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SCHEDULES

SCHEDULE 12

Section 61

THE JUDICIAL APPOINTMENTS COMMISSION

PART 1

THE COMMISSIONERS

The Commissioners

- 1 The Commission consists of—
 - (a) a chairman, and
 - (b) 14 other Commissioners,appointed by Her Majesty on the recommendation of the Lord Chancellor.
- 2 (1) The chairman must be a lay member.
 - (2) Of the other Commissioners—
 - (a) 5 must be judicial members,
 - (b) 2 must be professional members,
 - (c) 5 must be lay members,
 - (d) 1 other must be the holder of an office listed in Part 3 of Schedule 14, and
 - (e) 1 other must be a lay justice member.
 - (3) Of the Commissioners appointed as judicial members—
 - (a) 1 must be a Lord Justice of Appeal;
 - (b) 1 must be a puisne judge of the High Court;
 - (c) 1 other must be either a Lord Justice of Appeal or a puisne judge of the High Court;
 - (d) 1 must be a circuit judge;
 - (e) 1 must be a district judge of a county court, a District Judge (Magistrates' Courts) or a person appointed to an office under section 89 of the Supreme Court Act 1981 (c. 54).
 - (4) Of the Commissioners appointed as professional members—
 - (a) 1 must be a practising barrister in England and Wales;
 - (b) 1 must be a practising solicitor of the Senior Courts of England and Wales.
 - (5) A Commissioner is not to be taken into account for the purposes of any paragraph of sub-paragraph (2) unless he was appointed for the purposes of that paragraph.
- 3 A person must not be appointed as a Commissioner if he is employed in the civil service of the State.

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- 4 (1) A judicial member is a person who holds an office listed in paragraph 2(3) and who is not a practising lawyer.
- (2) A professional member is a person who is—
- (a) a practising barrister in England and Wales, or
 - (b) a practising solicitor of the Senior Courts of England and Wales.
- (3) A lay member is a person resident in England or Wales who has never held a listed judicial office or been a practising lawyer.
- (4) A lay justice member is a justice of the peace who—
- (a) holds no other listed judicial office, or no other except that of General Commissioner,
 - (b) is not a practising barrister in England and Wales, and
 - (c) is not a practising solicitor of the Senior Courts of England and Wales.
- 5 (1) The Lord Chancellor may by order amend any of the following provisions by substituting a number for the number of Commissioners for the time being specified there—
- (a) paragraph 1(b);
 - (b) any paragraph of paragraph 2(2);
 - (c) any paragraph of paragraph 2(3);
 - (d) any paragraph of paragraph 2(4).
- (2) That is subject to the following—
- (a) the total of the numbers in paragraph 2(2) must be the number in paragraph 1(b);
 - (b) the total of the numbers in paragraph 2(3) must be the number in paragraph 2(2)(a);
 - (c) the total of the numbers in paragraph 2(4) must be the number in paragraph 2(2)(b);
 - (d) the number substituted in any provision must not be less than the number specified in that provision as originally enacted.
- (3) The Lord Chancellor may not make an order under this paragraph without the agreement of the Lord Chief Justice.
- 6 (1) In this Schedule—
- “judicial member” has the meaning given by paragraph 4(1);
- “lay member” has the meaning given by paragraph 4(3);
- “listed judicial office” means an office listed in Schedule 14;
- “practising” is to be read in accordance with sub-paragraphs (2) and (3);
- “practising lawyer” means—
- (a) a practising barrister in England and Wales;
 - (b) a practising solicitor of the Senior Courts of England and Wales;
 - (c) a practising advocate in Scotland;
 - (d) a practising solicitor in Scotland;
 - (e) a practising member of the Bar of Northern Ireland;
 - (f) a practising solicitor of the Court of Judicature of Northern Ireland;
- “professional member” has the meaning given by paragraph 4(2);
- “senior Head of Division” means—

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- (a) the Master of the Rolls;
 - (b) if that office is vacant, the President of the Queen's Bench Division;
 - (c) if both of those offices are vacant, the President of the Family Division;
 - (d) if all of those offices are vacant, the Chancellor of the High Court.
- (2) A barrister in England and Wales, an advocate in Scotland or a member of the Bar of Northern Ireland is practising if he is—
- (a) practising as such,
 - (b) employed to give legal advice, or
 - (c) providing legal advice under a contract for services.
- (3) A solicitor of the Senior Courts of England and Wales, a solicitor in Scotland or a solicitor of the Court of Judicature of Northern Ireland is practising if he is—
- (a) acting as such,
 - (b) employed to give legal advice, or
 - (c) providing legal advice under a contract for services.

Selection of commissioners

- 7 (1) The Lord Chancellor may recommend a person for appointment as a Commissioner for the purposes of paragraph (a), (b) or (c) of paragraph 2(3) only if—
- (a) he has requested the Judges' Council to select a person to be appointed for the purposes of that paragraph;
 - (b) the person has been selected by the Judges' Council in accordance with that request, and
 - (c) the requirements of sub-paragraph (7) have been complied with.
- (2) The Lord Chancellor may recommend a person for appointment as a Commissioner for the purposes of paragraph 1(a), any other paragraph of paragraph 2(3), any paragraph of paragraph 2(4) or any of paragraphs (c) to (e) of paragraph 2(2) only if—
- (a) he has requested a panel appointed by him to select a person or (as the panel may determine) more than one person for the purposes of such a recommendation, and
 - (b) the person he recommends is the person or one of the persons selected.
- (3) Subject to sub-paragraph (1), the Lord Chancellor must recommend for appointment any person selected by the Judges' Council.
- (4) A request under this paragraph must specify the provision for the purposes of which the appointment is to be made.
- (5) A request may specify the time within which a person is to be selected.
- (6) The Lord Chancellor may appoint different panels for the purposes of different requests.
- (7) A selection by the Judges' Council must be notified to the Lord Chancellor in a report which gives reasons for the selection.
- (8) In this paragraph references to the Judges' Council are to be read as references to a body designated for the purposes of this Schedule by the Lord Chief Justice.

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Panels

- 8 (1) A panel appointed under paragraph 7(2) must have four members (subject to sub-paragraph (7)).
- (2) The first member must be a person selected by the Lord Chancellor with the agreement of the Lord Chief Justice (or, if the office of Lord Chief Justice is vacant, with the agreement of the senior Head of Division).
- (3) That member is to be chairman of the panel.
- (4) The second member must be the Lord Chief Justice or his nominee, unless the office of Lord Chief Justice is vacant.
- (5) If that office is vacant, the second member must be the senior Head of Division or his nominee.
- (6) The third member must be a person nominated by the first member.
- (7) The chairman of the Commission must also be a member of the panel unless his office is vacant or is the office for which a recommendation is to be made.
- (8) A person must not be a member of the panel if he is employed in the civil service of the State.
- (9) A person must not be the first member if he is one of the following—
- (a) a Commissioner;
 - (b) a member of the staff of the Commission;
 - (c) a practising lawyer;
 - (d) the holder of a listed judicial office;
 - (e) a member of the House of Commons.
- (10) A person must not be the third member if he is a member of the House of Commons.
- (11) The Lord Chancellor before selecting a person to be appointed as the first member, and the Lord Chief Justice or Head of Division before agreeing to the selection, must consider these questions—
- (a) whether the person has exercised functions that appear to him to be of a judicial nature and such as to make the person inappropriate for the appointment;
 - (b) whether any past service in a capacity listed in sub-paragraph (8) or (9) appears to him to make the person inappropriate for the appointment;
 - (c) whether the extent of any present or past party political activity or affiliations appears to him to make the person inappropriate for the appointment.
- (12) The first member must consider the same questions before nominating a person to be appointed as the third member.
- 9 The Lord Chancellor may pay to a member of a panel appointed under paragraph 7(2) such remuneration, fees or expenses as he may determine.

Selection by a panel

- 10 (1) This paragraph applies to selection by a panel appointed under paragraph 7(2).
- (2) Before selecting a person the panel must consider—

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- (a) in the case of a selection for the purposes of paragraph 2(4)(a), any views expressed by the General Council of the Bar;
 - (b) in the case of a selection for the purposes of paragraph 2(4)(b), any views expressed by the Law Society.
- (3) Before selecting a person for appointment as the chairman or one of the other lay members, the panel must consider—
- (a) whether the person has exercised functions that appear to the panel to be of a judicial nature and such as to make the person inappropriate for the appointment;
 - (b) whether any past service in a capacity listed in paragraph 8(9) or as a person employed in the civil service of the State appears to the panel to make the person inappropriate for the appointment;
 - (c) whether the extent of any present or past party political activity or affiliations appears to the panel to make the person inappropriate for the appointment.
- (4) The panel must select persons for appointment as lay members (including the chairman) with a view to securing, so far as practicable, that the persons so appointed include at any time at least one who appears to the panel to have special knowledge of Wales.

Vice-chairman

- 11 (1) The Commissioner who is the most senior of the persons appointed as judicial members is vice-chairman of the Commission.
- (2) For the purposes of sub-paragraph (1)—
- (a) seniority is by office held at the time (first Lord Justice of Appeal, then puisne judge, then circuit judge, then the offices mentioned in paragraph 2(3)(e));
 - (b) between two holders of one of those offices, the person who has served longest in the office (over one or more periods) is the senior.
- (3) In the absence of the chairman, the vice-chairman may exercise the chairman's functions other than under the following provisions—
- (a) paragraph 8(7);
 - (b) section 71;
 - (c) section 80.

Term of office etc. of Commissioners

- 12 (1) A Commissioner must be appointed for a fixed period.
- (2) But an appointment is subject to paragraphs 13 to 15.
- 13 A person—
- (a) may not be appointed as a Commissioner for more than 5 years at a time, and
 - (b) may not hold office as a Commissioner for periods (whether or not consecutive) totalling more than 10 years.
- 14 (1) A Commissioner—

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- (a) in the case of the chairman, ceases to be a Commissioner (and chairman) on ceasing to be a lay member;
 - (b) in the case of a judicial or professional member, ceases to be a Commissioner on the earlier of ceasing to be such a member, and ceasing to fall within the paragraph of paragraph 2(3) or 2(4) for the purposes of which he was appointed;
 - (c) in any other case, ceases to be a Commissioner on ceasing to fall within the paragraph of paragraph 2(2) for the purposes of which he was appointed.
- (2) But if (before or after an event within paragraph (a) or (b) of sub-paragraph (1)) the Lord Chancellor directs in a particular case that that paragraph is to be disregarded for a period specified in the direction, the person continues to be a Commissioner until the end of that period, subject to the terms of his appointment and the other provisions of this Schedule.
- (4) A Commissioner ceases to be a Commissioner if he becomes employed in the civil service of the State.
- 15 (1) A Commissioner may at any time—
- (a) resign his office by notice in writing addressed to Her Majesty;
 - (b) be removed from office by Her Majesty on the recommendation of the Lord Chancellor.
- (2) The Lord Chancellor may not under sub-paragraph (1) recommend that a Commissioner be removed from office unless he is satisfied that the Commissioner—
- (a) has failed without reasonable excuse to discharge the functions of his office for a continuous period of at least six months,
 - (b) has been convicted of an offence,
 - (c) is an undischarged bankrupt, or
 - (d) is otherwise unfit to hold his office or unable to discharge its functions.
- (3) A recommendation on the ground mentioned in sub-paragraph (2)(a) may not be made more than 3 months after the end of the period mentioned there.

Salary, allowances and expenses

- 16 (1) The Commission may—
- (a) pay to each Commissioner such remuneration, fees or expenses as the Lord Chancellor may determine;
 - (b) pay, or make provision for the payment of, such pension, allowance or gratuity as the Lord Chancellor may determine to or in respect of a person who is or has been a Commissioner.
- (2) If—
- (a) a person ceases to hold office as a Commissioner other than on the expiry of his term of appointment, and
 - (b) it appears to the Lord Chancellor that there are special circumstances that would warrant the payment of compensation to him,
- the Lord Chancellor may direct the Commission to make to or in respect of that person a payment of such amount as the Lord Chancellor may determine.

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Code of Conduct

- 17 The Lord Chancellor may issue and from time to time revise a code of conduct to be observed by the Commissioners.

PART 2

THE COMMISSION

Status of the Commission and its property

- 18 (1) The Commission is not to be regarded—
(a) as the servant or agent of the Crown, or
(b) as enjoying any status, immunity or privilege of the Crown.
- (2) The property of the Commission is not to be regarded as property of, or property held on behalf of, the Crown.

Powers

- 19 (1) The Commission may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.
- (2) But the Commission may not borrow money except with the agreement of the Lord Chancellor.
- (3) Nothing in this Schedule is to be read as limiting the generality of sub-paragraph (1).

Committees

- 20 (1) The Commission may establish committees.
- (2) A committee of the Commission may establish sub-committees.
- (3) A person may not be a member of a committee or sub-committee unless he is a Commissioner.
- (4) The Commission may delegate functions to a committee, and a committee may delegate functions (including functions delegated to them) to a sub-committee.
- (5) The function of making a selection under this Part of this Act may be delegated only to a committee or sub-committee whose members include at least one judicial member and one lay member.
- (6) In sub-paragraphs (2) to (5) references to a committee do not include references to a selection panel appointed under section 70 or 79.

Procedure and proceedings

- 21 (1) The Commission may regulate its own procedure, and the procedure of its committees and sub-committees, including quorum.
- (2) But the quorum of a committee or sub-committee to which the Commission's function of making a selection under this Part of this Act has been delegated must not be less than 3.

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- (3) The validity of proceedings of the Commission or a committee or sub-committee is not affected by—
- (a) a vacancy among the members, or
 - (b) a defect in the appointment of a member.

Staff

- 22 (1) The Commission—
- (a) must appoint a chief executive, and
 - (b) may appoint such other staff as it considers necessary to assist in the performance of its functions.
- (2) The Commission must not appoint a person as chief executive unless the Lord Chancellor approves the appointment.
- (3) Staff are to be—
- (a) appointed on terms and conditions determined by the Commission, and approved by the Lord Chancellor, and
 - (b) paid by the Commission in accordance with provision made by or under the terms of appointment.
- (4) In determining the terms and conditions the Commission must have regard to the desirability of keeping remuneration and the other terms and conditions broadly in line with those applying to employment in the civil service of the State.
- (5) In Schedule 1 to the Superannuation Act 1972 (c. 11) (kinds of employment to which a scheme under section 1 of the Act may apply), at the end of the list of “Royal Commissions and other Commissions” insert— “ Judicial Appointments Commission. ”
- (6) The Commission must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (5) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.
- (7) Staff of the Commission are not to be regarded as—
- (a) servants or agents of the Crown, or
 - (b) enjoying any status, immunity or privilege of the Crown.

Arrangements for assistance

- 23 (1) The Commission may make arrangements with such persons as it considers appropriate for assistance to be provided to it.
- (2) Arrangements may include the paying of fees to such persons.
- (3) No arrangements may be made under this paragraph unless approved by the Lord Chancellor.

Appointments and arrangements by the Lord Chancellor

- 24 (1) The Lord Chancellor may appoint a person to serve as chief executive until the first appointment under paragraph 22(1)(a) takes effect.

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- (2) A chief executive serving under sub-paragraph (1) may incur expenditure and do other things (including appointing staff and making arrangements for assistance under paragraph 23) in the name and on behalf of the Commission—
- (a) before the membership of the Commission is first constituted in accordance with paragraph 1, and
 - (b) thereafter, until the Commission determines otherwise.
- (3) A chief executive's powers under sub-paragraph (2) are exercisable subject to any directions given to him by the Lord Chancellor.
- 25 (1) The Lord Chancellor may—
- (a) appoint persons to serve as members of the Commission's staff;
 - (b) make arrangements in the name and on behalf of the Commission for other assistance to be provided to the Commission.
- (2) The Lord Chancellor may not exercise his powers under sub-paragraph (1) later than—
- (a) the end of 3 years after the day on which the Commission is first constituted in accordance with paragraph 1, or
 - (b) such earlier time as the Commission may determine.
- (3) If there is a chief executive of the Commission the Lord Chancellor may not exercise his powers under sub-paragraph (1) without the agreement of the chief executive.

Power to transfer staff to employment of the Commission

- 26 (1) The Lord Chancellor may by regulations provide for the employment of any relevant person to be transferred to the Commission.
- (2) A relevant person is any person who, immediately before the date prescribed in regulations under sub-paragraph (1), is—
- (a) employed in the civil service of the State, and
 - (b) providing assistance to the Commission in pursuance of arrangements made under paragraph 23 or 25.
- (3) But a person is not a relevant person if—
- (a) his employment in the civil service ends on the day immediately before the date referred to in sub-paragraph (2), or
 - (b) he is withdrawn from work with the Commission with effect from that date.
- (4) Before making any regulations under this paragraph the Lord Chancellor must consult such organisations as appear to him to represent the interests of persons likely to be affected by the regulations.
- (5) The Lord Chancellor may only exercise his power under sub-paragraph (1)—
- (a) before the membership of the Commission is first constituted in accordance with paragraph 1, and
 - (b) with the agreement of the Commission, during the period of 3 years beginning with the day on which the Commission is first constituted in accordance with that paragraph.

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Commencement Information

- II** Sch. 12 para. 26 partly in force; Sch. 12 para. 26 not in force at Royal Assent see s. 148; Sch. 12 para. 26 in force for specified purposes at 1.10.2005 by S.I. 2005/2505, art. 2(b); Sch. 12 para 26 in force at 3.4.2006 in so far as not already in force by S.I. 2006/1014, art. 2(a), Sch. 1 para. 15

Delegation

- 27 (1) The Commission may delegate functions to—
- (a) any of its staff,
 - (b) any person with whom arrangements are made under paragraph 23 or 25, or
 - (c) any person providing assistance to the Commission in pursuance of such arrangements.
- (2) A committee, a sub-committee or the chief executive may delegate functions (including functions delegated to them or him) to any of the persons listed at sub-paragraph (1).
- (3) Sub-paragraphs (1) and (2) do not apply to the functions of the Commission, or of a selection panel appointed under section 70 or 79, of making a selection under this Part of this Act.

Delegation and contracting out of superannuation functions

- 28 (1) Section 1(2) of the Superannuation Act 1972 (c. 11) (delegation of functions relating to civil service superannuation schemes by Minister for the Civil Service to another officer of the Crown etc.) has effect as if the reference to an officer of the Crown other than a Minister included a reference to the Commission's chief executive.
- (2) Any administration function conferred on the chief executive under section 1(2) of that Act (in accordance with sub-paragraph (1)) may be exercised by, or by employees of, any person authorised by the chief executive.
- (3) “Administration function” means a function of administering schemes—
- (a) made under section 1 of that Act, and
 - (b) from time to time in force.
- (4) The chief executive may, under sub-paragraph (2), authorise a person to exercise administrative functions—
- (a) to their full extent or to a specified extent;
 - (b) in all cases or in specified cases;
 - (c) unconditionally or subject to specified conditions.
- (5) An authorisation under sub-paragraph (2)—
- (a) is to be treated for all purposes as given by virtue of an order under section 69 of the Deregulation and Contracting Out Act 1994 (c. 40) (contracting out of functions of Ministers and office-holders);
 - (b) may be revoked at any time by the Commission or the chief executive.

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Inspection of documents

- 29 (1) The Commission must permit any person authorised by the Lord Chancellor to inspect or make copies of accounts or other documents which in the opinion of the Lord Chancellor relate to costs and expenditure of the Commission.
- (2) The Commission must provide such explanation of accounts or documents inspected or copied by any person under this paragraph as that person or the Lord Chancellor may require.

Financial provisions and directions

- 30 (1) The Lord Chancellor must pay to the Commission such sums as he may determine are appropriate for, or in connection with, the exercise by it of its functions.
- (2) The Lord Chancellor may by direction require the Commission—
- (a) not to incur costs and expenditure in excess of a specified amount without his consent;
 - (b) to follow specified procedures in relation to its costs and expenditure.
- (3) A direction under sub-paragraph (2) may relate to all of the Commission's costs and expenditure, or to costs and expenditure of a specified description.

Accounts and audit

- 31 (1) The Commission must keep proper accounts and proper records in relation to them.
- (2) The Commission must prepare a statement of accounts in respect of each financial year.
- (3) The statement must give a true and fair view of the state of the Commission's affairs at the end of the financial year, and of its income and expenditure and cash flows in the financial year.
- (4) The statement must be in compliance with any directions given by the Lord Chancellor with the Treasury's consent as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.
- (5) The Commission must send the statement to the Lord Chancellor at such time as he may direct.
- (6) The Lord Chancellor must, on or before 31 August in any year, send to the Comptroller and Auditor General the statement prepared by the Commission for the financial year last ended.
- (7) The Comptroller and Auditor General must examine, certify and report on the statement sent to him under sub-paragraph (6) and must lay copies of it and of his report before each House of Parliament.

Reports

- 32 (1) The Commission must, as soon as practicable after the end of each financial year, provide to the Lord Chancellor a report about the performance of its functions during that year.

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- (2) After consulting the Lord Chief Justice, the Lord Chancellor may by direction require the Commission to deal, in reports or a particular report under sub-paragraph (1), with matters specified in the direction.
- (3) The Commission must, as soon as practicable after a direction by the Lord Chancellor under this sub-paragraph, provide to the Lord Chancellor a report about any matter or matters specified in the direction.
- (4) The Lord Chancellor must lay before each House of Parliament a copy of any report provided to him under sub-paragraph (1).
- (5) The Commission must publish any report once copies of it have been laid under sub-paragraph (4).

Documentary evidence

- 33 The application of the seal of the Commission is to be authenticated by the signature of any Commissioner or member of staff of the Commission who has been authorised (whether generally or specifically) for the purpose.
- 34 Any contract or instrument which, if entered into or executed by an individual, would not need to be under seal, may be entered into or executed on behalf of the Commission by any person who has been authorised (whether generally or specifically) for the purpose.
- 35 A document purporting to be—
- (a) duly executed under the seal of the Commission, or
 - (b) signed on behalf of the Commission,
- is to be received in evidence and, unless the contrary is proved, taken to be executed or signed in that way.

General

- 36 (1) “Financial year” in this Schedule, means—
- (a) the period beginning with the date on which section 61 comes into force and ending with the following 31 March, and
 - (b) each successive period of twelve months.
- (2) In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified) at the appropriate place insert— “The Judicial Appointments Commission.”.
- (3) In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (other public bodies and offices which are public authorities) at the appropriate place insert— “The Judicial Appointments Commission.”

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