SCHEDULES

SCHEDULE 3

Section 5

JUDGES AND OTHER MEMBERS OF THE UPPER TRIBUNAL

Power to appoint judges of Upper Tribunal

1 (1) Her Majesty, on the recommendation of the Lord Chancellor, may appoint a person to be one of the judges of the Upper Tribunal.

(2) A person is eligible for appointment under sub-paragraph (1) only if the person—

(a) satisfies the judicial-appointment eligibility condition on a 7-year basis,

(b) is an advocate or solicitor in Scotland of at least seven years' standing,

(c) is a barrister or solicitor in Northern Ireland of at least seven years' standing, or

(d) in the Lord Chancellor's opinion, has gained experience in law which makes the person as suitable for appointment as if the person satisfied any of paragraphs (a) to (c).

(3) Section 52(2) to (5) (meaning of "gain experience in law") apply for the purposes of sub-paragraph (2)(d), but as if section 52(4)(i) referred to the Lord Chancellor instead of to the relevant decision-maker.

Power to appoint other members of Upper Tribunal

2 (1) The Lord Chancellor may appoint a person to be one of the members of the Upper Tribunal who are not judges of the tribunal.

(2) A person is eligible for appointment under sub-paragraph (1) only if the person has qualifications prescribed in an order made by the Lord Chancellor with the concurrence of the Senior President of Tribunals.

Appointed and transferred-in judges and other members: removal from office

3 (1) This paragraph applies to any power by which—

(a) a person appointed under paragraph 1(1) or 2(1),

(b) a transferred-in judge of the Upper Tribunal, or

(c) a transferred-in other member of the Upper Tribunal,

may be removed from office.

(2) If the person exercises functions wholly or mainly in Scotland, the power may be exercised only with the concurrence of the Lord President of the Court of Session.

(3) If the person exercises functions wholly or mainly in Northern Ireland, the power may be exercised only with the concurrence of the Lord Chief Justice of Northern Ireland.

(4) If neither of sub-paragraphs (2) and (3) applies, the power may be exercised only with the concurrence of the Lord Chief Justice of England and Wales.

Terms of appointment

4 (1) This paragraph applies—

(a) to a person appointed under paragraph 1(1) or 2(1),

(b) to a transferred-in judge of the Upper Tribunal, and

(c) to a transferred-in other member of the Upper Tribunal.

(2) If the terms of the person's appointment provide that he is appointed on a salaried (as opposed to fee-paid) basis, the person may be removed from office—

(a) only by the Lord Chancellor (and in accordance with paragraph 3), and

(b) only on the ground of inability or misbehaviour.

(3) Subject to sub-paragraph (2) (and to the Judicial Pensions and Retirement Act 1993 (c. 8)), the person is to hold and vacate office as a judge, or other member, of the Upper Tribunal in accordance with the terms of his appointment.

Remuneration, allowances and expenses

5 (1) Sub-paragraph (2) applies—

(a) to a person appointed under paragraph 1(1) or 2(1),

(b) to a transferred-in judge of the Upper Tribunal, and

(c) to a transferred-in other member of the Upper Tribunal.

(2) The Lord Chancellor may pay to a person to whom this sub-paragraph applies such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Certain judges neither appointed under paragraph 1(1) nor transferred in

6 (1) In this paragraph "judge by request of the Upper Tribunal" means a person who is a judge of the Upper Tribunal but—

(a) is not the Senior President of Tribunals,

(b) is not a judge of the Upper Tribunal appointed under paragraph 1(1),

(c) is not a transferred-in judge of the Upper Tribunal,

(d) is not a judge of the Upper Tribunal by virtue of section 5(1)(d) (legally qualified member of Asylum and Immigration Tribunal),

(e) is not a deputy judge of the Upper Tribunal, and

(f) is not a Chamber President, or Acting Chamber President or Deputy Chamber President, of a chamber of the Upper Tribunal.

(2) A judge by request of the Upper Tribunal may act as a judge of the Upper Tribunal only if requested to do so by the Senior President of Tribunals.

(3) Such a request made to a person who is a judge of the Upper Tribunal by virtue of section 5(1)(g) may be made only with—

(a) the concurrence of the Lord Chief Justice of England and Wales where the person is—
  (i) an ordinary judge of the Court of Appeal in England and Wales,
  (ii) a puisne judge of the High Court in England and Wales,
  (iii) a circuit judge,
  (iv) a district judge in England and Wales, or
  (v) a District Judge (Magistrates' Courts);

(b) the concurrence of the Lord President of the Court of Session where the person is—
  (i) a judge of the Court of Session, or
  (ii) a sheriff;

(c) the concurrence of the Lord Chief Justice of Northern Ireland where the person is—
  (i) a Lord Justice of Appeal in Northern Ireland,
  (ii) a puisne judge of the High Court in Northern Ireland,
  (iii) a county court judge in Northern Ireland, or
  (iv) a district judge in Northern Ireland.

(4) The Lord Chancellor may pay to a judge by request of the Upper Tribunal, or a person who is a judge of the Upper Tribunal by virtue of section 5(1)(d), such amounts (if any) as the Lord Chancellor may determine by way of—
  (a) remuneration;
  (b) allowances;
  (c) expenses.

Deputy judges of the Upper Tribunal

7 (1) The Lord Chancellor may appoint a person to be a deputy judge of the Upper Tribunal for such period as the Lord Chancellor considers appropriate.

(2) A person is eligible for appointment under sub-paragraph (1) only if he is eligible to be appointed under paragraph 1(1) (see paragraph 1(2)).

(3) Sub-paragraphs (4) and (5) apply—
  (a) to a person appointed under sub-paragraph (1), and
  (b) to a person who becomes a deputy judge of the Upper Tribunal as a result of provision under section 31(2).

(4) A person to whom this sub-paragraph applies is to hold and vacate office as a deputy judge of the Upper Tribunal in accordance with the terms of his appointment (subject to the Judicial Pensions and Retirement Act 1993 (c. 8)).

(5) The Lord Chancellor may pay to a person to whom this sub-paragraph applies such amounts (if any) as the Lord Chancellor may determine by way of—
  (a) remuneration;
  (b) allowances;
  (c) expenses.

Other members neither appointed under paragraph 2(1) nor transferred in

8 (1) In this paragraph “ex officio member of the Upper Tribunal” means—

(a) a person who is a member of the Upper Tribunal by virtue of section 5(2)(c) (member of Employment Appeal Tribunal appointed under section 22(1)(c) of the Employment Tribunals Act 1996 (c. 17)), or

(b) a person who is a member of the Upper Tribunal by virtue of section 5(2)(d) (member of the Asylum and Immigration Tribunal who is not a legally qualified member).

(2) The Lord Chancellor may pay to an ex officio member of the Upper Tribunal such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Training etc.

9 The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training, guidance and welfare of judges and other members of the Upper Tribunal (in their capacities as such judges and other members).

Oaths

10 (1) Sub-paragraph (2) applies to a person ("J")—

(a) who is appointed under paragraph 1(1), 2(1) or 7(1), or

(b) who—

(i) becomes a transferred-in judge, or a transferred-in other member, of the Upper Tribunal, or

(ii) becomes a deputy judge of the Upper Tribunal as a result of provision under section 31(2),

and has not previously taken the required oaths after accepting another office.

(2) J 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 J.

(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) In this paragraph "the required oaths" means (subject to sub-paragraph (5))—

(a) the oath of allegiance, and

(b) the judicial oath,

as set out in the Promissory Oaths Act 1868 (c. 72).

(5) Where it appears to the Lord Chancellor that J will carry out functions as a judge or other member of the Upper Tribunal wholly or mainly in Northern Ireland, the Lord Chancellor may direct that in relation to J "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.