to attend conferences and courses organised by or on behalf of the Judicial Studies Board on subjects relevant to the work that they undertake as Deputy Statutory Officers and Deputy District Judges. The Lady Chief Justice considers that these conferences and courses are of considerable value, not only for newly-appointed Deputy Statutory Officers but also for those who have been in office for some time.

14. REPORTING OF SICK ABSENCES

- 14.1 There is a requirement to keep records of sick absences. Sick absences should be notified as soon as possible on the first day of incapacity for work. If a Deputy Statutory Officer falls ill, they should inform the Lady Chief Justice's Office as soon as possible.

15. SICK ABSENCE

- 15.1 A Deputy Statutory Officer is entitled to claim sick pay when unwell and can cancel pre-booked days including training days. This is unless the pre-booked day would have been cancelled by NICTS for any other reason without payment of a cancellation fee.

16. MATERNITY, PATERNITY, PARENTAL, SHARED PARENTAL AND ADOPTION LEAVE

- 16.1 Judicial office holders are entitled to maternity, paternity, parental, shared parental and adoption leave and pay; details of which can be provided on request.

17. REQUEST FOR RESEARCH FACILITIES

- 17.1 From time to time members of the judiciary receive requests for research facilities, such as access to court records or chambers' hearings, interviews with themselves or court staff, or special assistance in attending public hearings. To ensure that such requests are treated consistently, they should be referred to the Lady Chief Justice. In considering such requests, the Lady Chief Justice will have regard to the likely value of the proposed research and the extent of the burden it might impose on the judiciary or on court staff. The Lady Chief Justice will consider very carefully all research applications where:-

- (i) active participation by the judiciary in the research is proposed; or
- (ii) the research proposed is to study decision-making by the judiciary; or
- (iii) the research relates to the judicial process and seems likely to raise important issues of policy or to make substantial comment on the work of the judiciary.

17.2 No members of the judiciary should feel obliged to participate in any project if they do not wish to do so. Where a judge does agree to participate in an approved research project the Lady Chief Justice's Office will notify them about the project and make arrangements, as appropriate, to provide whatever advice or assistance is necessary.

18. MANDATORY RETIREMENT AGE & SITTING IN RETIREMENT

18.1 As of March 2022, the Public Service Pensions and Judicial Offices 2022 raised the judicial mandatory retirement age for all judicial office holders to 75. There is no power for any judge to have their appointment extended beyond their normal compulsory retirement date except to conclude a part-heard case.

18.2 The Public Service Pensions and Judicial Offices Act 2022 also introduced a new legislative framework for sitting in retirement which came into force in October 2022. Sitting in retirement is not automatic nor an entitlement –any judge wishing to retire before their mandatory retirement age and continue to sit in retirement must submit an application which will be assessed against business need. Any judge who wishes to sit in retirement should refer to the sitting in retirement non-statutory policy and applicant guidance which is available from the relevant judicial secretariat or tribunal office and on the Judicial Intranet.

18.3 There will be no extensions to the office beyond the age of 75 except in exceptional circumstances to finish hearing a part-heard case, per JUPRA s27.

19. FURTHER INFORMATION

19.1 Further information about the terms of appointment which applies to Deputy Statutory Officers may be obtained from the Lady Chief Justice's Office, Chichester Street, Belfast, BT1 3JF who will seek advice from the Ministry of Justice on their behalf.