



Ministry  
of Justice

# **Tribunals leadership**

## **Consultation on reform of the office of Senior President of Tribunals**

May 2023

CP 829





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of Justice

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### Consultation on reform of the office of Senior President of Tribunals

Presented to Parliament

by the Lord Chancellor and Secretary of State for Justice  
by Command of His Majesty

May 2023



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# About this consultation

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<b>Response paper:</b>	A response to this consultation exercise is due to be published after the summer Parliamentary recess at: <a href="https://consult.justice.gov.uk/">https://consult.justice.gov.uk/</a>



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# Foreword by the Lord Chancellor

The tribunals are a critical part of the justice system. They offer a route to just outcomes for citizens, particularly those challenging decisions of the state so as to resolve issues around tax, employment, immigration and asylum.

Since 2007 the tribunal system has been led by the Senior President of Tribunals, a role which closely mirrors that of the Lord Chief Justice as leader of the courts of England and Wales.

In recent years the two postholders have aligned closely to make decisions in the interests of efficiency. This co-operative leadership model made sense considering the tribunals and courts share many of the same features and, therefore, many of the same challenges.

The reality, however, is that the statutory framework for leadership limits just how much can be achieved with this informal working arrangement. As such, the Government along with the judiciary has been exploring alternative models and how they might work in practice to deliver a better tribunal system.

We are agreed that a unified leadership model could help to deliver greater cohesion between the tribunals and the courts, as well as affording more flexibility in the system. A single, unified courts and tribunals judiciary in England and Wales will promote efficiency and consistency in our justice system, build an inclusive collegiate structure and increase opportunities for cross-deployment between the courts and tribunals.

This consultation seeks views on how best to achieve unification, while also making appropriate provision in respect of tribunals operating outside England and Wales, maintaining the Senior President of Tribunals' independence from the England and Wales judiciary in the exercise of responsibilities affecting them.

Creating a single judicial structure is the natural evolution of work since the creation of the unified tribunals in 2007 to forge stronger links between courts and tribunals in a cohesive justice system.

I am grateful to the senior judges within each of the UK's three jurisdictions for their input to this process already. The joint aim of the Government and the judiciary is to put in place a leadership model better positioned than ever to deliver an effective and efficient justice system – one that is truly fit for the future.

Rt Hon. Alex Chalk KC MP

Lord Chancellor and Secretary of State

# Executive summary

The independent office of Senior President of Tribunals provides leadership to the tribunals judiciary. Parliament made provision for the office in 2007, in the Act that established the First-tier Tribunal and Upper Tribunal. Since then, the senior judiciary across the courts and tribunals have, within the limit of the existing statutory framework, taken forward a number of initiatives to bring the courts and tribunals closer together and shape an effective, efficient and modern justice system.

The Government is now proposing to make reforms to the office of Senior President of Tribunals as part of its wider work to bring greater cohesion between the courts and tribunals judiciaries and to the justice system as a whole. The Government has worked closely with the senior judiciary in considering how best to achieve this, and it proposes to replace the existing office with a reconfigured one under the leadership of the Lord Chief Justice of England and Wales, sitting alongside the Heads of Division of the England and Wales judiciary.<sup>1</sup> The proposed reform will mean that tribunals judicial office-holders in England and Wales will become part of the same judicial structure as courts judges, while the structure of the tribunals themselves will remain as it is now. Giving effect to the proposals will require primary legislation.

Under the proposals, many responsibilities currently exercised by the Senior President of Tribunals will formally transfer to the Lord Chief Justice, with a power for the Lord Chief Justice to delegate them. This will allow responsibilities relating to the tribunals to be delegated to the holder of the reformed head of tribunals office, in the same way that the Lord Chief Justice delegates responsibilities to the Heads of Division. The reconfigured role of Senior President of Tribunals will therefore continue to provide dedicated senior leadership in the tribunals jurisdiction.

Unlike the offices of Heads of Division, the office of Senior President of Tribunals has a remit across the UK, as it is responsible for the reserved tribunals, which deal with reserved issues of UK law and have UK-wide jurisdiction and structures.<sup>2</sup> The Government therefore proposes to carve out the Senior President of Tribunals' responsibilities insofar as they relate to judges and non-legal members working within the reserved tribunals in Scotland and in Northern Ireland, so that these responsibilities are separate. The reformed

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<sup>1</sup> The Heads of Division are the President of the King's Bench Division, the President of the Family Division and the Chancellor of the High Court.

<sup>2</sup> In Scotland, these reserved tribunals are the Immigration and Asylum Tribunal, the Employment Tribunal (Scotland) and the Social Entitlement Chamber of the First-tier Tribunal (dealing with appeals relating to social security and child support). They are currently administered by HMCTS (His Majesty's Courts and Tribunals Service), which administers courts and tribunals in England and Wales. Scotland and Northern Ireland have separate services to administer their own courts and tribunals.

office of Senior President of Tribunals will therefore have responsibility for the reserved tribunals in Scotland and Northern Ireland.<sup>3</sup> This responsibility will not transfer to the Lord Chief Justice of England and Wales, and the Senior President of Tribunals will therefore exercise those duties independently of any powers delegated by the Lord Chief Justice in relation to England and Wales.

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<sup>3</sup> A tribunals organisation chart showing which tribunals have jurisdictions that cover Great Britain or the United Kingdom is available at <https://www.judiciary.uk/guidance-and-resources/tribunals-organisation-chart/>. <https://www.judiciary.uk/wp-content/uploads/2022/04/Tribunals-Chart-Updated-August-2022-31.pdf>

# Introduction

This paper sets out for consultation the proposal to reform the office of Senior President of Tribunals, as part of One Judiciary, the wider work to bring greater cohesion between the courts and tribunals. The consultation is aimed principally at judicial office-holders (including non-legal tribunal members) in the UK.

A Welsh language summary is being published separately.

An impact assessment is being published separately. We do not anticipate that the proposals would lead to additional costs or savings.

Copies of the consultation paper are being sent to:

## **Government**

- Cabinet Secretary for Justice and Home Affairs, Scotland
- Executive Office, Northern Ireland
- Counsel General for Wales
- HM Courts and Tribunals Service

## **UK Parliament**

- Chair of the House of Lords Constitution Committee
- Chair of the House of Commons Justice Committee

## **Chief Justices**

- Lord Chief Justice of England and Wales
- Lord President of the Court of Session and Lord Justice General of Scotland
- Lady Chief Justice of Northern Ireland

## **UK Supreme Court**

- President of the UK Supreme Court

## **Senior courts judiciary of England and Wales**

- Master of the Rolls
- President of the King's Bench Division
- President of the Family Division
- Chancellor of the High Court
- Senior Presiding Judge

### **Senior tribunals leadership judges**

- Senior President of Tribunals
- President of Scottish Tribunals
- President of Welsh Tribunals (and his successor from April 2023)
- Tribunal and Chamber Presidents in the UK jurisdictions

### **Judicial associations**

- Association of High Court Judges
- Association of High Court Masters
- Association of HM District Judges
- Council of Appeal Tribunal Judges
- Council of District Judges (Magistrates' Courts)
- Council of Employment Judges
- Council of HM Circuit Judges
- Council of Immigration Judges
- Council of Upper Tribunal Judges
- Forum of Tribunal Associations<sup>4</sup>
- Salaried Tribunal Judges Association
- UK Association of Fee Paid Judges

This list is not meant to be exhaustive or exclusive. We welcome responses from anyone with an interest in or views on the subject covered by this paper.

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<sup>4</sup> The Forum of Tribunal Associations includes these member organisations: the Council of Upper Tribunal Judges, the Council of Immigration Judges, the Council of Employment Judges, the Council of Tribunal Members Association, the Council of Appeal Tribunal Judges, the Association of Regional Medical Members, the Mental Health Tribunal Members Association, the Association of the Special Educational Needs Tribunal, the Association of Salaried Tribunal Judges for Health, Education and Social Care, the Employment Appeal Tribunal Lay Members Committee and the Association of Medical and Disability Qualified Members, Social Entitlement Chamber.

# Background

1. In July 2022, the Lord Chancellor, the Lord Chief Justice of England and Wales and the Senior President of Tribunals reaffirmed their shared ambition to create One Judiciary.<sup>5</sup> The principal aim of One Judiciary is to bring the courts and tribunals closer together to make better use of resources and to demonstrate that judges, whether they sit in courts or tribunals, are part of a single judicial family.
2. The unified tribunals system in England and Wales was created separately from the courts and has different statutory underpinnings. Over the years, the senior judiciary have taken forward initiatives to build stronger links between them where the statutory framework allowed. The next stage of this work will be to create a unified statutory leadership structure which will bring the tribunals in England and Wales together with the courts under the leadership of the Lord Chief Justice of England and Wales. This entails changing the office of Senior President of Tribunals and will require primary legislation. Under the change the Government proposes in this consultation paper, the Senior President of Tribunals would continue to provide leadership for the tribunals, with a role equivalent to a Head of Division. Chamber and Tribunal Presidents would continue to lead their respective jurisdictions.

## Present structure of tribunals leadership

3. The Tribunals, Courts and Enforcement Act 2007 created the office of Senior President of Tribunals as the judicial head of a unified tribunals judiciary. The Senior President of Tribunals presides over the First-tier and Upper Tribunal and Employment and Employment Appeal Tribunals. The office carries various powers and responsibilities relating to matters such as appointments, leadership, training, welfare and issuing Practice Directions.
4. In many ways, the office sits outside the England and Wales judicial structure headed by the Lord Chief Justice, and it carries responsibilities not only for the unified tribunals and the Employment Tribunal in England and Wales but also for the reserved tribunals operating outside England and Wales.
5. The objective of delivering and leading a modern tribunals system is reflected in the functions of the current office of Senior President of Tribunals as provided for in the Tribunals, Courts and Enforcement Act 2007. Under s.2(3), the office-holder must

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<sup>5</sup> Available at <https://www.judiciary.uk/announcements/pursuing-one-judiciary-by-the-lord-chancellor-the-lord-chief-justice-of-england-and-wales-and-the-senior-president-of-tribunals/>. 8 July 2022.

have regard to the need for tribunals to be accessible, for proceedings to be fair, quick and efficient and for judicial office-holders to have expertise, and must have regard to the need to develop innovative methods of resolving disputes.

## **Proposed new structure**

6. The Government recognises that the unified tribunals system has a strong jurisdictional identity and expertise that benefits all who use the tribunals. No proposal should weaken this. Our proposal is therefore to integrate the judiciaries – so that both tribunals and courts judicial office-holders can benefit – rather than to subsume the very different nature of tribunals practice and procedure into a courts model. This will protect the specialism of the tribunals while minimising inconsistencies across jurisdictions.
7. In order to achieve this, the existing office of Senior President of Tribunals, which sits outside the England and Wales judicial hierarchy, will be abolished and a new, equivalent office created within the judicial hierarchy. The new office will lead the tribunals judiciary in England and Wales and in the reserved tribunals, with the benefits of improving the efficiency of the judiciary and making more effective use of available resources. The new office will be placed alongside the offices of the Heads of Division – the President of the King’s Bench Division, the President of the Family Division and the Chancellor of the High Court – demonstrating the place of the tribunals jurisdiction within a single judicial family.
8. The proposed change reflects the importance of the tribunals within the justice system in England and Wales, and the statutory functions the Senior President of Tribunals will continue to carry with respect to the reserved tribunals in Scotland and Northern Ireland.
9. Under the existing statutory framework, the office of Senior President of Tribunals carries many responsibilities in respect of the tribunals and tribunals judicial office-holders that are analogous to the responsibilities formally held by the Lord Chief Justice in respect of the courts and courts judges. The Lord Chief Justice has statutory powers to delegate a wide range of these responsibilities to the Heads of Division. In aligning the new office of Senior President of Tribunals with the Heads of Division, the Government proposes to vest many of the responsibilities currently exercised by the Senior President of Tribunals with the Lord Chief Justice, with a delegatory power. Where responsibilities relate to judicial office-holders in the reserved tribunals as they operate in Scotland and Northern Ireland, the Government proposes to carve these out very clearly for retention under the reformed office, so that the Senior President of Tribunals can exercise them independently of the England and Wales judicial hierarchy, just as at present.

## Devolution considerations

10. The new office would retain the Senior President's existing responsibilities in respect of reserved tribunals operating in Scotland and Northern Ireland. The relevant powers and responsibilities relating to these tribunals would not, therefore, be vested with the Lord Chief Justice of England and Wales. The Government proposes instead to provide for separate powers and responsibilities vested in the new office and demarcated from those relating to England and Wales tribunals. The tribunals landscape across all the jurisdictions of the UK is complex and will continue to develop over time. It would be constitutionally undesirable for the Lord Chief Justice of England and Wales to have leadership responsibility for judiciary in Scotland and Northern Ireland. The Government also proposes to insert a new provision requiring the new Senior President of Tribunals to consult the Lord President or Lady Chief Justice of Northern Ireland on specific matters relating to the reserved judiciary, where appropriate. We intend that any consultation requirement would be proportionate and not impede the smooth running of the tribunals or create unnecessary burdens for the senior judiciary or their officials. We believe this proposed consultation would safeguard the interests of judicial office-holders outside England and Wales and provide reassurance that the Senior President of Tribunals would be exercising powers relating to them and their tribunals independently of the England and Wales judicial hierarchy.
11. With this approach, the Government supports the view of the senior judiciary that it would be helpful for a memorandum of understanding to be agreed between the Senior President of Tribunals, Lord President and Lady Chief Justice of Northern Ireland. This would set out the decisions or functions relating to the reserved tribunals judiciary on which the Senior President of Tribunals would consult the other principals. Such matters might include, for example, the detail of appointing or deploying judges or of agreeing guidance or Practice Directions that are to apply across UK jurisdictions.
12. The Government recognises, of course, that whether or not such a memorandum is agreed and what it contains are entirely matters for the judiciaries of the UK.

## Impact of the proposed changes

13. Reform of the office of Senior President of Tribunals is an indispensable part of the One Judiciary programme, the larger ambition the Government shares with the senior judiciary, and accompanies other work being undertaken by the Ministry of Justice and Judicial Office on aligning terms and conditions, ways of working and increasing opportunities for cross-deployment between courts and tribunals. The Senior President of Tribunals and Lord Chief Justice often work together to make



coordinated decisions, such as with regard to training and leadership. Bringing the leadership functions for the courts and tribunals within a single hierarchy will build on a relationship that has been growing since the 2007 legislation and will strengthen it for the future, promoting an inclusive and collegiate culture.

14. It is with the agreement of the Lord Chief Justice and the Senior President of Tribunals that the Government proposes to abolish the existing office and recreate it alongside the Heads of Division within the judicial hierarchy of England and Wales. This proposal will not make changes to the existing structure and operation of the tribunals or the offices of the tribunals judiciary. While the immediate scope of this consultation is therefore relatively narrow, it is an important step in enabling a single, cohesive judiciary for years to come. The Lord Chancellor has a duty, of course, to make sure that any judicial office is properly provided for and, in this instance, we want to have confidence that the configuration of the new office will continue to support the office-holder in leadership of the tribunals.
15. The achievement of a single judiciary remains a strategic imperative in reforming our justice system. It will bring the courts and tribunals, and the judges who sit in them, closer together, and it will bring benefits not only to judicial office-holders within one judicial family but also to the wider justice system and the professionals and members of the public who use it. It is key to successful modernisation of the courts and tribunals and will promote cross-deployment between courts and tribunals, supporting judges from different jurisdictional backgrounds in developing their skills and their judicial careers.

## **Equalities statement**

16. This equalities statement considers the potential equality impact of the Government's proposals to reform the office of Senior President of Tribunals.
17. Section 149 of the Equality Act 2010 sets out the public sector equality duty (PSED) as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it.

Paying “due regard” needs to be considered against the nine protected characteristics under the Equality Act 2010. The nine protected characteristics are race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, and pregnancy and maternity.

18. **Direct discrimination.** Our assessment is that the proposal to reform the office of the SPT would not be directly discriminatory as it would not lead to the treatment of any given individual less favourably than others on account of a protected characteristic.
19. **Indirect discrimination.** Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not. Our initial assessment is that these changes are not indirectly discriminatory within the meaning of the Equality Act 2010. As the proposed change would only affect the single office-holder (the Senior President of Tribunals), we do not consider it to cause any indirect discrimination.
20. **Discrimination arising from disability and duty to make reasonable adjustments.** The nature of the reform means that while it would change the formal structure of the judiciary through creating greater cohesion between the courts and tribunals judiciaries, the functioning of the new office of Senior President of Tribunals will not substantially differ from the current system in place. Thus, our assessment is that the proposal will not result in discrimination arising from disability or any particular disadvantages to persons with disabilities.
21. We will make reasonable adjustments to ensure judiciary with disabilities, or physical or mental health conditions, are not disadvantaged when fulfilling their role.
22. **Harassment and victimisation.** We do not consider there to be a risk of harassment or victimisation as a result of the proposal.
23. **Advancing equality of opportunity.** We consider that the proposals to reform the office of Senior President of Tribunals in this consultation support the wider work to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. Integrating the courts and tribunals judiciaries through these proposals will better facilitate cross-deployment of judges, supporting judges from different jurisdictional backgrounds in developing their skills and their judicial careers.
24. **Fostering good relations.** We have considered the need to foster good relations between people who share protected characteristics and those who do not. Our assessment is that the proposal would bring the courts and tribunals, and the judges who sit in them, closer together. Therefore, the proposal would bring benefits not only to judicial office-holders within one judicial family but also to the wider justice system

and the professionals and members of the public who use it. As noted above, we consider that the proposal would promote cross-deployment between courts and tribunals, supporting judges from different jurisdictional backgrounds in developing their skills and their judicial careers, and thus the proposal is likely to have a positive impact on fostering good relations both within and outside the judiciary.

25. **Decision-making.** Based on the above assessment, we consider that the proposals would have no adverse or disproportionately negative impact on people who share a protected characteristic, and that the proposals constitute reasonable steps to advance equality of opportunity and to foster good relations.
26. **Monitoring and evaluation.** We will update our equality assessment in light of any relevant consultation responses.

## **Note on publication**

27. This consultation paper about an independent judicial office is a Government publication because the proposed reform will require changes to statute, and it is for the Government to consult on legislative proposals and take them through Parliament. We have worked very closely with the senior judiciary and their officials in developing these proposals.
28. The Government is mindful that senior judges have security of tenure and that, more generally, it has constitutional duties in respect of the independence of the judiciary. The Government acknowledges the support of the Lord Chief Justice and the Senior President of Tribunals and is grateful to them and to their officials for their careful consideration and their work with officials in the Ministry of Justice. We will continue to work with the senior judiciary during the consultation and in preparing the Government's response to it.

# Proposals: the office itself

## Creation of a new office

29. The Government proposes to create a new office rather than amend the existing one. We recognise that it would in general be inappropriate to make substantial changes to an occupied judicial office, regardless of the incumbent's agreement. We therefore propose that the existing office should be abolished once it is vacant and the new one has come into effect.
30. The structure of the tribunals and the tribunals judiciary below the new office will remain unchanged, and the aim is that the creation of a new office will not disrupt the exercise of leadership during transition.

### Question 1

We invite comments on any effects envisaged on the operation of the tribunals in creating a new office.

## Placement of the new office

31. As the current office of Senior President of Tribunals sits outside the hierarchy of the England and Wales courts judiciary, there is no precise analogue to the office among the senior courts judiciary. The Senior President of Tribunals, does, however, sit above the puisne judges of the High Court who serve as Chamber Presidents in the Upper Tribunal. In this respect, the existing office is analogous to that of Heads of Division, who lead puisne judges within the High Court and who in practice exercise in their jurisdiction many of the day-to-day powers and responsibilities that the Senior President of Tribunals does in respect of the tribunals judiciary.
32. The Government therefore proposes that placing the new office alongside the Heads of Division would be appropriate. Not only would it suitably reflect the importance of the existing and proposed offices, but it would also reflect the importance both of the tribunals within the justice system in England and Wales and of the responsibilities the new office would carry with respect to the reserved tribunals as they operate in Scotland and Northern Ireland.

## Question 2

The Government's policy objectives are to confer on the Lord Chief Justice overall leadership of the courts and tribunals judiciaries (in England and Wales) and to position the new office of Senior President of Tribunals both appropriately and with a view to providing particular leadership of tribunals in different parts of the UK. We therefore invite views on the proposed placement.

## Titles

### Title of the new office

33. Following consultation with the senior judiciary, the Government proposes that the title of the new office should remain Senior President of Tribunals. Continuing with this title reflects the fact that the new office will, apart from having stronger and more effective connections with the senior courts judiciary and having very few separate statutory powers in respect of England and Wales, operate in much the same way from the perspective of judicial office-holders in both England and Wales and UK tribunals.
34. While it may seem anomalous that the title of Senior President should rank alongside the title of President of a Division of the High Court, the "Senior" part of the title makes sense when compared with the titles of the Chamber and Tribunal Presidents in the structure below. Many judicial titles carry traces of the history of their development, and the Government considers that there is no detriment in continuing with the current title. The existing title has the advantage of acknowledging the responsibilities of the office in respect of the reserved tribunals, which a less specific and more generic title might not. Nonetheless, the Government appreciates that titles convey symbolic importance and will be of particular interest to those for whom the office provides leadership.

## Question 3

The Government invites views on keeping the title of the new office as Senior President of Tribunals.

### Associated titles of the Lord Chief Justice

35. S.7 Constitutional Reform Act 2005 provides that the Lord Chief Justice is President of the Courts of England and Wales and Head of the Judiciary of England and Wales. The Lord Chief Justice's responsibilities derive from his role as President of the Courts of England and Wales:

- representing the views of the judiciary of England and Wales to Parliament, to the Lord Chancellor and to Ministers of the Crown generally
  - the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales within the resources made available by the Lord Chancellor
  - the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales and the allocation of work within courts
36. As President of the Courts of England and Wales, the Lord Chief Justice is president of the courts but not the tribunals.<sup>6</sup> To signify the new leadership structure and to mark the new responsibilities that will transfer to the Lord Chief Justice, the Government proposes to change the Lord Chief Justice's office to "President of the Courts and Tribunals of England and Wales".
37. This will be straightforward if, as proposed, the Senior President of Tribunals' existing responsibilities that are analogues of the Lord Chief Justice's in s.7(2) Constitutional Reform Act 2005 – insofar as they relate to the England and Wales tribunals – are transferred to the Lord Chief Justice (and with an express power to delegate them).
38. The Lord Chief Justice is also Head of the Judiciary. The word 'Judiciary' in this title is tied to the Lord Chief Justice's role as President of the Courts of England and Wales and therefore does not, at present, extend to the tribunals judiciary. We propose that in future the tribunals judiciary should also be in scope.

### **Supplementary titles of the Senior President of Tribunals**

39. Heads of Division may hold supplementary titles relating to their jurisdiction, namely Head of Family Justice, Head of Civil Justice and Head of Criminal Justice. The President of the Family Division is always the Head of Family Justice, by virtue of s.9 Constitutional Reform Act 2005. The Head of Criminal Justice is the Lord Chief Justice, unless he appoints another judge under s.8 Constitutional Reform Act 2005 (at present, the Head of Criminal Justice is the Lord Chief Justice). The Head of Civil Justice is the Master of the Rolls, the Chancellor of the High Court or an ordinary judge of the Court of Appeal, by virtue of s.62 Courts Act 2003 (the current Head of Civil Justice is the Master of the Rolls).
40. With the exception of the Head of Civil Justice title, these supplementary titles do not have specific statutory responsibilities attached to them. Rather, their purpose is to

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<sup>6</sup> The courts of which the Lord Chief Justice is president are listed at s.7(4) Constitutional Reform Act 2005, and he is entitled to sit in any of them by virtue of s.7(3) Constitutional Reform Act. As Lord Chief Justice, he is a judge of the First-tier and Upper Tribunals by virtue of s.6(1) Tribunals, Courts and Enforcement Act 2007.

denote where overall (though not necessarily sole) jurisdictional responsibility for each area of justice sits within the system.

41. In the interests of aligning where possible the reformed Senior President of Tribunals office with existing Heads of Division, the Government proposes – with the agreement of the senior judiciary – to create a new supplementary Head of Tribunals Justice title. The Government proposes allocating this title directly, in primary legislation, to the Senior President of Tribunals.
42. The new title would not have any specific statutory responsibilities attached to it, since the relevant responsibilities will already be allocated to either the Lord Chief Justice or the Senior President of Tribunals by virtue of those primary offices. But the title would signal the standing of tribunals justice as a recognised jurisdiction within the unified courts and tribunals system, as well as the fact that the Senior President of Tribunals will continue to have overall responsibility for matters of tribunals justice. The title of Head of Tribunals Justice would have effect only in England and Wales.

#### **Question 4**

Do you agree that the reformed office of the Senior President should have the statutory supplementary title of Head of Tribunals Justice?

#### **Deputy Head of Tribunals Justice (England and Wales)**

43. The existing office of Senior President of Tribunals has in the past been supported by a non-statutory Vice-President of Tribunals. The post of Vice-President has not been filled since September 2020.
44. Holders of the reformed office of Senior President of Tribunals might in future wish to have the support of a deputy in the exercise of their leadership responsibilities. Rather than continuing to rely on a purely non-statutory arrangement for this, the Government proposes, with the agreement of the senior judiciary, to make statutory provision for a new title of Deputy Head of Tribunals Justice.
45. Again, such an arrangement would align well with the provisions made for existing Heads of Division. The supplementary titles set out above all have statutory deputies attached to them: there is a Deputy Head of Criminal Justice, a Deputy Head of Civil Justice and a Deputy Head of Family Justice.<sup>7</sup>
46. As with the proposed supplementary title of Head of Tribunals Justice, the title of Deputy Head of Tribunals Justice would extend only to England and Wales. A Deputy Head of Tribunals Justice would therefore not have authority to exercise

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<sup>7</sup> Under s.8 Constitutional Reform Act 2005, s.62 Courts Act 2003 and s.9 Constitutional Reform Act 2005.

responsibilities in respect of tribunals or judicial office-holders in Scotland or Northern Ireland.

47. The Government proposes that, in line with the provisions for other Deputy Head titles, any appointment as Deputy Head of Tribunals Justice would be made from among the ordinary judges of the Court of Appeal at the discretion of the Lord Chief Justice, following consultation with the Lord Chancellor.
48. The Government does not propose to set out any specific statutory responsibilities for a Deputy Head of Tribunals Justice. Rather, it would be left to the most senior tribunals leadership judges – namely the Lord Chief Justice and the Senior President of Tribunals – to allocate responsibilities appropriately and according to need.

### Question 5

Do you agree that a new statutory Deputy Head of Tribunals Justice title should be created in this way?

## Appointment to the new office

### Route of appointment

49. There are two existing routes to recommending a candidate for appointment to the office of Senior President of Tribunals. These are set out at Sch.1 Tribunals, Courts and Enforcement Act 2007.
50. The first route is the recommendation by the Lord Chancellor of an ordinary judge of the Court of Appeal in England and Wales, a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court, or a Lord Justice of Appeal in Northern Ireland. Before making a recommendation, the Lord Chancellor must consult, and obtain the agreement of, the Lord Chief Justice, the Lord President of the Court of Session and the Lady Chief Justice of Northern Ireland. If agreement cannot be reached, the appointment process moves to the second route. This second route is through a selection panel appointed by the Judicial Appointments Commission. The composition of the selection panel reflects the interests of the three UK jurisdictions: it must include a person designated by the Lord Chief Justice, following consultation with both the Lord President of the Court of Session and the Lady Chief Justice of Northern Ireland.<sup>8</sup> The selection panel is further required to consult the Lord Chief Justice, Lord President and Lady Chief Justice as part of the selection process (if not members of the selection panel).

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<sup>8</sup> The panel composition and selection process are set out at s.75B Constitutional Reform Act 2005 and Regulation 17 of the Judicial Appointments Regulations 2013.



Under this second route, a candidate must satisfy the judicial-appointment eligibility condition on a seven-year basis or be an advocate, barrister or solicitor (as appropriate) in Scotland or Northern Ireland of at least seven years' standing.

51. The Government proposes that the first route should be removed, and that, instead, the second route should be the sole option, though with amendments to mirror the appointment process for a Head of Division. The appointment should, following reform, always be through a selection exercise managed by the Judicial Appointments Commission (which is independent of Government).
52. A Head of Division is always appointed by a selection panel of the Judicial Appointments Commission, at the request of the Lord Chancellor. The Lord Chancellor is a statutory consultee for both the Heads of Division and the Senior President of Tribunals and will continue to be a statutory consultee for the new office.<sup>9</sup> As the new office will have responsibility for the reserved tribunals judiciary in Scotland and Northern Ireland, the Lord President of the Court of Session and the Lady Chief Justice of Northern Ireland will also remain statutory consultees.
53. There is a difference between the selection panel for the Senior President of Tribunals and one for a Head of Division: the criterion for selecting a second member. For a Head of Division this second member is the most senior England and Wales Supreme Court Justice (or their nominee). For the Senior President of Tribunals, it is a person designated by the Lord Chief Justice (or their nominee) with relevant knowledge or experience of tribunals, such as a Chamber or Tribunal President or a former Senior President of Tribunals. To ensure the selection process for the new Senior President of Tribunals has equal status to that of a Head of Division, it is proposed that the most senior Supreme Court Justice (without any limitation to England and Wales, given the responsibility for the reserved tribunals as they operate outside England and Wales) is involved in the appointment process as a panel member.
54. It is important, nonetheless, for the selection panel to retain relevant knowledge or experience of the tribunals. If the second panel member is the most senior Supreme Court Judge, there will be a separate criterion that one of the panel members (of which there must be an odd number of no less than five) must have relevant experience or knowledge of the tribunals.

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<sup>9</sup> Regs 12 and 18 Judicial Appointment Regulations 2013, respectively.

## Question 6

Do you agree with the proposal for appointment to the new office to be solely through a selection exercise run by the Judicial Appointments Commission, on these lines?

### Eligibility for appointment

55. With the current first route of appointment to the existing office (the route the Government proposes to abolish), a candidate must, under Sch.1 Tribunals, Courts and Enforcement Act 2007, be an ordinary judge of the Court of Appeal in England and Wales, a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court, or a Lord Justice of Appeal in Northern Ireland. (To date, every Senior President of Tribunals has been a Court of Appeal judge.)
56. The eligibility under the current second route of appointment (through a selection exercise) is drawn differently but has a broadly similar effect, in that a candidate must be capable of qualifying to be a judge of a senior appellate court but need not necessarily be so. A candidate must therefore (in respect of England and Wales qualification) satisfy the judicial-appointment eligibility condition on a seven-year basis or (in respect of Scotland or Northern Ireland qualification) be an advocate, barrister or solicitor of at least seven years' standing.
57. S.10 Senior Courts Act 1981 provides that a Head of Division must either be a judge of the Court of Appeal or qualify to be one (namely, to satisfy the judicial-appointment eligibility condition on a seven-year basis). In respect of England and Wales, the Government proposes that this should be the qualification for the new office of Senior President of Tribunals and that a requirement to be a sitting judge of a senior appellate court should fall away with the abolition of the first route.
58. The new office will sit within the England and Wales judicial hierarchy and, independently of that hierarchy, will exercise responsibilities in respect of the reserved tribunals as they operate in Scotland and Northern Ireland. Because those reserved tribunals remain a part of the Senior President of Tribunals' responsibilities, the Government proposes that the new office should remain open to those who would qualify for appointment on the basis of their experience in Scotland or Northern Ireland. The equivalents to the England and Wales judicial-appointment eligibility condition – being an advocate or solicitor of at least seven years' standing in Scotland, or a barrister or solicitor of at least seven years' standing in Northern Ireland – would therefore remain as they are in the second route.

## Question 7

Do you agree that eligibility should be as under the existing second route?

### Abolition of a fixed-term option

59. The existing office of Senior President of Tribunals is a senior judicial office. Where the office-holder is a judge of the senior courts of England and Wales, the office is held “during good behaviour” on the same terms as other judges of senior courts.<sup>10</sup>
60. Under the Tribunals, Courts and Enforcement Act 2007, there is an option to appoint the Senior President of Tribunals for a fixed term (the legislation does not specify a particular term length). The Constitutional Reform Act 2005 did not make such provision for a Head of Division. The Government can see no justification for continuing to differentiate the reformed office of Senior President of Tribunals from the Heads of Division on this matter. Indeed, there would be no reason to introduce a fixed-term option in other senior appointments. The Government therefore proposes to remove the option.

## Question 8

Do you agree with the proposal to abolish the option of a fixed-term appointment?

## Court of Appeal matters

### Eligibility to sit in the Court of Appeal

61. The approach proposed by the senior judiciary and the Government is for the new office to align as closely as possible, where appropriate, with the Heads of Division.
62. By virtue of s.2(2) Senior Courts Act 1981, the President of the King’s Bench Division, the President of the Family Division and the Chancellor of the High Court are all, with the Lord Chief Justice and Master of the Rolls, ex-officio judges of the Court of Appeal. There is no existing provision for the Senior President of Tribunals to be such an ex-officio judge, though they may sit in the Court of Appeal (and the High Court) through an authorisation under s.9(1) Senior Courts Act 1981.
63. At present, the Senior President of Tribunals may continue to be a Lord Justice of Appeal, if already appointed as one, on appointment to the office of Senior President

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<sup>10</sup> S.11(3) SCA 1981: “A person appointed to an office to which this section applies shall hold that office during good behaviour, subject to a power of removal by Her Majesty on an address presented to Her by both Houses of Parliament”. This is reiterated at Sch.1 para.6(2) TCEA 2007 in respect of the Senior President of Tribunals.

of Tribunals. The Government agrees, however, that it is appropriate that the new office should align with the Heads of Division in being able to sit, as of right, in the Court of Appeal. The Government also recognises the importance of expertise in tribunals justice that the Senior President of Tribunals will bring. It therefore proposes to amend the Senior Courts Act 1981 to include the new office of Senior President of Tribunals as an ex-officio judge of the court, provided the judicial-appointment eligibility condition is met. On becoming an ex-officio judge, the Senior President of Tribunals will cease to be a Lord Justice of Appeal, in line with the existing provision for ex-officio judges at s.11(5) Senior Courts Act 1981.

64. The judicial-appointment eligibility condition is set out at s.50 Tribunals, Courts and Enforcement Act 2007. Lords Justices of Appeal must satisfy the judicial-appointment eligibility condition on a seven-year basis or be judges of the High Court, by virtue of s.10(3) Senior Courts Act 1981. The judicial-appointment eligibility condition has some detail to it that will be familiar to holders of judicial office, but for the present purpose it will be sufficient to note that the experience that must be gained before appointment is, in broad terms, experience in the legal system of England and Wales.
65. Under Sch.1 Tribunals, Courts and Enforcement Act 2007, the office of Senior President of Tribunals is open not only to those who meet the England and Wales judicial-appointment eligibility condition but also to those who are advocates or solicitors in Scotland, or barristers or solicitors in Northern Ireland, of seven years' standing. As the Government is proposing to retain such a provision, the question therefore arises as to whether it would be appropriate for a Senior President of Tribunals appointed outside the England and Wales judicial-appointment eligibility condition to be an ex-officio judge of the Court of Appeal. As there have been only four Senior Presidents of Tribunals since 2007, all of them meeting the England and Wales requirements, we have not had the benefit of experience to the contrary. In concluding that it would not be appropriate, we have borne in mind that being an ex-officio judge is not principally a matter of privilege or honour: the Lord Chief Justice and the Heads of Division have important responsibilities and working roles in the Court of Appeal, and our objective is to enable a Senior President of Tribunals who happens to have knowledge and experience of English and Welsh law to bring it into the jurisprudence of the court, without the need to undergo separate authorisation. We therefore think it serves no useful purpose to make a Senior President of Tribunals who does not meet the England and Wales requirements an ex-officio judge of the Court of Appeal simply for the sake of form.
66. We have also had regard to the fact that our proposal does not change the practical situation that has existed since 2007, namely that an office-holder meeting the England and Wales judicial-appointment eligibility condition may sit in the Court of Appeal (through an authorisation or using an existing Court of Appeal appointment)

and an office-holder not meeting it may not, except through an authorisation under s.9(1) Senior Courts Act 1981. Furthermore, Scottish and Northern Irish judges who become Justices of the UK Supreme Court cannot become ex-officio judges of the Court of Appeal, as English and Welsh judges can. Though they are appointed to the corresponding appellate courts in Scotland and Northern Ireland, that is a matter for those jurisdictions and not for the UK Government.

67. The Government does maintain the position agreed in 2007 that the office of Senior President of Tribunals includes important responsibilities across the UK and that appointment is therefore rightly open across the UK, regardless of the jurisdiction in which the candidate is qualified. Suitability for office does not depend on eligibility to sit in an appeal court in one part of the UK.
68. For all these reasons, the Government is of the view that it would not be appropriate to make a Senior President appointed from the Scottish or Northern Irish system an ex-officio judge of the England and Wales Court of Appeal. Nonetheless, the Government does recognise that it will be important that high profile, relevant tribunal cases in the Court of Appeal are able to be heard by the Senior President of Tribunals. The Government notes that the existing s.9(1) Senior Courts Act 1981 mechanism of authorisation could be used to authorise a Scottish or Northern Irish Senior President of Tribunals to sit in the Court of Appeal. This could be done either on a case-by-case basis or for the duration of their tenure as Senior President of Tribunals. The route taken could be determined at the outset of each appointment.
69. Taking the s.9(1) approach would minimise concerns regarding a qualification other than in English and Welsh law, as the Senior President of Tribunals would not be appointed as a member of the Court of Appeal and would only be authorised to hear cases where that was considered appropriate.

### Questions 9 and 10

Do you agree that an England and Wales qualified appointee to the new office of Senior President of Tribunals should be made an ex-officio judge of the Court of Appeal?

Do you agree that a Scotland or Northern Ireland qualified appointee should not be made an ex-officio judge of the Court of Appeal, but instead be authorised under s.9(1) Senior Courts Act 1981 to hear relevant cases in the Court of Appeal when appropriate?

### Order of precedence in the Court of Appeal

70. Where the holder of the new office will qualify as an ex-officio judge of the Court of Appeal, the question arises where the office should be placed within the existing order of precedence set out at s.13 Senior Courts Act 1981, to which certain formalities are attached. Because the Senior Presidents of Tribunals is not currently

an ex-officio judge of the Court of Appeal, his or her rank is determined in the same way as the other Lords Justices, which is by order of appointment.

71. The order of precedence of the senior judiciary, particularly the Heads of Division, as set out in the Senior Courts Act 1981 is as follows (in descending order): Lord Chief Justice, Master of the Rolls, Justices of the UK Supreme Court and persons who have been Lord Chancellor, President of the King's Bench Division, President of the Family Division, Chancellor of the High Court, Vice-Presidents of the Court of Appeal, ex-officio judges of the Court of Appeal, Lord or Lady Justices of Appeal in order of appointment, and High Court judges in order of appointment.
72. The seniority of the Heads of Division is also reflected in section 16(3) Constitutional Reform Act 2005, which determines who will exercise the functions of the Lord Chief Justice in the event of incapacity or where there is a vacancy. The order in which the Heads of Division will cover the Lord Chief Justice's role is as follows, again in descending order: the Master of the Rolls, the President of the King's Bench Division, the President of the Family Division, the Chancellor of the High Court. The Government proposes that the new office of the Senior President of Tribunals should be included in that list.
73. The Government proposes that, given the need to determine a list order, the new office of Senior President of Tribunals should rank after the Chancellor of the High Court in both Acts.

### **Questions 11 and 12**

Do you agree that the new office of Senior President of Tribunals should rank next after the Chancellor of the High Court in the order of precedence?

Do you agree that the new office should have similar responsibilities to the Master of the Rolls and the Heads of Division in the event of the office of Lord Chief Justice being vacant or the office-holder being incapacitated?

## Proposals: the exercise of responsibilities

74. This consultation paper notes the wide range of powers and responsibilities exercised by the existing office of the Senior President of Tribunals. In bringing these responsibilities within a single judicial structure, the question arises how best to allocate them.
75. In general, it is proposed that responsibilities for tribunals operating in England and Wales will be transferred to the Lord Chief Justice with a new delegation power. This will largely mirror existing arrangements for courts responsibilities, many of which are exercised by Heads of Division through delegation by the Lord Chief Justice.
76. The existing office of Senior President of Tribunals, of course, has responsibilities in respect of Scotland and Northern Ireland and is also under a duty at s.47 Tribunals, Courts and Enforcement Act 2007 to cooperate with territorial chief justices when making arrangements for the training, guidance or welfare of judiciary in a jurisdiction.
77. The existing arrangements work well in respect of tribunals operating in Scotland and Northern Ireland, and the Government wishes to make sure its proposals allow this to continue. With regard to Scotland and Northern Ireland, the Senior President of Tribunals will have powers mirroring those of the Lord Chief Justice. This arrangement will give the Senior President of Tribunals oversight of the application of powers in all jurisdictions, thus ensuring that operational difficulties are avoided: for instance, in determining the panel composition within a chamber that operates across jurisdictions.
78. The Government is therefore particularly keen to test these proposals widely, so that it can work up legislative measures which all parties can be confident will be practicable and will respect the operation of tribunals in different jurisdictions of the UK.

### Leadership

79. S.2(3) Tribunals, Courts and Enforcement Act 2007 imposes certain duties on the Senior President of Tribunals in the exercise of the office:

A holder of the office of Senior President of Tribunals must, in carrying out the functions of that office, have regard to—

- (a) the need for tribunals to be accessible,

- (b) the need for proceedings before tribunals—
  - (i) to be fair, and
  - (ii) to be handled quickly and efficiently,
- (c) the need for members of tribunals to be experts in the subject-matter of, or the law to be applied in, cases in which they decide matters, and
- (d) the need to develop innovative methods of resolving disputes that are of a type that may be brought before tribunals.

80. These duties to have regard to particular matters were enacted when the office and the unified system were created. The Government believes that it is right to preserve these principles and therefore proposes that the Senior President of Tribunals retain them and that the duties insofar as they apply in England and Wales also extend to the Lord Chief Justice. The existing office has a general duty of cooperation with territorial chief justices, including the Lord Chief Justice, as set out at s.47 Tribunals, Courts and Enforcement Act 2007. This duty remains an important part of the effective functioning of the tribunals system. The new office of Senior President of Tribunals would therefore retain this duty with respect to reserved matters, and the duty with respect to England and Wales matters would extend to the Lord Chief Justice.

Area	Lord Chief Justice of England and Wales	Proposed office of Senior President of Tribunals
Regard to particular matters	To acquire in relation to England and Wales tribunals matters, with a power to delegate.	To retain in relation to reserved tribunals matters in Scotland and Northern Ireland.
Duty of cooperation	To extend the existing duty, in relation to the new responsibility for England and Wales tribunals.	To retain the duty in relation to reserved tribunals matters in Scotland and Northern Ireland.

### Question 13

Do you agree that these proposals will preserve the interests of the tribunals across the UK jurisdictions?

## Appointments

81. The Senior President of Tribunals has powers to appoint judges and non-legal members of the First-tier Tribunal (under s.4 and Sch.2 Tribunals, Courts and Enforcement Act 2007), to appoint deputy judges and non-legal members to the



Upper Tribunal (under s.5 and Sch.3 Tribunals, Courts and Enforcement Act 2007) and to appoint Chamber Presidents, including Deputy and Acting Presidents (under s.7 and Sch.4 Tribunals, Courts and Enforcement Act 2007). There are additional powers relating to determining qualification for appointment.

82. There are various existing safeguards with respect to the reserved tribunals. Under regulation 32 of the Judicial Appointments Regulations 2013, for example, the Senior President of Tribunals must consult Scottish Ministers if a judicial office-holder will be exercising functions mainly or wholly in Scotland.
83. In revising the existing powers of appointment with the creation of the new office, the Government proposes that it will be appropriate, as a general rule, for the Lord Chief Justice to acquire powers of appointment in respect of England and Wales, with a power to delegate. The new office of Senior President of Tribunals would have powers of appointment in respect of the judiciaries of the reserved tribunals.

Area	Lord Chief Justice of England and Wales	Proposed office of Senior President of Tribunals
Appointments	To acquire powers relating to appointments to England and Wales tribunals, with powers as appropriate to delegate.	To retain powers of appointment for the reserved tribunals judiciary, with obligations to consult Scottish Ministers.

#### Question 14

Do you agree with the proposals relating to appointment powers?

## Allocation, deployment and staff matters

84. A holder of the current office of Senior President of Tribunals is able to exercise a number of powers so that judicial expertise is available as needed to allow the tribunals system as a whole to function effectively. The Government wishes to maintain this objective in drawing up the detail of proposals for the new office of Senior President of Tribunals.
85. As a general principle, current powers will transfer to the Lord Chief Justice as they relate to England and Wales, with a power to delegate. The Lord Chief Justice is responsible, under s.7 Constitutional Reform Act, for the “maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales and the allocation of work within courts”: this provision would be amended to include

tribunals. The new office of Senior President of Tribunals would, of course, have powers as they relate to the judiciaries of the reserved tribunals operating in Scotland and Northern Ireland.

86. The Government, with the agreement of the senior judiciary, proposes that powers in relation to allocation and deployment in England and Wales be shared between the Lord Chief Justice and Senior President of Tribunals. With allocation, we aim to avoid the situation where a chamber is responsible for certain work in Scotland or Northern Ireland but a different chamber is responsible for the same work in England and Wales. With deployment, we believe there might be operational difficulties for chambers if different panel compositions were separately prescribed by the Lord Chief Justice and the Senior President of Tribunals for cases in different parts of the UK. Allocating the Senior President of Tribunals powers with respect of all jurisdictions will mitigate these risks.
87. Under Sch.2 and Sch.3 Tribunals, Courts and Enforcement Act 2007, the Senior President of Tribunals has the power to use “judges by request”. He must, as appropriate, seek the concurrence of the Lord Chief Justice, the Lord President or the Lady Chief Justice of Northern Ireland. The Government proposes to transfer this power to the Lord Chief Justice, with a power to delegate, except in respect of the reserved tribunals. We propose that reserved tribunals operating in Scotland and Northern Ireland, in relation to which powers to use judges by request, will remain with the Senior President of Tribunals.
88. In the area of judicial assistance, the Senior President of Tribunals can make a number of authorisations to sit judicially. There are no specific powers relating to Scotland or Northern Ireland.
89. Under s.40 Tribunals, Courts and Enforcement Act 2007, the Lord Chancellor must consult the Senior President of Tribunals before making an order authorising entry into contracts for the provision of staff to carry out the administrative work of the tribunals. This mirrors provision relating to the courts at s.2 Courts Act 2003 (which also requires the Lord Chancellor to consult the Heads of Division). The Government believes that it would therefore be appropriate for the Senior President of Tribunals to retain the right to be consulted and for the Lord Chief Justice to have a right to be consulted except in relation to the reserved tribunals operating in Scotland and Northern Ireland.

Area	Lord Chief Justice of England and Wales	Proposed office of Senior President of Tribunals
Allocation	To acquire general responsibility with respect to England and Wales, with a power to delegate and a duty to consult the Senior President of Tribunals.	To retain general responsibility with respect to the reserved tribunals in Scotland and Northern Ireland.
Deployment	To acquire general responsibility with respect to England and Wales, with a power to delegate and a duty to consult the Senior President of Tribunals.	To retain general responsibility with respect to the reserved tribunals in Scotland and Northern Ireland.
Judges by request	To acquire the power in respect of England and Wales, with a power to delegate.	To retain the power in respect of the reserved tribunals in Scotland and Northern Ireland and to continue to have the duty to obtain the concurrence of the territorial chief justice.
Judicial assistance	To acquire powers as they relate to England and Wales, with a power to delegate.	No specific powers relating to the reserved tribunals in Scotland and Northern Ireland to transfer.
Staff	To have a right to be consulted before a Lord Chancellor's order in relation to England and Wales tribunals.	To retain the right to be consulted before a Lord Chancellor's order, split between a shared right (with the Lord Chief Justice) in relation to England and Wales tribunals and a sole right in relation to the reserved tribunals in Scotland and Northern Ireland.
Delegation of functions to staff	To acquire responsibility for the authorisation of tribunals staff exercising judicial functions mostly or wholly in England and Wales.	To retain responsibility for the authorisation of tribunals staff carrying out judicial functions mostly or wholly in Scotland or Northern Ireland
Sitting in retirement	To acquire the power to appoint England and Wales judicial office-holders to sitting in retirement offices, with a power to delegate.	To retain the power to appoint reserved judicial office-holders to sitting in retirement offices.

### Question 15

Do you agree with the proposals relating to allocation, deployment and staff matters?

## Tribunals business

90. The Senior President of Tribunals may currently exercise various powers in leading the practice of the tribunals:
- giving directions as to the practice and procedure of the First-tier and Upper Tribunals (under s.23 Tribunals, Courts and Enforcement Act 2007)
  - making Employment Tribunal Practice Directions and approving Practice Directions made by tribunals presidents (under s.7A Employment Tribunals Act 1996)
  - making Employment Appeal Tribunal Practice Directions and approving Practice Directions made by the President of the Employment Appeal Tribunal (under s.29A Employment Tribunals Act 1996)
91. The Lord Chief Justice has the power to make Practice Directions in different courts jurisdictions, though this is generally delegated to Heads of Division. The Government proposes to follow this approach in transferring the Senior President of Tribunals' responsibilities to the Lord Chief Justice, insofar as they concern England and Wales tribunals. The Senior President of Tribunals will retain responsibility for Practice Directions relating to reserved tribunals operating in Scotland and Northern Ireland, including the approval of practice directions made by tribunals presidents that deal with reserved matters.
92. The Lord Chief Justice has a general power to make designated rules by statutory instrument (under s.12 and Sch.1 Constitutional Reform Act 2005). The Senior President of Tribunals does not have such a general power, and so no change is necessary.
93. The Tribunal Procedure Committee makes rules governing the practice and procedure in the First-tier Tribunal and the Upper Tribunal. There is provision about membership of the Committee at Sch.5 Tribunals, Courts and Enforcement Act 2007: the Lord Chancellor, Lord Chief Justice, Lord President and Senior President of Tribunals have various powers to make appointments to the Committee, along with various duties to consult.
94. The Lord Chief Justice has power to make appointments to the Civil Procedure Rule Committee (under s.2 Civil Procedure Act 1997) and to the Criminal and Family Procedure Rule Committees (under s.70 and s.77 Courts Act 2003). To reflect arrangements for these Committees, the Government believes it would be

appropriate for the Lord Chief Justice to take on formal powers of appointment from the Senior President of Tribunals as they relate to England and Wales.

95. The Lord Chancellor must consult the Senior President of Tribunals before making an order prescribing fees for tribunal proceedings or mediation (under s.42 Tribunals, Courts and Enforcement Act 2007). The Government proposes to retain this requirement, insofar as England and Wales tribunals are concerned, and to require the Lord Chancellor also to consult the Lord Chief Justice. The Senior President of Tribunals would be the only judge consulted in relation to the reserved tribunals. We believe it would be appropriate to make provision in this way because there is existing provision, at s.92 Courts Act 2003, for the Lord Chief Justice and Heads of Division to be consulted before the making of fees orders relating to the courts.

Area	Lord Chief Justice of England and Wales	Proposed office of Senior President of Tribunals
<b>Practice Directions</b>	To acquire responsibilities in relation to England and Wales tribunals, with powers to delegate.	To retain responsibilities in relation to reserved tribunals operating in Scotland and Northern Ireland and to Practice Directions dealing with reserved matters.
<b>Designated rules</b>	No change.	No change.
<b>Rule committees</b>	To acquire powers of appointment as they relate to England and Wales.	To retain powers of appointment only as they relate to the reserved tribunals operating in Scotland and Northern Ireland.
<b>Fees</b>	To acquire the right of consultation in relation to England and Wales tribunals.	To share the right of consultation in relation to England and Wales tribunals and have sole right of consultation in relation to reserved tribunals operating in Scotland and Northern Ireland.

### Question 16

Do you agree with the proposed division of responsibilities relating to tribunals business?

## Welfare matters

96. The Lord Chief Justice is responsible “for the maintenance of appropriate arrangements for the welfare, training and guidance” of the courts judiciary of England and Wales (under s.7 Constitutional Reform Act 2005). The Senior President of Tribunals has a mirrored responsibility in relation to judges and non-legal members of the First-Tier and Upper Tribunals (under s.4, s.5, Sch.2 and Sch.3 Tribunals, Courts and Enforcement Act 2007) and in relation to members of the Employment Tribunal and Employment Appeal Tribunal (under s.5A and s.24A Employment Tribunals Act 1996).
97. The Government proposes to transfer the Senior President of Tribunals’ responsibility to the Lord Chief Justice, with a power for the Lord Chief Justice to delegate. This would not apply in relation to judges and non-legal members of the reserved tribunals operating in Scotland and Northern Ireland, for whom the Senior President of Tribunals alone would be responsible.
98. The Government proposes no change to existing arrangements in relation to conduct. The Senior President of Tribunals is currently only able to act by virtue of delegation from the Lord Chief Justice, and there are therefore no powers to transfer.

Area	Lord Chief Justice of England and Wales	Proposed office of Senior President of Tribunals
Welfare, guidance and training	To acquire responsibility in relation to tribunals judges and non-legal members in England and Wales, with a power to delegate.	To retain responsibility in relation to members of the reserved tribunals in Scotland and Northern Ireland.
Conduct, discipline and sanctions	No change.	No change.

### Question 17

Do you agree with the proposed exercise of these responsibilities relating to welfare matters?

## Representation

99. The Senior President of Tribunals has a power under Sch.1 para.13 Tribunals, Courts and Enforcement Act 2007 to “lay before Parliament written representations

on matters that appear to him to be matters of importance relating [...] to tribunal members, or [...] otherwise to the administration of justice by tribunals”. Under para.14 of this Schedule, the Senior President of Tribunals also has a responsibility “for representing the views of tribunal members to Parliament, to the Lord Chancellor and to Ministers of the Crown generally”. These provisions are analogues of those the Lord Chief Justice has in respect of the courts judiciary, at s.5 and s.7 Constitutional Reform Act 2005.

100. The Government believes that the most appropriate rearrangement would be for the Lord Chief Justice to take on the power and responsibility relating to tribunal members and tribunals justice in England and Wales, with the Senior President of Tribunals retaining these where they relate to the reserved tribunals operating in Scotland and Northern Ireland. The inclusion of tribunals within the Lord Chief Justice’s remit would be a supportive signal to wider audiences about the unity of the judiciary within England and Wales.
101. In this rearrangement, we do not propose that the Lord Chief Justice should have a power to delegate. The Lord Chief Justice’s power and responsibility would therefore extend to the tribunals in the same way that it includes the different jurisdictions of the court (and in the same way that it is not delegated to Heads of Division, who nonetheless are not precluded from raising matters).
102. Unlike the Lord Chief Justice, the Senior President of Tribunals has a statutory duty to produce an annual report, under s.43 Tribunals, Courts and Enforcement Act 2007. This report is for the Lord Chancellor and must cover such matters as the Senior President of Tribunals and the Lord Chancellor determine. The Government proposes to amend this duty to limit it to the reserved tribunals operating in Scotland and Northern Ireland, which will maintain an appropriate focus on their interests.
103. It may be helpful to note that engagement among the three branches of the Constitution – the Government, Parliament and the judiciary – is in no way limited to these statutory provisions.

<b>Area</b>	<b>Lord Chief Justice of England and Wales</b>	<b>Proposed office of Senior President of Tribunals</b>
Representation to Parliament and Ministers	To include within existing arrangements tribunals and tribunal members in England and Wales.	To retain existing arrangements only in respect of the reserved tribunals operating in Scotland and Northern Ireland.
Annual report to the Lord Chancellor	No change: there is no existing duty.	To limit to the reserved tribunals in Scotland and Northern Ireland the duty to produce an annual report.

### Question 18

Do you agree these proposals will provide the appropriate representation of the tribunals jurisdiction?

## Other matters

104. The HMCTS Framework Document was originally laid before Parliament on 1 April 2008, detailing the partnership between the Lord Chancellor and the Lord Chief Justice “in relation to the governance, resourcing and operation of the courts”.<sup>11</sup> When HMCS became HMCTS, the Senior President of Tribunals became a third principal and has a similar governance role to the Lord Chief Justice in relation to tribunals. Currently, it is the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals who jointly set objectives for HMCTS. The Framework Document sets out the respective roles of the principals and where joint decision-making is required:
105. “The Senior President of Tribunals is at present a separate judicial office with similar, but not identical, responsibilities to the Lord Chief Justice. For as long as the separate statutory office remains, references hereafter to the Lord Chief Justice should be taken as including references to the Senior President (modified so far as necessary to take account of any differences in his statutory functions for the time-being).”<sup>12</sup>
106. “The Board will support the Senior President of Tribunals in the discharge of his specific functions under the Tribunal Courts and Enforcement Act 2007, including in particular section 2 (the duty to have regard to the need for tribunals to be accessible, for their proceedings to be fair, quick and efficient, for members to be experts and in the development of innovative methods of resolving disputes).”<sup>13</sup>
107. Following reform, the Government agrees with the principals that it will be appropriate for the Senior President of Tribunals to be a Board member but no longer to be a principal. This is a matter that lies outside the statutory provision and will therefore be addressed at the appropriate point.
108. The Lord Chancellor must consult the Lord Chief Justice in relation to the pension entitlement of both courts and tribunals judicial office-holders (under s.2 Judicial Pensions and Retirement Act 1993). In respect of the tribunals judiciary, the Lord

<sup>11</sup> HC Deb 1 April 2008 vol 474 c43WS.

<sup>12</sup> HM Courts and Tribunals Service, *Framework Document*, p.3, para.1.4

<sup>13</sup> *Framework Document*, p.7, para.4.2.



Chief Justice may delegate the ability to be consulted to a nominated judicial office-holder. The Senior President of Tribunals is not required to be consulted in relation to judicial office-holders in the reserved tribunals, and there is therefore no power to transfer.

Area	Lord Chief Justice of England and Wales	Proposed office of Senior President of Tribunals
HMCTS Framework	To remain a principal, but with a new responsibility for the tribunals as well as the courts.	To become a Board member instead of a principal, to represent the reserved tribunals operating in Scotland and Northern Ireland.
Consultation on pension entitlement	No change.	No change.

**Question 19**

We invite any comments on these proposals relating to these other matters.

# Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

## **Question 1**

We invite comments on any effects envisaged on the operation of the tribunals in creating a new office.

## **Question 2**

The Government's policy objectives are to confer on the Lord Chief Justice overall leadership of the courts and tribunals judiciaries (in England and Wales) and to position the new office of Senior President of Tribunals both appropriately and with a view to providing particular leadership of tribunals in different parts of the UK. We therefore invite views on the proposed placement.

## **Question 3**

The Government invites views on keeping the title of the new office as Senior President of Tribunals.

## **Question 4**

Do you agree that the reformed office of the Senior President should have the statutory supplementary title of Head of Tribunals Justice?

## **Question 5**

Do you agree that a new statutory Deputy Head of Tribunals Justice title should be created in this way?

## **Question 6**

Do you agree with the proposal for appointment to the new office to be solely through a selection exercise run by the Judicial Appointments Commission, on these lines?

## **Question 7**

Do you agree that eligibility should be as under the existing second route?

## **Question 8**

Do you agree with the proposal to abolish the option of a fixed-term appointment?

**Questions 9 and 10**

Do you agree that an England and Wales qualified appointee to the new office of Senior President of Tribunals should be made an ex-officio judge of the Court of Appeal?

Do you agree that a Scotland or Northern Ireland qualified appointee should not be made an ex-officio judge of the Court of Appeal, but instead be authorised under s.9(1) Senior Courts Act 1981 to hear relevant cases in the Court of Appeal when appropriate?

**Questions 11 and 12**

Do you agree that the new office of Senior President of Tribunals should rank next after the Chancellor of the High Court in the order of precedence?

Do you agree that the new office should have similar responsibilities to the Master of the Rolls and the Heads of Division in the event of the office of Lord Chief Justice being vacant or the office-holder being incapacitated?

**Question 13**

Do you agree that these proposals will preserve the interests of the tribunals across the UK jurisdictions?

**Question 14**

Do you agree with the proposals relating to appointment powers?

**Question 15**

Do you agree with the proposals relating to allocation, deployment and staff matters?

**Question 16**

Do you agree with the proposed division of responsibilities relating to tribunals business?

**Question 17**

Do you agree with the proposed exercise of these responsibilities relating to welfare matters?

**Question 18**

Do you agree these proposals will provide the appropriate representation of the tribunals jurisdiction?

**Question 19**

We invite any comments on these proposals relating to these other matters.

**Thank you for taking part in this consultation.**

# About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Judicial office</b> , job title or capacity in which you are responding to this consultation	
<b>Date</b>	
<b>Organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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## Contact details

Please send your response by 6 July 2023 to:

### **Tribunals leadership consultation**

Ministry of Justice, zone 9.20

102 Petty France

London SW1H 9AJ

**Email:** [SPT.consultation@justice.gov.uk](mailto:SPT.consultation@justice.gov.uk)

## Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

## Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from [SPT.consultation@justice.gov.uk](mailto:SPT.consultation@justice.gov.uk).

## Publication of response

A paper summarising the responses to this consultation will be published in due course. The response paper will be available online at <https://consult.justice.gov.uk/>.

## Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 2018, the UK General Data Protection Regulation and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the Data Protection Act 2018 and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

# Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Consultation\\_Principles\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf)











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