

FEE-PAID MEMBER of the SPECIAL IMMIGRATION APPEALS COMMISSION

CONDITIONS OF APPOINTMENT AND TERMS OF SERVICE

INTRODUCTION

1. Schedule 1 of the Special Immigration Appeals Commission Act 1997 provides for the composition of the Commission. The legislation provides for the appointment of members by the Lord Chancellor. A member is to hold and vacate his/her office in accordance with the terms of his/her appointment.

LOCATION

2. All appeals to the Commission are heard in London at Field House, Bream's Buildings.

DURATION OF APPOINTMENT

3. An appointment as a fee-paid member is for a (renewable) period of five years, subject to the upper age limit.

RENEWAL OF APPOINTMENT

4. At the end of the initial five-year appointment, renewal for further successive periods of five years is automatic subject to the individual's agreement and the upper age limit unless a question of cause for non-renewal is raised, or the individual no longer satisfies the conditions or qualifications for appointment.

There are four grounds for non-renewal:

- (a) inability;
 - (b) misbehaviour; including
 - 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;
 - (c) part of a reduction in numbers because of changes in operational requirements;
 - (d) part of a structural change to enable recruitment of new fee-paid members.
5. All decisions not to renew on grounds (a) and (b) are taken by the Lord Chancellor with the concurrence of the Lord Chief Justice. Such decisions are taken following an investigation conducted by a judge, who will report to the Lord Chancellor and the Lord Chief Justice.
 6. All decisions not to renew on grounds (c) or (d) will be on a "first in, first out" principle. The decision to use such grounds and the extent to which they will be used will be taken by the Lord Chancellor after consultation with the Senior President of the Tribunals Service and with the concurrence of the Lord Chief Justice.

7. Fee-paid members may choose to end their appointment by resignation or by declining to accept renewal on completion of a term.

UPPER AGE LIMIT

8. The appointment of a fee-paid member will not normally be extended beyond the age of 70.

ARRANGEMENTS FOR SITTINGS

9. A fee paid member is called upon to sit and to undertake other prescribed duties as the need arises. The frequency of sittings depends upon the workload of the Commission and on the commitments of the office holder. Due to the nature of the workload of the Commission no guarantee will be given on the number of sitting days that will be offered to post holders. However, the allocation of work is a judicial function and, subject to overriding operational requirements, all post holders will be offered work on the same basis.
10. An office holder's work is arranged, in consultation with him/her. The office holder should observe the sitting and other requirements of the centre at which they sit.

CONFLICTS OF INTEREST

11. 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.
12. The Lord Chancellor and the Lord Chief Justice regard it as the judicial office holder's personal responsibility (and not that of staff of the commission) to avoid, as far as possible, any potential conflict of interest which might require him or her to stand down from a particular case.
14. Judicial office holders are 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*. Fee-paid office holders 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) 2 WLR 870]). Fee-paid judicial office holders should exercise caution in any reference to their appointment on, for example, letterheads or in advertising literature. Fee-paid members hold office only when they are serving judicially and should not use their appointment as a means of pursuing, personal, professional or commercial advantage.

JUDICIAL CONDUCT

15. The public both deserves and expects the highest standards of conduct from those who hold judicial office. An office holder should notify the Lord Chief Justice and the Senior President at the earliest opportunity if they are aware of any matters relating to conduct which may affect their position or may reflect on the standing and reputation of the judiciary at large.

16. If an office holder is charged with, or cautioned for any criminal offence, other than a parking or speeding offence without aggravating circumstances, whether before or after he or she has been authorised to sit as a fee paid office holder, he or she should report the matter at once to the Lord Chief Justice, copied to the Lord Chancellor, 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, including some motoring matters, need not necessarily be regarded as being incompatible with continuing to hold judicial office. However, if a judicial office holder were convicted of a grave offence, for instance one involving violence to persons, dishonesty or moral turpitude, the Lord Chancellor and the Lord Chief Justice would regard themselves as having cause to consider the exercise of his powers to remove the individual from office on the grounds of misbehaviour; and the Lord Chancellor and the Lord Chief Justice regard 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.
17. The public must be entitled to expect all judicial office holders to maintain at all times proper standards of courtesy and consideration. The Lord Chancellor and the Lord Chief Justice do not regard behaviour which could cause offence, particularly on grounds of racial, or religious grounds, or amounting to sexual harassment, as 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 also been made, is in their view capable as being regarded as misbehaviour.

REMOVAL FROM OFFICE

18. The Lord Chancellor may if he thinks fit terminate the appointment of a fee-paid member on specified grounds. There are two grounds for removal from appointment:
 - a. inability;
 - b. misbehaviour; including
 - failure to comply with training requirements;
 - failure to comply with sitting requirements (without good reason); and
 - failure to observe the standards reasonably expected from a holder of such office
19. All decisions to remove are taken by the Lord Chancellor with the concurrence of the Lord Chief Justice. Such decisions are taken in accordance with the procedures contained in the Regulations made under the Constitutional Reform Act 2005.

DISQUALIFICATION

20. Fee-paid Members are precluded by statute from serving concurrently as Members of Parliament, etc. A fee-paid member is expected to submit his or her resignation to the Lord Chancellor in the event of nomination or adoption as a prospective candidate for election to Parliament, to the Scottish Parliament, to the Welsh Assembly, to the Northern Ireland assembly or the European Parliament. The Lord Chancellor should be consulted if doubts arise about any particular circumstances.

FEES, INCOME TAX AND NI CONTRIBUTIONS

21. The appointment is non-salaried and non-pensionable. Fee-paid Judges will receive a fee for each day sat. This fee is revised from time to time.
22. It is a general principle that Crown servants in receipt of a salary do not normally receive additional remuneration for public offices held, or work undertaken, concurrently on a fee-paid basis. While there may be circumstances (e.g. where it can be demonstrated that the judicial sittings are undertaken during a period of unpaid leave from the primary office or employment) where daily sitting fees may be payable, in general public office holders and public servants paid by Central Government will receive no remuneration for any fee-paid judicial offices held concurrently.
23. Fee-paid judicial office-holders who are practitioners or private sector employees are expected to be open and transparent with their firm, chambers or primary employer in terms of the arrangements, including financial arrangements, relating to their judicial appointment. It is essential that remuneration arrangements, and any uncertainties surrounding particular individual circumstances, should be resolved at the time of appointment or at the earliest opportunity following a material change of circumstances during a period of service. The same expectations apply to those fee-paid judicial office holders who are employed by or are officers of, local government.
24. Fee-paid Judges are regarded as holders 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 via the Ministry of Justice's payroll system and the net fee paid to the office holder. Fees are not subject to VAT.

TRAVELLING AND OTHER EXPENSES

25. Travelling expenses and in certain circumstances night subsistence allowances may be payable in connection with sittings, attendance at training courses, etc. Details of the current mileage and night subsistence rates will be supplied by the staff of the Commission. The rules governing, and rates of these allowances, may change from time to time, and any such changes will be notified. HM Revenue & Customs tax rules governing the tax treatment, and rates, of these allowances may also change and any such changes will be notified to office holders.

MATERNITY, PATERNITY AND ADOPTION LEAVE AND STATUTORY SICK PAY

26. Fee-paid judicial office holders are entitled to maternity, paternity and adoption leave and Statutory Sick Pay. Details of the operation of these entitlements will be provided to office holders as appropriate.