These notes refer to the Constitutional Reform Act 2005 (c.4) which received Royal Assent on 24 March 2005

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 Duty to Convene Commission: Special Rules

97. This part of the Schedule modifies the Lord Chancellor's duty to convene a selection commission under certain circumstances.

Selection commission for the office of Deputy President

98. Paragraph 13 provides that the duty on the Lord Chancellor to convene a selection commission for the office of Deputy President or for the office of Judge does not apply if a selection commission for the office of President has been convened or the Lord Chancellor is under a duty to convene such a selection commission. This means that if there is a vacancy or impending vacancy for the office of President this must be filled before any vacancy in the office of Deputy President which might arise at the same time. This "fill the senior office first" approach, which maximises the likelihood that there will be a President to chair commissions for other vacancies, is carried through for other vacancies by paragraph 14.

Selection commission for the Office of Judge

99. Paragraph 14 provides that the duty on the Lord Chancellor to convene a selection commission for the office of Judge does not apply if a selection commission for the office of President or Deputy President has been convened or the Lord Chancellor is under a duty to convene such a selection commission. This means that if there is a vacancy or impending vacancy for the office of President or Deputy President these must be filled before any vacancy for the office of Judge which might arise at the same time.

100. Paragraphs 13(2) and 14(2) state that the Lord Chancellor must convene a selection commission for the unfilled vacancies (in the office of Deputy President or Judge) as soon as practicable after the Lord Chancellor has selected a candidate put forward by the selection commission for the office of President or Deputy President.

Section 27: Selection process

101. This section sets out the overall process which must be undertaken by the selection commission (the composition of which is provided for in Schedule 8) before it makes a selection of one name (subsection 10) and puts this to the Lord Chancellor (under section 28). Subsection (1) sets out the duties of the commission with regard to the particular selection process to be applied to each vacancy under consideration.

102. As provided for in subsections (5) and (6) selection must be made solely on merit. The task of setting out the criteria or competences against which merit will be tested lies with the commission. The commission can only recommend those who meet the eligibility requirements set out in section 25. Under subsection (7) anyone who is a member of the commission cannot be selected (hence the provisions in Schedule 8 for identifying

persons who wish to be considered for a particular vacancy and disqualifying them from membership of the commission).

103. Subsection (8) provides that the commission must, when making selections for the appointment of judges, also take into account the need for the Court to have among its judges those with knowledge and experience of practice in the law in every part of the United Kingdom. This is intended to maintain the convention that currently applies to the House of Lords that there should generally be at least 2 Scottish judges and usually 1 from Northern Ireland. The Lord Chancellor, as provided for by subsection (9), may issue non-binding guidance to the commission about the vacancy that has arisen, for example on the jurisdictional requirements of the Court, which the commission must have regard to.

104. Subsections (2) and (3) list the persons the commission must consult during the selection process (although it may consult others). They are (subsection (2)): senior judges (as defined by Section 60) who are neither on the commission nor willing to be considered for selection, the Lord Chancellor, the First Minister in Scotland, the Assembly First Secretary in Wales and the Secretary of State for Northern Ireland. In addition (subsection (3)), the commission must, if all the "senior judges" for a part of the United Kingdom are not able to be consulted (because they are candidates or members of the commission), consult the next most senior judge in that part who is able to be consulted. This ensures that there will always be some senior judicial input from every part of the United Kingdom into every selection process.

Section 28: Report

105. This section sets out the stage after the commission has made a selection under the process set out in Section 27.

106. Subsection (1) provides that after a selection has been made the commission must submit a report to the Lord Chancellor stating who has been selected and containing the information set out in subsections (2), (3) and (4) (that information being essentially that which is required to enable the Lord Chancellor to exercise his options under section 29 on a properly informed basis).

107. Before choosing to exercise one of his options set out in section 29 the Lord Chancellor, having received the report, must (under subsection (5)) consult the senior judges (or other judges) who were consulted by the commission, the First Minister in Scotland, the Assembly First Secretary in Wales and the Secretary of State for Northern Ireland.

Section 29: The Lord Chancellor's options

108. This section sets out the Lord Chancellor's options after he has received a name from the commission and carried out further consultation under section 28. It works in conjunction with section 30 which sets out the grounds on which the Lord Chancellor can exercise two of his options – to reject the selection commission's recommendation or to ask the selection commission to reconsider its recommendation. It outlines the three possible stages of the process and the options the Lord Chancellor has at those stages.

109. Subsection (1) outlines the three possible stages. The first stage is where a person has been selected under section 27. The second stage is where a person has been selected following a rejection or reconsideration at stage 1. The third and final stage is where a person has been selected following a rejection or reconsideration at stage 2.

110. Subsection (2) provides the Lord Chancellor with his options in dealing with stage 1 of the process. He may (a) notify the selection (which is to say, notify the Prime Minister of the selection for the Prime Minister to recommend that person to Her Majesty for appointment), (b) reject the selection or (c) require the commission to reconsider the

selection. Should the Lord Chancellor exercise options (b) or (c) the process enters stage 2.

111. Subsection (3) provides that during the second stage the Lord Chancellor can (a) notify the selection to the Prime Minister (as above), having exercised either option b) or c) in stage 1; (b) reject the selection if it was made following reconsideration at the first stage; or (c) require the commission to reconsider the selection, but only if it was made following a rejection at stage 1. Should the Lord Chancellor exercise option (b) or (c) the process enters stage 3.

112. At the third stage, as provided for in subsection (4), the Lord Chancellor must notify the selection although, as provided for in subsection (5), he may notify a candidate who was reconsidered at stage one or two but not rejected.

113. The Lord Chancellor's options as set out in this section can be summarised as follows: He can:

a) accept the recommendation;

b) ask the commission to reconsider; or

c) reject the recommendation.

114. If the Lord Chancellor selects option b) first, he would ask the selection commission to reconsider. After reconsideration the commission, under section 31, can still put forward the same name with further reasons or recommend an alternative. The Lord Chancellor can then put forward either of the recommended candidates (unless he chooses to reject the second candidate put forward).

115. Under option c) the Lord Chancellor can reject the name provided by the selection commission.

116. If rejection follows reconsideration, under section 31 the selection commission must submit an alternative candidate. At this point the Lord Chancellor can either:

a) accept this candidate; or

b) accept the candidate originally put forward before reconsideration.

117. If the Lord Chancellor rejects the original name provided by the selection commission, under section 31 it must submit an alternative candidate giving reasons for their choice. At this point the Lord Chancellor can either:

a) accept the second candidate; or

b) ask the selection commission to reconsider – The selection commission, under section 31, can then either resubmit the second candidate or an alternative candidate. If an alternative candidate is put forward the Lord Chancellor can then choose between the first name following rejection or the new name following reconsideration.

Section 30: Exercise of powers to reject or require reconsideration

118. This section details the grounds upon which the Lord Chancellor can exercise his powers to reject or require reconsideration of a selection, as provided for in section 29.

119. The right of rejection is only exercisable according to subsection (1) when in the Lord Chancellor's opinion the person selected is not suitable for the office concerned.

120. The right to require reconsideration, as stated in subsection (2), is exercisable under three conditions subject to the Lord Chancellor's opinion. The Lord Chancellor can ask for reconsideration if he feels there is not enough evidence that the person is suitable for office; if he feels there is not enough evidence that person is the best candidate on merit;

or if there is not enough evidence that the judges of the Court will between them have enough knowledge of, and experience in the laws of each parts of the United Kingdom, following the new appointment.

121. Should the Lord Chancellor exercise either of these options, under subsection (3) the Lord Chancellor must provide his reasons in writing.

Section 31: Selection following rejection or requirement to reconsider

122. This section makes provision for the process that the selection commission must follow if the Lord Chancellor requests reconsideration of a selection, or rejects a selection, under section 29.

123. As provided by subsections (2) and (3) the commission can never put forward a candidate whose selection has been rejected at any stage of the process.

124. Subsection (3) provides that the commission can reselect a candidate whose selection the Lord Chancellor has requested be reconsidered or provide another candidate, but not a candidate whose selection has already been rejected.

125. Subsection (4) states that the commission must inform the Lord Chancellor of the person selected following rejection or requirement for reconsideration.

Terms of Appointment

Section 32: Oath of allegiance and judicial oath

126. This section provides for every judge of the Supreme Court (which includes the President and Deputy President) to be required to take the oath of allegiance to the Sovereign and the Judicial Oath, as soon as may be after accepting that office. The required oaths are described in subsection (6) and are set out in the Promissory Oaths Act 1868. Separate provision is made for the taking of the oaths on appointment as President, Deputy President, and judge.

127. Subsection (1) requires the President to take the oaths in the presence of the Deputy President, or, if there is no Deputy President, the senior ordinary judge ("senior ordinary judge" being defined in section 60(3)(b)).

128. Subsection (2) requires the Deputy President to take the oaths in the presence of the President, or, if there is no President, the senior ordinary judge.

129. Subsection (3) provides that a judge of the Court (excluding the President and Deputy President – see subsection (5)) must take the oaths in the presence of the President, or, if there is no President, the Deputy President, or if there is no Deputy President, the senior ordinary judge.

130. Subsection (4) provides that the President and Deputy President are required to take the oaths in terms of subsections (1) and (2) whether or not the person appointed as President or Deputy President has previously taken the oaths after accepting another office. For example, a person appointed as President having previously served as Deputy President will be required to take the oaths on appointment as President even though he took them on appointment as Deputy President.

131. Subsection (5) provides that a judge of the Court who becomes a Supreme Court judge by virtue of his appointment directly to the Court as President or Deputy President does not have to take the oaths twice, by virtue of subsection (1) or (2) and of subsection (3) – that is to say, in those circumstances, the person appointed as President or Deputy President takes the oaths only once, on account of the appointment as President.

Section 33: Tenure

132. This section provides for the judges of the Supreme Court to hold office while they are of good behaviour, as is presently the case for Lords of Appeal in Ordinary. This is of course subject to the possibility of resignation, and the provision for retirement, set out in sections 35 and 36. (This provision does not apply to persons who, under section 38 of the Act, are acting judges of the Supreme Court. See section 38(5)(b).)

133. This section also provides, consistently with the position of all senior judicial office holders, that removal from office of any judge of the Supreme Court may only be effected following resolutions passed by both the House of Commons and the House of Lords.

Section 34: Salaries and allowances

134. This section provides for judges of the Supreme Court to receive a salary and allowance, detailing how the salary and allowance is to be determined and from where the salary and allowance is paid. It is in terms which reproduce the effect of the provisions governing these matters for Lords of Appeal in Ordinary.

135. Subsection (1) states that a judge of the Supreme Court is entitled to a salary, and subsection (2) that the amount of the salary is to be determined by the Lord Chancellor with the agreement of the Treasury. Subsection (3) makes transitional provision to the effect that at the commencement of the provisions establishing the Supreme Court, the salaries of the first judges of the Supreme Court will remain the same as those received by them as Lords of Appeal in Ordinary immediately before commencement. Subsection (4) provides for these salaries, consistently with other judicial salaries, to be capable of being increased but not reduced.

136. Subsection (5) provides that the salary will be charged on and paid out of the Consolidated Fund of the United Kingdom.

137. Subsection (6) provides that the Lord Chancellor may determine, in agreement with the Treasury, an allowance to be paid to a judge of the Court, which will be paid out of money provided Parliament. This is in addition to the judicial salary, to provide flexibility.

Section 35: Resignation and retirement

138. This section makes provision for the resignation or retirement of judges of the Supreme Court.

139. Under subsection (1) any judge of the Supreme Court (including the President and Deputy President) may at any time resign from that office. Resignation is effected by giving notice in writing to the Lord Chancellor.

140. Subsection (2) makes separate provision for resignation from the office of President or Deputy President. The holder may so resign without resigning from the office of a judge of the Supreme Court. The resignation is again effected by giving notice in writing to the Lord Chancellor.

141. Subsection (3) amends section 26(4)(a) of, and Schedule 5 to, the Judicial Pensions and Retirement Act 1993 (retirement), so that references to “Judge of the Supreme Court” will be substituted for “Lord of Appeal in Ordinary”. The effect of this amendment is that the retirement age and associated provisions as to retirement which apply to Lords of Appeal in Ordinary will apply in the same way to judges of the Supreme Court.

Section 36: Medical Retirement

142. This section makes provision analogous to that for other senior judicial office holders for vacation of the office of a judge of the Supreme Court (including the President and Deputy President) on medical grounds.

143. Subsection (1) provides for the scope of the section: it applies if the Lord Chancellor is satisfied by means of a medical certificate that the person holding office as a judge of the Supreme Court is both disabled by permanent infirmity from performing his duties and for the time being is incapacitated from resigning from his office.

144. In such circumstances, subsection (2) enables the Lord Chancellor to declare the office of the person in question to be vacated (subject to the conditions in subsection (4)). Subsection (3) provides for this declaration to have effect as though the person in question had himself or herself resigned on the date of the declaration. Subsection (4) requires the Lord Chancellor, before making a declaration, to secure the agreement of the appropriate judges of the Supreme Court (depending on the office which would be vacated). Without that agreement, the declaration will have no effect. In the case of an ordinary judge (as defined in section 60(3)(a)), the agreement required is that of the President and Deputy President of the Court; in the case of the President, the agreement required is that of the Deputy President and the senior ordinary judge (as defined in section 60(3)(b)); and in the case of the Deputy President, the agreement required is that of the President and the senior ordinary judge.

Section 37: Pensions

145. Subsections (1) and (2) make amendments to the Judicial Pensions Act 1981 and Judicial Pensions and Retirements Act 1993 respectively, to substitute 'Judge of the Supreme Court' for 'Lord of Appeal in Ordinary'. These amendments are to ensure that the pension provision currently enjoyed by the Lords of Appeal in Ordinary will transfer over to the Justices of the Supreme Court, and that individual members of the Supreme Court who were previously Lords of Appeal in Ordinary will retain the pension benefits accrued in the former capacity and that those benefits will continue to accrue in the same way relative to their service as judges of the Supreme Court as they did relative to their service as Lords of Appeal in Ordinary.

146. Furthermore, subsection (3) provides that the amendments made to the 1981 and 1993 Acts do not affect the operation of any provision or anything done under a provision in relation to the office of, or service as, Lord of Appeal in Ordinary. This ensures that any retired Lords of Appeal in Ordinary are not affected adversely by the changes to legislation.

Acting Judges

Section 38: Acting Judges

147. This section makes provision enabling the Supreme Court to have access to additional Judges beyond its permanent membership to supplement the permanent members of the Supreme Court where necessary; sets out the mechanism for determining the "pool" from which acting judges will be drawn; and sets out the terms and conditions of any service as an acting judge.

148. Subsection (1) sets out the basic proposition that certain persons may act as judges of the Court if the President so requests. The persons who may be so requested are those who presently hold office as "senior territorial judges" (defined in subsection (8)), and those who are members of the supplementary panel (about which provision is made in section 39). As provided for in subsection (2) the Deputy President can make such a request if circumstances require.

149. Subsection (3) amends the Judicial Pensions and Retirement Act 1993 with the effect that acting judges cannot sit in the Supreme Court after the age of 75, bringing them into line with the provisions for continued sitting by retired Lords of Appeal in Ordinary and other "Lords of Appeal" (other than the Lord Chancellor) entitled to sit in the House of Lords at present.

150. Subsection (4) provides that any acting judge sitting in the Supreme Court should be treated for all purposes as a permanent judge of the Supreme Court (with the exception of the provisions as to appointment, tenure, remuneration, etc. listed in subsections (5) and (6)), and may accordingly perform any of the functions of a permanent judge of the Court.

151. Subsection (7) provides for the remuneration and allowances for acting judges, which are to be determined by the Lord Chancellor with the agreement of the Treasury and paid from money provided by Parliament.

152. Subsection (8) defines "senior territorial judge", as judges of the Court of Appeal in England and Wales and their counterparts at senior appellate level in Scotland and Northern Ireland.

Section 39: Supplementary panel

153. This section makes provision for the constitution of the Court's supplementary panel (from which judges can be drawn to supplement the permanent membership of the Court).

154. Subsection (1) provides that there is to be a supplementary panel, and subsections (2) and (3) make provision for its membership on commencement – in effect the same persons, with the exception of the Lord Chancellor and the Lords of Appeal in Ordinary (who will have become the judges of the Supreme Court), who are presently "Lords of Appeal" and able, by virtue of section 5(3) of the Appellate Jurisdiction Act 1876, to sit in proceedings in the Appellate Committee.

155. After commencement, by virtue of subsection (4), a person will become a member of the supplementary panel on ceasing to hold office as a judge of the Supreme Court or as a senior territorial judge, provided approval is given as laid out in sub-paragraphs (a) and (b). There is a special rule if the person in question is the President of the Court (subsection (5)). In this case, by virtue of subsection (6), that person automatically becomes a member of the supplementary panel, unless he or she notifies unwillingness to become a member of the panel, was removed from office for misbehaviour, or retired from office on grounds of incapacity, as set out in paragraphs (a)-(c). Subsection (7), for the avoidance of doubt, makes it clear that ceasing to hold office as a senior territorial judge in order to take up office as a judge of the Supreme Court (and vice versa) does not trigger membership of the supplementary panel.

156. Subsection (8) provides for resignation from the panel (by notice in writing to the President). Subsection (9) provides for retirement from the panel, which is to be at the age of 75 or five years after joining the panel, whichever is earlier. Subsection (10) provides that "senior territorial judge" has the same meaning as in section 38(8), and defines the term "qualifying judicial office" as being the office held by a person prior to becoming a member of the supplementary panel and on account of the holding of which that person was entitled to become a member of the panel.

Jurisdiction, relation to other courts etc

Section 40: Jurisdiction

157. This section makes provision for the jurisdiction of the Supreme Court, which is in essence that of the House of Lords in appellate matters together with the jurisdiction of

the Judicial Committee of the Privy Council in relation to devolution issues under the Scotland Act 1998, Government of Wales Act 1998 and Northern Ireland Act 1998.

158. Subsection (1) provides that the Supreme Court is to be, as is the House of Lords, a superior court of record, and accordingly has the inherent powers of such a court.

159. Subsections (2) and (3) reproduce the effect of section 3 of the Appellate Jurisdiction Act 1876, conferring on the Supreme Court the appellate jurisdiction exercised by virtue of that section by the House of Lords. The other appellate jurisdiction of the House of Lords, and the jurisdiction of the Judicial Committee of the Privy Council in relation to devolution issues, are transferred to the Supreme Court by virtue of subsection (4) and Schedule 9 (which is introduced by that subsection).

160. Since the provisions work by transferring the existing jurisdiction, the appeal process (except to the extent that it would be covered by Supreme Court Rules made under section 45) and the types of appeal from each jurisdiction, including leave requirements, and the routes of recourse otherwise, will remain the same as is currently the case for the House of Lords and Judicial Committee of the Privy Council.

161. Subsection (5) makes provision for the Supreme Court to have the power, as does the House of Lords, to determine any questions it deems necessary to determine, for the purposes of doing justice in an appeal to it, under this Act or any other Act.

Section 41: Relation to other courts etc

162. This section makes provision as to the effect of decisions of the Supreme Court as judicial precedents. The essence of the provision is that a decision made by the Supreme Court under particular jurisdiction should have the same effect as a decision of the body in which the jurisdiction is currently vested (whether that is the House of Lords or the Judicial Committee of the Privy Council). So in the case of jurisdiction transferred from the House of Lords, a decision of the Supreme Court on an appeal from one jurisdiction within the United Kingdom will not have effect as a binding precedent in any other such jurisdiction, or in a subsequent appeal before the Supreme Court from another such jurisdiction. In the case of the devolution jurisdiction transferred from the Judicial Committee of the Privy Council, a decision of the Supreme Court will be binding in all legal proceedings except for subsequent proceedings before the Supreme Court itself.

163. Subsection (1) provides that nothing in the provisions of the Act about the Supreme Court is to affect the distinctions between the separate legal systems of the parts of the United Kingdom. This recognises that those legal systems are separate, and that there is a variety of distinctions between them, so that, for example, Scotland differs from Northern Ireland in some ways, and in other ways from England and Wales.

164. Subsection (2) provides that a decision of the Supreme Court on an appeal from a court in one part of the United Kingdom is to be regarded as the decision of a court of that part of the United Kingdom. So, for example, a decision on appeal from the Court of Session would be regarded as a decision of a Scottish court, and would have binding effect in Scottish courts accordingly, but would not have binding effect in English courts (although it might, like the decision of the House of Lords in Donoghue v. Stevenson, be found by English courts to be so persuasive an authority as to be readily followed). Subsection (2) does not apply in relation to decisions in devolution proceedings.

165. Subsections (3) and (4) make provision to maintain the status quo in relation to the effect of decisions in devolution proceedings. The status quo is that, by virtue of section 103(1) of the Scotland Act 1998, section 82(1) of the Northern Ireland Act 1998 and paragraph 32 of Schedule 8 to the Government of Wales Act 1998, a decision of the Judicial Committee of the Privy Council in the exercise of its devolution jurisdiction is "binding in all legal proceedings (other than proceedings before the Committee)".

166. Subsection (3) accordingly provides that a decision of the Supreme Court on a devolution matter will not bind the Court itself when subsequently making a decision on

a devolution matter, but will otherwise be "binding in all legal proceedings", mirroring the wording of section 103(1) of the Scotland Act 1998 and its counterparts.

167. Subsection (4) defines "devolution matter", by reference not only to those matters which are "devolution issues" in the Scotland Act, Northern Ireland Act and Government of Wales Act, but also to the possibility of a reference to the Court, under the Scotland Act and Northern Ireland Act alone, of the question whether a Bill or part of a Bill of the Scottish Parliament or Northern Ireland Assembly is within the Parliament's or Assembly's legislative competence.

Composition for Proceedings

168. The Supreme Court will, like the House of Lords, be able to sit in panels. Section 42, together with section 43, makes provision for the composition of panels. The underlying rule is that no panel should ever consist wholly or predominantly of non-permanent judges, but that otherwise, the Court should have considerable flexibility (essentially mirroring that of the Appellate Committee), including the flexibility, subject to the agreement of the parties, to commence or continue hearing proceedings notwithstanding that a judge is unable to continue.

Section 42: Composition

169. Subsections (1), (2) and (3) provide for the basic rule that an uneven number of judges equal to or greater than three must be designated to hear any proceedings - there is no flexibility to designate an even number of judges. Given that an uneven number must be designated, permanent judges have to be in the majority in order to ensure that the composition is never wholly or predominantly of non-permanent judges (subsection (1)(c)).

170. This does not mean that the actual hearing cannot commence before an even number of judges, as the judges will by definition have been designated to hear proceedings in advance of the beginning of the hearing proper, and section 42 is, as subsection (4) makes clear, subject to section 43, which allows for additional flexibility. Subsection (5) makes it clear that the power to require more than three judges to be designated for particular proceedings or a particular class or classes of proceedings is exercisable by the President of the Court; and subsection (6) makes provision which ensures that the sections work on the basis that the Court is constituted for proceedings when the judges are designated to hear those proceedings (rather than when the hearing commences).

Section 43: Changes in Composition

171. This section provides for flexibility in the event of the Court being reduced in number (for example due to death or illness) before the end of proceedings.

172. Subsection (1) provides for this section to apply if the Court ceases to be duly constituted "because one or more members of the Court are unable to continue". In such a case, subject to any directions which the President may give (subsection (4)), the presiding judge (defined in subsection (6) as the judge who is to preside over the proceedings, or is presiding if they have already commenced) may direct that the Court is still duly constituted (subsection (2)), but only if the parties agree, the Court still consists of at least three judges, and at least half of those judges are permanent judges. So the Court may continue with an even number of judges; and if it does, and the judges divide evenly in their decisions, the case must (subsection (5)) be re-argued before a Court constituted in accordance with section 42 .

173. Because the section applies (by virtue of section 42(6)) to any proceedings from the time that judges are designated to hear proceedings (rather than when the proceedings commence), the Court is (for example) enabled to start the hearing with four judges where five were designated but one is unable to continue, as long as at least two of the four are permanent judges. The provision in subsection (1), that the section applies to

a court constituted in accordance with a direction 'under this section', is to allow for the possibility of two judges falling out of a panel which started off with at least five. This might occur if, for example, a panel of five is designated, and before the hearing commences, one judge is unable to continue, and the presiding judge directs (the parties being in agreement and there still being four judges of whom at least two are permanent) that the Court is still duly constituted; and then another judge is unable to continue, leaving three, of whom two are permanent, and the parties are still in agreement that the proceedings should continue. Then there would be a Court which ceases to be duly constituted "in accordance with this section", but the presiding judge may direct that it is still duly constituted.

Practice and Procedure

Section 44: Specially qualified advisers

174. This section makes provision for the Supreme Court to have specially qualified advisers to assist it in its work for the purpose of hearings that may require specialist support. This derives from existing provision in the Supreme Court of Judicature Act 1891 (section 3) and the Judicial Standing Orders of the House of Lords (Order XVI).

175. Subsection (1) makes the basic provision empowering the Court, if it thinks it is necessary, to hear and dispose of proceedings, either wholly or in part, with the assistance of one or more specially qualified advisers.

176. Subsection (2) provides that any remuneration payable to an expert adviser is to be determined by the Court unless otherwise agreed between the adviser and the parties to the proceedings. This remuneration, as set out in subsection (3), will form part of the costs of the proceedings.

Section 45: Making of Rules

177. This section, together with section 46, sets out how Rules of Court will be made for the Supreme Court.

178. Subsection (1) provides for the President of the Supreme Court to make rules dealing with the Court's practice and procedure. This power is in part analogous to the way in which the House of Lords regulates its work through its Standing Orders and Practice Directions.

179. Subsection (2) provides that the power to make rules includes the power to provide rules for different cases, including different proceedings such as civil and criminal proceedings and on devolution matters.

180. Under subsection (3) the President is obliged to exercise the rule-making power with a view to ensuring that the Court is accessible, fair and efficient and the rules are simple and simply expressed.

181. Subsection (4) places a duty on the President, before making Supreme Court Rules, to consult the Lord Chancellor, the principal legal professional bodies of the different parts of the United Kingdom (listed in subsection (5)), and such other bodies, representing persons likely to be affected by the Rules, as the President considers it appropriate to consult.

Section 46: Procedure after Rules made

182. By virtue of subsection (1), Rules made by the President are to be submitted to the Lord Chancellor, and by virtue of subsection (2), Rules so allowed are to come into force on such day as the Lord Chancellor directs, and be contained in a statutory instrument to which the Statutory Instruments Act 1946 will apply as if it contained rules made by a Minister of the Crown. Such an instrument is, by virtue of subsection (3), to be subject to negative resolution procedure.

Section 47: Photography etc

183. This section removes the prohibition on photography in section 41 of the Criminal Justice Act 1925 and in section 29 of the Criminal Justice Act (Northern Ireland) 1945 (both of which prohibit the taking of photographs in all courts) in relation to the Supreme Court, by changing the definition of 'court' in those provisions to include all courts of justice except the Supreme Court.

Staff and resources

184. Sections 48 to 51 together make provision for the resourcing and funding arrangements for the Supreme Court. They establish the post of Chief Executive of the Supreme Court within a clear statutory framework, which places certain duties on the Chief Executive and the Lord Chancellor. The Chief Executive will be responsible for the non-judicial functions of the Court and anything delegated to him by the President under section 50 (in effect allowing the Chief Executive to be formally responsible for appointing staff to the Court). In doing so the Chief Executive will be answerable to the President, in accordance with whose directions he will be required to act in carrying out his functions (although not so as to override any other duty or restriction on his powers). The Chief Executive will be responsible for ensuring that the Court's resources are used to provide an efficient and effective system to support the Court in carrying on its business. The Lord Chancellor has a corresponding duty under section 50 to provide accommodation for the Court and to provide other resources to allow the Chief Executive to carry out his responsibilities. The resourcing arrangements will operate as follows:

- The administrative service for the Supreme Court will be headed by a Chief Executive, a civil servant appointed by a process involving an *ad hoc* commission.
- The staff of the Court will be civil servants, accountable to the Chief Executive and not to the Lord Chancellor.
- The Chief Executive will be principally answerable to, and operating under the day-to-day guidance of, the President of the Court.
- The President of the Supreme Court and the Chief Executive will determine the bid for resources for the Court in line with Governmental spending review timescales.
- The bid will be passed to the Lord Chancellor, who will include it as a separate line in the overall DCA bid submitted to the Treasury.
- The Lord Chancellor will be responsible for directly dealing with the Treasury to secure resources for the Court during the Spending Review process.
- The Treasury will scrutinise the overall DCA bid and approve the overall financial expenditure for the DCA group in the Spending Review period including the Supreme Court.
- Following the settlement DCA will give a separate Departmental Expenditure Limit (DEL) to the UK Supreme Court.
- The Chief Executive of the Supreme Court will submit an estimate to HM Treasury which will then be presented before the House of Commons as part of the overall estimates.
- The House of Commons will approve the overall estimates and transfer resources accordingly.
- Because the Supreme Court will have its own estimate, the funds approved will be transferred to the Court direct from the Consolidated Fund, not via the DCA.

- The Chief Executive will be the Accounting Officer for the Supreme Court and so directly accountable to the Court and to Parliament, rather than being subject to the DCA Permanent Secretary as Principal Accounting Officer**.**

Section 48: Chief Executive

185. Subsection (1) establishes the office of Chief Executive, to be appointed under subsection (2) by the Lord Chancellor after consulting the President of the Court. In accordance with subsection (3) the Chief Executive will be responsible for all the non-judicial functions of the Court and any function of appointing officers and staff under section 49(1) that is delegated to him by the President of the Supreme Court. The President is expected to delegate all his functions under section 49(1), so this means that in effect the Chief Executive will appoint staff for the Supreme Court. Under subsection (4), the Chief Executive will carry out his functions in accordance with any directions given by the President.

Section 49: Officers and Staff

186. Subsection (1) makes provision for the President of the Supreme Court to have formal responsibility for appointing staff to the Supreme Court. This function may be delegated to the Chief Executive. Under subsection (2) the Chief Executive will be able to determine the staffing needs and arrangements in agreement with the Lord Chancellor and in accordance with the Court's overall budget. Subsections (3) and (4) provide that, as both the staff of the Court and the Chief Executive will be civil servants, the civil service pension arrangements will apply accordingly.

Section 50: Accommodation and Other Resources

187. Under subsection (1) the Lord Chancellor is responsible for ensuring that the Supreme Court is provided with such accommodation as he thinks appropriate for the Court to carry on its business. The Lord Chancellor is also responsible for providing such other resources as he thinks appropriate for the Court to carry on its business. This complements section 48, which sets out the duties of the Chief Executive. The Chief Executive will not be able to carry out his duties if the Lord Chancellor does not provide appropriate resources.

188. Subsection (2) provides that the Lord Chancellor can discharge his general duty under subsection (1) by directly providing accommodation or other resources or by entering into arrangements with third parties for their provision; and subsection (3) makes available for this purpose certain powers to acquire land for public service.

189. This section additionally, under subsection (4), enables the Scottish Ministers to make a contribution towards the resource running costs of the Court. This contribution (which will be related to the proportion of the costs of civil business attributable to appeals from Scotland) will be made by a transfer of resources from an appropriate budget.

Section 51: System to support Court in carrying on business

190. Subsection (1) places the Chief Executive under the duty to ensure that the resources provided under the preceding section are used to provide an efficient and effective system to support the Court in carrying on its business. The Chief Executive is therefore responsible for the effective administration of the Court. Subsection (2) makes provision for the key responsibilities of the Chief Executive in undertaking his general duty under subsection (1).

Fees

Section 52: Fees

191. This section should be read together with section 53, which makes supplementary provision about fees. Section 52(1) provides for the Lord Chancellor to have a power, by order (which by virtue of section 144 is to be exercisable by statutory instrument subject to negative resolution procedure) to prescribe the fees payable in respect of any matter dealt with by the Supreme Court. By virtue of subsection (2), this includes a power to exempt, remit or reduce fees, and to specify the criteria by which exemptions, reductions and remissions are to operate. The exercise of the power to prescribe fees is, by virtue of subsection (3), subject to a duty on the Lord Chancellor to have regard to the principle that access to the courts should not be denied.

192. By virtue of subsections (4)-(6), the exercise of the power is also subject to a requirement of prior consultation with the President and Deputy President of the new Supreme Court and the senior judiciary in each of the three jurisdictions of the United Kingdom, and the principal legal professional bodies in those jurisdictions.

Section 53: Fees: Supplementary

193. This section supplements section 52. Subsection (1) provides that Supreme Court fees are to be recoverable as a civil debt (mirroring the general position in relation to court fees).

194. Subsection (2) places the Lord Chancellor under a duty to take such steps as are reasonably practicable to bring information about fees to the attention of those who are likely to have to pay them.

195. Subsection (3) defines “Supreme Court fees” (as fees prescribed in an order under section 52).

Annual report

Section 54: Annual Report

196. Subsection (1) places a duty on the Chief Executive of the Supreme Court to prepare a report as soon as practicable after the end of each financial year (defined in subsection (3)) about the business of the Supreme Court, and to send it to the Lord Chancellor and to the heads of the three devolved administrations. By virtue of subsection (2), the Lord Chancellor is required to lay that Report before both Houses of Parliament.

Supplementary

Section 55: Seal

197. This section makes provision for the Supreme Court to have an official seal, and for that seal to be judicially recognised so as not to require further proof of documents emanating from the Court.

Section 56: Records of the Supreme Court

198. This section amends the Public Records Act 1958 to ensure that records of the Supreme Court are included among the "court records" under the general supervision of the Public Records Office. This is achieved by amending the list in paragraph 4(1) of Schedule 1 to the Public Records Act 1958 to add to the list of courts therein an entry for the Supreme Court.

199. In addition this section makes provision for the Chief Executive of the Supreme Court to have custody of the records of the Court by virtue of his office as chief executive, rather than by virtue of a determination by the Lord Chancellor to this effect.

Section 57 and Schedule 10: Proceedings under jurisdiction transferred to Supreme Court

200. Section 57 introduces Schedule 10, which makes transitional provision relating to proceedings which, at the time the Supreme Court is established, are pending in the House of Lords or Judicial Committee of the Privy Council under jurisdiction which is transferred to the Supreme Court. The essence of the approach is that such proceedings may be continued in the Supreme Court after the transfer of the jurisdiction as if they had commenced in the Supreme Court, and anything done in accordance with the rules applicable to proceedings in the House of Lords or Judicial Committee (as the case may be) is to be treated as having been done in accordance with the corresponding rules of the Supreme Court. In addition, there is a saving for any acts, decisions or orders of the House of Lords or Judicial Committee in proceedings under a transferred jurisdiction, which will have the same effect, with further proceedings pursuant to or in respect of them being possible, as if they were acts, decisions or orders of the Supreme Court.

Section 58: Northern Ireland Act 1998: excepted and reserved matters relating to the Supreme Court

201. This section relates to the status of the UK Supreme Court under the Northern Ireland Act 1998. It provides that the Supreme Court is to be an excepted matter but that rights of appeal to the Supreme Court and legal aid for such appeals are to be reserved matters. In so doing it ensures that the position of the UK Supreme Court reflects the current status of the judicial function of the House of Lords.

Section 59: Renaming of Supreme Courts for England and Wales and Northern Ireland

202. This section makes provision for the renaming of the Supreme Court of England and Wales and the Supreme Court of Judicature of Northern Ireland.

203. Subsection (1) provides that the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales. Subsections (2) and (3) provide respectively that the Supreme Court of Judicature of Northern Ireland is renamed the Court of Judicature of Northern Ireland and that the Northern Ireland Supreme Court Rules Committee is renamed the Northern Ireland Court of Judicature Rules Committee.

204. Subsection (4) provides for references to those bodies in other legislation and in any "instrument or other document" (so as to cover, for example, court forms) to have effect as references to those bodies as renamed.

205. Subsection (5) introduces Schedule 11, which provides additionally for direct textual amendment of numerous references in other legislation to one or other of the existing Supreme Courts.

Schedule 11: Renaming of Supreme Courts for England and Wales and Northern Ireland

206. Schedule 11 works in conjunction with section 59 to give effect to the renaming of the Supreme Court of England and Wales and the Supreme Court of Judicature of Northern Ireland. Schedule 11 provides for direct textual amendments of the numerous references in other legislation to one or other of the existing Supreme Courts.

207. Part 1 re-titles the Supreme Court Act 1981, Supreme Court (Offices) Act 1997, the Rules of the Supreme Court (Northern Ireland) 1980 and the Rules of the Supreme Court (Northern Ireland) (Revision) 1980, and provides for references to those enactments

wherever they occur in any other enactment to be changed to references to those enactments as retitled.

208. Part 2 covers the vast majority of the legislation which refers to the Supreme Court of England and Wales: paragraph 4 lists legislation in which the only references needing amendment are simply to "the Supreme Court", and provides for all those references to be changed to references to "the Senior Courts".

209. Part 3 corresponds to Part 2: Paragraph 5 provides for references to a person being required to be a solicitor of the Supreme Court of Northern Ireland (which constitute the majority of references in UK legislation to the Supreme Court of Northern Ireland) to be replaced by references to a solicitor of the Court of Judicature; and paragraph 6 covers, in the same way as paragraph 4, legislation which refers to the Supreme Court of Northern Ireland.

210. Part 4 deals with references in other legislation which require more tailored amendment. Of particular importance are the amendments made to the Interpretation Act 1978 by paragraph 18 of the Schedule. The definition of "Supreme Court" in Schedule 1 to the 1978 Act is amended so that "Supreme Court" is defined as the Supreme Court of the United Kingdom and will have that meaning wherever it appears in the statute book unless a contrary intention appears. In addition, the existing entries defining "Supreme Court" are replaced by entries defining "Senior Courts" and "Court of Judicature" respectively.

Section 60: Interpretation of Part 3

211. Subsection (1) defines 'part of the United Kingdom', 'the senior judges' and 'the Supreme Court' for the purposes of Part 3 of the Act.

212. Subsection (2) defines the term 'high judicial office' for the purposes of Part 3 of the Act. This expression is used in the requirements of eligibility for qualification as a Supreme Court judge in section 25, and in the requirements of eligibility to serve as an acting judge under sections 38 and 39. This definition replaces that in section 25 of the Appellate Jurisdiction Act 1876.

213. Subsection (3) defines the terms 'ordinary judge' and 'senior ordinary judge' (which are of particular importance in determining the person before whom oaths are to be taken on appointment, and who will chair and sit on the selection commission provided for in Schedule 8, should the President and Deputy President be unable to sit). An "ordinary judge" is defined in subsection (3)(a) as a judge of the Supreme Court other than the President or Deputy President. The "senior ordinary judge" is defined in subsection (3)(b) as the ordinary judge who has served longest as a judge of the Court (whether over one or more periods and whether or nor always as an ordinary judge). Subsection (4) "carries over" seniority for this purpose, providing that service as a Lord of Appeal in Ordinary counts as service as judge of the Court in defining the senior ordinary judge.