EXPLANATORY MEMORANDUM TO

THE SELECTION OF THE PRESIDENT OF WELSH TRIBUNALS REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes provision for the process for appointing the President of Welsh Tribunals where agreement on that appointment is not reached between the Lord Chief Justice, the Lord Chancellor and the Welsh Ministers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Part 3 of the Wales Act 2017 (WA17) make provision for the Welsh Tribunals. Section 60 of the WA17 creates a new post of President of Welsh Tribunals (PWT). Paragraph 2 of Schedule 5 to the WA17 provides two routes to appointment of the PWT: by agreement between the Lord Chief Justice, the Lord Chancellor and the Welsh Ministers or, in default, by selection under the auspices of the Judicial Appointments Commission.

4.2 Where the latter route applies Part 2 of that Schedule makes provision about the selection process. In particular, paragraph 7 requires the Lord Chancellor to make regulations about the selection process to be applied where the Commission receives a request to select a person to the office of PWT and to make provision for the membership of the selection panel and the process to be followed by that panel. These regulations are made in compliance with that obligation.

4.3 By virtue of the Wales Act 2017 (Commencement No.1) Regulations 2017 (S.I. 2017/351) the provisions of Part 3 of, and Schedule 5 to, the WA17 come into force on the date on which regulations made under paragraph 7 of Schedule 5 come into force.

5. Extent and Territorial Application

5.1 This instrument extends to the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Lord Chancellor and Secretary of State for Justice, The Right Honourable David Liddington MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Selection of the President of Welsh Tribunals Regulations 2017 are compatible with the Convention rights".

7. Policy background

What is being done and why

7.1 Under Part 3 of the WA17, the PWT will be responsible for the maintenance of appropriate arrangements for the training, guidance and welfare of members of the Welsh tribunals and for representing the views of members of the Welsh tribunals to the Welsh Ministers and to other members of the National Assembly for Wales. Part 3 of that Act also contains provision allowing cross deployment between tribunals in Wales and between those Welsh tribunals and the UK wide first-tier and upper tribunals.

7.2 As explained above the purpose of these regulations is to enable the PWT to be appointed (and in consequence to enable the statutory provisions relating to the PWT, and to the extended cross deployment of the judiciary referred to above, to come into force).

Consolidation

7.3 No consolidation is applicable to this instrument.

8. Consultation outcome

8.1 There is no statutory consultation requirement applicable to this instrument. The Ministry of Justice has, however, engaged with officials in the Welsh Government and the Lord Chief Justice during the preparation of this instrument, and their views have been reflected accordingly.

9. Guidance

9.1 No specific guidance is provided in relation to this instrument and none is considered necessary.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector other than those regularly associated with a new judicial appointment.

10.3 An impact assessment has not been prepared for this instrument. These Regulations implement the relevant aspect of the Wales Bill 2017. The impact assessment of that bill confirmed it was for the Welsh Government to assess the impact and costs of their own policies.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 Any review of this instrument will take place alongside any review of other judicial appointment regulations.

12.2 The Ministry of Justice will continue to monitor and evaluate "what works" in improving judicial diversity and strengthening the appointment process. The Ministry of Justice will continue to work with the Judicial Office of England and Wales and the Judicial Appointments Commission to collect and share diversity data, enabling the development of a baseline against which progress can be measured. The Ministry of Justice will also work closely with the Judicial Appointments Commission, Judicial Office and legal professions to ensure where possible that data is collected and published reflecting all of the protected characteristics detailed within the Equality Act 2010.

12.3 The principles that will underpin any review are that the appointments process must: fully respect and maintain the independence of the judiciary; hold appointment on merit at the heart of the process; deliver openness and transparency throughout the process and create a more diverse judiciary that is reflective of society and appointed on merit.

13. Contact

13.1 Graham Driver at the Ministry of Justice Telephone: 07971 973877 or email: Clare.Wormald@justice.gov.uk can answer any queries regarding the instrument.