

# **Courts and Tribunals (Judiciary and Functions of Staff) Bill**

## **Judiciary Measures**

### **Introduction**

1. The Bill will introduce greater flexibility to the deployment of judges, enabling the judiciary to respond to the changing demands in caseloads of different jurisdictions and making best use of the existing cohort and their time and expertise; this will benefit all users of the courts and tribunals. The Lord Chief Justice of England and Wales (LCJ) and the Senior President of Tribunals (SPT) have far-reaching powers to do this but there are specific areas where existing legislation could be amended to allow for more flexible judicial deployment.

### **What is the current position and what are the proposed changes?**

2. The Upper Tribunal (UT) is the superior body to the First-tier Tribunal (FtT) and has a number of functions, including hearing appeals from the FtT 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.
3. 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.
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 94A 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, the family court or the FtT and UT.
5. There is currently limited flexibility to fully use the complement of certain senior judges of the employment tribunals in the Employment Appeal Tribunal (EAT) and across the tribunals due to certain restrictions on allowing these judges to sit elsewhere. The proposed amendment would target these anomalies by enabling the presidents of the employment tribunals to sit in

the EAT, and by enabling leadership judges of the employment tribunals to hear cases in the FtT and UT.

6. There is a current restriction on a person presiding over more than one chamber of the FtT or of the UT. Allowing for a Chamber President to be appointed to more than one Chamber in the same Tribunal will meet the aim of flexibly using the existing (and future) complement of Chamber Presidents, without having to recruit and appoint a new Chamber President immediately there is a vacancy.
7. In 2017 the name of the court dealing with bankruptcy matters was changed to the Insolvency and Companies Court to better reflect the work of the court. In 2018 the titles of the more junior judges in that court were changed and we are now changing the title of the office of the senior judge. Changing the Title of the Chief Bankruptcy Registrar to that of Chief Insolvency and Companies Court Judge will bring it in line with other judges of the Insolvency and Companies Court.
8. Some judicial titles, such as the Chief Bankruptcy Registrar can only be changed by primary legislation. We will also be making an amendment of power to correct an anomaly preventing some judicial titles from being amended by Ministerial Order. This will allow more efficient changes of title when required as a result of organisational changes in the courts and tribunals.