

THE ASSOCIATION OF DISTRICT JUDGES

Response to the Consultation document “The Governance of Britain: Judicial Appointments” CP 25/07

Question 1: Do you consider these principles for judicial appointments to be broadly right? — yes.

Question 2: Are there any other fundamental principles that should underpin the process for judicial appointments? — No.

Question 3: Do you consider the existing arrangements for making judicial appointments properly take account of these principles? — Yes, although there remains work to be done between the JAC, the MoJ and HMCS to reduce delays in the appointments’ system as much as possible.

Question 4: Should the current role of the executive in judicial appointments be altered? If so, how? — No. The 3-stage process set out at paragraph 3.12 et seq. of the Consultation Paper is elaborate but the reality is that it has not yet been invoked, so far as the Association is aware. It therefore seems inappropriate to be contemplating change to a process which has not yet itself been tested. The time to do so would be if, in the light of actual experience, the process was found wanting.

Question 5: Should the current role of the judiciary in the process be altered, and if so how? — No.

Question 6: Whether or not there is a change in the role of the executive or the judiciary, should the legislature be involved in the process in some way, for example by holding post-appointment hearings? If so, how? — No.

Question 7: Should any change to the arrangements for judicial appointments be across the board, or should it apply to a group of appointments, for example by

removing the Lord Chancellor from the process of appointment for all but the senior judiciary? — No. There should be no distinction between the various ranks of the judiciary save where, as is provided already in the Constitutional Reform Act 2005, different processes are required to deal with promotions within the existing senior judiciary.

Question 8: Should there continue to be some check (currently exercised by the Lord Chancellor) on recommendations from the JAC? And if so, who is best placed to perform that role? — Yes, it is appropriate for some checks to exist. As the Lord Chancellor, as a senior government minister, recommends the selected names to HM The Queen then he remains best placed to perform that role.

Question 9: Should the need for consultation or concurrence be removed for decisions on authorisation, nomination, assignment, and extensions of service? — Yes. Experience suggests it is not needed. There is also potential for conflict with the new Ministry of Justice. Should the Lord Chancellor, for instance, continue to have an involvement in the appointment of Resident Judges at the Crown Court centres now that he has a responsibility to Parliament for HM Prisons? With the creation of the MoJ such “deployment” issues are best taken by the Lord Chief Justice without the involvement of the Lord Chancellor.

Question 10: Should the Lord Chancellor’s functions in making or recommending judicial appointments be exercisable by junior Ministers or senior officials, or should the Lord Chancellor always exercise those functions personally? — This function is best left to the Lord Chancellor. To delegate downwards undermines the status of those appointed. For the Lord Chancellor to be involved with only the more senior judiciary is demeaning to the rest of the judicial family. The Lord Chancellor has already indicated that he would sign lists off, below HCJ level, within 24 hours of being given them; that recognises the Lord Chancellor’s constitutional role in the appointments’ process as well as ensuring a speedy system to deal with most of the appointments he has to recommend.

Question 11: Should the Lord Chancellor be required to act personally when making or recommending judicial appointments above a certain level, and if so, what should that level be? — not applicable: see Answer 10 above.

Question 12: Should it be possible for junior Ministers or senior officials to act on behalf of the Lord Chancellor, when his concurrence or consultation is required in relation to nominations, authorisations, assignment, or extensions of service? — As has been stated at Answer 9 above, the Association believes that such work should no longer involve either the Lord Chancellor or any other minister within the MoJ. These are issues of deployment and should rest with the Lord Chief Justice. Internal arrangements could be created within the judiciary and HMCS to ensure that much of this work was delegated downwards. Regional Directors, for instance, could take many decisions together with the Presiding Judges rather than everything having to be escalated up to the Lord Chief Justice.

Question 13: Do you agree that the Lord Chancellor should ultimately have the responsibility for determining eligibility criteria for specific judicial posts? — the merit criterion must remain the sole test. More generally, and even if the Lord Chancellor, acting through Parliament, is able to determine the statutory eligibility criteria, he ought to seek to obtain the concurrence of the Lord Chief Justice to any changes he might be minded to introduce. Dealing with individual appointments, what ought to be considered is a generic judicial job specification to which could then be added extra provisions relating to the particular post being filled. A lot of time, it is believed, is wasted by the JAC sorting out the nuances of distinction between slightly different job specifications. Non-statutory eligibility criteria appertaining to specific posts should be decided between the MoJ and the senior judiciary, and ought not to be decided by the JAC

Question 14: Should medical checks be carried out earlier in the selection process? — yes.

Question 15: Should the CRA be amended to allow the Judicial Appointments Commission to take the preliminary steps in a selection process before a formal Vacancy Notice is received? — yes, if indeed amendment to the CRA is required.

Question 16: Are there, in your view, any additional changes that should be made to the judicial appointments process? — see Answer 3 above.

Dated 17th January 2008

For and on behalf of the Association of District Judges

District Judge Michael J Walker
Hon Sec, Association of District Judges
Room C14
Royal Courts of Justice
Strand
London WC2A 2LL

020 7947 7752

Email: DistrictJudgeMichael.Walker@judiciary.gsi.gov.uk