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SCHEDULES

SCHEDULE 1

Section 2

SENIOR PRESIDENT OF TRIBUNALS

PART 1

RECOMMENDATIONS FOR APPOINTMENT

Duty to fill vacancies

- 1 (1) If there is a vacancy in the office of Senior President of Tribunals, the Lord Chancellor must recommend a person for appointment to that office.
- (2) Sub-paragraph (1) does not apply to a vacancy while the Lord Chief Justice of England and Wales agrees that it may remain unfilled.

The two routes to a recommendation: agreement under this paragraph or selection under Part 2

- 2 (1) Before the Lord Chancellor may recommend a person for appointment to the office of Senior President of Tribunals, the Lord Chancellor must consult—
- (a) the Lord Chief Justice of England and Wales,
 - (b) the Lord President of the Court of Session, and
 - (c) the Lord Chief Justice of Northern Ireland.
- (2) Sub-paragraphs (3) and (4) apply if—
- (a) the outcome of consultation under sub-paragraph (1) is agreement between—
 - (i) the Lord Chancellor,
 - (ii) the Lord Chief Justice of England and Wales,
 - (iii) the Lord President of the Court of Session, and
 - (iv) the Lord Chief Justice of Northern Ireland,as to the person to be recommended, and
 - (b) the person is—
 - (i) an ordinary judge of the Court of Appeal in England and Wales,
 - (ii) a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court, or
 - (iii) a Lord Justice of Appeal in Northern Ireland.
- (3) The Lord Chancellor must recommend the person for appointment to the office of Senior President of Tribunals, subject to sub-paragraph (4).
- (4) Where the person—

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- (a) declines to be recommended, or does not agree within a time specified to him for that purpose, or
 - (b) is otherwise not available within a reasonable time to be recommended,
- the Lord Chancellor must, instead of recommending the person for appointment, consult afresh under sub-paragraph (1).
- (5) If the Lord Chancellor has consulted under sub-paragraph (1) but sub-paragraphs (3) and (4) do not apply following that consultation, the Lord Chancellor must make a request to the Judicial Appointments Commission for a person to be selected for recommendation for appointment to the office of Senior President of Tribunals.

PART 2

SELECTION BY THE JUDICIAL APPOINTMENTS COMMISSION

Eligibility for selection

- 3 A person is eligible for selection in pursuance of a request under paragraph 2(5) only if—
- (a) he satisfies the judicial-appointment eligibility condition on a 7-year basis,
 - (b) he is an advocate or solicitor in Scotland of at least seven years' standing, or
 - (c) he is a barrister or solicitor in Northern Ireland of at least seven years' standing.

The selection process

- 4 In Chapter 2 of Part 4 of the Constitutional Reform Act 2005 (c. 4) (appointments), after section 75 insert—

“Senior President of Tribunals

75A Sections 75B to 75G apply where request made for selection

- (1) Sections 75B to 75G apply where the Lord Chancellor makes a request to the Commission under paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007 (request for person to be selected for recommendation for appointment to the office of Senior President of Tribunals).
- (2) Those sections are subject to section 95 (withdrawal and modification of requests).

75B Selection process

- (1) On receiving a request the Commission must appoint a selection panel.
- (2) The panel must —
 - (a) determine the selection process to be applied,
 - (b) apply the selection process, and
 - (c) make a selection accordingly.

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- (3) As part of the selection process the panel must consult—
 - (a) the Lord Chief Justice, if not a member of the panel,
 - (b) the Lord President of the Court of Session, if not a member of the panel, and
 - (c) the Lord Chief Justice of Northern Ireland, if not a member of the panel.
- (4) One person only must be selected for the recommendation to which a request relates.
- (5) Subsection (4) applies to selection under this section and to selection under section 75G.
- (6) A selection panel is a committee of the Commission.

75C Selection panel

- (1) The selection panel must consist of four members.
- (2) The first member is the Lord Chief Justice, or his nominee.
- (3) The second member is a person designated by the Lord Chief Justice.
- (4) Unless subsection (7) applies, the third member is the chairman of the Commission or his nominee.
- (5) The fourth member is a lay member of the Commission designated by the third member.
- (6) Subsection (7) applies if—
 - (a) there is no chairman of the Commission, or
 - (b) the chairman of the Commission is unavailable and has not nominated a person under subsection (4).
- (7) In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (8) A nominee of the Lord Chief Justice must be a Head of Division or a Lord Justice of Appeal.
- (9) The person designated under subsection (3) must be—
 - (a) a person who holds, or has held, the office of Senior President of Tribunals,
 - (b) a person who holds, or has held, office as a Chamber President of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal, or
 - (c) a person who holds, or has held, an office that, in the opinion of the Lord Chief Justice, is such that a holder of it would acquire knowledge or experience of tribunals broadly similar to that which would be acquired by—
 - (i) a person who holds the office of Senior President of Tribunals, or
 - (ii) a person who holds office as a Chamber President of a chamber of the First-tier Tribunal, or

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(iii) a person who holds office as a Chamber President of a chamber of the Upper Tribunal.

- (10) Before designating a person under subsection (3), the Lord Chief Justice must consult—
- (a) the Lord President of the Court of Session, and
 - (b) the Lord Chief Justice of Northern Ireland.
- (11) A person may not be appointed to the panel if he is willing to be considered for selection.
- (12) A person may not be appointed to the panel as the nominee of more than one person.
- (13) A person appointed to the panel otherwise than as a nominee may not be a nominee.
- (14) The first member is the chairman of the panel.
- (15) On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie.

75D Report

- (1) After complying with section 75B(2) the selection panel must submit a report to the Lord Chancellor.
- (2) The report must—
 - (a) state who has been selected;
 - (b) contain any other information required by the Lord Chancellor.
- (3) The report must be in a form approved by the Lord Chancellor.
- (4) After submitting the report the panel must provide any further information the Lord Chancellor may require.

75E The Lord Chancellor's options

- (1) This section refers to the following stages—

<i>Stage 1:</i>	where a person has been selected under section 75B
<i>Stage 2:</i>	where a person has been selected following a rejection or reconsideration at stage 1
<i>Stage 3:</i>	where a person has been selected following a rejection or reconsideration at stage 2

- (2) At stage 1 the Lord Chancellor must do one of the following—
 - (a) accept the selection;
 - (b) reject the selection;
 - (c) require the selection panel to reconsider the selection.

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- (3) At stage 2 the Lord Chancellor must do one of the following—
 - (a) accept the selection;
 - (b) reject the selection, but only if it was made following a reconsideration at stage 1;
 - (c) require the selection panel to reconsider the selection, but only if it was made following a rejection at stage 1.
- (4) At stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he accepts a selection under it.
- (5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.

75F Exercise of powers to reject or require reconsideration

- (1) The power of the Lord Chancellor under section 75E to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office of Senior President of Tribunals.
- (2) The power of the Lord Chancellor under section 75E to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—
 - (a) there is not enough evidence that the person is suitable for the office of Senior President of Tribunals, or
 - (b) there is evidence that the person is not the best candidate on merit.
- (3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

75G Selection following rejection or requirement to reconsider

- (1) If under section 75F the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with this section.
- (2) If the Lord Chancellor rejects a selection, the selection panel—
 - (a) may not select the person rejected, and
 - (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.
- (3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel—
 - (a) may select the same person or a different person, but
 - (b) where the requirement is following a rejection, may not select the person rejected.
- (4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.

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- (5) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007.”

Withdrawal and modification of requests under paragraph 2(5)

- 5 (1) Section 95 of the Constitutional Reform Act 2005 (c. 4) (withdrawal and modification of requests) is amended as follows.
- (2) In subsection (1) (application of section), after “87” insert “ or paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007 ”.
- (3) In subsection (4) (limitation on withdrawal of request under subsection (2)(c)), after “73(2),” insert “ 75E(2), ”.

PART 3

TERMS OF OFFICE

Tenure, removal, resignation etc.

- 6 (1) If—
- (a) a person appointed to the office of Senior President of Tribunals is appointed on terms that provide for him to retire from the office at a particular time specified in those terms (“the end of the fixed-term”), and
- (b) the end of the fixed-term is earlier than the time at which the person is required by the 1993 Act to retire from the office,
- the person shall, if still holding the office at the end of the fixed-term, vacate the office at the end of the fixed-term.
- (2) Subject to sub-paragraph (1) (and to the 1993 Act), a person appointed to the office of Senior President of Tribunals shall hold that office during good behaviour, subject to a power of removal by Her Majesty on an address presented to Her by both Houses of Parliament.
- (3) It is for the Lord Chancellor to recommend to Her Majesty the exercise of the power of removal under sub-paragraph (2).
- (4) In this paragraph “the 1993 Act” means the Judicial Pensions and Retirement Act 1993 (c. 8).
- 7 (1) Sub-paragraph (2) applies to a person appointed to the office of Senior President of Tribunals on a recommendation made under paragraph 2(3).
- (2) The person ceases to be Senior President of Tribunals if he ceases to fall within paragraph 2(2)(b).
- 8 A person who holds the office of Senior President of Tribunals may at any time resign that office by giving the Lord Chancellor notice in writing to that effect.
- 9 (1) The Lord Chancellor, if satisfied by means of a medical certificate that a person holding the office of Senior President of Tribunals—
- (a) is disabled by permanent infirmity from the performance of the duties of the office, and

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- (b) is for the time being incapacitated from resigning the office, may, subject to sub-paragraph (2), by instrument under his hand declare the person to have vacated the office; and the instrument shall have the like effect for all purposes as if the person had on the date of the instrument resigned the office.
- (2) A declaration under sub-paragraph (1) with respect to a person shall be of no effect unless it is made with the concurrence of—
 - (a) the Lord Chief Justice of England and Wales,
 - (b) the Lord President of the Court of Session, and
 - (c) the Lord Chief Justice of Northern Ireland.

Remuneration, allowances and expenses

- 10 The Lord Chancellor may pay to the Senior President of Tribunals such amounts (if any) as the Lord Chancellor may determine by way of—
 - (a) remuneration;
 - (b) allowances;
 - (c) expenses.

Oaths

- 11 (1) A person appointed to the office of Senior President of Tribunals must take the required oaths in the presence of—
 - (a) the Lord Chief Justice of England and Wales, or
 - (b) another holder of high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005 (c. 4)) who is nominated by the Lord Chief Justice of England and Wales for the purpose of taking the oaths from the person.
- (2) Sub-paragraph (1) applies whether or not the person has previously taken the required oaths after accepting another office.
- (3) In this paragraph “the required oaths” means—
 - (a) the oath of allegiance, and
 - (b) the judicial oath,as set out in the Promissory Oaths Act 1868 (c. 72).

PART 4

CERTAIN FUNCTIONS OF THE SENIOR PRESIDENT

Meaning of “tribunal member”

- 12 (1) For the purposes of this Part of this Schedule, each of the following is a “tribunal member”—
 - (a) a judge, or other member, of the First-tier Tribunal or Upper Tribunal,
 - (b) ^{F1}
 - (c) a member of a panel of members of employment tribunals (whether or not a panel of chairmen),
 - (d) a judge, or other member, of the Employment Appeal Tribunal, and

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(e) a person who is, or is a member of, a tribunal in a list in Schedule 6 that has effect for the purposes of section 30.

(2) In this Part of this Schedule “tribunals” means—

- (a) the First-tier Tribunal,
- (b) the Upper Tribunal,
- (c) ^{F2}
- (d) employment tribunals,
- (e) the Employment Appeal Tribunal, and
- (f) any tribunal in a list in Schedule 6 that has effect for the purposes of section 30.

Textual Amendments

- F1** Sch. 1 para. 12(1)(b) omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), **Sch. 1 para. 44** (with Sch. 4)
- F2** Sch. 1 para. 12(2)(c) omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), **Sch. 1 para. 44** (with Sch. 4)

Representations to Parliament

- 13 The Senior President of Tribunals may lay before Parliament written representations on matters that appear to him to be matters of importance relating—
- (a) to tribunal members, or
 - (b) otherwise to the administration of justice by tribunals.

Representation of views of tribunal members

- 14 The Senior President of Tribunals is responsible for representing the views of tribunal members to Parliament, to the Lord Chancellor and to Ministers of the Crown generally.

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