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## SCHEDULES

### SCHEDULE 4

#### OTHER FUNCTIONS OF THE LORD CHANCELLOR AND ORGANISATION OF THE COURTS

##### PART 1

##### AMENDMENTS

###### *Courts Act 2003 (c. 39)*

- 308 The Courts Act 2003 is amended as follows.
- 309 (1) In section 2 (Court officers, staff and services), in subsection (7) for paragraphs (c) and (d) substitute—
- “(c) the President of the Queen's Bench Division,
  - (d) the President of the Family Division, and
  - (e) the Chancellor of the High Court.”
- 310 (1) Section 4 (establishment of courts boards) is amended as follows.
- (2) After subsection (5) insert—

“(5A) Before making any order under subsection (2) or (4), the Lord Chancellor must consult the Lord Chief Justice.”
  - (3) After subsection (7) insert—

“(7A) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 311 (1) Section 5 (functions of courts boards) is amended as follows.
- (2) In subsection (5) after “Lord Chancellor must” insert “, after consulting the Lord Chief Justice, ”.
  - (3) In subsection (7) after “Lord Chancellor may” insert “, after consulting the Lord Chief Justice, ”.
  - (4) After subsection (8) insert—

“(9) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 312 (1) Section 8 (local justice areas) is amended as follows.
- (2) After subsection (5) insert—

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“(5A) Before making any order under subsection (2) or (4), the Lord Chancellor must consult the Lord Chief Justice.”

- (3) After subsection (7) insert—
- “(8) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 313 (1) Section 10 (appointment of lay justices etc) is amended as follows.
- (2) In subsection (2) for “Lord Chancellor” substitute “ Lord Chief Justice ”.
- (3) In subsection (3) for “or on behalf of the Lord Chancellor” substitute “ Lord Chief Justice ”.
- (4) After subsection (5) insert—
- “(6) The functions conferred on the Lord Chief Justice by subsections (2) and (3) may be exercised only after consulting the Lord Chancellor.
- (7) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (2) or (3).”
- 314 In section 11 (resignation and removal of lay justices), in subsection (2)—
- (a) after “Lord Chancellor may” insert “ , with the concurrence of the Lord Chief Justice, ”;
- (b) in paragraph (b) after “Lord Chancellor” insert “ with the concurrence of the Lord Chief Justice ”.
- 315 (1) Section 13 (entry of names in the supplemental list) is amended as follows.
- (2) In subsection (3) for “Lord Chancellor may” substitute “ Lord Chief Justice may, with the concurrence of the Lord Chancellor, ”.
- (3) In subsection (5) after “Lord Chancellor may” insert “ , with the concurrence of the Lord Chief Justice, ”.
- (4) After subsection (5) insert—
- “(6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (3).”
- 316 In section 14 (removal of names from the supplemental list), in subsection (2)(b) after “Lord Chancellor” insert “ , with the concurrence of the Lord Chief Justice, ”.
- 317 (1) Section 15 (lay justices' allowances) is amended as follows.
- (2) In subsection (7) for “Lord Chancellor” substitute “ Lord Chief Justice ”.
- (3) After subsection (8) insert—
- “(9) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (7).”
- 318 In section 16 (records of lay justices), after subsection (3) insert—

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- “(4) The Lord Chancellor must consult the Lord Chief Justice before—
- (a) appointing a person under subsection (1), or
  - (b) giving a direction under subsection (2).
- (5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 319 (1) Section 17 (chairman and deputy chairmen) is amended as follows.
- (2) In subsection (3) for “Lord Chancellor, or a person acting on his behalf, may” substitute “ Lord Chief Justice may, with the concurrence of the Lord Chancellor, ”.
- (3) After subsection (5) insert—
- “(6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 320 (1) Section 19 (training, development and appraisal of lay justices) is amended as follows.
- (2) In subsection (2) for “Lord Chancellor” in each place substitute “ Lord Chief Justice ”.
- (3) In subsection (3)—
- (a) for “Lord Chancellor” substitute “ Lord Chief Justice ”;
  - (b) for “appropriate training and training materials” substitute “ training and training materials that appear to him, after consulting the Lord Chancellor, to be appropriate ”.
- (4) After subsection (3) insert—
- “(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 321 (1) Section 20 (rules) is amended as follows.
- (2) In subsection (1) for “Lord Chancellor” substitute “ Lord Chief Justice ”.
- (3) In subsection (2)—
- (a) for “Lord Chancellor” substitute “ Lord Chief Justice ”;
  - (b) before paragraph (a) insert—  
“(za) the Lord Chancellor,”.
- (4) After subsection (2) insert—
- “(3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions of making the rules referred to in this section.”
- 322 (1) Section 21 (duty to consult lay justices on matters affecting them etc) is amended as follows.
- (2) That section becomes subsection (1) of section 21.
- (3) In that subsection after “Lord Chancellor” insert “ and the Lord Chief Justice ”.

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- (4) After that subsection insert—
- “(2) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 323 In section 22 (appointment of District Judges (Magistrates' Courts)), in subsection (5) after “Lord Chancellor may” insert “, with the concurrence of the Lord Chief Justice,”.
- 324 In section 24 (Deputy District Judges (Magistrates' Courts)), in subsection (4) after “Lord Chancellor may” insert “, with the concurrence of the Lord Chief Justice,”.
- 325 (1) Section 25 (District Judges (Magistrates' Courts) as justices of the peace) is amended as follows.
- (2) In subsection (2), leave out “or on behalf of the Lord Chancellor” and insert “ the Lord Chief Justice, after consulting the Lord Chancellor ”.
- (3) After subsection (2) insert—
- “(3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (2).”
- 326 (1) Section 27 (justices' clerks and assistant clerks) is amended as follows.
- (2) In subsection (1)(b) after “Lord Chancellor” insert “, after consulting the Lord Chief Justice,”.
- (3) In subsection (3)—
- (a) in paragraph (a) after “must” insert “, after consulting the Lord Chief Justice,”;
- (b) in paragraph (b) for “subsection (4)” substitute “ subsections (4A) to (4C) ”.
- (4) For subsection (4) substitute—
- “(4A) The Lord Chancellor may change an assignment of a justices' clerk so that he is no longer assigned to a local justice area (“the relevant area”) only if the conditions in subsections (4B) and (4C) are met.
- (4B) Before changing the assignment, the Lord Chancellor must consult—
- (a) the chairman of the lay justices assigned to the relevant area, or
- (b) if that is not possible or not practicable, the deputy chairman or such of the lay justices assigned to or acting in the relevant area as it appears to the Lord Chancellor appropriate to consult.
- (4C) The Lord Chief Justice must agree to the change.”
- (5) After subsection (6) insert—
- “(6A) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 327 (1) Section 28 (functions) is amended as follows.

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- (2) In subsection (8) after “Lord Chancellor” insert “ with the concurrence of the Lord Chief Justice ”.
- (3) After subsection (9) insert—
- “(10) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 328 (1) Section 30 (places, dates and times of sittings) is amended as follows.
- (2) In subsection (1) after “Lord Chancellor may” insert “ , after consulting the Lord Chief Justice, ”.
- (3) In subsection (7) after “Lord Chancellor may” insert “ , after consulting the Lord Chief Justice, ”.
- (4) After subsection (8) insert—
- “(9) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (1) or (7).”
- 329 (1) Section 34 (costs in legal proceedings) is amended as follows.
- (2) In subsection (5) after “Lord Chancellor may” insert “ , after consulting the Lord Chief Justice, ”.
- (3) After subsection (5) insert—
- “(6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 330 For section 62 substitute—

#### **“62 Head and Deputy Head of Civil Justice**

- (1) There is to be a Head of Civil Justice.
- (2) The Head of Civil Justice is—
- (a) the Master of the Rolls, or
- (b) if the Lord Chief Justice appoints another person, that person.
- (3) The Lord Chief Justice may appoint a person to be Deputy Head of Civil Justice.
- (4) The Lord Chief Justice must not appoint a person under subsection (2)(b) or (3) unless these conditions are met—
- (a) the Lord Chief Justice has consulted the Lord Chancellor;
- (b) the person to be appointed is one of the following—
- (i) the Chancellor of the High Court;
- (ii) an ordinary judge of the Court of Appeal.
- (5) A person appointed under subsection (2)(b) or (3) holds the office to which he is appointed in accordance with the terms of his appointment.

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(6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”

331 (1) Section 64 (power to alter judicial titles) is amended as follows.

(2) In subsection (2)—

- (a) omit “Vice-Chancellor”;
- (b) insert at the appropriate place—
  - (i) “Chancellor of the High Court”;
  - (ii) “Deputy Head of Civil Justice”;
  - (iii) “Deputy Head of Criminal Justice”;
  - (iv) “Deputy Head of Family Justice”;
  - (v) “Head of Civil Justice”;
  - (vi) “Head of Criminal Justice”;
  - (vii) “Head of Family Justice”;
  - (viii) “President of the Courts of England and Wales”;
  - (ix) “President of the Queen's Bench Division”.

(3) After subsection (3) insert—

“(3A) The Lord Chancellor may make an order under this section only with the concurrence of the Lord Chief Justice.”

(4) In subsection (4)—

- (a) omit paragraph (a);
- (b) for paragraphs (c) and (d) substitute—
  - “(ba) the President of the Queen's Bench Division,
  - (c) the President of the Family Division, and
  - (d) the Chancellor of the High Court.”

(5) After subsection (6) insert—

“(7) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”

#### Commencement Information

**II** Sch. 4 para. 331 partly in force; Sch. 4 para. 331 not in force at Royal Assent see s. 148; Sch. 4 para. 331(1)(2)(a)(b)(i)(ii)(v)-(ix)(3)-(5) in force at 3.4.2006 by S.I 2006/1014 {art. 2(a)}, Sch. 1 para. 11(z)

332 In section 69 (Criminal Procedure Rules), in subsection (4) omit “or alter”.

333 (1) Section 70 (Criminal Procedure Rule Committee) is amended as follows.

(2) In subsection (1) for paragraph (b) substitute—

“(b) the persons currently appointed in accordance with subsections (1A) and (1B).”

(3) After subsection (1) insert—

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- “(1A) The Lord Chief Justice must appoint the persons falling within paragraphs (a) to (e) of subsection (2).
- (1B) The Lord Chancellor must appoint the persons falling within paragraphs (f) to (k) of subsection (2).”
- (4) In subsection (2) for “The Lord Chancellor must appoint” substitute “ The persons to be appointed in accordance with subsections (1A) and (1B) are ”.
- (5) For subsection (3) substitute—
- “(3) Before appointing a person in accordance with subsection (1A), the Lord Chief Justice must consult the Lord Chancellor.
- (3A) Before appointing a person in accordance with subsection (1B), the Lord Chancellor must consult the Lord Chief Justice.”
- (6) After subsection (5) insert—
- “(5A) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 334 (1) Section 71 (power to change certain requirements relating to Committee) is amended as follows.
- (2) In subsection (1) for paragraph (a) substitute—
- “(a) amend section 70(2) or (3A), and”.
- (3) For subsection (2) substitute—
- “(2) The Lord Chancellor may make an order under this section only with the concurrence of the Lord Chief Justice.
- (3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 335 (1) Section 72 (process for making Criminal Procedure Rules) is amended as follows.
- (2) For subsections (3) and (4) substitute—
- “(3) The Lord Chancellor may, with the concurrence of the Secretary of State, allow or disallow rules so made.
- (4) If the Lord Chancellor disallows rules, he must give the Committee written reasons for doing so.”
- (3) In subsection (5) for “, as allowed or altered” substitute “ and allowed ”.
- 336 After section 72 insert—
- “72A Rules to be made if required by Lord Chancellor**
- (1) This section applies if the Lord Chancellor gives the Criminal Procedure Rules Committee written notice that he thinks it is expedient for Criminal Procedure Rules to include provision that would achieve a purpose specified in the notice.

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- (2) The Committee must make such rules as it considers necessary to achieve the specified purpose.
  - (3) Those rules must be—
    - (a) made within a reasonable period after the Lord Chancellor gives notice to the Committee;
    - (b) made in accordance with section 72.
  - (4) The Lord Chancellor may not give notice under subsection (1) unless the Secretary of State agrees.”
- 337 (1) Section 73 (power to amend legislation in connection with Criminal Procedure Rules) is amended as follows.
- (2) That section becomes subsection (1) of section 73.
  - (3) In that subsection after “Secretary of State” insert “ and after consulting the Lord Chief Justice ”.
  - (4) After that subsection insert—
    - “(2) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 338 In section 75 (Family Procedure Rules), in subsection (5) omit “or alter”.
- 339 (1) Section 77 (Family Procedure Rule Committee) is amended as follows.
- (2) In subsection (1) for paragraph (b) substitute—
    - “(b) the persons currently appointed in accordance with subsections (1A) and (1B).”
  - (3) After subsection (1) insert—
    - “(1A) The Lord Chief Justice must appoint the persons falling within paragraphs (a) to (f) of subsection (2).
    - (1B) The Lord Chancellor must appoint the persons falling within paragraphs (g) to (o) of subsection (2).”
  - (4) In subsection (2) for “The Lord Chancellor must appoint” substitute “ The persons to be appointed in accordance with subsections (1A) and (1B) are ”.
  - (5) In subsection (3) for “under subsection (2), Lord Chancellor must consult” substitute “ in accordance with subsection (1A), the Lord Chief Justice must consult the Lord Chancellor and ”.
  - (6) Omit subsection (4).
  - (7) In subsection (5) for “under subsection (2)(h) to (m), the Lord Chancellor must consult” substitute “ in accordance with subsection (1B), the Lord Chancellor must consult the Lord Chief Justice and, if the person falls within any of paragraphs (h) to (m) of subsection (2), must also consult ”.
  - (8) After section (6) insert—



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“(7) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”

340 (1) Section 78 (power to change certain requirements relating to Committee) is amended as follows.

(2) In subsection (1)(a) after “Lord Chancellor” insert “ or Lord Chief Justice ”.

(3) After subsection (1) insert—

“(1A) The Lord Chancellor may make an order under this section only with the concurrence of the Lord Chief Justice.”

(4) After subsection (2) insert—

“(3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”

341 (1) Section 79 (process for making Family Procedure Rules) is amended as follows.

(2) For subsections (3) and (4) substitute—

“(3) The Lord Chancellor may allow or disallow rules so made.

(4) If the Lord Chancellor disallows rules, he must give the Committee written reasons for doing so.”

(3) In subsection (5) for “, as allowed or altered” substitute “ and allowed ”.

342 After section 79 insert—

**“79A Rules to be made if required by Lord Chancellor**

(1) This section applies if the Lord Chancellor gives the Family Procedure Rules Committee written notice that he thinks it is expedient for Family Procedure Rules to include provision that would achieve a purpose specified in the notice.

(2) The Committee must make such rules as it considers necessary to achieve the specified purpose.

(3) Those rules must be—

(a) made within a reasonable period after the Lord Chancellor gives notice to the Committee;

(b) made in accordance with section 79.”

343 (1) Section 80 (power to amend legislation in connection with the rules) is amended as follows.

(2) That section becomes subsection (1) of section 80.

(3) In that subsection after “Lord Chancellor may” insert “ , after consulting the Lord Chief Justice, ”.

(4) After that subsection insert—

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- “(2) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.”
- 344 (1) Section 81 (practice directions relating to family proceedings) is amended as follows.
- (2) In subsection (1), before paragraph (a) insert—
- “(za) the civil division of the Court of Appeal,  
 (zb) the High Court.”
- (3) After subsection (2) insert—
- “(2A) Directions as to the practice and procedure of any relevant court in family proceedings (whether given under subsection (1) or otherwise) may provide for any matter which, by virtue of paragraph 3 of Schedule 1 to the Civil Procedure Act 1997, may be provided for by Civil Procedure Rules.”
- (4) In subsection (3) for “magistrates' courts and county courts (or any of them)” substitute “ any relevant court ”.
- (5) After subsection (4) (inserted by paragraph 9(5) of Schedule 2 to this Act) insert—
- “(5) In this section—  
 “Civil Procedure Rules” has the same meaning as in the Civil Procedure Act 1997;  
 “relevant court” means a court listed in subsection (1).”
- 345 In section 92 (fees), in subsection (5) for paragraphs (c) and (d) substitute—
- “(ba) the President of the Queen's Bench Division;  
 (c) the President of the Family Division;  
 (d) the Chancellor of the High Court;”.
- 346 (1) Section 102 (power to alter judicial titles: Northern Ireland) is amended as follows.
- (2) Omit subsection (4).
- (3) After subsection (6) insert—
- “(6A) The Lord Chancellor may make an order under this section only with the concurrence of the Lord Chief Justice.
- (6B) The Lord Chief Justice may nominate any of the following to exercise his functions under subsection (6A)—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;  
 (b) a Lord Justice of Appeal (as defined in section 88 of that Act).”
- 347 In section 107 (interpretation), in subsection (6) omit “by the Lord Chancellor”.
- 348 In section 108 (rules, regulations and orders), in subsections (1) and (6) after “Lord Chancellor” insert “ or Lord Chief Justice ”.
- 349 (1) Section 109 (minor and consequential amendments etc) is amended as follows.
- (2) After subsection (4) insert—
- “(4A) The following paragraphs apply to the making of provision that relates to England and Wales in an order under subsection (4)—

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- (a) before deciding what provision it is necessary or expedient to make, the Lord Chancellor must consult the Lord Chief Justice of England and Wales;
  - (b) before making the order, the Lord Chancellor must consult the Lord Chief Justice of England and Wales.
- (4B) The following paragraphs apply to the making of provision that relates to Northern Ireland in an order under subsection (4)—
- (a) before deciding what provision it is necessary or expedient to make, the Lord Chancellor must consult the Lord Chief Justice of Northern Ireland;
  - (b) before making the order, the Lord Chancellor must consult the Lord Chief Justice of Northern Ireland.”
- (3) After subsection (6) insert—
- “(7) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.
- (8) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this section—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).”
- 350 (1) Schedule 1 (constitution and procedure of courts boards) is amended as follows.
- (2) For paragraph 1 substitute—
- “1 (1) The members of each courts board are to be appointed by the Lord Chancellor.
- (2) The Lord Chancellor may appoint a member of a description mentioned in paragraph 2(a) only with the concurrence of the Lord Chief Justice.”
- (3) In paragraph 8 (meaning of regulations) after “Lord Chancellor” insert “ after consulting the Lord Chief Justice ”.
- (4) After paragraph 8 insert—
- “9 The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this Schedule.”
- 351 In Schedule 7 (High Court writs of execution), in paragraph 12(4) (regulations) for paragraphs (c) and (d) substitute—
- “(ba) the President of the Queen's Bench Division,
  - (c) the President of the Family Division,
  - (d) the Chancellor of the High Court, and”.

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