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STATUTORY INSTRUMENTS

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**2006 No. 676**

**LORD CHIEF JUSTICE  
JUDICIAL APPOINTMENTS AND DISCIPLINE**

**The Judicial Discipline (Prescribed  
Procedures) Regulations 2006**

<i>Made</i>	- - - -	<i>10th March 2006</i>
<i>Laid before Parliament</i>		<i>13th March 2006</i>
<i>Coming into force</i>	- -	<i>3rd April 2006</i>

The Lord Chief Justice, in exercise of his power under sections 115, 120 and 121 of the Constitutional Reform Act 2005(1), with the agreement of the Lord Chancellor, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, makes the following Regulations—

**PART 1**

**Introductory**

**Citation and commencement**

1. These regulations may be cited as the Judicial Discipline (Prescribed Procedures) Regulations 2006 and shall come into force on 3rd April 2006.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Constitutional Reform Act 2005;

“advisory committee” means one of the Lord Chancellor’s advisory committees on the appointment of justices of the peace;

“business day” means any day except Saturday, Sunday or a bank holiday, and “bank holiday” includes Christmas Day and Good Friday;

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(1) 2005 c. 4. The expression “prescribed” is defined by section 122 of the Constitutional Reform Act 2005 as meaning prescribed by regulations under section 115 of that Act.

“case” means a complaint made under regulations 8, 9 or 10 or a referral made under regulation 13;

“complaint” means a complaint containing an allegation of misconduct by a judicial office holder;

“disciplinary action” means the exercise by the Lord Chancellor of his power to remove a person from an office listed in Schedule 14 to the Act; the exercise by the Lord Chief Justice of his powers under section 108(3), (4)(b) and (c) and (5) of the Act; or a decision to move an Address for the removal of a senior judge by both Houses of Parliament;

“judicial office holder” means a senior judge, a holder of an office listed in Schedule 14 to the Act, or the holder of an office which has been designated by an order under section 118 of the Act(2);

“justice of the peace” means a justice of the peace who is not a District Judge (Magistrates' Courts);

“President” in relation to a tribunal means a President or other judicial office holder with disciplinary responsibility for tribunal members and includes any judicial office holder designated to exercise such disciplinary responsibility under rules made under regulation 10;

“the subject of the disciplinary proceedings” means the judicial office holder whose conduct is being considered in accordance with these regulations.

- (2) In these regulations, a reference to the Lord Chief Justice is to be read—
- (a) in relation to a judicial office holder who exercises functions wholly or mainly in Scotland, as a reference to the Lord President of the Court of Session;
  - (b) in relation to a judicial office holder who exercises functions wholly or mainly in Northern Ireland, as a reference to the Lord Chief Justice of Northern Ireland;
  - (c) otherwise, as a reference to the Lord Chief Justice of England and Wales.

### **Office for Judicial Complaints**

3.—(1) The Lord Chancellor shall, with the agreement of the Lord Chief Justice, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, designate officials for the purpose of performing functions under these regulations.

(2) Officials designated by the Lord Chancellor under paragraph (1) shall be known collectively as the Office for Judicial Complaints.

(3) The Office for Judicial Complaints may undertake such enquiries as are necessary for it to perform its functions under these regulations.

(4) A complainant or the subject of the disciplinary proceedings must reply to a request made by the Office for Judicial Complaints pursuant to those enquiries within twenty business days of that request.

### **Time limits within which a complaint must be made**

4.—(1) A complaint must be made within twelve months of the event or matter complained of.

(2) But a complaint relating to a continuing state of affairs may be made at any time while that state of affairs continues or within twelve months from when it ends.

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(2) Schedule 14 to the Constitutional Reform Act 2005 has been amended to add certain offices by S.I.2006/678 and is applied to coroners by S.I. 2006/677.

(3) Subject to regulation 5, an advisory committee, a President or the Office for Judicial Complaints must dismiss a complaint without further investigation if the complaint is made outside the time limits set out at paragraphs (1) and (2).

#### **Extension of time limits**

**5.—**(1) The Office for Judicial Complaints, an advisory committee, a President, an investigating judge or a review body, as the case may be, may extend a time limit under these regulations, whether or not the time limit has expired, where there is good reason to do so.

(2) A person who is refused an extension of a time limit under paragraph (1) may make representations to the Office for Judicial Complaints asking it to refer the request for an extension to the Lord Chancellor or to the Lord Chief Justice.

(3) The person must make such representations within ten business days of being notified of the refusal.

(4) The Lord Chancellor or the Lord Chief Justice may extend a time limit under these regulations, whether or not the time limit has expired, where there is good reason to do so.

#### **Failure to comply with time limits**

**6.—**(1) This regulation applies where any person who has been invited to make representations to a person exercising functions under these regulations or under rules made under these regulations has not complied with the relevant time limit for doing so.

(2) The person exercising the functions may—

- (a) continue to deal with the case,
- (b) treat representations made outside the relevant time limit as if they had not been made,
- (c) complete any report,
- (d) recommend the dismissal of the case or the ending of an investigation or a review, or
- (e) where the regulations or rules made under them specifically permit, dismiss the case.

(3) But a review body may only recommend ending a review under paragraph 2(d) where the case was referred to it under regulation 29(1)(d).

#### **Measurement of time for doing an act**

**7.** In these regulations the time for doing any act in response to a notification, invitation or request made under the regulations runs from the second business day after the day on which the notification or request is sent by first class post, e-mail or fax to the person invited or required to do that act.

## **PART 2**

### **Complaints and Referrals**

#### **Complaints made to the Office for Judicial Complaints**

**8.** Subject to regulations 9 and 10, a complaint must be made to the Office for Judicial Complaints.

### **Complaints made to advisory committees**

9.—(1) A complaint about a justice of the peace must be made in accordance with rules made under paragraph (2) to the advisory committee for the local justice area to which the justice of the peace is assigned under section 10(2) of the Courts Act 2003(3).

(2) The Lord Chief Justice shall, with the agreement of the Lord Chancellor, make rules for dealing with complaints about justices of the peace.

(3) Where an advisory committee sends a case to the Office for Judicial Complaints in accordance with rules made under paragraph (2), it will be dealt with under regulation 19.

(4) The Lord Chancellor and the Lord Chief Justice, or either of them, may determine that a complaint which has been dismissed by an advisory committee or which the advisory committee is minded to dismiss shall nevertheless be subject to further consideration under the rules and these regulations where the complaint is sufficiently serious for further consideration to be necessary.

(5) Where there has been a determination under the previous paragraph, the case must be sent to the advisory committee for further consideration.

### **Complaints made in relation to tribunals**

10.—(1) A complaint about a relevant tribunal member, other than a President, must be made to the President of the tribunal concerned in accordance with rules made under paragraph (2).

(2) The Lord Chief Justice, with the agreement of the Lord Chancellor, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, shall make rules dealing with complaints about tribunal members.

(3) A relevant tribunal member for the purposes of paragraph (1) is a tribunal member to whom rules made under paragraph (2) apply.

(4) Where a President sends a case to the Office for Judicial Complaints in accordance with rules made under paragraph (2), it shall be dealt with under regulation 19.

(5) Where, under rules made under paragraph (2), a President has found a case to be substantiated and he has decided to keep a record of the case in a form which may be referred to in future disciplinary proceedings, he must notify the tribunal member.

(6) The tribunal member may make representations to the Lord Chancellor and the Lord Chief Justice within ten business days of the notification by the President.

(7) After considering any representations under the previous paragraph and any advice from the President, the Lord Chancellor or the Lord Chief Justice may decide to appoint an investigating judge if he considers that the case is sufficiently serious or complex enough to require judicial investigation.

(8) Where an investigating judge is not appointed under the previous paragraph, the Lord Chancellor and the Lord Chief Justice shall deal with the case under Part 6.

(9) The Lord Chancellor and the Lord Chief Justice, or either of them, may determine that a complaint which has been dismissed by a President or which the President is minded to dismiss shall nevertheless be subject to further consideration under the rules and these regulations where the complaint is sufficiently serious for further consideration to be necessary.

(10) Where there has been a determination under the previous paragraph, the case must be sent to the President for further consideration.

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(3) 2003 c. 39: the local justice areas are listed at [SI 2005/554](#) as amended by [SI/2005/2949](#).

### **Form of a complaint**

11. A complaint to the Office for Judicial Complaints, an advisory committee or a President must be made in writing, unless the Office for Judicial Complaints, the advisory committee or the President considers that in the circumstances it is reasonable to accept a complaint in another form.

### **Withdrawal of complaint**

12.—(1) The complainant may withdraw a complaint at any time.

(2) A complaint must be treated as withdrawn if the complainant indicates that he does not want the complaint or any further information which he has provided to be disclosed to the subject of the disciplinary proceedings.

(3) If a complaint is withdrawn or treated as withdrawn at any time, but the Lord Chancellor or the Lord Chief Justice considers that the matters which it raised are sufficiently serious for further consideration to be necessary, he may direct that the complaint shall be considered further under these regulations or under rules made under these Regulations.

### **Referral of other information for consideration**

13.—(1) Where no complaint is being considered under these regulations or under rules made under these regulations, but the Lord Chancellor or the Lord Chief Justice receives information from any source which suggests to him that disciplinary proceedings might be justified, he may refer that information to the Office for Judicial Complaints to be dealt with under these regulations, or to an advisory committee or President, as the case may be, to be dealt with in accordance with their rules.

(2) The Office for Judicial Complaints may, after making any enquiries which it thinks necessary, refer the case to the nominated judge in accordance with regulation 16.

## **PART 3**

### **Consideration by the Office for Judicial Complaints and the Nominated Judge**

#### **Consideration of a complaint by the Office for Judicial Complaints**

14.—(1) Unless there are reasons why it believes that a complaint should be investigated, the Office for Judicial Complaints must dismiss a complaint, or part of a complaint, if it falls into any of the following categories—

- (a) it does not adequately particularise the matter complained of;
- (b) it is about a judicial decision or judicial case management, and raises no question of misconduct;
- (c) the action complained of was not done or caused to be done by a judicial office holder;
- (d) it is vexatious;
- (e) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;
- (f) it is untrue, mistaken or misconceived;
- (g) it raises a matter which has already been dealt with, whether under these regulations or otherwise, and does not present any material new evidence;
- (h) it is about a person who no longer holds any judicial office;
- (i) it is about the private life of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office;

- (j) it is about the professional conduct in a non-judicial capacity of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office;
  - (k) for any other reason it does not relate to misconduct by a judicial office holder.
- (2) The Office for Judicial Complaints may not dismiss a complaint under paragraph (1)(a) unless it has given the complainant a reasonable opportunity to provide adequate particulars of the complaint.

#### **Further consideration of a complaint liable to be dismissed under regulation 14**

15. But the Lord Chancellor and the Lord Chief Justice, or either of them, may determine that a complaint which has been dismissed by the Office for Judicial Complaints or which the Office for Judicial Complaints is minded to dismiss under regulation 14(1) shall nevertheless be subject to further consideration under these regulations where the complaint is sufficiently serious for further consideration to be necessary.

#### **Referral to nominated judge**

16. The Office for Judicial Complaints must refer the case to a nominated judge where—
- (a) a complaint has not been dismissed by the Office for Judicial Complaints under regulations 4 or 14;
  - (b) it is a referral under regulation 13; or
  - (c) the Lord Chancellor or the Lord Chief Justice has determined under regulation 15 that further consideration of the case is necessary.

#### **Nomination of nominated judge**

- 17.—(1) The nominated judge shall be a judicial office holder who is nominated by the Lord Chief Justice with the agreement of the Lord Chancellor.
- (2) The Lord Chief Justice may nominate a different judicial office holder to deal with different cases.
- (3) In a particular case, the nominated judge must be of at least the same judicial rank as the subject of the disciplinary proceedings.

#### **Functions of nominated judge**

18. The nominated judge shall advise the Lord Chancellor and the Lord Chief Justice—
- (a) whether the case should be dismissed with no further action;
  - (b) whether a judicial investigation is required; and if so, how the investigation should be carried out; and what matters should be considered in that investigation;
  - (c) whether disciplinary action should be taken without further investigation and, if so, what disciplinary action should be taken; and
  - (d) whether, in addition to or without a judicial investigation, some other action should be taken.

## PART 4

### Consideration by the Lord Chancellor and the Lord Chief Justice

#### **Consideration by the Lord Chancellor and the Lord Chief Justice**

**19.**—(1) The Lord Chancellor or the Lord Chief Justice may, after considering any advice from a nominated judge, an advisory committee or a President, decide to appoint an investigating judge if he considers that the case is sufficiently serious or complex to require judicial investigation.

(2) Where an investigating judge is not appointed under paragraph (1), the Lord Chancellor and the Lord Chief Justice shall, after considering any advice from a nominated judge, an advisory committee or a President, deal with the case under Part 6.

## PART 5

### Judicial Investigation

#### **Nomination of investigating judge**

**20.**—(1) When a case is to be subject to judicial investigation, the Lord Chief Justice with the agreement of the Lord Chancellor shall nominate a judicial office holder or a former judicial office holder to be the investigating judge.

(2) The investigating judge must be of a higher judicial rank than the subject of the disciplinary proceedings.

(3) In relation to a former judicial office holder, reference to his judicial rank means the rank he held immediately before he ceased to hold judicial office.

#### **Terms of reference of investigating judge**

**21.**—(1) The terms of reference for the investigation by the investigating judge shall be such as the Lord Chancellor and the Lord Chief Justice may agree.

(2) The investigating judge may ask the Lord Chancellor and the Lord Chief Justice to amend his terms of reference.

(3) Any changes to the terms of reference shall be such as the Lord Chancellor and the Lord Chief Justice may agree.

#### **Functions of investigating judge**

**22.** The investigating judge must advise the Lord Chancellor and the Lord Chief Justice—

- (a) as to the facts of a case;
- (b) whether the case is substantiated or not;
- (c) whether disciplinary action should be taken; and if so what disciplinary action should be taken; and
- (d) as to any other matters in his terms of reference.

#### **Procedure of investigation by investigating judge**

**23.**—(1) The investigating judge may decide how to conduct his investigation, but he must—

- (a) notify the subject of the disciplinary proceedings and any complainant of his proposals for the conduct of his investigation, and whether he proposes to take oral evidence;
  - (b) invite the subject of the disciplinary proceedings and any complainant to make representations on his proposals; and
  - (c) record any representations on the proposals which those persons may make.
- (2) Representations must be provided to the investigating judge within ten business days of the invitation under paragraph (1)(b).

### **Evidence and representations**

**24.**—(1) The investigating judge must invite the subject of the disciplinary proceedings to give evidence and make representations about the case.

(2) The investigating judge may invite the complainant or any person who he considers can assist his investigation to give evidence about the case.

(3) Evidence and representations must be provided to the investigating judge within ten business days of the invitation under paragraphs (1) and (2).

(4) The investigating judge may take oral evidence if he considers it necessary to do so.

(5) The investigating judge must arrange for any evidence given orally to be recorded in a transcript or a tape recording.

(6) The investigating judge must disclose any evidence obtained under paragraph (2) to the subject of the disciplinary proceedings and must invite him to make representations on the evidence.

(7) The subject of the disciplinary proceedings must make any representations under paragraph (6) within ten business days of the invitation under paragraph (6).

(8) Where the investigating judge considers that it is necessary to disclose evidence obtained during the course of an investigation to any person other than the subject of the disciplinary proceedings, he must first invite—

- (a) the person who provided the evidence, and
- (b) the subject of the disciplinary proceedings

to make representations about the proposed disclosure.

(9) The person who provided the evidence and the subject of the disciplinary proceedings must make representations under paragraph (8) within ten business days of the invitation.

### **Report of investigating judge**

**25.**—(1) Subject to his terms of reference, the investigating judge may decide the form and content of his report.

(2) The investigating judge must disclose a draft of his report to the subject of the disciplinary proceedings and invite him to make representations about it.

(3) The investigating judge must disclose a draft of his report to any complainant and invite him to make representations about it.

(4) The investigating judge may show a draft of his report to any other person, and invite him to make representations about it.

- (5) Disclosure of the draft report under paragraphs (3) or (4)—
- (a) may be of the whole or part,
  - (b) may be in the form of a summary, and



- (c) must omit any information the disclosure of which is prohibited under section 139 of the Act.
- (6) Representations must be provided to the investigating judge within ten business days of disclosure of the draft report under paragraphs (3) or (4).
- (7) After considering any representations made in accordance with paragraphs (2) to (4) and (6) the investigating judge must—
  - (a) complete his report and submit it to the Lord Chancellor and the Lord Chief Justice, with details of any requested changes which he has not made;
  - (b) send a copy of his report to the subject of the disciplinary proceedings; and
  - (c) send a copy of his report or the relevant part of his report to any other person who has been invited to make representations about the draft report, but omitting any material the disclosure of which is prohibited under section 139 of the Act.

## PART 6

### Proposed Disciplinary Action, Notification and Final Decision

#### **Decisions and proposed disciplinary action**

- 26.**—(1) Where they have considered advice from a nominated judge, the report of an advisory committee or a President under regulation 19 or the report of an investigating judge under Part 5, the Lord Chancellor and the Lord Chief Justice may agree that—
- (a) the case is unsubstantiated and is dismissed;
  - (b) the case is substantiated wholly or in part, but does not require further action and is dismissed;
  - (c) the case is substantiated wholly or in part, but should be dealt with informally by the Lord Chief Justice;
  - (d) if the case is about a tribunal member, it should be dealt with by a President;
  - (e) the case is substantiated wholly or in part and—
    - (i) the Lord Chief Justice will exercise one or more of his disciplinary powers;
    - (ii) the Lord Chancellor will exercise his power to remove the subject of the disciplinary proceedings from judicial office; or
    - (iii) the Lord Chancellor will move an Address;
  - (f) they will refer the case to a review body under Part 7.
- (2) Where a case has been reviewed by a review body, the Lord Chancellor and the Lord Chief Justice shall be bound by any findings of fact made by the review body, and shall not take any disciplinary action more severe than that recommended by the review body.
- (3) The Lord Chancellor and the Lord Chief Justice may, after considering the review body's report, propose to take action under paragraphs (1)(a) to (e).
- (4) If the Lord Chancellor and the Lord Chief Justice cannot agree what action should be proposed, the case is dismissed.

### **Notification of proposed disciplinary action and final decision**

27.—(1) Where the Lord Chancellor and the Lord Chief Justice propose to take a particular disciplinary action under regulation 26 or to make a record of the case in a form that may be referred to in any future disciplinary proceedings, they must—

- (a) notify the subject of the disciplinary proceedings of the proposal;
- (b) state that the case will be recorded in a form that may be referred to in any future disciplinary proceedings, and
- (c) invite him to make representations.

(2) The subject of the disciplinary proceedings must make any representations within twenty business days of an invitation under paragraph (1)(c).

(3) After considering any representations made under paragraph (2), the Lord Chancellor and the Lord Chief Justice must make a final decision.

(4) The Lord Chancellor and the Lord Chief Justice must notify the subject of the disciplinary proceedings of their decision.

(5) If the Lord Chancellor and the Lord Chief Justice cannot agree what action should be taken, the case is dismissed.

## **PART 7**

### **Review Bodies**

#### **Composition of a review body**

28.—(1) A review body must consist of—

- (a) a judicial office holder of a higher judicial rank than the subject of the disciplinary proceedings;
- (b) a judicial office holder of the same judicial rank as the subject of the disciplinary proceedings; and
- (c) two other members, neither of whom has been—
  - (i) a judicial office holder, or
  - (ii) a practising lawyer (within the meaning of paragraph 6(1) of Schedule 12 to the Act).

(2) A judicial office holder for the purposes of paragraph (1)(a) or (b) may be a former judicial office holder and reference to his judicial rank means the rank he held immediately before he ceased to hold judicial office.

(3) The Lord Chief Justice with the agreement of the Lord Chancellor shall nominate the members of the review body under paragraphs 1(a) and (b).

(4) The Lord Chancellor with the agreement of the Lord Chief Justice shall nominate the other members.

(5) A person is ineligible for membership of the review body if he has had any previous involvement with the case concerned, other than as a member of a review body.

(6) The judicial office holder nominated under paragraph (1)(a) shall chair the review body and shall have a casting vote if necessary.

### **Convening a review body**

**29.**—(1) The Lord Chancellor and the Lord Chief Justice shall convene a review body to review a case where—

- (a) they decide to refer the findings of a judicial investigation under Part 5 to a review body;
- (b) the Ombudsman recommends that an investigation or determination should be reviewed by a review body, and the Lord Chancellor and the Lord Chief Justice accept the recommendation;
- (c) the Ombudsman sets aside a determination made in a case in accordance with section 111 of the Act and directs that the case is to be referred to a review body;
- (d) the subject of the disciplinary proceedings requests the Lord Chancellor and the Lord Chief Justice to refer the case to a review body in accordance with paragraph (2).

(2) The subject of the disciplinary proceedings may request the Lord Chancellor and the Lord Chief Justice to refer the case to a review body where they notify him under regulation 27 that they propose—

- (a) to take disciplinary action against him, or
- (b) to record the case in a form which may be referred to in later disciplinary proceedings.

(3) The Lord Chancellor and the Lord Chief Justice may impose a time limit within which the review body must submit its report to them.

(4) Where the subject of the disciplinary proceedings wishes the Lord Chancellor and the Lord Chief Justice to refer the case to a review body under paragraph (1)(d), he must—

- (a) request them to do so within ten business days of the notification to him of the decision of the Lord Chancellor and the Lord Chief Justice, and
- (b) state in his request the issues that he wishes the review body to consider.

### **Functions of a review body**

**30.**—(1) A review body may review—

- (a) any finding of fact;
- (b) any decision or recommendation as to the conduct of a judicial office holder;
- (c) any disciplinary action which has been proposed or taken; and
- (d) the procedures which have been used to deal with the case, but only so far as necessary to enable the review body to deal with the matters in sub-paragraphs (a) to (c) above.

(2) The review body may consider matters not raised in a request under regulation 29(4)(b).

(3) The scope of review by a review body is not restricted by the findings of any previous investigation, whether under these regulations or not, or of any previous review of the case by a review body.

(4) A review body may recommend the taking of more severe disciplinary action than that previously recommended by an advisory committee, a President, the nominated judge, the investigating judge or a review body in relation to the case, or that which the Lord Chancellor and the Lord Chief Justice had intended to take.

(5) Where the Lord Chancellor and the Lord Chief Justice have proposed the removal from a judicial office of the subject of the disciplinary proceedings, the review body must advise whether removal is justified.

(6) Where a review body is considering whether the subject of the disciplinary proceedings should be suspended from office, the review body must consider that question in relation to each judicial office which he holds.

### **Review of documents**

**31.—**(1) A review body shall have access to the documents which the Office for Judicial Complaints, an advisory committee, a President, the nominated judge, the investigating judge, the Lord Chancellor and the Lord Chief Justice have used for the purpose of exercising their functions under these regulations or under rules made under these regulations.

(2) The review body must initially review the case on the basis of those documents and of any statement under regulation 29(4)(b) which the judicial office holder has provided (“the regulation 29 statement”).

(3) After considering the documents and any regulation 29 statement, the review body may either proceed under regulation 32 or under regulation 33.

### **Recommendations without a full review**

**32.—**(1) This regulation applies where—

- (a) the review body considers that one or more of the matters referred to in regulation 30(1) should be reconsidered without a full review under regulation 33; or
- (b) the case was referred to the review body under regulation 29(1)(d) and the review body considers that there is no need to review the case further.

(2) In the circumstances described in paragraph (1)(a), the review body may proceed to prepare a draft report under regulation 34.

(3) In the circumstances described in paragraph (1)(b), the review body must notify the subject of the disciplinary proceedings of its opinion and must invite him to make representations.

(4) The subject of the disciplinary proceedings must make any representations to the review body within ten business days of the notification.

(5) Where the review body remains of the view that there is no need to review the case further after considering any representations from the subject of the disciplinary proceedings, it may proceed to prepare a draft report under regulation 34.

### **Further procedure of review body**

**33.—**(1) Where regulation 32 does not apply, the review body must—

- (a) determine the procedure it will follow;
- (b) inform the subject of the disciplinary proceedings of the proposed procedure;
- (c) invite him to make representations about the proposed procedure, and, in particular, whether it should take oral evidence from the subject of the disciplinary proceedings.

(2) The subject of the disciplinary proceedings must make any such representations to the review body within ten business days of the invitation under paragraph (2)(c).

(3) A review body must take oral evidence from the subject of the disciplinary proceedings if he requests it to do so, unless it considers it unnecessary to do so.

(4) A review body may take evidence, including oral evidence, from any other person.

### **Draft report of review body**

**34.—**(1) The review body must prepare a report and show a draft of it to the subject of the disciplinary proceedings.

(2) The review body may disclose a draft of its report to any other person.

- (3) The review body must invite each person to whom it discloses its draft report to make representations about it.
- (4) Representations to the review body must be made within ten business days of the invitation.
- (5) Disclosure of the draft report under paragraph (2)—
  - (a) may be of the whole or part,
  - (b) may be in the form of a summary, and
  - (c) must omit any information the disclosure of which is prohibited under section 139 of the Act.

### **Completion of the review body's report**

- 35.**—(1) After considering any representations made in accordance with regulation 34, the review body must—
- (a) decide whether or not to make any changes requested;
  - (b) send its final report to the Lord Chancellor and the Lord Chief Justice, with details of any requested changes which it has not made;
  - (c) send a copy of its final report to the subject of the disciplinary proceedings;
  - (d) send a copy of its report to the Ombudsman, where the case was referred to the review body under regulation 29(1)(b) or (c), indicating any passages which contain personal information which ought not to be included in any report by the Ombudsman or shown by him to anyone other than the subject of the disciplinary proceedings; and
  - (e) send any relevant part of the report in full or in summary to any other person who has been invited to comment on the draft report, omitting any material the disclosure of which would be prohibited under section 139 of the Act.
- (2) The Lord Chancellor and the Lord Chief Justice shall make a decision after considering the review body's final report.

## **PART 8**

### **Miscellaneous**

#### **Deferral of consideration of a case**

- 36.**—(1) Where a case arises out of court or tribunal proceedings in which a complainant is involved, or in which the judicial office holder sits, the Lord Chancellor and the Lord Chief Justice may defer consideration of the case until the Office for Judicial Complaints is notified that the court proceedings have been concluded.
- (2) Where a case arises out of court or tribunal proceedings in which a judicial office holder is a party, the Lord Chancellor and the Lord Chief Justice may defer consideration of the case until the Office for Judicial Complaints is notified that the court proceedings have been concluded.
- (3) Where the case relates to disciplinary proceedings by a professional body, the Lord Chancellor and the Lord Chief Justice may defer consideration of the case until the Office for Judicial Complaints is notified that the disciplinary proceedings have been concluded.
- (4) Where the Lord Chancellor and the Lord Chief Justice defer consideration of a case under the previous paragraph, they may draw the case to the attention of the professional body responsible for the disciplinary proceedings.

(5) “Professional body” means the Law Society of England and Wales, the Law Society of Scotland, the Law Society of Northern Ireland, the Bar Council of England and Wales, the Faculty of Advocates, the Bar Council of Northern Ireland, the General Medical Council, or any other body which regulates professional practice.

### **Notification of a deferral**

**37.**—(1) Where a judicial office holder has been informed that he is the subject of a complaint, or otherwise the subject of disciplinary proceedings, the Office for Judicial Complaints must inform him of the decision to defer consideration of the case.

(2) Where consideration of a case is deferred, and the complainant has not withdrawn his complaint, the Office for Judicial Complaints must notify the complainant of the decision to defer consideration of the case.

### **Revival of a deferred case**

**38.** When consideration of a case arising out of a complaint has been deferred under regulation 36, and is revived on the conclusion of any proceedings to which that regulation refers, the subject matter of the case shall be limited to that which formed the subject matter of the original complaint, unless the Lord Chancellor or the Lord Chief Justice decide otherwise.

### **Interim suspension**

**39.**—(1) If the Lord Chief Justice decides, with the agreement of the Lord Chancellor, to suspend a judicial office holder from his judicial office under section 108(4)(a), (6) or (7) of the Act, he must—

- (a) notify the judicial office holder of the proposed suspension, the reasons for it and the time when it is proposed that it will come into effect;
- (b) notify the judicial office holder of the factors that will be taken into account in determining when the suspension will end; and
- (c) invite him to make representations.

(2) The judicial office holder must make any representations within ten business days of notification under paragraph (1)(a).

(3) When any of the factors which the Lord Chief Justice and the Lord Chancellor have indicated would be taken into account in accordance with paragraph (1)(b) become operative, or any other matter which the Lord Chief Justice and the Lord Chancellor consider relevant arises, the Lord Chief Justice and the Lord Chancellor must—

- (a) decide whether continuation of the suspension is appropriate;
- (b) notify the judicial office holder of their decision under sub-paragraph (a) and of the reasons for that decision; and
- (c) invite the judicial office holder to make representations.

(4) The judicial office holder must make any representations within ten business days of notification under paragraph (3).

### **Disclosure of information**

**40.**—(1) The Lord Chancellor and the Lord Chief Justice shall inform the complainant whether his complaint has been upheld or dismissed, and what if any disciplinary action they have agreed to take.

(2) The Lord Chancellor and the Lord Chief Justice shall agree upon the terms of any information given under paragraph (1) and the manner in which it shall be given.

(3) The Lord Chancellor and the Lord Chief Justice may disclose information about disciplinary proceedings or the taking of disciplinary action against identified or identifiable judicial office holders to anyone to whom they agree it is necessary to give such information.

(4) The Lord Chancellor and the Lord Chief Justice may agree to the public disclosure of information about disciplinary action where they agree that the maintenance of public confidence in the judiciary requires that such information be disclosed.

### **Procedural requirements in relation to reviews by the Ombudsman**

**41.**—(1) If the Ombudsman requests from any person information for the purposes of a review carried out under section 111 of the Act, and such information is not provided within ten business days from notification of the request, or within such other period as he indicates, he may—

- (a) prepare his review without regard to that information, and
- (b) may disregard any representations made out of time by the person concerned.

(2) The Lord Chancellor, the Lord Chief Justice, the Office for Judicial Complaints, the nominated judge, an advisory committee, a President, an investigating judge, and a review body convened under Part 7 must provide the Ombudsman with such information as he may reasonably require for the purposes of a review carried out under section 111 or section 113 of the Act.

(3) Where the Ombudsman directs that an investigation should be undertaken or undertaken again by virtue of section 111(7)(b), the case shall be subject to Part 4 of these regulations.

### **Delegation**

**42.** The Lord Chief Justice may delegate any of his functions under these regulations, other than those under regulations 9(2) and 10(2).

### **Scotland and Northern Ireland: eligibility to exercise functions**

**43.**—(1) Where the subject of the disciplinary proceedings is a member of a tribunal which has jurisdiction throughout Great Britain or the United Kingdom, the following office holders may also be nominated as a nominated judge under regulation 17, an investigating judge under regulation 20 or a member of a review body under regulation 28(1)(a) and (b)—

- (a) where the subject of the disciplinary proceedings exercises functions wholly or mainly in Scotland, a sheriff, a sheriff principal or a judge of the Court of Session;
- (b) where the subject of the disciplinary proceedings exercises functions wholly or mainly in Northern Ireland, the holder of an office listed in Schedule 1 to the Justice (Northern Ireland) Act 2002(4).

### **Scotland and Northern Ireland: Judicial Appointments and Conduct Ombudsman**

**44.** Sections 110 to 113 of the Act apply—

- (a) in relation to judicial office holders who exercise functions wholly or mainly in Scotland as if in section 110(8)(b) the reference to the Lord Chief Justice of England and Wales were a reference to the Lord President of the Court of Session; and

- (b) in relation to judicial office holders who exercise functions wholly or mainly in Northern Ireland as if in section 110(8)(b) the reference to the Lord Chief Justice of England and Wales were a reference to the Lord Chief Justice of Northern Ireland.

**Treatment of transitional complaints**

45. These regulations apply to any complaint made before 3rd April 2006 which has not been withdrawn, dismissed or determined, but Parts 2 to 5 do not apply in a case where a judicial investigation has started before that date.

Date 8th March 2006

*Phillips of Worth Matravers C J*

I agree

Date 7th March 2006

*Falconer of Thoroton C*

I agree

Date 6th March 2006

*Arthur Hamilton*  
Lord President of the Court of Session

I agree

Date 7th March 2006

*Brian Kerr*  
Lord Chief Justice of Northern Ireland



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## EXPLANATORY NOTE

*(This note is not part of the Order)*

The regulations prescribe the procedures to be followed in the investigation and determination of allegations of misconduct by judicial office holders under chapter 3 of Part 4 of the Constitutional Reform Act 2005 (c. 4). The procedures govern the exercise of the Lord Chancellor's powers to remove judicial office holders and the Lord Chief Justice's statutory powers formally to advise, warn or reprimand them, or to suspend them from office. They also govern the investigation of allegations about judicial office holders appointed by the Lord Chancellor who sit wholly or mainly in Scotland or Northern Ireland. In these cases, the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland has the same powers as the Lord Chief Justice of England and Wales.

The regulations also form part of the implementation of the Concordat agreed between the Lord Chancellor and the Lord Chief Justice in January 2004. The Concordat sets out the principles governing the allocation of functions between the Lord Chancellor and the Lord Chief Justice, including an outline of the procedures to be followed in judicial disciplinary cases.

**Part 1** provides for the citation and commencement of the regulations, defines certain terms used in them, and provides for the designation of dedicated officials in an Office for Judicial Complaints (OJC) to support the Lord Chancellor and the Chief Justices in the investigation and determination of allegations. It also provides for time limits and their extension.

**Part 2** deals with the persons to whom complaints are to be made. It provides for the making of rules by the Lord Chief Justice to govern the investigation of complaints (1) against magistrates by local advisory committees, and (2) against members of specified tribunals by their President or other designated senior judicial officer. It provides for complaints to be withdrawn, and for either the Lord Chancellor or the Lord Chief Justice to refer complaints for further investigation.

**Part 3** provides for the initial consideration of complaints other than those against magistrates or relevant members of tribunals. It enables the OJC to make enquiries, and to dismiss a complaint to the extent that it falls within criteria set out in the regulations. Nominated judges will be appointed to advise the Lord Chancellor and the Lord Chief Justice on the action to be taken in cases not dismissed by the OJC.

**Part 4** deals with the decisions which the Lord Chancellor and the Lord Chief Justice may take after a case has been investigated by the OJC and nominated judges, advisory committees or tribunal Presidents.

**Part 5** enables the Lord Chancellor or Lord Chief Justice to refer cases for investigation, for the appointment of investigating judges and the procedures to be followed by them.

**Part 6** provides for the Lord Chancellor and the Lord Chief Justice to dismiss cases, or to determine what disciplinary action they propose should be taken, to notify judicial office holders against whom it is proposed to take disciplinary action, and for the taking of final decisions after considering any representations.

**Part 7** provides for the establishment of review bodies and for their functions and procedures.

**Part 8** contains miscellaneous provisions for: cases to be deferred; procedures on the interim suspension of a judicial office holder; publicity in relation to disciplinary hearings; procedural requirements in relation to investigations by the Judicial Appointments and Conduct Ombudsman, and for the application to Scotland and Northern Ireland of relevant provisions of the Act relating to the Ombudsman; the delegation by the Lord Chief Justice of any of his functions under these

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

regulations, apart from the rule-making power contained in regulations 9 and 10; and transitional arrangements for complaints made before the commencement of the regulations.