

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 6: Other Provisions Relating to the Judiciary**

##### **Commentary on Sections**

##### ***Section 137: Parliamentary Disqualification***

362. In summary, section 137 has the effect of barring members of the Supreme Court of the United Kingdom from membership of the House of Commons and the Northern Ireland Assembly; and of barring them, and certain other holders of judicial office which exclude the holder from membership of the House of Commons, from sitting and voting in the House of Lords while they hold that office.
363. Subsection (1) inserts the office of ‘Judge of the Supreme Court’ into Part 1 of Schedule 1 to the House of Commons Disqualification Act 1975. Subsection (2) makes corresponding provision for the Northern Ireland Assembly Disqualification Act 1975 (specific provision in relation to the Scottish Parliament and National Assembly for Wales being unnecessary because disqualification for membership of those bodies is tied to the House of Commons Disqualification Act). This of itself ensures that the holders of that office are, for as long as they hold it, disqualified for membership of the House of Commons. Taken with subsection (3), this has the effect of making it impossible to hold full-time high judicial office and at the same time be an active member of the House of Lords.
364. Subsection (3) bars holders of any “disqualifying judicial office” (defined in subsection (4) as the offices in Schedule 1 to the House of Commons Disqualification Act 1975 and the corresponding list in the Northern Ireland Assembly Disqualification Act 1975) from sitting or voting in the House of Lords or in any Lords Committee or Joint Committee. Such a person does not cease to be a member of the House while this disqualification continues, however.
365. Subsection (3) means that a person who is disqualified from sitting and voting in the House of Lords by virtue of subsection (2) is not disqualified from receiving a writ of summons to the House of Lords.

##### ***Section 138 and Schedule 16: Judicial Committee of the Privy Council***

366. **Section 138** introduces Schedule 16 which amends various statutory provisions to remove the right of the Lord President of the Council to be a member of the Judicial Committee of the Privy Council, and to sit judicially. Paragraph 2 of that Schedule recasts section 1 of the Judicial Committee Act of 1833 to redefine the membership of the Judicial Committee. This has the effect of removing not only the Lord President, but also the Lord Chancellor, Lord Keeper and Commissioners of the Great Seal. It also removes the (now in practice obsolete) power to appoint to the Judicial Committee other members of the Privy Council who do not fulfil the statutory requirements. Members of the Judicial Committee of the Privy Council from the United Kingdom will in future

*These notes refer to the Constitutional Reform Act 2005  
(c.4) which received Royal Assent on 24 March 2005*

be only those Privy Councillors who have held high judicial office as defined by Part 3 of the present Act (The Supreme Court). This will include judges of the new United Kingdom Supreme Court. Other enactments also provide for certain Commonwealth judges to be members of the Judicial Committee of the Privy Council. These judges' membership of the Judicial Committee is maintained Paragraph 3 of the Schedule requires the appointment of the registrar of the Judicial Committee to be made only after consultation with the President of the Supreme Court.