

SCHEDULES

SCHEDULE 13

JUDICIAL APPOINTMENTS

PART 6

APPOINTMENT OF JUDGE TO EXERCISE FUNCTIONS OF A HEAD OF DIVISION IN CASE OF INCAPACITY OR A VACANCY ETC

- 83 Where a Head of Division is incapable of exercising relevant functions, or the office of a Head of Division is vacant, the Lord Chief Justice may, with the concurrence of the Lord Chancellor, appoint a judge of the Senior Courts to exercise relevant functions of the Head of Division.
- 84 An appointment under paragraph 83—
- (a) must be in writing,
 - (b) must specify the functions that may be exercised by the appointed judge, and
 - (c) must set out the duration of the appointment.
- 85 In paragraph 83—
- “Head of Division” means—
 - (a) the Master of the Rolls,
 - (b) the President of the Queen’s Bench Division,
 - (c) the President of the Family Division, or
 - (d) the Chancellor of the High Court;
- “the Lord Chief Justice” means the Lord Chief Justice of England and Wales;
- “the Senior Courts” means the Senior Courts of England and Wales.
- 86 In this Part of this Schedule “relevant functions” means functions under any of the following—
- section 5 of the Public Notaries Act 1843 (functions of Chancellor of the High Court in relation to refusal of master of the faculties to grant a faculty to practise as a public notary);
 - section 8(5) of the Public Records Act 1958 (President of the Family Division to be consulted in relation to transfer of certain records);
 - section 5(2) or (3) of the Senior Courts Act 1981 (concurrence of Heads of Division with transfer of judges between Divisions of High Court etc);
 - section 7(1) of the Senior Courts Act 1981 (power of Lord Chancellor, Lord Chief Justice and Heads of Division, acting collectively, to recommend alteration of Divisions of High Court etc);
 - section 11(9) of the Senior Courts Act 1981 (concurrence of particular Heads of Division etc with Lord Chancellor’s declaration of a vacancy in the office

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of a judge of the Senior Courts who is permanently incapacitated and unable to resign);

section 54 of the Senior Courts Act 1981 (functions of Master of the Rolls in relation to composition of courts of civil division of Court of Appeal);

section 57 of the Senior Courts Act 1981 (determination by Master of the Rolls with concurrence of Lord Chancellor of sittings of civil division of Court of Appeal during vacation);

section 61(5) of the Senior Courts Act 1981 (concurrence of Heads of Division concerned with assignment of business of one Division of High Court to another Division of High Court);

section 63(3) of the Senior Courts Act 1981 (concurrence of Head of Division concerned with direction that business is to cease to be assigned to specially nominated judge of High Court);

section 71(4)(a) of the Senior Courts Act 1981 (determination by Heads of Division with concurrence of Lord Chancellor of sittings of Divisions of High Court during vacation);

section 109(2) or 110 of the Senior Courts Act 1981 (President of the Family Division may make certain arrangements in relation to documents relating to probate etc);

section 111 of the Senior Courts Act 1981 (President of the Family Division may give directions as to form and content of records of grants made in the Principal Registry or a district probate registry);

section 126 of the Senior Courts Act 1981 (President of the Family Division may, with concurrence of Lord Chancellor, make regulations imposing conditions on deposit of wills);

section 133 of the Senior Courts Act 1981 (functions of Master of the Rolls in relation to enrolment and engrossment of instruments);

section 25(3)(a) of the Administration of Justice Act 1982 (President of the Family Division may, with concurrence of Lord Chancellor, make regulations as to deposit and registration of wills);

section 257(3) of the Inheritance Tax Act 1984 (President of the Family Division may make certain arrangements in relation to delivery of accounts for the purposes of that Act);

section 37 of the Matrimonial and Family Proceedings Act 1984 (President of the Family Division may, with concurrence of Lord Chancellor, give directions with respect to distribution and transfer between High Court and family court of family business and family proceedings);

section 1(9) of the Courts and Legal Services Act 1990 (Heads of Division etc to be consulted in relation to changes to allocation of business of High Court and county court);

section 58A(5)(a), 58AA(6)(a) or 58B(7)(a) of the Courts and Legal Services Act 1990 (Heads of Division etc to be consulted in relation to certain matters relating to agreements for funding of legal services);

section 56(4) of the Access to Justice Act 1999 (Heads of Division etc to be consulted in relation to changes to destination of appeals);

section 57 of the Access to Justice Act 1999 (Master of the Rolls or President of the Family Division etc may assign appeals to the Court of Appeal);

section 2(7) of the Courts Act 2003 (Heads of Division etc to be consulted in relation to authorisation of contracting-out of administrative work of courts);

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section 64(4) of the Courts Act 2003 (Heads of Division to be consulted in relation to change of judicial title);

section 66(4)(b) of the Courts Act 2003 (President of the Family Division may nominate Circuit judges etc to sit as members of family proceedings courts);

section 77(3) of the Courts Act 2003 (President of the Family Division etc to be consulted in relation to certain appointments to Family Procedure Rule Committee);

section 78(2) of the Courts Act 2003 (President of the Family Division to be consulted in relation to certain changes to Family Procedure Rule Committee);

section 92(5) of the Courts Act 2003 (Heads of Division etc to be consulted in relation to fees of Senior Courts, family court, county court and magistrates' courts);

paragraph 12(4) of Schedule 7 to the Courts Act 2003 (Heads of Division etc to be consulted in relation to regulations about enforcement officers);

section 52(4) of the Constitutional Reform Act 2005 (Heads of Division etc to be consulted in relation to Supreme Court fees);

section 183(7)(b) of the Legal Services Act 2007 (consent of Master of the Rolls etc in relation to fees for administration of an oath or taking of an affidavit);

paragraph 1(10) of Schedule 3 to the Legal Services Act 2007 (concurrence of President of the Family Division etc with meaning of "reserved family proceedings" prescribed for the purposes of that paragraph).

87 The Lord Chancellor may by order amend the list in paragraph 86 so as to—

- (a) add an entry,
- (b) remove an entry, or
- (c) vary an entry.

88 After section 10(6) of the Senior Courts Act 1981 (where there is a vacancy in one or more of the offices of the Heads of Division, a newly-appointed Lord Chief Justice is to take the required oaths in the presence of the holders of such of the offices as are not vacant) insert—

“(6A) Where the holder of an office mentioned in subsection (5) is incapable of exercising the functions of the office, the office is to be treated as vacant for the purposes of subsection (6).”