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## SCHEDULES

### SCHEDULE 1

Section 12

#### POWERS TO MAKE RULES

##### PART 1

##### THE PROCESS

##### *Interpretation*

- 1 In this Part “designated rules” means rules under another Act which are, by virtue of provision in that Act, to be made in accordance with this Part.

##### *The process*

- 2 (1) It is for the Lord Chief Justice, or a judicial office holder nominated by the Lord Chief Justice with the agreement of the Lord Chancellor, to make designated rules.
- (2) The Lord Chief Justice may nominate a judicial office holder in accordance with sub-paragraph (1)—
- (a) to make designated rules generally, or
  - (b) to make designated rules under a particular enactment.
- (3) In this Part—
- (a) “judicial office holder” has the same meaning as in section 109(4);
  - (b) references to the Lord Chief Justice's nominee, in relation to designated rules, mean a judicial office holder nominated by the Lord Chief Justice under sub-paragraph (1) to make those rules.
- 3 (1) The Lord Chief Justice, or his nominee, may make designated rules only with the agreement of the Lord Chancellor.
- (2) If the Lord Chancellor does not agree designated rules made by the Lord Chief Justice, or by his nominee, the Lord Chancellor must give that person written reasons why he does not agree the rules.
- 4 (1) Designated rules made by the Lord Chief Justice, or by his nominee, and agreed by the Lord Chancellor—
- (a) come into force on such day as the Lord Chancellor directs, and
  - (b) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 (c. 36) applies as if the instrument contained rules made by a Minister of the Crown.
- (2) A statutory instrument containing designated rules is subject to annulment in pursuance of a resolution of either House of Parliament.

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- 5 (1) This paragraph applies if the Lord Chancellor gives the Lord Chief Justice, or his nominee, written notice that he thinks it is expedient for designated rules to include provision that would achieve a purpose specified in the notice.
- (2) The Lord Chief Justice, or his nominee, must make such designated rules as he considers necessary to achieve the specified purpose.
- (3) Those rules must be—
- (a) made within a reasonable period after the Lord Chancellor gives notice under sub-paragraph (1);
  - (b) made in accordance with the provisions of this Part.

## PART 2

### RULE-MAKING POWERS SUBJECT TO THE PROCESS IN PART 1

#### *Trustee Act 1925 (c. 19)*

- 6 In section 54 of the Trustee Act 1925 (jurisdiction in regard to mental patients), for the paragraph after subsection (2)(d) substitute—
- “(2A) Rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 with respect to the exercise of the jurisdiction referred to in subsection (2).”

#### *Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36)*

- 7 In section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (procedure for indictment of offenders), in subsection (6A)(a) for “by the Lord Chancellor” substitute “ in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 ”.

#### *Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65)*

- 8 (1) Section 5 of the Reserve and Auxiliary Forces (Protection of Civilian Interests) Act 1951 (appropriate courts and procedure) is amended as follows.
- (2) In subsection (2) for “The Lord Chancellor may also make rules” substitute “ Rules may be made in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 ”.
- (3) In subsections (3) to (5) for “Rules so made” substitute “ Rules under subsection (2) ”.
- (4) In subsection (6) for “this section” substitute “ subsection (1) ”.

#### *Courts-Martial (Appeals) Act 1968 (c. 20)*

- 9 (1) Section 49 of the Courts-Martial (Appeals) Act 1968 (rules of court) is amended as follows.
- (2) In subsection (1) for “by the Lord Chief Justice with the approval of the Lord Chancellor” substitute “ in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 ”.

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(3) In subsection (2) for “Lord Chief Justice” substitute “ person making the rules ”.

(4) Omit subsections (3) and (4).

*Adoption Act 1976 (c. 36)*

10 In section 66 of the Adoption Act 1976 (rules of procedure), in subsection (1) for “by the Lord Chancellor” substitute “ in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 ”.

*Supreme Court Act 1981 (c. 54)*

11 The Supreme Court Act 1981 is amended as follows.

12 (1) Section 127 (probate rules) is amended as follows.

(2) In subsection (1) for the words from the beginning to “for regulating” substitute “ Rules of court (in this Part referred to as “probate rules”) may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 for regulating ”.

(3) Omit subsection (3).

13 (1) Section 136 (production of documents filed in, or in custody of, Supreme Court) is amended as follows.

(2) In subsection (1) for the words from the beginning to “make rules” substitute “ Rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 ”.

(3) In subsection (2)(b) for “Lord Chancellor” substitute “ person making the rules ”.

(4) Omit subsection (3).

*Mental Health Act 1983 (c. 20)*

14 The Mental Health Act 1983 is amended as follows.

15 In section 108 (general provisions as to rules under Part 7), after subsection (1) (as substituted by paragraph 129(2) of Schedule 4) insert—

“(1A) Rules under any other provision of this Part of this Act are to be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005.”

16 In section 143 (general provisions as to regulations, orders and rules), after subsection (3) insert—

“(4) This section does not apply to rules which are, by virtue of section 108 of this Act, to be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005.”

*County Courts Act 1984 (c. 28)*

17 (1) Section 38 of the County Courts Act (remedies available in county courts) is amended as follows.

(2) Omit subsection (4)(c).

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(3) After subsection (4) insert—

“(4A) If regulations are made under subsection (3), rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 about procedure relevant to the matters prescribed in the regulations.”

*Matrimonial and Family Proceedings Act 1984 (c. 42)*

18 In section 40 of the Matrimonial and Family Proceedings Act 1984 (family proceedings rules), in the second paragraph of subsection (2)—

- (a) in paragraph (a) omit “by the Lord Chancellor”;
- (b) in paragraph (b) omit “by the President of the Family Division with the concurrence of the Lord Chancellor”.

*Coroners Act 1988 (c. 13)*

19 The Coroners Act 1988 is amended as follows.

20 In section 11 (proceedings at inquest), for subsection (5)(c) substitute—

“(c) shall be in such form as may be prescribed in rules made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005.”

21 (1) Section 32 (power to make rules) is amended as follows.

- (2) In subsection (1) for “The Lord Chancellor may, with the concurrence of the Secretary of State, make rules” substitute “ Rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 ”.
- (3) In subsection (3) for “of the Lord Chancellor under this section to make rules” substitute “ to make rules under this section ”.
- (4) Omit subsection (4).

*Family Law Act 1996 (c. 27)*

22 The Family Law Act 1996 is amended as follows.

23 (1) For the title to section 12 substitute “ Rules about procedure ”.

(2) In subsection (1) for “The Lord Chancellor may make rules” substitute “ Rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 ”.

(3) In subsection (2) for “The Lord Chancellor may make rules” substitute “ Rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 ”.

24 In section 65 (rules, regulations and orders), in subsection (5) after “does not apply” insert “ to rules made under section 12 or ”.

25 The power to amend or repeal enactments that is referred to in section 109(5)(b) of the Courts Act 2003 (c. 39) may be exercised in relation to sections 12 and 65 of the Family Law Act 1996 (c. 27) as amended by paragraphs 24 and 25 of this Schedule.

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*Adoption and Children Act 2002 (c. 38)*

- 26 (1) The Adoption and Children Act 2002 is amended as follows.
- (2) Those amendments do not have effect at any time after the amendments made to the Adoption and Children Act 2002 by paragraph 413 of Schedule 8 to the Courts Act 2003 have come into force.
- 27 In section 141 (rules of procedure), in subsection (1) for “The Lord Chancellor may make rules” substitute “ Rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 ”.
- 28 In section 142 (supplementary and consequential provision), in subsection (4) for “this Act or” substitute “ this Act, any power to make rules under section 141 or any power ”.

*Courts Act 2003 (c. 39)*

- 29 In section 76 of the Courts Act 2003 (further provision about scope of Family Procedure Rules) omit “by the President of the Family Division, with the concurrence of the Lord Chancellor,”.

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