

## SCHEDULES

### SCHEDULE 5

Section 60

#### PRESIDENT OF WELSH TRIBUNALS

#### PART 1

#### APPOINTMENT

##### *Duty to fill vacancies*

- 1 (1) If there is a vacancy in the office of President of Welsh Tribunals, the Lord Chief Justice must appoint a person to that office.
- (2) Sub-paragraph (1) does not apply to a vacancy while the Lord Chief Justice, the Lord Chancellor and the Welsh Ministers all agree that it may remain unfilled.
- (3) In this Schedule “the Lord Chief Justice” means the Lord Chief Justice of England and Wales.

##### *The two routes to appointment: agreement under this paragraph or selection under Part 2*

- 2 (1) The Lord Chief Justice, before he or she may appoint a person to the office of President of Welsh Tribunals, must consult—
  - (a) the Lord Chancellor, and
  - (b) the Welsh Ministers.
- (2) Sub-paragraphs (3) and (4) apply if—
  - (a) the outcome of consultation under sub-paragraph (1) is agreement between the Lord Chief Justice, the Lord Chancellor and the Welsh Ministers as to the person to be appointed, and
  - (b) the person holds or has held office as—
    - (i) an ordinary judge of the Court of Appeal in England and Wales, or
    - (ii) a puisne judge of the High Court.
- (3) The Lord Chief Justice must appoint the person to the office of President of Welsh Tribunals, subject to sub-paragraph (4).
- (4) Where the person—
  - (a) declines to be appointed, or does not agree within a time specified to him or her for that purpose, or
  - (b) is otherwise not available within a reasonable time to be appointed,the Lord Chief Justice must, instead of appointing the person, consult afresh under sub-paragraph (1).

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- (5) If the Lord Chief Justice has consulted under sub-paragraph (1) but sub-paragraphs (3) and (4) do not apply following that consultation, he or she must make a request to the Judicial Appointments Commission (“the Commission”) for a person to be selected for appointment to the office of President of Welsh 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 he or she satisfies the judicial-appointment eligibility condition on a 7-year basis.

#### *The selection process*

- 4 (1) On receiving a request from the Lord Chief Justice under paragraph 2(5) the Commission must appoint a selection panel.
- (2) The panel must have an odd number of members not less than five.
- (3) The members of the panel must include—
- (a) at least two who are non-legally-qualified,
  - (b) at least two judicial members, and
  - (c) at least two members of the Commission.

Contributions to meeting more than one of the requirements may be made by the same person’s membership of the panel.

- (4) The panel must —
- (a) determine the selection process to be applied;
  - (b) apply the selection process;
  - (c) make a selection accordingly.
- (5) As part of the selection process the panel must consult—
- (a) the Lord Chancellor;
  - (b) the Welsh Ministers.
- (6) One person only must be selected for the appointment to which a request relates.
- (7) Sub-paragraph (4) applies to selection under this paragraph and to selection under regulations made under paragraph 7.
- (8) A selection panel is a committee of the Commission.

#### *Merit and good character*

- 5 (1) This paragraph applies to any selection by a selection panel appointed under paragraph 4.
- (2) Selection must be solely on merit.

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- (3) A person must not be selected unless the selection panel body is satisfied that he or she is of good character.
- (4) Neither “solely” in sub-paragraph (2), nor Part 5 of the Equality Act 2010 (public appointments etc), prevents the selection panel, where two persons are of equal merit, from preferring one of them over the other for the purpose of increasing diversity within—
  - (a) the group of persons who hold offices for which there is selection by panels appointed by the Commission, or
  - (b) a sub-group of that group.

#### *Encouragement of diversity*

- 6 (1) A selection panel appointed under paragraph 4, in performing its functions under this Part, must have regard to the need to encourage diversity in the range of persons available for selection.
- (2) This paragraph is subject to paragraph 5.

#### *Regulations about selection*

- 7 (1) The Lord Chancellor must by regulations made with the agreement of the Lord Chief Justice and the Welsh Ministers—
  - (a) make further provision about the process to be applied in a case where the Commission receives a request under paragraph 2(5);
  - (b) make further provision about—
    - (i) membership of selection panels appointed under paragraph 4, and
    - (ii) the process that is to be applied in a case where a selection panel is required to be appointed under that paragraph;
  - (c) secure, subject to paragraph 8 and any provision within sub-paragraph (2)(d) that is included in the regulations, that in every case referred to paragraph (a) or (b)(ii) there will come a point in the process when a selection has to be accepted, either unconditionally or subject only to matters such as the selected person’s willingness and availability, by or on behalf of the Lord Chief Justice.
- (2) The regulations may in particular—
  - (a) provide for process additional to the selection process applied under paragraph 4(4), including post-acceptance process;
  - (b) make provision as to things that are, or as to things that are not, to be done—
    - (i) as part of the selection process applied under paragraph 4(4), or
    - (ii) in determining what that process is to be;
  - (c) provide for paragraph 4(4)(c) not to apply where, or to the extent that, the Commission decides that the selection process applied under paragraph 4(4) has not identified candidates of sufficient merit for it to comply with paragraph 4(4)(c);
  - (d) give powers to the Lord Chief Justice, including—
    - (i) power to require a selection panel to reconsider a selection under paragraph 4(4) or any subsequent selection,
    - (ii) power to reject a selection under paragraph 4(4) or any subsequent selection, and

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- (iii) power to require the reconsideration of a decision mentioned in paragraph (c);
  - (e) provide for particular action to be taken by the Commission or a selection panel after the panel has complied with paragraph 4;
  - (f) provide for the dissolution of a selection panel appointed under paragraph 4;
  - (g) provide for a person to cease to be a member of such a panel where the person's membership of the panel ceases to contribute to meeting a requirement about the panel's members;
  - (h) provide for a person to become a member of such a panel where another person ceases to be a member of the panel or where another person's membership of the panel ceases to contribute to meeting a requirement about the panel's members;
  - (i) make provision for or in connection with assessments, whether pre-acceptance or post-acceptance, of the health of persons selected;
  - (j) provide for the Lord Chief Justice to nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise functions given to the Lord Chief Justice by the regulations;
  - (k) make provision as to the meaning of "non-legally-qualified" and "judicial member" in paragraph 4(3).
- (3) Regulations under this paragraph—
- (a) may make different provision for different purposes;
  - (b) may make transitory, transitional or saving provision.
- (4) The power to make regulations under this paragraph is exercisable by statutory instrument.
- A statutory instrument containing regulations under this paragraph may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) This paragraph is subject to paragraph 8.

*Withdrawal and modification of requests*

- 8 (1) The Lord Chief Justice may withdraw a request under paragraph 2(5)—
- (a) with the agreement of the Welsh Ministers, or
  - (b) if, after consulting Welsh Ministers, the Lord Chief Justice considers the selection process determined by the selection panel is not satisfactory, or has not been applied satisfactorily.
- (2) The Lord Chief Justice may modify a request under paragraph 2(5) with the agreement of the Welsh Ministers.
- (3) If a request is withdrawn in part or modified, the selection panel may, if it thinks it appropriate because of the withdrawal or modification, change any selection already made pursuant to the request, except a selection already accepted.
- (4) The Lord Chief Justice may not withdraw a request under sub-paragraph (1)(b) if a selection made pursuant to the request—
- (a) has been accepted unconditionally or subject only to matters such as the selected person's willingness and availability, or

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- (b) in exercise of power conferred by regulations under paragraph 7, has been rejected or required to be reconsidered.
- (5) Any withdrawal or modification of a request must be by notice in writing to the Commission.
- (6) In the case of a withdrawal of a request, the notice must state whether it is under sub-paragraph (1)(a) or (b).
- (7) In the case of a withdrawal under sub-paragraph (1)(b), the notice must state why the Lord Chief Justice considers the selection process determined by the selection panel is not satisfactory, or has not been applied satisfactorily.
- (8) If or to the extent that a request is withdrawn—
  - (a) the preceding provisions of this Part of this Schedule cease to apply in relation to it;
  - (b) any selection made on it is to be disregarded.
- (9) Withdrawal of a request to any extent does not affect the power of the Lord Chief Justice to make another request in the same or different terms.

#### *Effect of acceptance of selection*

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- (1) Subject to the following provisions of this paragraph, where the Lord Chief Justice accepts a selection made under paragraph 4(4) he or she must appoint the person selected.
  - (2) Before making the appointment the Lord Chief Justice may direct the Commission to make arrangements in accordance with the direction—
    - (a) for any assessment of the health of the person selected that the Lord Chief Justice considers appropriate, and
    - (b) for a report of the assessment to be made to the Lord Chief Justice.
  - (3) Sub-paragraph (4) applies in any of the following circumstances—
    - (a) the Lord Chief Justice notifies the Commission that he or she is not satisfied on the basis of a report under sub-paragraph (2)(b), having consulted the Welsh Ministers, that the health of the person selected is satisfactory for the purposes of the appointment;
    - (b) the person selected declines to be appointed, or does not agree within a time specified to him for that purpose;
    - (c) the person selected is otherwise not available within a reasonable time to be appointed.
  - (4) Where this sub-paragraph applies—
    - (a) the selection accepted and any previous selection for the appointment are to be disregarded;
    - (b) the request pursuant to which the selection was made continues to have effect;
    - (c) any subsequent selection pursuant to that request may be made in accordance with the same or a different selection process.

### PART 3

#### TERMS OF OFFICE

##### *Tenure, removal, resignation etc*

- 10 (1) If—
- (a) a person is appointed to the office of President of Welsh Tribunals on terms that provide for him or her 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 President of Welsh Tribunals holds 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.
- 11 A person who holds the office of President of Welsh Tribunals may at any time resign that office by giving the Lord Chief Justice notice in writing to that effect.
- 12 (1) The Lord Chief Justice, if satisfied by means of a medical certificate that a person holding the office of President of Welsh Tribunals—
- (a) is disabled by permanent infirmity from the performance of the duties of the office, and
  - (b) is for the time being incapacitated from resigning the office,
- may, subject to sub-paragraph (2), by instrument under his or her hand declare the person to have vacated the office; and the instrument has the equivalent 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 is of no effect unless it is made with the concurrence of—
- (a) the Lord Chancellor, and
  - (b) the Welsh Ministers.

##### *Remuneration, allowances and expenses*

- 13 The Welsh Ministers may pay to the President of Welsh Tribunals whatever amounts they determine in respect of—
- (a) remuneration;
  - (b) allowances;
  - (c) expenses.

### *Oaths*

- 14 (1) A person appointed to the office of President of Welsh Tribunals must take the required oaths in the presence of—
- (a) the Lord Chief Justice, or
  - (b) another holder of high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005) who is nominated by the Lord Chief Justice 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.