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## SCHEDULES

### SCHEDULE 2

Section 13

#### POWERS TO GIVE DIRECTIONS

##### PART 1

##### THE PROCESS

##### *Interpretation*

- 1 In this Part “designated directions” means directions under another Act which are, by virtue of provision in that Act, to be made or given 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 or give designated directions.
- (2) The Lord Chief Justice may nominate a judicial office holder in accordance with sub-paragraph (1)—
- (a) to make or give designated directions generally, or
  - (b) to make or give designated directions 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 directions, mean a judicial office holder nominated by the Lord Chief Justice under sub-paragraph (1) to make or give those directions.
- 3 (1) The Lord Chief Justice, or his nominee, may make or give designated directions only with the agreement of the Lord Chancellor.
- (2) Sub-paragraph (1) does not apply to designated directions to the extent that they consist of guidance about any of the following—
- (a) the application or interpretation of the law;
  - (b) the making of judicial decisions.
- (3) Sub-paragraph (1) does not apply to designated directions to the extent that they consist of criteria for determining which judges may be allocated to hear particular categories of case; but the directions may, to that extent, be made or given only after consulting the Lord Chancellor.
- (4) If sub-paragraph (1) applies but the Lord Chancellor does not agree designated directions made or given by the Lord Chief Justice, or by his nominee, the Lord

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Chancellor must give that person written reasons why he does not agree the directions.

## PART 2

### POWERS OF DIRECTION SUBJECT TO THE PROCESS IN PART 1

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

- 4 (1) Section 4 of the Courts-Martial (Appeals) Act 1968 is amended as follows.
- (2) In subsection (1) for “by the Lord Chief Justice with the consent of the Lord Chancellor” substitute “in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005”.
- (3) In subsection (2) for “If the Lord Chief Justice so directs” substitute “If such directions so provide”.
- (4) In subsection (3) for “the Lord Chief Justice shall direct” substitute “such directions may provide”.

#### *Supreme Court Act 1981 (c. 54)*

- 5 In section 124 of the Supreme Court Act 1981 (place for deposit of original wills and other documents), for “as the Lord Chancellor may direct” substitute “as may be provided for in directions given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005”.

#### *Civil Procedure Act 1997 (c. 12)*

- 6 For section 5 of the Civil Procedure Act 1997 substitute—

#### **“5 Practice directions**

- (1) Practice directions may be given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005.
- (2) Practice directions given otherwise than under subsection (1) may not be given without the approval of—
- (a) the Lord Chancellor, and
  - (b) the Lord Chief Justice.
- (3) Practice directions (whether given under subsection (1) or otherwise) may provide for any matter which, by virtue of paragraph 3 of Schedule 1, may be provided for by Civil Procedure Rules.
- (4) The power to give practice directions under subsection (1) includes power—
- (a) to vary or revoke directions given by any person;
  - (b) to give directions containing different provision for different cases (including different areas);
  - (c) to give directions containing provision for a specific court, for specific proceedings or for a specific jurisdiction.

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- (5) Subsection (2)(a) does not apply to directions to the extent that they consist of guidance about any of the following—
  - (a) the application or interpretation of the law;
  - (b) the making of judicial decisions.
- (6) Subsection (2)(a) does not apply to directions to the extent that they consist of criteria for determining which judges may be allocated to hear particular categories of case; but the directions may, to that extent, be given only—
  - (a) after consulting the Lord Chancellor, and
  - (b) with the approval of the Lord Chief Justice.”

*Courts Act 2003 (c. 39)*

7 The Courts Act 2003 is amended as follows.

8 (1) Section 74 (practice directions as to practice and procedure of criminal courts) is amended as follows.

(2) In subsection (1) for “The Lord Chief Justice may, with the concurrence of the Lord Chancellor, give directions” substitute “ Directions may be given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 ”.

(3) In subsection (2) for the words from “may not be given” to the end substitute “given otherwise than under subsection (1) may not be given without the approval of—

- (a) the Lord Chancellor, and
- (b) the Lord Chief Justice.”

(4) In subsection (3)(a) for “by the Lord Chief Justice or any other person” substitute “ under subsection (1) or otherwise ”.

(5) For subsection (4) substitute—

“(4) Subsection (2)(a) does not apply to directions to the extent that they consist of guidance about any of the following—

- (a) the application or interpretation of the law;
- (b) the making of judicial decisions.

(5) Subsection (2)(a) does not apply to directions to the extent that they consist of criteria for determining which judges may be allocated to hear particular categories of case; but the directions may, to that extent, be given only—

- (a) after consulting the Lord Chancellor, and
- (b) with the approval of the Lord Chief Justice.”

9 (1) Section 81 (practice directions relating to family proceedings) is amended as follows.

(2) In subsection (1) for “The President of the Family Division may, with the concurrence of the Lord Chancellor, give directions” substitute “ Directions may be given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 ”.

(3) In subsection (2) for the words from “may not be given” to the end substitute “given otherwise than under subsection (1) may not be given without the approval of—

- (a) the Lord Chancellor, and
- (b) the Lord Chief Justice.”

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- (4) In subsection (3)(a) for “by the President of the Family Division or any other person” substitute “ under subsection (1) or otherwise ”.
- (5) After subsection (3) insert—
- “(4) Subsection (2)(a) does not apply to directions to the extent that they consist of guidance about any of the following—
- (a) the application or interpretation of the law;
  - (b) the making of judicial decisions.
- (5) Subsection (2)(a) does not apply to directions to the extent that they consist of criteria for determining which judges may be allocated to hear particular categories of case; but the directions may, to that extent, be given only—
- (a) after consulting the Lord Chancellor, and
  - (b) with the approval of the Lord Chief Justice.”

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