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SCHEDULES

SCHEDULE 4

Section 7

CHAMBERS AND CHAMBER PRESIDENTS: FURTHER PROVISION

VALID FROM 03/11/2008

PART 1

CHAMBER PRESIDENTS: APPOINTMENT, DELEGATION, DEPUTIES AND FURTHER PROVISION

Eligibility for appointment as Chamber President by Lord Chancellor

- 1 A person is eligible for appointment under section 7(7) only if—
- (a) he is a judge of the Upper Tribunal, or
 - (b) he does not fall within paragraph (a) but is eligible to be appointed under paragraph 1(1) of Schedule 3 as a judge of the Upper Tribunal (see paragraph 1(2) of that Schedule).

Appointment as Chamber President by Lord Chancellor: consultation and nomination

- 2 (1) The Lord Chancellor must consult the Senior President of Tribunals before the Lord Chancellor appoints under section 7(7) a person within—
- section 6(1)(a) (ordinary judge of Court of Appeal in England and Wales),
 - section 6(1)(b) (Lord Justice of Appeal in Northern Ireland),
 - section 6(1)(c) (judge of the Court of Session), or
 - section 6(1)(d) (puisne judge of the High Court in England and Wales or Northern Ireland).
- (2) If the Lord Chancellor, in exercise of his power under section 7(7) in a particular case, wishes that the person appointed should be drawn from among the ordinary judges of the Court of Appeal in England and Wales or the puisne judges of the High Court in England and Wales, the Lord Chancellor must first ask the Lord Chief Justice of England and Wales to nominate one of those judges for the purpose.
- (3) If the Lord Chancellor, in exercise of his power under section 7(7) in a particular case, wishes that the person appointed should be drawn from among the judges of the Court of Session, the Lord Chancellor must first ask the Lord President of the Court of Session to nominate one of those judges for the purpose.
- (4) If the Lord Chancellor, in exercise of his power under section 7(7) in a particular case, wishes that the person appointed should be drawn from among the Lords Justices of Appeal in Northern Ireland or the puisne judges of the High Court in Northern Ireland, the Lord Chancellor must first ask the Lord Chief Justice of Northern Ireland to nominate one of those judges for the purpose.

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- (5) If a judge is nominated under sub-paragraph (2), (3) or (4) in response to a request under that sub-paragraph, the Lord Chancellor must appoint the nominated judge as Chamber President of the chamber concerned.

Chamber Presidents: duration of appointment, remuneration etc.

- 3 (1) A Chamber President is to hold and vacate office as a Chamber President in accordance with the terms of his appointment as a Chamber President (subject to the Judicial Pensions and Retirement Act 1993 (c. 8)).
- (2) The Lord Chancellor may pay to a Chamber President such amounts (if any) as the Lord Chancellor may determine by way of—
- (a) remuneration;
 - (b) allowances;
 - (c) expenses.

Delegation of functions by Chamber Presidents

- 4 (1) The Chamber President of a chamber of the First-tier Tribunal or Upper Tribunal may delegate any function he has in his capacity as the Chamber President of the chamber—
- (a) to any judge, or other member, of either of those tribunals;
 - (b) to staff appointed under section 40(1).
- (2) A delegation under sub-paragraph (1) is not revoked by the delegator's becoming incapacitated.
- (3) Any delegation made by a person under sub-paragraph (1) that is in force immediately before the person ceases to be the Chamber President of a chamber continues in force until subsequently varied or revoked by another holder of the office of Chamber President of that chamber.
- (4) The delegation under sub-paragraph (1) of a function shall not prevent the exercise of the function by the Chamber President of the chamber concerned.
- (5) In this paragraph “delegate” includes further delegate.

Deputy Chamber Presidents

- 5 (1) The Lord Chancellor may appoint a person who is not a Deputy Chamber President of a chamber to be a Deputy Chamber President of a chamber.
- (2) The Senior President of Tribunals may appoint a person who is a Deputy Chamber President of a chamber to be instead, or to be also, a Deputy Chamber President of another chamber.
- (3) The power under sub-paragraph (1) is exercisable in any particular case only if the Lord Chancellor—
- (a) has consulted the Senior President of Tribunals about whether a Deputy Chamber President should be appointed for the chamber concerned, and
 - (b) considers, in the light of the consultation, that a Deputy Chamber President of the chamber should be appointed.

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- (4) A person is eligible for appointment under sub-paragraph (1) only if—
- (a) he is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3,
 - (b) he is a transferred-in judge of the Upper Tribunal (see section 31(2)),
 - (c) he is a judge of the Upper Tribunal by virtue of—
 - section 5(1)(d) (legally qualified member of Asylum and Immigration Tribunal),
 - section 5(1)(e) (Social Security Commissioner for Northern Ireland),
 - section 5(1)(g) (certain judges of courts in the United Kingdom), or
 - section 5(1)(h) (deputy judge of the Upper Tribunal), or
 - (d) he falls within none of paragraphs (a) to (c) but is eligible to be appointed under paragraph 1(1) of Schedule 3 as a judge of the Upper Tribunal (see paragraph 1(2) of that Schedule).
- (5) If the Lord Chancellor, in exercise of his power under sub-paragraph (1) in a particular case, wishes that the person appointed should be drawn from among the ordinary judges of the Court of Appeal in England and Wales or the puisne judges of the High Court in England and Wales, the Lord Chancellor must first ask the Lord Chief Justice of England and Wales to nominate one of those judges for the purpose.
- (6) If the Lord Chancellor, in exercise of his power under sub-paragraph (1) in a particular case, wishes that the person appointed should be drawn from among the judges of the Court of Session, the Lord Chancellor must first ask the Lord President of the Court of Session to nominate one of those judges for the purpose.
- (7) If the Lord Chancellor, in exercise of his power under sub-paragraph (1) in a particular case, wishes that the person appointed should be drawn from among the Lords Justices of Appeal in Northern Ireland or the puisne judges of the High Court in Northern Ireland, the Lord Chancellor must first ask the Lord Chief Justice of Northern Ireland to nominate one of those judges for the purpose.
- (8) If a judge is nominated under sub-paragraph (5), (6) or (7) in response to a request under that sub-paragraph, the Lord Chancellor must appoint the nominated judge as a Deputy Chamber President of the chamber concerned.
- (9) A Deputy Chamber President is to hold and vacate office as a Deputy Chamber President in accordance with the terms of his appointment (subject to the Judicial Pensions and Retirement Act 1993 (c. 8)).
- (10) The Lord Chancellor may pay to a Deputy Chamber President such amounts (if any) as the Lord Chancellor may determine by way of—
- (a) remuneration;
 - (b) allowances;
 - (c) expenses.
- (11) In sub-paragraphs (1) and (2) “chamber” means chamber of the First-tier Tribunal or chamber of the Upper Tribunal.

Acting Chamber Presidents

- 6 (1) If in the case of a particular chamber of the First-tier Tribunal or Upper Tribunal there is no-one appointed under section 7 to preside over the chamber, the Senior

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President of Tribunals may appoint a person to preside over the chamber during the vacancy.

- (2) A person appointed under sub-paragraph (1) is to be known as an Acting Chamber President.
- (3) A person who is the Acting Chamber President of a chamber is to be treated as the Chamber President of the chamber for all purposes other than—
 - (a) the purposes of this paragraph of this Schedule, and
 - (b) the purposes of the Judicial Pensions and Retirement Act 1993 (c. 8).
- (4) A person is eligible for appointment under sub-paragraph (1) only if he is eligible for appointment as a Chamber President.
- (5) An Acting Chamber President is to hold and vacate office as an Acting Chamber President in accordance with the terms of his appointment.
- (6) The Lord Chancellor may pay to an Acting Chamber President such amounts (if any) as the Lord Chancellor may determine by way of—
 - (a) remuneration;
 - (b) allowances;
 - (c) expenses.

Guidance

- 7 The Chamber President of a chamber of the First-tier Tribunal or the Upper Tribunal is to make arrangements for the issuing of guidance on changes in the law and practice as they relate to the functions allocated to the chamber.

Oaths

- 8 (1) Sub-paragraph (2) applies to a person (“the appointee”)—
- (a) appointed under section 7(7) as a Chamber President,
 - (b) appointed under paragraph 5(1) as a Deputy Chamber President of a chamber, or
 - (c) appointed as an Acting Chamber President.
- (2) The appointee must take the required oaths before—
- (a) the Senior President of Tribunals, or
 - (b) an eligible person who is nominated by the Senior President of Tribunals for the purpose of taking the oaths from the appointee.
- (3) A person is eligible for the purposes of sub-paragraph (2)(b) if any one or more of the following paragraphs applies to him—
- (a) he holds high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005 (c. 4));
 - (b) he holds judicial office (as defined in section 109(4) of that Act);
 - (c) he holds (in Scotland) the office of sheriff.
- (4) Sub-paragraph (2) does not apply to the appointee if he has previously taken the required oaths in compliance with a requirement imposed on him under paragraph 9 of Schedule 2 or paragraph 10 of Schedule 3.
- (5) In this paragraph “the required oaths” means (subject to sub-paragraph (6))—

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- (a) the oath of allegiance, and
 - (b) the judicial oath,
- as set out in the Promissory Oaths Act 1868 (c. 72).

(6) Where it appears to the Lord Chancellor that the appointee will carry out functions under his appointment wholly or mainly in Northern Ireland, the Lord Chancellor may direct that in relation to the appointee “the required oaths” means—

- (a) the oath as set out in section 19(2) of the Justice (Northern Ireland) Act 2002 (c. 26), or
- (b) the affirmation and declaration as set out in section 19(3) of that Act.

PART 2

JUDGES AND OTHER MEMBERS OF CHAMBERS: ASSIGNMENT AND JURISDICTION

VALID FROM 03/11/2008

Assignment is function of Senior President of Tribunals

- 9 (1) The Senior President of Tribunals has—
- (a) the function of assigning judges and other members of the First-tier Tribunal (including himself) to chambers of the First-tier Tribunal, and
 - (b) the function of assigning judges and other members of the Upper Tribunal (including himself) to chambers of the Upper Tribunal.
- (2) The functions under sub-paragraph (1) are to be exercised in accordance with the following provisions of this Part of this Schedule.

VALID FROM 03/11/2008

Deemed assignment of Chamber Presidents and Deputy Chamber Presidents

- 10 (1) The Chamber President, or a Deputy Chamber President, of a chamber—
- (a) is to be taken to be assigned to that chamber;
 - (b) may be assigned additionally to one or more of the other chambers;
 - (c) may be assigned under paragraph (b) to different chambers at different times.
- (2) Paragraphs 11(1) and (2) and 12(2) and (3) do not apply to assignment of a person who is a Chamber President or a Deputy Chamber President.
- (3) In sub-paragraph (1) “chamber” means chamber of the First-tier Tribunal or the Upper Tribunal.

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Assigning members of First-tier Tribunal to its chambers

- 11 (1) Each person who is a judge or other member of the First-tier Tribunal by virtue of appointment under paragraph 1(1) or 2(1) of Schedule 2 or who is a transferred-in judge, or transferred-in other member, of the First-tier Tribunal—
- (a) is to be assigned to at least one of the chambers of the First-tier Tribunal, and
 - (b) may be assigned to different chambers of the First-tier Tribunal at different times.
- (2) A judge or other member of the First-tier Tribunal to whom sub-paragraph (1) does not apply—
- (a) may be assigned to one or more of the chambers of the First-tier Tribunal, and
 - (b) may be assigned to different chambers of the First-tier Tribunal at different times.
- (3) The Senior President of Tribunals may assign a judge or other member of the First-tier Tribunal to a particular chamber of the First-tier Tribunal only with the concurrence—
- (a) of the Chamber President of the chamber, and
 - (b) of the judge or other member.
- (4) The Senior President of Tribunals may end the assignment of a judge or other member of the First-tier Tribunal to a particular chamber of the First-tier Tribunal only with the concurrence of the Chamber President of the chamber.
- (5) Sub-paragraph (3)(a) does not apply where the judge, or other member, concerned is not assigned to any of the chambers of the First-tier Tribunal.
- (6) Sub-paragraphs (3)(a) and (4) do not apply where the judge concerned is within section 6(1)(a) to (d) (judges of Courts of Appeal, Court of Session and High Courts).
- (7) Sub-paragraphs (3) and (4) do not apply where the judge concerned is the Senior President of Tribunals himself.

VALID FROM 03/11/2008

Assigning members of Upper Tribunal to its chambers

- 12 (1) Sub-paragraph (2) applies to a person if—
- (a) he is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3, or
 - (b) he is a transferred-in judge of the Upper Tribunal, or
 - (c) he is a deputy judge of the Upper Tribunal, or
 - (d) he is a member of the Upper Tribunal by virtue of appointment under paragraph 2(1) of Schedule 3, or

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- (e) he is a transferred-in other member of the Upper Tribunal.
- (2) Each person to whom this sub-paragraph applies—
 - (a) is to be assigned to at least one of the chambers of the Upper Tribunal, and
 - (b) may be assigned to different chambers of the Upper Tribunal at different times.
- (3) A judge or other member of the Upper Tribunal to whom sub-paragraph (2) does not apply—
 - (a) may be assigned to one or more of the chambers of the Upper Tribunal, and
 - (b) may be assigned to different chambers of the Upper Tribunal at different times.
- (4) The Senior President of Tribunals may assign a judge or other member of the Upper Tribunal to a particular chamber of the Upper Tribunal only with the concurrence—
 - (a) of the Chamber President of the chamber, and
 - (b) of the judge or other member.
- (5) The Senior President of Tribunals may end the assignment of a judge or other member of the Upper Tribunal to a particular chamber of the Upper Tribunal only with the concurrence of the Chamber President of the chamber.
- (6) Sub-paragraph (4)(a) does not apply where the judge, or other member, concerned is not assigned to any of the chambers of the Upper Tribunal.
- (7) Sub-paragraphs (4)(a) and (5) do not apply where the judge concerned is within section 6(1)(a) to (d) (judges of Courts of Appeal, Court of Session and High Courts).
- (8) Sub-paragraphs (4) and (5) do not apply where the judge concerned is the Senior President of Tribunals himself.

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Policy of Senior President of Tribunals as respects assigning members to chambers etc.

- 13
- (1) The Senior President of Tribunals must publish a document recording the policy adopted by him in relation to—
 - (a) the assigning of persons to chambers in exercise of his functions under paragraph 9,
 - (b) the assigning of persons to act as members of the Asylum and Immigration Tribunal in exercise of his functions under paragraphs 5A and 5B of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 (c. 41), and
 - (c) the nominating of persons to act as members of panels of members of employment tribunals in exercise of his functions under any such provision as is mentioned in section 5D(1) of the Employment Tribunals Act 1996 (c. 17).
 - (2) That policy must be such as to secure—

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- (a) that appropriate use is made of the knowledge and experience of the judges and other members of the First-tier Tribunal and Upper Tribunal, and
 - (b) that, in the case of a chamber (of the First-tier Tribunal or Upper Tribunal) whose business consists of, or includes, cases likely to involve the application of the law of Scotland or Northern Ireland, sufficient knowledge and experience of that law is to be found among persons assigned to the chamber.
- (3) No policy may be adopted by the Senior President of Tribunals for the purposes of sub-paragraph (1) unless the Lord Chancellor concurs in the policy.
- (4) The Senior President of Tribunals must keep any policy adopted for the purposes of sub-paragraph (1) under review.

VALID FROM 03/11/2008

Choosing members to decide cases

- 14 (1) The First-tier Tribunal's function, or the Upper Tribunal's function, of deciding any matter in a case before the tribunal is to be exercised by a member or members of the chamber of the tribunal to which the case is allocated.
- (2) The member or members must be chosen by the Senior President of Tribunals.
- (3) A person choosing under sub-paragraph (2)—
- (a) must act in accordance with any provision under paragraph 15;
 - (b) may choose himself.
- (4) In this paragraph “member”, in relation to a chamber of a tribunal, means a judge or other member of the tribunal who is assigned to the chamber.

Composition of tribunals

- 15 (1) The Lord Chancellor must by order make provision, in relation to every matter that may fall to be decided by the First-tier Tribunal or the Upper Tribunal, for determining the number of members of the tribunal who are to decide the matter.
- (2) Where an order under sub-paragraph (1) provides for a matter to be decided by a single member of a tribunal, the order—
- (a) must make provision for determining whether the matter is to be decided by one of the judges, or by one of the other members, of the tribunal, and
 - (b) may make provision for determining, if the matter is to be decided by one of the other members of the tribunal, what qualifications (if any) that other member must have.
- (3) Where an order under sub-paragraph (1) provides for a matter to be decided by two or more members of a tribunal, the order—
- (a) must make provision for determining how many (if any) of those members are to be judges of the tribunal and how many (if any) are to be other members of the tribunal, and
 - (b) may make provision for determining—

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- (i) if the matter is to be decided by persons who include one or more of the other members of the tribunal, or
 - (ii) if the matter is to be decided by two or more of the other members of the tribunal,
- what qualifications (if any) that other member or any of those other members must have.
- (4) A duty under sub-paragraph (1), (2) or (3) to provide for the determination of anything may be discharged by providing for the thing to be determined by the Senior President of Tribunals, or a Chamber President, in accordance with any provision made under that sub-paragraph.
 - (5) Power under paragraph (b) of sub-paragraph (2) or (3) to provide for the determination of anything may be exercised by giving, to the Senior President of Tribunals or a Chamber President, power to determine that thing in accordance with any provision made under that paragraph.
 - (6) Where under sub-paragraphs (1) to (4) a matter is to be decided by two or more members of a tribunal, the matter may, if the parties to the case agree, be decided in the absence of one or more (but not all) of the members chosen to decide the matter.
 - (7) Where the member, or any of the members, of a tribunal chosen to decide a matter does not have any qualification that he is required to have under sub-paragraphs (2) (b), or (3)(b), and (5), the matter may despite that, if the parties to the case agree, be decided by the chosen member or members.
 - (8) Before making an order under this paragraph, the Lord Chancellor must consult the Senior President of Tribunals.
 - (9) In this paragraph “qualification” includes experience.

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