CONSTITUTION COMMITTEE

Note for witnesses:

Scope of inquiry into the judicial appointments process

An inquiry into judicial appointments is potentially very broad. Some aspects of the subject clearly fall outside the remit of a committee responsible for inquiring into matters of broad constitutional significance. In examining the judicial appointments process, the Constitution Committee will focus on the two key questions of:

- who is responsible for the appointment of judges (including justices of the Supreme Court); and
- what are the substantive criteria governing those appointments.

The Committee is particularly interested in the constitutional roles of, and relationships between, the various public bodies and office-holders involved in the judicial appointments process: the independent recommending commissions; the executive; members of the judiciary; and parliamentarians.

The inquiry seeks to assess how and how well these bodies contribute to maintaining the principles that ought to inform the design of a judicial appointments process in a constitutional democracy—including the independence of the judiciary and ensuring proper accountability and transparency of the process.

The starting point for the inquiry is the model for appointments created by the Constitutional Reform Act 2005. The Committee anticipates that much of the inquiry will focus on the operation of this model, from a constitutional perspective. The Committee is however also interested in examining constitutional reform proposals that would bring about significant change to the model—including the creation of a role for parliamentarians in the appointments process and the constitutional implications of a ‘career judiciary’ (in which lawyers are appointed to junior judicial roles at a much earlier stage of their careers than has traditionally been the case).

Issues relating to the lack of diversity in the composition of the judiciary fall within the scope of the inquiry insofar as this is a constitutional question. The Committee is interested to explore why from a constitutional perspective diversity may be thought to be important. Detailed examination of strategies to improve access to the legal profession and the bench falls outside the scope of the inquiry.

The inquiry is therefore not a comprehensive exercise in post-legislative scrutiny of the Constitutional Reform Act 2005 or of the operation of other legislation and practices dealing with judicial appointments. The inquiry will not be concerned with questions of the operational efficiency and effectiveness of the appointments process.