Prisons and Courts Bill

Flexible Judicial Deployment

Introduction

1. The Government's vision is for a modern and world-renowned justice system that is swifter, more accessible and easier to use for everyone. It will be efficient and fit-for-purpose, with facilities across the entire estate that are modern, user-friendly, and work in favour of our hard-working and dedicated judges and magistrates.

2. Increasing the flexibility of judicial deployment across all jurisdictions is key to enabling the judiciary to respond to the changing demands of a reformed courts system and making best use of the existing cohort and their time. The Lord Chief Justice of England and Wales and Senior President of Tribunals already have far reaching powers to do this, but there are three small legislative changes that we have identified that would make it smoother in certain areas.

What is the current position and what are the propose changes?

3. The Upper Tribunal (UT) is the superior body to the First-tier Tribunal and has a number of functions including hearing appeals from the First-tier Tribunal as well as most applications for judicial review of immigration decisions. The Tribunals, Courts & Enforcement Act 2007 sets out the judges who are judges of the UT and therefore may hear cases there. This includes Circuit Judges, District Judges and High Court Judges, but does not include Recorders. Allowing Recorders to sit in the UT would enable the judiciary to be deployed more flexibly in order to meet business need by broadening the pool that the UT can draw from. In the short term, this could be used to address backlogs – for example, there are currently judges who have the right experience and authorisation to deal with judicial review cases in the Immigration & Asylum Chamber, but cannot be deployed there because they are Recorders.

4. The Lord Chief Justice for England and Wales already has a statutory power to appoint a person meeting the eligibility criteria as a Deputy High Court Judge (DHCJ) if their appointment is urgent, temporary and there are no other reasonable steps that could be taken to fill the gap in the time (section 94AA of the Constitutional Reform Act 2005). This is without the need for the usual process to appoint such a judge, which requires a lengthier appointment exercise run by the Judicial Appointments Commission and could, for example, be used to cover a sickness absence at short notice. This allows DHCJs to be appointed to facilitate business in the High Court or Crown Court. The proposed amendment would widen this so that the person appointed could sit in any court or tribunal to which a permanent DHCJ could be deployed, such as the County Court.

5. The Arbitration Act 1996 provides for two areas where a judge may sit as a judge-arbitrator: judges of the Commercial Court, and judges conduct official referees' business (which is now dealt with by the Technology & Construction Court). This allows cases falling within the jurisdiction of these courts of the High Court to be resolved via arbitration by a judge-arbitrator further to an arbitration agreement, and only with the Lord Chief Justice's permission for the appointment. This change would extend the range of High Court judges who can sit as judge-arbitrators, and would also allow the Lord Chief Justice to delegate his functions in agreeing that judges can be appointed as judge-arbitrators. As a result, an eligible High Court judge will be able to sit as a judge-arbitrator, for example in the Chancery Division of the High Court, which has seen a growth in demand for arbitration in recent years.

This publication was archived in June 2017.