



# Constitutional Reform Act 2005

## 2005 CHAPTER 4

### PART 1

#### THE RULE OF LAW

#### **1 The rule of law**

This Act does not adversely affect—

- (a) the existing constitutional principle of the rule of law, or
- (b) the Lord Chancellor's existing constitutional role in relation to that principle.

### PART 2

#### ARRANGEMENTS TO MODIFY THE OFFICE OF LORD CHANCELLOR

##### *Qualifications for office of Lord Chancellor*

#### **2 Lord Chancellor to be qualified by experience**

- (1) A person may not be recommended for appointment as Lord Chancellor unless he appears to the Prime Minister to be qualified by experience.
- (2) The Prime Minister may take into account any of these—
  - (a) experience as a Minister of the Crown;
  - (b) experience as a member of either House of Parliament;
  - (c) experience as a qualifying practitioner;
  - (d) experience as a teacher of law in a university;
  - (e) other experience that the Prime Minister considers relevant.
- (3) In this section “qualifying practitioner” means any of these—
  - (a) a person who has a Senior Courts qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);

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- (b) an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary;
- (c) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

*Continued judicial independence*

### 3 Guarantee of continued judicial independence

- (1) The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.
- (2) Subsection (1) does not impose any duty which it would be within the legislative competence of the Scottish Parliament to impose.
- (3) A person is not subject to the duty imposed by subsection (1) if he is subject to the duty imposed by section 1(1) of the Justice (Northern Ireland) Act 2002 (c. 26).
- (4) The following particular duties are imposed for the purpose of upholding that independence.
- (5) The Lord Chancellor and other Ministers of the Crown must not seek to influence particular judicial decisions through any special access to the judiciary.
- (6) The Lord Chancellor must have regard to—
  - (a) the need to defend that independence;
  - (b) the need for the judiciary to have the support necessary to enable them to exercise their functions;
  - (c) the need for the public interest in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.
- (7) In this section “the judiciary” includes the judiciary of any of the following—
  - (a) the Supreme Court;
  - (b) any other court established under the law of any part of the United Kingdom;
  - (c) any international court.
- [<sup>F1</sup>(7A) In this section “the judiciary” also includes every person who—
  - (a) holds an office listed in Schedule 14 or holds an office listed in subsection (7B), and
  - (b) but for this subsection would not be a member of the judiciary for the purposes of this section.
- (7B) The offices are those of—
  - (a) Senior President of Tribunals;
  - (b) President of Employment Tribunals (Scotland);
  - (c) Vice President of Employment Tribunals (Scotland);
  - (d) member of a panel of chairmen of Employment Tribunals (Scotland);
  - (e) member of a panel of members of employment tribunals that is not a panel of chairmen;
  - (f) <sup>F2</sup>.....]

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- (8) In subsection (7) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—
- (a) an agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is a party, or
  - (b) a resolution of the Security Council or General Assembly of the United Nations.

#### Textual Amendments

- F1** S. 3(7A)(7B) inserted (19.9.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), **ss. 1, 148**; [S.I. 2007/2709](#), **art. 2(a)**
- F2** S. 3(7B)(f) omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), **art. 9, Sch. 3 para. 217**

## 4 Guarantee of continued judicial independence: Northern Ireland

- (1) For section 1 of the Justice (Northern Ireland) Act 2002 (c. 26) (guarantee of continued judicial independence) substitute—

### “1 Guarantee of continued judicial independence

- (1) The following persons must uphold the continued independence of the judiciary—
- (a) the First Minister,
  - (b) the deputy First Minister,
  - (c) Northern Ireland Ministers, and
  - (d) all with responsibility for matters relating to the judiciary or otherwise to the administration of justice, where that responsibility is to be discharged only in or as regards Northern Ireland.
- (2) The following particular duty is imposed for the purpose of upholding that independence.
- (3) The First Minister, the deputy First Minister and Northern Ireland Ministers must not seek to influence particular judicial decisions through any special access to the judiciary.
- (4) In this section “the judiciary” includes the judiciary of any of the following—
- (a) the Supreme Court;
  - (b) any other court established under the law of any part of the United Kingdom;
  - (c) any international court.
- (5) In subsection (4) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—
- (a) an agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is a party, or

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- (b) a resolution of the Security Council or General Assembly of the United Nations.”
- (2) In section 91(2) of that Act (extent: provisions not restricted to Northern Ireland), before paragraph (a) insert—
- “(za) section 1,”.

### *Representations by senior judges*

## 5 Representations to Parliament

- (1) The chief justice of any part of the United Kingdom may lay before Parliament written representations on matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in that part of the United Kingdom.
- (2) In relation to Scotland those matters do not include matters within the legislative competence of the Scottish Parliament, unless they are matters to which a Bill for an Act of Parliament relates.
- (3) In relation to Northern Ireland those matters do not include transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates.
- (4) In subsection (3) the reference to transferred matters has the meaning given by section 4(1) of the Northern Ireland Act 1998 (c. 47).
- (5) In this section “chief justice” means—
- (a) in relation to England and Wales or Northern Ireland, the Lord Chief Justice of that part of the United Kingdom;
  - (b) in relation to Scotland, the Lord President of the Court of Session.

### Commencement Information

- II** S. 5 partly in force; s. 5 not in force at Royal Assent, see s. 148; s. 5(1)(2)(5) in force at 3.4.2006 by S.I. 2006/1014, art. 2(a), Sch. 1 para. 4; s. 5(3)(4) in force at 8.5.2007 by S.I. 2007/1252, art. 2

## 6 Representations to the Northern Ireland Assembly

- (1) The Lord Chief Justice of Northern Ireland may lay before the Northern Ireland Assembly written representations on matters within subsection (2) that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in Northern Ireland.
- (2) The matters are—
- (a) excepted or reserved matters to which a Bill for an Act of the Northern Ireland Assembly relates;
  - (b) transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates.

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- (3) In subsection (2) references to excepted, reserved and transferred matters have the meaning given by section 4(1) of the Northern Ireland Act 1998.

### *Judiciary and courts in England and Wales*

## **7 President of the Courts of England and Wales**

- (1) The Lord Chief Justice holds the office of President of the Courts of England and Wales and is Head of the Judiciary of England and Wales.
- (2) As President of the Courts of England and Wales he is responsible—
- (a) for representing the views of the judiciary of England and Wales to Parliament, to the Lord Chancellor and to Ministers of the Crown generally;
  - (b) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales within the resources made available by the Lord Chancellor;
  - (c) for the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales and the allocation of work within courts.
- (3) The President of the Courts of England and Wales is president of the courts listed in subsection (4) and is entitled to sit in any of those courts.
- (4) The courts are—
- the Court of Appeal
  - the High Court
  - the Crown Court
  - the county courts
  - the magistrates' courts.
- (5) In section 1 of the Supreme Court Act 1981 (c. 54), subsection (2)(Lord Chancellor to be president of the Supreme Court of England and Wales) ceases to have effect.

## **8 Head and Deputy Head of Criminal Justice**

- (1) There is to be a Head of Criminal Justice.
- (2) The Head of Criminal Justice is—
- (a) the Lord Chief Justice, or
  - (b) if the Lord Chief Justice appoints another person, that person.
- (3) The Lord Chief Justice may appoint a person to be Deputy Head of Criminal Justice.
- (4) The Lord Chief Justice must not appoint a person under subsection (2)(b) or (3) unless these conditions are met—
- (a) the Lord Chief Justice has consulted the Lord Chancellor;
  - (b) the person to be appointed is [<sup>F3</sup>a judge] of the Court of Appeal.
- (5) A person appointed under subsection (2)(b) or (3) holds the office to which he is appointed in accordance with the terms of his appointment.

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### Textual Amendments

**F3** Words in s. 8(4)(b) substituted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 52, 53, [Sch. 14 para. 61](#); S.I. 2006/3364, [art. 2\(k\)](#)

## 9 Head and Deputy Head of Family Justice

- (1) The President of the Family Division is Head of Family Justice.
- (2) The Lord Chief Justice may appoint a person to be Deputy Head of Family Justice.
- (3) The Lord Chief Justice must not appoint a person under subsection (2) unless these conditions are met—
  - (a) the Lord Chief Justice has consulted the Lord Chancellor;
  - (b) the person to be appointed is an ordinary judge of the Court of Appeal.
- (4) A person appointed as Deputy Head of Family Justice holds that office in accordance with the terms of his appointment.

*Judiciary and courts in Northern Ireland*

## 10 The Lord Chancellor and Northern Ireland courts

In the Judicature (Northern Ireland) Act 1978 (c. 23) after section 68 insert—

### “68A Lord Chancellor's duty

- (1) The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of—
  - (a) the Supreme Court,
  - (b) county courts,
  - (c) magistrates' courts, and
  - (d) coroners' courts,
 and that appropriate services are provided for those courts.
- (2) The Lord Chancellor must, within 18 months of the coming into force of this section, and afterwards annually, prepare and lay before both Houses of Parliament a report as to the way in which he has discharged his duty under subsection (1).”

### Commencement Information

**I2** [S. 10](#) partly in force; [s. 10](#) not in force at Royal Assent see [s. 148](#); [s. 10](#) in force for specified purposes at 3.4.2006 by [S.I. 2006/1014](#), [art. 2\(a\)](#), [Sch. 1 para. 6](#)

## 11 Lord Chief Justice of Northern Ireland

For subsection (1) of section 12 of the Justice (Northern Ireland) Act 2002 (c. 26) (role of the Lord Chief Justice) substitute—

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“(1A) The Lord Chief Justice holds the office of President of the Courts of Northern Ireland and is Head of the Judiciary of Northern Ireland.

(1B) As President of the Courts of Northern Ireland he is responsible—

- (a) for representing the views of the judiciary of Northern Ireland to Parliament, the Lord Chancellor and Ministers of the Crown generally;
- (b) for representing the views of the judiciary of Northern Ireland to the Northern Ireland Assembly, the First Minister and deputy First Minister and Northern Ireland Ministers;
- (c) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of Northern Ireland within the resources made available by the Lord Chancellor;
- (d) for the maintenance of appropriate arrangements for the deployment of the judiciary of Northern Ireland and the allocation of work within courts.

(1C) The President of the Courts of Northern Ireland is president of the courts listed in subsection (1D) and is entitled to sit in any of those courts.

(1D) The courts are—

the Court of Appeal  
the High Court  
the Crown Court  
the county courts  
the magistrates' courts.”

#### Commencement Information

- I3** S. 11 partly in force; s. 11 not in force at Royal Assent s. 148; s. 11 in force for specified purposes at 3.4.2006 by S.I. 2006/1014, art. 2(a), Sch. 1 para. 6; s. 11 in force for further specified purposes at 8.5.2007 by S.I. 2007/1252, art. 2

#### *Other provisions about the judiciary and courts*

### 12 Powers to make rules

- (1) Part 1 of Schedule 1 sets out a process for the exercise of rule-making powers.
- (2) Part 2 of the Schedule contains amendments of Acts that contain rule-making powers.
- (3) Those amendments—
  - (a) provide for those powers to be exercised in accordance with the process set out in Part 1 of the Schedule, and
  - (b) make consequential provision.

### 13 Powers to give directions

- (1) Part 1 of Schedule 2 sets out a process for the exercise of powers to give directions.
- (2) Part 2 of the Schedule contains amendments of Acts that contain powers to give directions.

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- (3) Those amendments—
- (a) provide for those powers to be exercised in accordance with the process set out in Part 1 of the Schedule, and
  - (b) make consequential provision.

## 14 Transfer of appointment functions to Her Majesty

Schedule 3 provides for—

- (a) Her Majesty instead of the Lord Chancellor to make appointments to certain offices, and
- (b) the modification of enactments relating to those offices.

### Commencement Information

- I4** [S. 14](#) partly in force; [s. 14](#) not in force at Royal Assent see [s. 148](#); [s. 14](#) in force for specified purposes at 3.4.2006 by [S.I. 2006/1014](#), [art. 2\(a\)](#), [Sch. 1 para. 8](#)

## 15 Other functions of the Lord Chancellor and organisation of the courts

- (1) Schedule 4 provides for—
- (a) the transfer of functions to or from the Lord Chancellor,
  - (b) the modification of other functions of the Lord Chancellor,
  - (c) the modification of enactments relating to those functions, and
  - (d) the modification of enactments relating to the organisation of the courts.
- (2) Schedule 5 makes similar provision about functions under legislation relating to Northern Ireland.

### Commencement Information

- I5** [S. 15](#) partly in force; [s. 15](#) not in force at Royal Assent see [s. 148](#); [s. 15\(2\)](#) in force for specified purposes at 31.8.2005 by [S.I. 2005/2284](#), [art. 2](#); [s. 15](#) in force for specified purposes at 3.4.2006 by [S.I. 2006/1014](#), [art. 2\(a\)](#), [Sch. 1 para. 10](#)

## 16 Functions of the Lord Chief Justice during vacancy or incapacity

- (1) This section applies during any period when—
- (a) the office of Lord Chief Justice is vacant, or
  - (b) the Lord Chief Justice is incapacitated.
- (2) During such a period—
- (a) any function of the Lord Chief Justice may be exercised by the senior Head of Division;
  - (b) anything which falls to be done in relation to the Lord Chief Justice may be done in relation to the senior Head of Division.
- (3) The senior Head of Division is—
- (a) the Master of the Rolls, or



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- (b) the President of the Queen's Bench Division, if the office in paragraph (a) is vacant, or
  - (c) the President of the Family Division, if the offices in paragraphs (a) and (b) are vacant, or
  - (d) the Chancellor of the High Court, if the offices in paragraphs (a), (b) and (c) are vacant.
- (4) For the purposes of this section—
- (a) the Lord Chief Justice is to be regarded as incapacitated only if at least three of the Heads of Division declare in writing that they are satisfied that he is incapacitated;
  - (b) in such a case, the Lord Chief Justice is to be regarded as incapacitated until at least three of the Heads of Division declare in writing that they are satisfied that he is no longer incapacitated.
- (5) In this section—
- (a) “Lord Chief Justice” means the Lord Chief Justice of England and Wales;
  - (b) “incapacitated”, in relation to the Lord Chief Justice, means unable to exercise the functions of that office;
  - (c) “Head of Division” means each of the office holders referred to in subsection (3).

#### *Lord Chancellor's oath*

### **17 Lord Chancellor's oath**

- (1) In the Promissory Oaths Act 1868 (c. 72) after section 6 insert—

#### **“6A Lord Chancellor's Oath**

- (1) The oath set out in subsection (2) shall be tendered to and taken by the Lord Chancellor, after and in the same manner as the official oath, as soon as may be after his acceptance of office.
- (2) The oath is—

“I, \_\_\_\_\_, do swear that in the office of Lord High Chancellor of Great Britain I will respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible. So help me God.”
- (2) The section inserted by subsection (1) does not apply in the case of acceptance of office before the coming into force of this section.

#### *Speakership of the House of Lords*

### **18 Speakership of the House of Lords**

Schedule 6 contains amendments relating to the Speakership of the House of Lords.

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*Functions subject to transfer, modification or abolition*

**19 Transfer, modification or abolition of functions by order**

- (1) The Lord Chancellor may by order make provision for any of these purposes—
  - (a) to transfer an existing function of the Lord Chancellor to another person;
  - (b) to direct that an existing function of the Lord Chancellor is to be exercisable concurrently with another person;
  - (c) to direct that an existing function of the Lord Chancellor exercisable concurrently with another person is to cease to be exercisable by the Lord Chancellor;
  - (d) to modify an existing function of the Lord Chancellor;
  - (e) to abolish an existing function of the Lord Chancellor.
- (2) An order under subsection (1) may in particular—
  - (a) amend or repeal any of the following—
    - (i) an enactment other than one contained in an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;
    - (ii) subordinate legislation other than subordinate legislation made under an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;
    - (iii) any other instrument or document, including a prerogative instrument;
  - (b) include—
    - (i) any supplementary, incidental or consequential provision, and
    - (ii) any transitory, transitional or saving provision,
 which the Lord Chancellor considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, provision made under subsection (1).
- (3) The amendments that may be made by virtue of subsection (2)(a) are in addition to those made by or under any other provision of this Act.
- (4) An order under subsection (1) may not include provision that may be made under section 1(1) of the Ministers of the Crown Act 1975 (c. 26) (power to transfer functions to other Ministers etc).
- (5) An order under subsection (1) may not be made in relation to any function of the Lord Chancellor that is within Schedule 7.
- (6) An order under subsection (1) may amend Schedule 7 so as to include any function which, by virtue of provision in the order—
  - (a) becomes exercisable by the Lord Chancellor concurrently with another person, or
  - (b) is modified.
- (7) An order under subsection (1) may not, to the extent that it amends Schedule 7, be revoked by another order under subsection (1).
- (8) In this section—

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“existing function” means any function other than one that is conferred by—

- (a) an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed, or
- (b) subordinate legislation made under an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;

“prerogative instrument” means an Order in Council, warrant, charter or other instrument made under the prerogative.

## **20 Protected functions not transferable under Ministers of the Crown Act 1975**

- (1) The Ministers of the Crown Act 1975 (c. 26) is amended as follows.
- (2) In section 1 (power by Order in Council to transfer functions of Ministers), after subsection (5) insert—

“(6) This section does not apply to the functions of the Lord Chancellor that are within Schedule 7 to the Constitutional Reform Act 2005.

- (7) An Order in Council under this section may amend Schedule 7 to the Constitutional Reform Act 2005 so as to include any function which, by virtue of provision in the Order in Council—

- (a) is transferred to the Lord Chancellor,
- (b) becomes exercisable by the Lord Chancellor concurrently with another person, or
- (c) remains exercisable by the Lord Chancellor but ceases to be exercisable concurrently with another person.

- (8) An Order in Council under this section may not, to the extent that it amends Schedule 7 to the Constitutional Reform Act 2005, be revoked by another Order in Council under this section.”

- (3) After section 5(3) (Orders under Act to be revocable) insert—

“(3A) Subsection (3) is subject to section 1(8).”

## **21 Amendment of Schedule 7**

- (1) The Lord Chancellor may by order amend Schedule 7 so as to include within that Schedule any function of the Lord Chancellor under an enactment, other than an enactment contained in an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed.
- (2) For the purposes of subsection (1) it does not matter whether a function of the Lord Chancellor is exercisable by him alone or concurrently with another person.
- (3) An order made under this section may not be revoked by an order made under this section.

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### *Supplementary*

## **22 Transfers: supplementary**

- (1) This section applies where a function of the Lord Chancellor is transferred to another person (“the transferee”) by any provision of this Act or of an order under section 19 (“the amending provision”).
- (2) Where the transferee is Her Majesty, references to the transferee in the following provisions of this section are to be read as references to the Lord Chancellor.
- (3) The transfer does not affect the validity of anything done (or having effect as if done) by or in relation to the Lord Chancellor before the commencement of the amending provision.
- (4) So far as is necessary in consequence of the transfer, an enactment or instrument passed or made before the commencement of the provision has effect, subject to any amendment made by the amending provision or any other provision of this Act, as if—
  - (a) a reference to the Lord Chancellor were a reference to the transferee;
  - (b) a reference to the Lord Chancellor's Department were a reference to the department of the transferee;
  - (c) a reference to an officer of the Lord Chancellor were a reference to an officer of the transferee.
- (5) Anything done by or in relation to the Lord Chancellor in connection with the function has effect, so far as is necessary for continuing its effect after the commencement of the amending provision, as if done by or in relation to the transferee.
- (6) Anything which relates to the function and which is in the process of being done by or in relation to the Lord Chancellor at the commencement of the amending provision may be continued by or in relation to the transferee.
- (7) Legal proceedings to which the Lord Chancellor is party in relation to the function at the commencement of the amending provision may be continued by or against the transferee.
- (8) Documents or forms printed for use in connection with the function may be used in connection with it even though they contain (or are to be read as containing) references to the Lord Chancellor, his Department or an officer of his.
- (9) For the purposes of the use of any such documents after the commencement of the amending provision, those references are to be read as references to the transferee, his department or an officer of his.

## **PART 3**

### THE SUPREME COURT

#### *The Supreme Court*

## **23 The Supreme Court**

- (1) There is to be a Supreme Court of the United Kingdom.

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- (2) The Court consists of 12 judges appointed by Her Majesty by letters patent.
- (3) Her Majesty may from time to time by Order in Council amend subsection (2) so as to increase or further increase the number of judges of the Court.
- (4) No recommendation may be made to Her Majesty in Council to make an Order under subsection (3) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.
- (5) Her Majesty may by letters patent appoint one of the judges to be President and one to be Deputy President of the Court.
- (6) The judges other than the President and Deputy President are to be styled “Justices of the Supreme Court”.
- (7) The Court is to be taken to be duly constituted despite any vacancy among the judges of the Court or in the office of President or Deputy President.

## 24 First members of the Court

On the commencement of section 23—

- (a) the persons who immediately before that commencement are Lords of Appeal in Ordinary become judges of the Supreme Court,
- (b) the person who immediately before that commencement is the senior Lord of Appeal in Ordinary becomes the President of the Court, and
- (c) the person who immediately before that commencement is the second senior Lord of Appeal in Ordinary becomes the Deputy President of the Court.

### *Appointment of judges*

## 25 Qualification for appointment

- (1) A person is not qualified to be appointed a judge of the Supreme Court unless he has (at any time)—
  - (a) held high judicial office for a period of at least 2 years,
  - (b) been a qualifying practitioner for a period of at least 15 years.
  - [<sup>F4</sup>(b) satisfied the judicial-appointment eligibility condition on a 15-year basis, or
  - (c) been a qualifying practitioner for a period of at least 15 years.]
- (2) A person is a qualifying practitioner for the purposes of this section at any time when—
  - (a) <sup>F5</sup> .....
  - (b) he is an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary, or
  - (c) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

### Textual Amendments

- F4** S. 25(1)(b)(c) substituted (21.7.2008) for s. 25(1)(b) and preceding word by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 50, 148, [Sch. 10 para. 41\(2\)](#); S.I. 2008/1653, [art. 2\(d\)](#) (with arts. 3,4)

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**F5** S. 25(2)(a) omitted (21.7.2008) by virtue of and repealed (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 50, 146, 148, Sch. 10 para. 41(3), [Sch. 23 Pt. 2](#); S.I. 2008/1653, [art. 2\(d\)](#) (with arts. 3, 4); S.I. 2008/2696, [art. 5\(j\)](#) (with arts. 3, 4)

## 26 Selection of members of the Court

- (1) This section applies to a recommendation for an appointment to one of the following offices—
  - (a) judge of the Supreme Court;
  - (b) President of the Court;
  - (c) Deputy President of the Court.
- (2) A recommendation may be made only by the Prime Minister.
- (3) The Prime Minister—
  - (a) must recommend any person whose name is notified to him under section 29;
  - (b) may not recommend any other person.
- (4) A person who is not a judge of the Court must be recommended for appointment as a judge if his name is notified to the Prime Minister for an appointment as President or Deputy President.
- (5) If there is a vacancy in one of the offices mentioned in subsection (1), or it appears to him that there will soon be such a vacancy, the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.
- (6) Schedule 8 is about selection commissions.
- (7) Subsection (5) is subject to Part 3 of that Schedule.
- (8) Sections 27 to 31 apply where a selection commission is convened under this section.

## 27 Selection process

- (1) The commission must—
  - (a) determine the selection process to be applied,
  - (b) apply the selection process, and
  - (c) make a selection accordingly.
- (2) As part of the selection process the commission must consult each of the following—
  - (a) such of the senior judges as are not members of the commission and are not willing to be considered for selection;
  - (b) the Lord Chancellor;
  - (c) the First Minister in Scotland;
  - (d) [<sup>F6</sup>the First Minister for Wales];
  - (e) the Secretary of State for Northern Ireland.
- (3) If for any part of the United Kingdom no judge of the courts of that part is to be consulted under subsection (2)(a), the commission must consult as part of the selection process the most senior judge of the courts of that part who is not a member of the commission and is not willing to be considered for selection.
- (4) Subsections (5) to (10) apply to any selection under this section or section 31.

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- (5) Selection must be on merit.
- (6) A person may be selected only if he meets the requirements of section 25.
- (7) A person may not be selected if he is a member of the commission.
- (8) In making selections for the appointment of judges of the Court the commission must ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom.
- (9) The commission must have regard to any guidance given by the Lord Chancellor as to matters to be taken into account (subject to any other provision of this Act) in making a selection.
- (10) Any selection must be of one person only.

#### Textual Amendments

- F6** Words in s. 27(2)(d) substituted (2.5.2007) by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1(2)(3), 3, [Sch. 1 para. 110\(a\)](#)

## 28 Report

- (1) After complying with section 27 the commission must submit a report to the Lord Chancellor.
- (2) The report must—
  - (a) state who has been selected;
  - (b) state the senior judges consulted under section 27(2)(a) and any judge consulted under section 27(3);
  - (c) contain any other information required by the Lord Chancellor.
- (3) The report must be in a form approved by the Lord Chancellor.
- (4) After submitting the report the commission must provide any further information the Lord Chancellor may require.
- (5) When he receives the report the Lord Chancellor must consult each of the following—
  - (a) the senior judges consulted under section 27(2)(a);
  - (b) any judge consulted under section 27(3);
  - (c) the First Minister in Scotland;
  - (d) [<sup>F7</sup>the First Minister for Wales];
  - (e) the Secretary of State for Northern Ireland.

#### Textual Amendments

- F7** Words in s. 28(5)(d) substituted (2.5.2007) by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1(2)(3), 3, [Sch. 1 para. 110\(b\)](#)

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## 29 The Lord Chancellor's options

(1) This section refers to the following stages—

<i>Stage 1:</i>	where a person has been selected under section 27
<i>Stage 2:</i>	where a person has been selected following a rejection or reconsideration at stage 1
<i>Stage 3:</i>	where a person has been selected following a rejection or reconsideration at stage 2.

(2) At stage 1 the Lord Chancellor must do one of the following—

- (a) notify the selection;
- (b) reject the selection;
- (c) require the commission to reconsider the selection.

(3) At stage 2 the Lord Chancellor must do one of the following—

- (a) notify the selection;
- (b) reject the selection, but only if it was made following a reconsideration at stage 1;
- (c) require the commission to reconsider the selection, but only if it was made following a rejection at stage 1.

(4) At stage 3 the Lord Chancellor must notify the selection, unless subsection (5) applies and he makes a notification under it.

(5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may at stage 3 notify that person's name to the Prime Minister.

(6) In this Part references to the Lord Chancellor notifying a selection are references to his notifying to the Prime Minister the name of the person selected.

## 30 Exercise of powers to reject or require reconsideration

(1) The power of the Lord Chancellor under section 29 to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned.

(2) The power of the Lord Chancellor under section 29 to require the commission to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—

- (a) there is not enough evidence that the person is suitable for the office concerned,
- (b) there is evidence that the person is not the best candidate on merit, or
- (c) there is not enough evidence that if the person were appointed the judges of the Court would between them have knowledge of, and experience of practice in, the law of each part of the United Kingdom.



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- (3) The Lord Chancellor must give the commission reasons in writing for rejecting or requiring reconsideration of a selection.

### **31 Selection following rejection or requirement to reconsider**

- (1) If under section 29 the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the commission must select a person in accordance with this section.
- (2) If the Lord Chancellor rejects a selection, the commission—
- (a) may not select the person rejected, and
  - (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.
- (3) If the Lord Chancellor requires a selection to be reconsidered, the commission—
- (a) may select the same person or a different person, but
  - (b) where the requirement is following a rejection, may not select the person rejected.
- (4) The commission must inform the Lord Chancellor of the person selected following a rejection or requirement to reconsider.

#### *Terms of appointment*

### **32 Oath of allegiance and judicial oath**

- (1) A person who is appointed as President of the Court must, as soon as may be after accepting office, take the required oaths in the presence of—
- (a) the Deputy President, or
  - (b) if there is no Deputy President, the senior ordinary judge.
- (2) A person who is appointed as Deputy President of the Supreme Court must, as soon as may be after accepting office, take the required oaths in the presence of—
- (a) the President, or
  - (b) if there is no President, the senior ordinary judge.
- (3) A person who is appointed as a judge of the Supreme Court must, as soon as may be after accepting office, take the required oaths in the presence of—
- (a) the President, or
  - (b) if there is no President, the Deputy President, or
  - (c) if there is no President and no Deputy President, the senior ordinary judge.
- (4) Subsections (1) and (2) apply whether or not the person appointed as President or Deputy President has previously taken the required oaths in accordance with this section after accepting another office.
- (5) Subsection (3) does not apply where a person is first appointed as a judge of the Court upon appointment to the office of President or Deputy President.
- (6) In this section “required oaths” means—
- (a) the oath of allegiance, and
  - (b) the judicial oath,

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as set out in the Promissory Oaths Act 1868 (c. 72).

### **33 Tenure**

A judge of the Supreme Court holds that office during good behaviour, but may be removed from it on the address of both Houses of Parliament.

### **34 Salaries and allowances**

- (1) A judge of the Supreme Court is entitled to a salary.
- (2) The amount of the salary is to be determined by the Lord Chancellor with the agreement of the Treasury.
- (3) Until otherwise determined under subsection (2), the amount is that of the salary of a Lord of Appeal in Ordinary immediately before the commencement of section 23.
- (4) A determination under subsection (2) may increase but not reduce the amount.
- (5) Salaries payable under this section are to be charged on and paid out of the Consolidated Fund of the United Kingdom.
- (6) Any allowance determined by the Lord Chancellor with the agreement of the Treasury may be paid to a judge of the Court out of money provided by Parliament.

### **35 Resignation and retirement**

- (1) A judge of the Supreme Court may at any time resign that office by giving the Lord Chancellor notice in writing to that effect.
- (2) The President or Deputy President of the Court may at any time resign that office (whether or not he resigns his office as a judge) by giving the Lord Chancellor notice in writing to that effect.
- (3) In section 26(4)(a) of and Schedule 5 to the Judicial Pensions and Retirement Act 1993 (c. 8) (retirement), for “Lord of Appeal in Ordinary” substitute “Judge of the Supreme Court”.

### **36 Medical retirement**

- (1) This section applies if the Lord Chancellor is satisfied by means of a medical certificate that a person holding office as a judge of the Supreme Court—
  - (a) is disabled by permanent infirmity from the performance of the duties of his office, and
  - (b) is for the time being incapacitated from resigning his office.
- (2) The Lord Chancellor may by instrument under his hand declare the person's office to have been vacated.
- (3) A declaration by instrument under subsection (2) has the same effect for all purposes as if the person had, on the date of the instrument, resigned his office.
- (4) But such a declaration has no effect unless it is made—
  - (a) in the case of an ordinary judge, with the agreement of the President and Deputy President of the Court;

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- (b) in the case of the President, with the agreement of the Deputy President and the senior ordinary judge;
- (c) in the case of the Deputy President, with the agreement of the President and the senior ordinary judge.

### **37 Pensions**

- (1) In the tables in sections 1 and 16 of the Judicial Pensions Act 1981 (c. 20) (application and interpretation), for “Lord of Appeal in Ordinary”—
  - (a) in the first column, substitute “ Judge of the Supreme Court ”, and
  - (b) in the second column, in each place substitute “ judge of the Supreme Court ”.
- (2) In Part 1 of Schedule 1 to the Judicial Pensions and Retirement Act 1993 (qualifying judicial offices: judges), for “Lord of Appeal in Ordinary” substitute “Judge of the Supreme Court”.
- (3) The amendments made by this section to the 1981 and 1993 Acts do not affect the operation of any provision of or made under those Acts, or anything done under such provision, in relation to the office of, or service as, Lord of Appeal in Ordinary.

#### *Acting judges*

### **38 Acting judges**

- (1) At the request of the President of the Supreme Court any of the following may act as a judge of the Court—
  - (a) a person who holds office as a senior territorial judge;
  - (b) a member of the supplementary panel under section 39.
- (2) A request under subsection (1) may be made by the Deputy President of the Court if there is no President or the President is unable to make that request.
- (3) In section 26(7) of the Judicial Pensions and Retirement Act 1993 (c. 8) (requirement not to act in certain capacities after the age of 75) for paragraph (b) substitute—
  - “(b) act as a judge of the Supreme Court under section 38 of the Constitutional Reform Act 2005;”.
- (4) Every person while acting under this section is, subject to subsections (5) and (6), to be treated for all purposes as a judge of the Supreme Court (and so may perform any of the functions of a judge of the Court).
- (5) A person is not to be treated under subsection (4) as a judge of the Court for the purposes of any statutory provision relating to—
  - (a) the appointment, retirement, removal or disqualification of judges of the Court,
  - (b) the tenure of office and oaths to be taken by judges of the Court, or
  - (c) the remuneration, allowances or pensions of judges of the Court.
- (6) Subject to section 27 of the Judicial Pensions and Retirement Act 1993, a person is not to be treated under subsection (4) as having been a judge of the Court if he has acted in the Court only under this section.

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- (7) Such remuneration and allowances as the Lord Chancellor may with the agreement of the Treasury determine may be paid out of money provided by Parliament to any person who acts as a judge of the Court under this section.
- (8) In this section “office as a senior territorial judge” means office as any of the following—
- (a) a judge of the Court of Appeal in England and Wales;
  - (b) a judge of the Court of Session, but only if the holder of the office is a member of the First or Second Division of the Inner House of that Court;
  - (c) a judge of the Court of Appeal in Northern Ireland, unless the holder holds the office only by virtue of being a puisne judge of the High Court.

### **39 Supplementary panel**

- (1) There is to be a panel of persons known as the supplementary panel.
- (2) On the commencement of this section any member of the House of Lords who—
- (a) meets one of the conditions in subsection (3),
  - (b) does not hold high judicial office,
  - (c) has not attained the age of 75, and
  - (d) is not a person who was appointed to the office of Lord Chancellor on or after 12 June 2003,
- becomes a member of the panel.
- (3) The conditions are—
- (a) that he ceased to hold high judicial office less than 5 years before the commencement of this section;
  - (b) that he was a member of the Judicial Committee of the Privy Council immediately before that commencement;
  - (c) that he ceased to be a member of that Committee less than 5 years before that commencement.
- (4) A person becomes a member of the supplementary panel on ceasing to hold office as a judge of the Supreme Court or as a senior territorial judge, but only if, while he holds such office—
- (a) his membership of the panel is approved in writing by the President of the Supreme Court, and
  - (b) the President of the Court gives the Lord Chancellor notice in writing of the approval.
- (5) Subsection (4) does not apply to a person who ceases to hold office as a judge of the Supreme Court when he ceases to be President of the Court.
- (6) Such a person becomes a member of the supplementary panel on ceasing to be President of the Court, unless—
- (a) while President, he gives the Lord Chancellor notice that he is not to become a member of the panel,
  - (b) he ceases to be President on being removed from office as a judge of the Court on the address of both Houses of Parliament, or
  - (c) his office is declared vacant under section 36.

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- (7) A person does not become a member of the supplementary panel under subsection (4) or (6) if—
  - (a) on ceasing to hold office as a judge of the Supreme Court he takes office as a senior territorial judge, or
  - (b) on ceasing to hold office as a senior territorial judge he takes office as a judge of the Supreme Court.
- (8) A member of the supplementary panel may resign by notice in writing to the President of the Court.
- (9) Unless he resigns (and subject to sections 26(7)(b) and 27 of the Judicial Pensions and Retirement Act 1993 (c. 8)), a person ceases to be a member of the supplementary panel—
  - (a) at the end of 5 years after the last day on which he holds his qualifying office, or
  - (b) if earlier, at the end of the day on which he attains the age of 75.
- (10) In this section—
  - (a) “office as a senior territorial judge” has the same meaning as in section 38;
  - (b) a person's “qualifying office” is the office (that is, high judicial office, membership of the Judicial Committee of the Privy Council, office as a judge of the Supreme Court or office as a senior territorial judge) that he held before becoming a member of the supplementary panel.

*Jurisdiction, relation to other courts etc*

## **40 Jurisdiction**

- (1) The Supreme Court is a superior court of record.
- (2) An appeal lies to the Court from any order or judgment of the Court of Appeal in England and Wales in civil proceedings.
- (3) An appeal lies to the Court from any order or judgment of a court in Scotland if an appeal lay from that court to the House of Lords at or immediately before the commencement of this section.
- (4) Schedule 9—
  - (a) transfers other jurisdiction from the House of Lords to the Court,
  - (b) transfers devolution jurisdiction from the Judicial Committee of the Privy Council to the Court, and
  - (c) makes other amendments relating to jurisdiction.
- (5) The Court has power to determine any question necessary to be determined for the purposes of doing justice in an appeal to it under any enactment.
- (6) An appeal under subsection (2) lies only with the permission of the Court of Appeal or the Supreme Court; but this is subject to provision under any other enactment restricting such an appeal.

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#### 41 Relation to other courts etc

- (1) Nothing in this Part is to affect the distinctions between the separate legal systems of the parts of the United Kingdom.
- (2) A decision of the Supreme Court on appeal from a court of any part of the United Kingdom, other than a decision on a devolution matter, is to be regarded as the decision of a court of that part of the United Kingdom.
- (3) A decision of the Supreme Court on a devolution matter—
  - (a) is not binding on that Court when making such a decision;
  - (b) otherwise, is binding in all legal proceedings.
- (4) In this section “devolution matter” means—
  - (a) a question referred to the Supreme Court under [F8 section 96, 99 or 112 of the Government of Wales Act 2006,] section 33 of the Scotland Act 1998 (c. 46) or section 11 of the Northern Ireland Act 1998 (c. 47);
  - (b) a devolution issue as defined in [F9 Schedule 9 to the Government of Wales Act 2006](c. 38), Schedule 6 to the Scotland Act 1998 or Schedule 10 to the Northern Ireland Act 1998.

#### Textual Amendments

- F8** Words in s. 41(4)(a) inserted (6.11.2009) by [The Government of Wales Act 2006 \(Consequential Modifications, Transitional Provisions and Saving\) Order 2009 \(S.I. 2009/2958\)](#), **art. 7**
- F9** Words in s. 41(4)(b) substituted (2.5.2007) by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1(2)(3), 3, **Sch. 1 para. 111**

#### *Composition for proceedings*

#### 42 Composition

- (1) The Supreme Court is duly constituted in any proceedings only if all of the following conditions are met—
  - (a) the Court consists of an uneven number of judges;
  - (b) the Court consists of at least three judges;
  - (c) more than half of those judges are permanent judges.
- (2) Paragraphs (a) and (b) of subsection (1) are subject to any directions that in specified proceedings the Court is to consist of a specified number of judges that is both uneven and greater than three.
- (3) Paragraph (b) of subsection (1) is subject to any directions that in specified descriptions of proceedings the Court is to consist of a specified minimum number of judges that is greater than three.
- (4) This section is subject to section 43.
- (5) In this section—
  - (a) “directions” means directions given by the President of the Court;
  - (b) “specified”, in relation to directions, means specified in those directions;

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- (c) references to permanent judges are references to those judges of the Court who are not acting judges under section 38.
- (6) This section and section 43 apply to the constitution of the Court in any proceedings from the time judges are designated to hear the proceedings.

#### **43 Changes in composition**

- (1) This section applies if in any proceedings the Court ceases to be duly constituted in accordance with section 42, or in accordance with a direction under this section, because one or more members of the Court are unable to continue.
- (2) The presiding judge may direct that the Court is still duly constituted in the proceedings.
- (3) The presiding judge may give a direction under this section only if—
  - (a) the parties agree;
  - (b) the Court still consists of at least three judges (whether the number of judges is even or uneven);
  - (c) at least half of those judges are permanent judges.
- (4) Subsections (2) and (3) are subject to directions given by the President of the Court.
- (5) If in any proceedings the Court is duly constituted under this section with an even number of judges, and those judges are evenly divided, the case is to be re-argued in a Court which is constituted in accordance with section 42.
- (6) In this section—
  - (a) “presiding judge” means the judge who is to preside, or is presiding, over proceedings;
  - (b) references to permanent judges have the same meaning as in section 42.

#### *Practice and procedure*

#### **44 Specially qualified advisers**

- (1) If the Supreme Court thinks it expedient in any proceedings, it may hear and dispose of the proceedings wholly or partly with the assistance of one or more specially qualified advisers appointed by it.
- (2) Any remuneration payable to such an adviser is to be determined by the Court unless agreed between the adviser and the parties to the proceedings.
- (3) Any remuneration forms part of the costs of the proceedings.

#### **45 Making of rules**

- (1) The President of the Supreme Court may make rules (to be known as “Supreme Court Rules”) governing the practice and procedure to be followed in the Court.
- (2) The power to make Supreme Court Rules includes power to make different provision for different cases, including different provision—
  - (a) for different descriptions of proceedings, or

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- (b) for different jurisdiction of the Supreme Court.
- (3) The President must exercise the power to make Supreme Court Rules with a view to securing that—
  - (a) the Court is accessible, fair and efficient, and
  - (b) the rules are both simple and simply expressed.
- (4) Before making Supreme Court Rules the President must consult all of the following—
  - (a) the Lord Chancellor;
  - (b) the bodies listed in subsection (5);
  - (c) such other bodies that represent persons likely to be affected by the Rules as the President considers it appropriate to consult.
- (5) The bodies referred to in subsection (4)(b) are—
  - The General Council of the Bar of England and Wales;
  - The Law Society of England and Wales;
  - The Faculty of Advocates of Scotland;
  - The Law Society of Scotland;
  - The General Council of the Bar of Northern Ireland;
  - The Law Society of Northern Ireland.

**Modifications etc. (not altering text)**

- C1** S. 45 modified (temp. from 27.2.2006) by [The Constitutional Reform Act 2005 \(Temporary Modifications\) Order 2006 \(S.I. 2006/227\)](#), **art. 2**

**46 Procedure after rules made**

- (1) Supreme Court Rules made by the President of the Supreme Court must be submitted by him to the Lord Chancellor.
- (2) Supreme Court Rules submitted to the Lord Chancellor—
  - (a) come into force on such day as the Lord Chancellor directs, and
  - (b) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 (c. 36) applies as if the instrument contained rules made by a Minister of the Crown.
- (3) A statutory instrument containing Supreme Court Rules is subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**

- C2** S. 46 modified (temp. from 27.2.2006) by [The Constitutional Reform Act 2005 \(Temporary Modifications\) Order 2006 \(S.I. 2006/227\)](#), **art. 2**

**47 Photography etc**

- (1) In section 41 of the Criminal Justice Act 1925 (c. 86) (prohibition on taking photographs etc in court), for subsection (2)(a) substitute—



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- “(a) the expression “court” means any court of justice (including the court of a coroner), apart from the Supreme Court;”.
- (2) In section 29 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 N.I.) (prohibition on taking photographs etc in court), for subsection (2)(a) substitute—
- “(a) the expression “court” means any court of justice (including the court of a coroner), apart from the Supreme Court;”.

### *Staff and resources*

#### **48 Chief executive**

- (1) The Supreme Court is to have a chief executive.
- (2) The Lord Chancellor must appoint the chief executive, after consulting the President of the Court.
- (3) The President of the Court may delegate to the chief executive any of these functions—
- (a) functions of the President under section 49(1);
  - (b) non-judicial functions of the Court.
- (4) The chief executive must carry out his functions (under subsection (3) or otherwise) in accordance with any directions given by the President of the Court.

#### **49 Officers and staff**

- (1) The President of the Supreme Court may appoint officers and staff of the Court.
- (2) It is for the chief executive of the Supreme Court to determine these matters with the agreement of the Lord Chancellor—
- (a) the number of officers and staff of the Court;
  - (b) subject to subsection (3), the terms on which officers and staff are to be appointed.
- (3) The civil service pension arrangements for the time being in force apply (with any necessary adaptations) to the chief executive of the Court, and to persons appointed under subsection (1), as they apply to other persons employed in the civil service of the State.
- (4) In subsection (3) “the civil service pension arrangements” means—
- (a) the principal civil service pension scheme (within the meaning of section 2 of the Superannuation Act 1972 (c. 11), and
  - (b) any other superannuation benefits for which provision is made under or by virtue of section 1 of that Act for or in respect of persons in employment in the civil service of the State.

#### **50 Accommodation and other resources**

- (1) The Lord Chancellor must ensure that the Supreme Court is provided with the following—
- (a) such court-houses, offices and other accommodation as the Lord Chancellor thinks are appropriate for the Court to carry on its business;

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- (b) such other resources as the Lord Chancellor thinks are appropriate for the Court to carry on its business.
- (2) The Lord Chancellor may discharge the duty under subsection (1) by—
  - (a) providing accommodation or other resources, or
  - (b) entering into arrangements with any other person for the provision of accommodation or other resources.
- (3) The powers to acquire land for the public service conferred by—
  - (a) section 2 of the Commissioners of Works Act 1852 (c. 28) (acquisition by agreement), and
  - (b) section 228(1) of the Town and Country Planning Act 1990 (c. 8) (compulsory acquisition),
 are to be treated as including power to acquire land for the purpose of its provision under arrangements under subsection (2)(b).
- (4) The Scottish Ministers may make payments by way of contribution to the costs incurred by the Lord Chancellor in providing the Court with resources in accordance with subsection (1)(b).
- (5) In this section “court-house” means any place where the Court sits, including the precincts of any building in which it sits.

## **51 System to support Court in carrying on business**

- (1) The chief executive of the Supreme Court must ensure that the Court's resources are used to provide an efficient and effective system to support the Court in carrying on its business.
- (2) In particular—
  - (a) appropriate services must be provided for the Court;
  - (b) the accommodation provided under section 50 must be appropriately equipped, maintained and managed.

### *Fees*

## **52 Fees**

- (1) The Lord Chancellor may, with the agreement of the Treasury, by order prescribe fees payable in respect of anything dealt with by the Supreme Court.
- (2) An order under this section may, in particular, contain provision about—
  - (a) scales or rates of fees;
  - (b) exemptions from fees;
  - (c) reductions in fees;
  - (d) whole or partial remission of fees.
- (3) When including any provision in an order under this section, the Lord Chancellor must have regard to the principle that access to the courts must not be denied.
- (4) Before making an order under this section, the Lord Chancellor must consult all of the following—

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- (a) the persons listed in subsection (5);
  - (b) the bodies listed in subsection (6).
- (5) The persons referred to in subsection (4)(a) are—
- (a) the President of the Supreme Court;
  - (b) the Lord Chief Justice of England and Wales;
  - (c) the Master of the Rolls;
  - (d) the Lord President of the Court of Session;
  - (e) the Lord Chief Justice of Northern Ireland;
  - (f) the Lord Justice Clerk;
  - (g) the President of the Queen's Bench Division;
  - (h) the President of the Family Division;
  - (i) the Chancellor of the High Court.
- (6) The bodies referred to in subsection (4)(b) are—
- (a) the General Council of the Bar of England and Wales;
  - (b) the Law Society of England and Wales;
  - (c) the Faculty of Advocates of Scotland;
  - (d) the Law Society of Scotland;
  - (e) the General Council of the Bar of Northern Ireland;
  - (f) the Law Society of Northern Ireland.

### **53 Fees: supplementary**

- (1) Supreme Court fees are recoverable summarily as a civil debt.
- (2) The Lord Chancellor must take such steps as are reasonably practicable to bring information about Supreme Court fees to the attention of persons likely to have to pay them.
- (3) In this section “Supreme Court fees” means fees prescribed in an order under section 52.

#### *Annual report*

### **54 Annual report**

- (1) As soon as practicable after each financial year, the chief executive of the Supreme Court must prepare a report about the business of the Supreme Court during that year and give a copy of that report to the following persons—
  - (a) the Lord Chancellor;
  - (b) the First Minister in Scotland;
  - (c) the First Minister and the deputy First Minister in Northern Ireland;
  - (d) [F10the First Minister for Wales].
- (2) The Lord Chancellor must lay a copy of any report of which a copy is given under subsection (1)(a) before each House of Parliament.
- (3) Each of the following is a “financial year” for the purposes of this section—

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- (a) the period which begins with the date on which this section comes into force and ends with the following 31 March;
- (b) each successive period of 12 months.

#### Textual Amendments

**F10** Words in s. 54(1)(d) substituted (2.5.2007) by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1(2)(3), 3, **Sch. 1 para. 110(c)**

### Supplementary

#### 55 Seal

- (1) The Supreme Court is to have an official seal.
- (2) Every document purporting to be sealed with the official seal of the Supreme Court is to be received in evidence in all parts of the United Kingdom without further proof.

#### 56 Records of the Supreme Court

- (1) The Public Records Act 1958 (c. 51) is amended as follows.
- (2) In section 8 (court records)—
  - (a) in subsection (1) after “such records” insert “ other than records of the Supreme Court, ”;
  - (b) after subsection (1) insert—
    - “(1A) Records of the Supreme Court for which the Lord Chancellor is responsible under subsection (1) shall be in the custody of the chief executive of that court.”
- (3) In Schedule 1 (definition of public records), in paragraph 4 (records of courts and tribunals), before sub-paragraph (1)(a) insert—
  - “(za) records of the Supreme Court;”.

#### 57 Proceedings under jurisdiction transferred to the Supreme Court

Schedule 10 contains transitional provision relating to proceedings under jurisdiction which is transferred to the Supreme Court by this Act from the House of Lords or the Judicial Committee of the Privy Council.

#### 58 Northern Ireland Act 1998: excepted and reserved matters relating to the Supreme Court

- (1) The Northern Ireland Act 1998 (c. 47) is amended as follows.
- (2) In Schedule 2 (excepted matters), after paragraph 11 insert—

“11A The Supreme Court.”

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(3) In Schedule 3 (reserved matters), after paragraph 14 insert—

- “14A The following matters—
- (a) rights of appeal to the Supreme Court;
  - (b) legal aid for appeals to the Supreme Court.”

## **59 Renaming of Supreme Courts of England and Wales and Northern Ireland**

- (1) The Supreme Court of England and Wales is renamed the Senior Courts of England and Wales.
- (2) The Supreme Court of Judicature of Northern Ireland is renamed the Court of Judicature of Northern Ireland.
- (3) The Northern Ireland Supreme Court Rules Committee is renamed the Northern Ireland Court of Judicature Rules Committee.
- (4) Any reference in an enactment, instrument or other document to a court or committee renamed by this section is to be read, so far as necessary for continuing its effect, as a reference to the Senior Courts, the Court of Judicature or the Northern Ireland Court of Judicature Rules Committee (as the case may be).
- (5) Schedule 11 (which makes amendments in connection with the renaming) has effect.
- (6) Unless otherwise provided, amendments made by an enactment (A) (whether or not in force) to another enactment (B)—
  - (a) are not included in references in that Schedule to enactment A;
  - (b) are included in references in that Schedule to enactment B.

## **60 Interpretation of Part 3**

- (1) In this Part—
  - “part of the United Kingdom” means England and Wales, Scotland or Northern Ireland;
  - “the senior judges” means—
    - (a) the judges of the Supreme Court;
    - (b) the Lord Chief Justice of England and Wales;
    - (c) the Master of the Rolls;
    - (d) the Lord President of the Court of Session;
    - (e) the Lord Chief Justice of Northern Ireland;
    - (f) the Lord Justice Clerk;
    - (g) the President of the Queen's Bench Division;
    - (h) the President of the Family Division;
    - (i) the Chancellor of the High Court;
  - “the Supreme Court” means the Supreme Court of the United Kingdom.
- (2) In this Part—
  - (a) “high judicial office” means office as a judge of any of the following courts—
    - (i) the Supreme Court;
    - (ii) the Court of Appeal in England and Wales;

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- (iii) the High Court in England and Wales;
  - (iv) the Court of Session;
  - (v) the Court of Appeal in Northern Ireland;
  - (vi) the High Court in Northern Ireland;
- or as a Lord of Appeal in Ordinary;
- (b) a person appointed to the office of Lord Chancellor on or after 12 June 2003 who holds, or held, office of a kind referred to in paragraph (a) (“the qualifying office”) is to be regarded as holding, or having held, high judicial office only if—
    - (i) he has ceased to be Lord Chancellor by virtue of that appointment, and
    - (ii) he holds, or held, the qualifying office otherwise than by virtue of that appointment as Lord Chancellor.
- (3) In this Part—
- (a) “ordinary judge” means a judge of the Supreme Court who is not the President or the Deputy President of the Court;
  - (b) the senior ordinary judge at any time is, of the ordinary judges at that time, the one who has served longest as a judge of the Court (whether over one or more periods and whether or not including one or more previous periods as President or Deputy President).
- (4) Service as a Lord of Appeal in Ordinary counts as service as a judge of the Court for the purposes of subsection (3)(b).
- (5) In this Part references to the Lord Chancellor notifying a selection are to be read in accordance with section 29(6).

## PART 4

### JUDICIAL APPOINTMENTS AND DISCIPLINE

#### CHAPTER 1

##### COMMISSION AND OMBUDSMAN

### **61 The Judicial Appointments Commission**

- (1) There is to be a body corporate called the Judicial Appointments Commission.
- (2) Schedule 12 is about the Commission.

### **62 Judicial Appointments and Conduct Ombudsman**

- (1) There is to be a Judicial Appointments and Conduct Ombudsman.
- (2) Schedule 13 is about the Ombudsman.

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## CHAPTER 2

### APPOINTMENTS

#### *General provisions*

#### **63 Merit and good character**

- (1) Subsections (2) and (3) apply to any selection under this Part by the Commission or a selection panel (“the selecting body”).
- (2) Selection must be solely on merit.
- (3) A person must not be selected unless the selecting body is satisfied that he is of good character.

#### **64 Encouragement of diversity**

- (1) The Commission, in performing its functions under this Part, must have regard to the need to encourage diversity in the range of persons available for selection for appointments.
- (2) This section is subject to section 63.

#### **65 Guidance about procedures**

- (1) The Lord Chancellor may issue guidance about procedures for the performance by the Commission or a selection panel of its functions of—
  - (a) identifying persons willing to be considered for selection under this Part, and
  - (b) assessing such persons for the purposes of selection.
- (2) The guidance may, among other things, relate to consultation or other steps in determining such procedures.
- (3) The purposes for which guidance may be issued under this section include the encouragement of diversity in the range of persons available for selection.
- (4) The Commission and any selection panel must have regard to the guidance in matters to which it relates.

#### **Commencement Information**

- 16** S. 65 wholly in force at 3.4.2006; s. 65 not in force at Royal Assent see. s. 148; s. 65(1)-(3) in force at 1.10.2005 by S.I. 2005/2505, art. 2; s. 65(4) in force at 3.4.2006 by S.I. 2006/1014, art. 2(a), Sch. 1 para. 18

#### **66 Guidance: supplementary**

- (1) Before issuing any guidance the Lord Chancellor must—
  - (a) consult the Lord Chief Justice;
  - (b) after doing so, lay a draft of the proposed guidance before each House of Parliament.

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- (2) If the draft is approved by a resolution of each House of Parliament within the 40-day period the Lord Chancellor must issue the guidance in the form of the draft.
- (3) In any other case the Lord Chancellor must take no further steps in relation to the proposed guidance.
- (4) Subsection (3) does not prevent a new draft of the proposed guidance from being laid before each House of Parliament after consultation with the Lord Chief Justice.
- (5) Guidance comes into force on such date as the Lord Chancellor may appoint by order.
- (6) The Lord Chancellor may—
  - (a) from time to time revise the whole or part of any guidance and re-issue it;
  - (b) after consulting the Lord Chief Justice, by order revoke any guidance.
- (7) In this section—
 

“40-day period” in relation to the draft of any proposed guidance means—

  - (a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later day, and
  - (b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days;

“guidance” means guidance issued by the Lord Chancellor under section 65 and includes guidance which has been revised and re-issued.

### *Lord Chief Justice and Heads of Division*

#### **67 Selection of Lord Chief Justice and Heads of Division**

- (1) Sections 68 to 75 apply to a recommendation for an appointment to one of the following offices—
  - (a) Lord Chief Justice;
  - (b) Master of the Rolls;
  - (c) President of the Queen's Bench Division;
  - (d) President of the Family Division;
  - (e) Chancellor of the High Court.
- (2) Any such recommendation must be made in accordance with those sections and section 96.

#### **68 Duty to fill vacancies**

- (1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Chief Justice.
- (2) The Lord Chancellor must make a recommendation to fill any vacancy in any other office listed in section 67(1).



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- (3) Subsection (2) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

## **69 Request for selection**

- (1) The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation to which this section applies.
- (2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.
- (3) Subsection (2) does not apply where the office of Lord Chief Justice is vacant or where the Lord Chief Justice is incapacitated for the purposes of section 16 (functions during vacancy or incapacity).
- (4) Sections 70 to 75 apply where the Lord Chancellor makes a request under this section.
- (5) Those sections are subject to section 95 (withdrawal and modification of requests).

## **70 Selection process**

- (1) On receiving a request the Commission must appoint a selection panel.
- (2) The panel must—
- (a) determine the selection process to be applied,
  - (b) apply the selection process, and
  - (c) make a selection accordingly.
- (3) One person only must be selected for each recommendation to which a request relates.
- (4) Subsection (3) applies to selection under this section and to selection under section 75.
- (5) If practicable the panel must consult, about the exercise of its functions under this section, the current holder of the office for which a selection is to be made.
- (6) A selection panel is a committee of the Commission.

## **71 Selection panel**

- (1) The selection panel must consist of four members.
- (2) The first member is the most senior England and Wales Supreme Court judge who is not disqualified, or his nominee.
- (3) Unless subsection (7) applies, the second member is the Lord Chief Justice or his nominee.
- (4) Unless subsection (9) applies, the third member is the chairman of the Commission or his nominee.
- (5) The fourth member is a lay member of the Commission designated by the third member.
- (6) Subsection (7) applies if—
- (a) the Lord Chief Justice is disqualified, or
  - (b) there is no Lord Chief Justice.

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- (7) In those cases the most senior England and Wales Supreme Court judge who is not disqualified must designate a person (but not a person who is disqualified) as the second member.
- (8) Subsection (9) applies if—
- (a) there is no chairman of the Commission, or
  - (b) the chairman of the Commission is unavailable and has not nominated a person under subsection (4).
- (9) In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (10) Only the following may be a nominee under subsection (2) or (3) or designated under subsection (7)—
- (a) an England and Wales Supreme Court judge,
  - (b) a Head of Division, or
  - (c) a Lord Justice of Appeal.
- (11) The following also apply to nominees under this section—
- (a) a person may not be a nominee if he is disqualified;
  - (b) a person may not be appointed to the panel as the nominee of more than one person;
  - (c) a person appointed to the panel otherwise than as a nominee may not be a nominee.
- (12) The first member is the chairman of the panel.
- (13) On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie.
- (14) A person is disqualified for the purposes of this section if—
- (a) he is the current holder of the office for which a selection is to be made, or
  - (b) he is willing to be considered for selection.
- (15) In this section “England and Wales Supreme Court judge” means a judge of the Supreme Court who has held high judicial office in England and Wales before appointment to the Court.

## 72 Report

- (1) After complying with section 70(2) the selection panel must submit a report to the Lord Chancellor.
- (2) The report must—
- (a) state who has been selected;
  - (b) contain any other information required by the Lord Chancellor.
- (3) The report must be in a form approved by the Lord Chancellor.
- (4) After submitting the report the panel must provide any further information the Lord Chancellor may require.

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### **73 The Lord Chancellor's options**

(1) This section refers to the following stages—

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<i>Stage 1:</i>	where a person has been selected under section 70
<i>Stage 2:</i>	where a person has been selected following a rejection or reconsideration at stage 1
<i>Stage 3:</i>	where a person has been selected following a rejection or reconsideration at stage 2.

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(2) At stage 1 the Lord Chancellor must do one of the following—

- (a) accept the selection;
- (b) reject the selection;
- (c) require the selection panel to reconsider the selection.

(3) At stage 2 the Lord Chancellor must do one of the following—

- (a) accept the selection;
- (b) reject the selection, but only if it was made following a reconsideration at stage 1;
- (c) require the selection panel to reconsider the selection, but only if it was made following a rejection at stage 1.

(4) At stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he accepts a selection under it.

(5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.

### **74 Exercise of powers to reject or require reconsideration**

(1) The power of the Lord Chancellor under section 73 to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned.

(2) The power of the Lord Chancellor under section 73 to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—

- (a) there is not enough evidence that the person is suitable for the office concerned, or
- (b) there is evidence that the person is not the best candidate on merit.

(3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

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## 75 Selection following rejection or requirement to reconsider

- (1) If under section 73 the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with this section.
- (2) If the Lord Chancellor rejects a selection, the selection panel—
  - (a) may not select the person rejected, and
  - (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.
- (3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel—
  - (a) may select the same person or a different person, but
  - (b) where the requirement is following a rejection, may not select the person rejected.
- (4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.
- (5) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under section 69.

*<sup>F11</sup>Senior President of Tribunals*

### Textual Amendments

- F11** Ss. 75A-75G and preceding cross-heading inserted (19.9.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 2, 148, [Sch. 1 para. 4](#); S.I. 2007/2709, [art. 2\(g\)](#)

## 75A Sections 75B to 75G apply where request made for selection

- (1) Sections 75B to 75G apply where the Lord Chancellor makes a request to the Commission under paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007 (request for person to be selected for recommendation for appointment to the office of Senior President of Tribunals).
- (2) Those sections are subject to section 95 (withdrawal and modification of requests).

## 75B Selection process

- (1) On receiving a request the Commission must appoint a selection panel.
- (2) The panel must —
  - (a) determine the selection process to be applied,
  - (b) apply the selection process, and
  - (c) make a selection accordingly.
- (3) As part of the selection process the panel must consult—
  - (a) the Lord Chief Justice, if not a member of the panel,
  - (b) the Lord President of the Court of Session, if not a member of the panel, and
  - (c) the Lord Chief Justice of Northern Ireland, if not a member of the panel.

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- (4) One person only must be selected for the recommendation to which a request relates.
- (5) Subsection (4) applies to selection under this section and to selection under section 75G.
- (6) A selection panel is a committee of the Commission.

## **75C Selection panel**

- (1) The selection panel must consist of four members.
- (2) The first member is the Lord Chief Justice, or his nominee.
- (3) The second member is a person designated by the Lord Chief Justice.
- (4) Unless subsection (7) applies, the third member is the chairman of the Commission or his nominee.
- (5) The fourth member is a lay member of the Commission designated by the third member.
- (6) Subsection (7) applies if—
  - (a) there is no chairman of the Commission, or
  - (b) the chairman of the Commission is unavailable and has not nominated a person under subsection (4).
- (7) In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (8) A nominee of the Lord Chief Justice must be a Head of Division or a Lord Justice of Appeal.
- (9) The person designated under subsection (3) must be—
  - (a) a person who holds, or has held, the office of Senior President of Tribunals,
  - (b) a person who holds, or has held, office as a Chamber President of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal, or
  - (c) a person who holds, or has held, an office that, in the opinion of the Lord Chief Justice, is such that a holder of it would acquire knowledge or experience of tribunals broadly similar to that which would be acquired by—
    - (i) a person who holds the office of Senior President of Tribunals, or
    - (ii) a person who holds office as a Chamber President of a chamber of the First-tier Tribunal, or
    - (iii) a person who holds office as a Chamber President of a chamber of the Upper Tribunal.
- (10) Before designating a person under subsection (3), the Lord Chief Justice must consult—
  - (a) the Lord President of the Court of Session, and
  - (b) the Lord Chief Justice of Northern Ireland.
- (11) A person may not be appointed to the panel if he is willing to be considered for selection.
- (12) A person may not be appointed to the panel as the nominee of more than one person.

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- (13) A person appointed to the panel otherwise than as a nominee may not be a nominee.
- (14) The first member is the chairman of the panel.
- (15) On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie.

#### **75D Report**

- (1) After complying with section 75B(2) the selection panel must submit a report to the Lord Chancellor.
- (2) The report must—
  - (a) state who has been selected;
  - (b) contain any other information required by the Lord Chancellor.
- (3) The report must be in a form approved by the Lord Chancellor.
- (4) After submitting the report the panel must provide any further information the Lord Chancellor may require.

#### **75E The Lord Chancellor's options**

- (1) This section refers to the following stages—

<i>Stage 1:</i>	where a person has been selected under section 75B
<i>Stage 2:</i>	where a person has been selected following a rejection or reconsideration at stage 1
<i>Stage 3:</i>	where a person has been selected following a rejection or reconsideration at stage 2

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- (2) At stage 1 the Lord Chancellor must do one of the following—
  - (a) accept the selection;
  - (b) reject the selection;
  - (c) require the selection panel to reconsider the selection.
- (3) At stage 2 the Lord Chancellor must do one of the following—
  - (a) accept the selection;
  - (b) reject the selection, but only if it was made following a reconsideration at stage 1;
  - (c) require the selection panel to reconsider the selection, but only if it was made following a rejection at stage 1.
- (4) At stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he accepts a selection under it.
- (5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.

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#### **75F Exercise of powers to reject or require reconsideration**

- (1) The power of the Lord Chancellor under section 75E to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office of Senior President of Tribunals.
- (2) The power of the Lord Chancellor under section 75E to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—
  - (a) there is not enough evidence that the person is suitable for the office of Senior President of Tribunals, or
  - (b) there is evidence that the person is not the best candidate on merit.
- (3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

#### **75G Selection following rejection or requirement to reconsider**

- (1) If under section 75F the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with this section.
- (2) If the Lord Chancellor rejects a selection, the selection panel—
  - (a) may not select the person rejected, and
  - (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.
- (3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel—
  - (a) may select the same person or a different person, but
  - (b) where the requirement is following a rejection, may not select the person rejected.
- (4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.
- (5) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007.]

### *Lords Justices of Appeal*

#### **76 Selection of Lords Justices of Appeal**

- (1) Sections 77 to 84 apply to a recommendation for appointment as a Lord Justice of Appeal.
- (2) Any such recommendation must be made in accordance with those sections and section 96.

#### **77 Duty to fill vacancies**

- (1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Justice of Appeal.

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- (2) Subsection (1) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

## **78 Request for selection**

- (1) The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation for appointment as a Lord Justice of Appeal.
- (2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.
- (3) A request may relate to more than one recommendation.
- (4) Sections 79 to 84 apply where the Lord Chancellor makes a request under this section.
- (5) Those sections are subject to section 95 (withdrawal and modification of requests).

## **79 Selection process**

- (1) On receiving a request the Commission must appoint a selection panel.
- (2) The panel must—
- (a) determine the selection process to be applied,
  - (b) apply the selection process, and
  - (c) make a selection accordingly.
- (3) One person only must be selected for each recommendation to which a request relates.
- (4) Subsection (3) applies to selection under this section and to selection under section 84.
- (5) A selection panel is a committee of the Commission.

## **80 Selection panel**

- (1) The selection panel must consist of four members.
- (2) The first member is the Lord Chief Justice, or his nominee.
- (3) The second member is a Head of Division or Lord Justice of Appeal designated by the Lord Chief Justice.
- (4) Unless subsection (7) applies, the third member is the chairman of the Commission or his nominee.
- (5) The fourth member is a lay member of the Commission designated by the third member.
- (6) Subsection (7) applies if—
- (a) there is no chairman of the Commission, or
  - (b) the chairman of the Commission is unavailable and has not nominated a person under subsection (4).
- (7) In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.
- (8) A nominee of the Lord Chief Justice must be a Head of Division or a Lord Justice of Appeal.



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- (9) A person may not be appointed to the panel if he is willing to be considered for selection.
- (10) A person may not be appointed to the panel as the nominee of more than one person.
- (11) A person appointed to the panel otherwise than as a nominee may not be a nominee.
- (12) The first member is the chairman of the panel.
- (13) On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie.

## **81 Report**

- (1) After complying with section 79(2) the selection panel must submit a report to the Lord Chancellor.
- (2) The report must—
  - (a) state who has been selected;
  - (b) contain any other information required by the Lord Chancellor.
- (3) The report must be in a form approved by the Lord Chancellor.
- (4) After submitting the report the panel must provide any further information the Lord Chancellor may require.

## **82 The Lord Chancellor's options**

- (1) This section refers to the following stages—

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<i>Stage 1:</i>	where a person has been selected under section 79
<i>Stage 2:</i>	where a person has been selected following a rejection or reconsideration at stage 1
<i>Stage 3:</i>	where a person has been selected following a rejection or reconsideration at stage 2.

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- (2) At stage 1 the Lord Chancellor must do one of the following—
  - (a) accept the selection;
  - (b) reject the selection;
  - (c) require the selection panel to reconsider the selection.
- (3) At stage 2 the Lord Chancellor must do one of the following—
  - (a) accept the selection;
  - (b) reject the selection, but only if it was made following a reconsideration at stage 1;
  - (c) require the selection panel to reconsider the selection, but only if it was made following a rejection at stage 1.

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- (4) At stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he accepts a selection under it.
- (5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.

### **83 Exercise of powers to reject or require reconsideration**

- (1) The power of the Lord Chancellor under section 82 to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned.
- (2) The power of the Lord Chancellor under section 82 to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—
  - (a) there is not enough evidence that the person is suitable for the office concerned, or
  - (b) there is evidence that the person is not the best candidate on merit.
- (3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

### **84 Selection following rejection or requirement to reconsider**

- (1) If under section 82 the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with this section.
- (2) If the Lord Chancellor rejects a selection, the selection panel—
  - (a) may not select the person rejected, and
  - (b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.
- (3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel—
  - (a) may select the same person or a different person, but
  - (b) where the requirement is following a rejection, may not select the person rejected.
- (4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.
- (5) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under section 78.

#### *Puisne judges and other office holders*

### **85 Selection of puisne judges and other office holders**

- (1) Sections 86 to 93 apply to—
  - (a) a recommendation for an appointment to the office of puisne judge of the High Court;

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- (b) a recommendation for an appointment to an office listed in Part 1 of Schedule 14 in exercise of Her Majesty's function under the enactment listed opposite that office;
  - (c) an appointment to an office listed in Part 2 or 3 of that Schedule in exercise of the Lord Chancellor's function under the enactment listed opposite that office.
- (2) Any such recommendation or appointment must be made in accordance with those sections and section 96.

[<sup>F12</sup>(2A) This section is subject to—

- (a) section 30(4) of the Courts-Martial (Appeals) Act 1951,
- (b) sections 91(1ZB) and 102(1C) of the Supreme Court Act 1981,
- (c) section 8(1ZC) of the County Courts Act 1984, and
- (d) sections 94A and 94B below.]

(3) The Lord Chancellor may by order make any of the following amendments to Schedule 14—

- (a) an amendment which adds a reference to an enactment under which appointments are made to an office;
- (b) an amendment which adds a reference to an office to which appointments are made under an enactment;
- (c) an amendment consequential on the abolition or change of name of an office;
- (d) an amendment consequential on the substitution of one or more enactments for an enactment under which appointments are made to an office.

[<sup>F13</sup>(4) The Lord Chancellor may by order amend section 94A or 94B if he thinks that the amendment is consequential on an amendment made to Schedule 14 by an order under subsection (3).]

#### Textual Amendments

**F12** S. 85(2A) inserted (19.7.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 53(3)

**F13** S. 85(4) inserted (19.7.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 53(4)

#### Modifications etc. (not altering text)

**C3** S. 85 excluded (19.7.2009) by Supreme Court Act 1981 (c. 54), s. 91(1ZB) (as inserted by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 57(3))

**C4** S. 85 excluded (19.9.2009) by Courts-Martial (Appeals) Act 1951 (c. 46), s. 30(4) (as inserted by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 58(3); S.I. 2007/2709, art. 2(a))

#### Commencement Information

**I7** S. 85 wholly in force at 2.4.2007; s. 85 not in force at Royal Assent see s. 148; s. 85(3) in force 1.10.2005 by S.I. 2005/2505; s. 85(1)(b)(c)(2) in force at 3.4.2006 by S.I. 2006/1014, art. 2(a), Sch. 1 para. 19; s. 85(1)(a) in force at 2.4.2007 by S.I. 2006/1014, art. 2(b), Sch. 2 para. 2

## 86 Duty to fill vacancies

- (1) The Lord Chancellor must make a recommendation to fill any vacancy in the office of puisne judge of the High Court or in an office listed in Part 1 of Schedule 14.
- (2) The Lord Chancellor must make an appointment to fill any vacancy in an office listed in Part 2 or 3 of that Schedule.

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- (3) Subsections (1) and (2) do not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

### **87 Request for selection**

- (1) The Lord Chancellor may request the Commission to select a person for a recommendation or appointment to which this section applies.
- (2) Before making a request the Lord Chancellor must consult the Lord Chief Justice.
- (3) A request may relate to more than one recommendation or appointment.
- (4) Sections 88 to 93 apply where the Lord Chancellor makes a request under this section.
- (5) Those sections are subject to section 95 (withdrawal and modification of requests).

### **88 Selection process**

- (1) On receiving a request the Commission must—
  - (a) determine the selection process to be applied,
  - (b) apply the selection process, and
  - (c) make a selection accordingly.
- (2) But if or so far as the Commission decides that the selection process has not identified candidates of sufficient merit for it to comply with subsection (1)(c), section 93 applies and subsection (1)(c) does not apply.
- (3) As part of the selection process the Commission must consult—
  - (a) the Lord Chief Justice; and
  - (b) a person (other than the Lord Chief Justice) who has held the office for which a selection is to be made or has other relevant experience.
- (4) One person only may be selected for each recommendation or appointment to which a request relates.
- (5) Subsection (4) applies to selection under this section and to selection under section 92 or 93.

### **89 Report**

- (1) After complying with section 88 the Commission must submit a report to the Lord Chancellor.
- (2) The report must—
  - (a) describe the selection process;
  - (b) state any selection made;
  - (c) state any decision under section 88(2);
  - (d) state any recommendation made in consultation under section 88(3) by a person consulted;
  - (e) give reasons in any case where the Commission has not followed such a recommendation;
  - (f) contain any other information required by the Lord Chancellor.

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- (3) The report must be in a form approved by the Lord Chancellor.
- (4) After submitting the report the Commission must provide any further information the Lord Chancellor may require.

## **90 The Lord Chancellor's options**

- (1) This section refers to the following stages—

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<i>Stage 1:</i>	where a person has been selected under section 88
<i>Stage 2:</i>	where a person has been selected following a rejection or reconsideration at stage 1
<i>Stage 3:</i>	where a person has been selected following a rejection or reconsideration at stage 2.

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- (2) At stage 1 the Lord Chancellor must do one of the following—
  - (a) accept the selection;
  - (b) reject the selection;
  - (c) require the Commission to reconsider the selection.
- (3) At stage 2 the Lord Chancellor must do one of the following—
  - (a) accept the selection;
  - (b) reject the selection, but only if it was made following a reconsideration at stage 1;
  - (c) require the Commission to reconsider the selection, but only if it was made following a rejection at stage 1.
- (4) At stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he accepts a selection under it.
- (5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.
- (6) Before exercising his powers under this section at any stage in relation to a selection for an appointment or recommendation, the Lord Chancellor must—
  - (a) consult any person whom he is required by any enactment to consult before making the appointment or recommendation, and
  - (b) consult the Scottish Ministers if it appears to him to be an appointment, or a recommendation for the appointment, of a person to exercise functions wholly or mainly in Scotland.

## **91 Exercise of powers to reject or require reconsideration**

- (1) The power of the Lord Chancellor under section 90 to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned or particular functions of that office.

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- (2) The power of the Lord Chancellor under section 90 to require the Commission to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—
  - (a) there is not enough evidence that the person is suitable for the office concerned or particular functions of that office, or
  - (b) there is evidence that the person is not the best candidate on merit.
- (3) The Lord Chancellor must give the Commission reasons in writing for rejecting or requiring reconsideration of a selection.

## **92 Selection following rejection or requirement to reconsider**

- (1) If under section 90 the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the Commission must select a person in accordance with this section.
- (2) If the Lord Chancellor rejects a selection, the Commission—
  - (a) may not select the person rejected, and
  - (b) where the rejection is following a requirement to reconsider, may not select the person (if different) whose selection it reconsidered.
- (3) If the Lord Chancellor requires a selection to be reconsidered, the Commission—
  - (a) may select the same person or a different person, but
  - (b) where the requirement is following a rejection, may not select the person rejected.
- (4) But if the Commission decides that the selection process has not identified a candidate of sufficient merit for it to make a selection under this section—
  - (a) section 93 applies;
  - (b) subsection (1) does not apply, but subsections (2) and (3) apply to any selection under section 93.
- (5) The Commission must inform the Lord Chancellor of any person selected following a rejection or a requirement to reconsider.
- (6) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under section 87.

## **93 Reconsideration of decision not to select**

- (1) The Lord Chancellor may require the Commission to reconsider a decision that the selection process has not identified candidates of sufficient merit for it to make a selection.
- (2) The Commission must inform the Lord Chancellor of any person selected on reconsideration under this section.
- (3) Sections 90 to 92 apply to such a person as if the Commission had selected him instead of making the decision reconsidered.

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## **94 Duty to identify persons for future requests**

- (1) If the Lord Chancellor gives the Commission notice of a request he expects to make under section 87 the Commission must—
  - (a) seek to identify persons it considers would be suitable for selection on the request, and
  - (b) submit a report to the Lord Chancellor containing any information it considers appropriate about—
    - (i) the extent to which it has identified suitable persons, and
    - (ii) other matters likely to assist the Lord Chancellor in exercising his functions relating to appointments and recommendations.
- (2) For the purposes of subsection (1)(a) and (b)(ii), the Commission must in particular have regard to—
  - (a) the number of recommendations and appointments the Lord Chancellor expects to request selections for;
  - (b) the powers of the Lord Chancellor to reject or require reconsideration of a selection.
- (3) As part of the process of identifying persons under subsection (1)(a), the Commission must consult—
  - (a) the Lord Chief Justice, and
  - (b) a person or persons, other than the Lord Chief Justice, with experience in the office or offices to which requests specified in the notice relate, or with other relevant experience.
- (4) A report under subsection (1)(b) must—
  - (a) state any recommendation made in consultation under subsection (3) by a person consulted;
  - (b) give reasons in any case where the Commission has not followed such a recommendation.
- (5) Where the Lord Chancellor makes a request for the purposes of which the Commission has identified persons under subsection (1)(a), the Commission must, in determining the selection process to be applied, consider whether selection should be from among those persons.

### **[<sup>F14</sup>94A Appointments not subject to section 85: courts**

- (1) Where this section applies to an appointment—
  - (a) section 85 does not apply, but
  - (b) the Lord Chancellor may not make the appointment without the concurrence of the Lord Chief Justice.
- (2) This section applies to the appointment of a person, on a fee-paid basis, to an office in the table below (the “proposed appointment”) if the person—
  - (a) holds the corresponding qualifying office (or one of them) on a salaried basis, or
  - (b) ceased to hold the corresponding qualifying office (or one of them) within two years ending with the date when the proposed appointment takes effect and, immediately before ceasing to hold that office, held it on a salaried basis.

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<b><i>Proposed appointment (fee-paid)</i></b>	<b><i>Qualifying office (salaried)</i></b>
An office listed in Part 2 of Schedule 14.	The same office.
Deputy District Judge (Magistrates' Courts).	District Judge (Magistrates' Courts), Senior District Judge (Chief Magistrate), or Deputy Senior District Judge (Chief Magistrate).
Assistant Judge Advocate General, or a person appointed temporarily to assist the Judge Advocate General.	Judge Advocate of Her Majesty's Fleet, Judge Advocate General, Vice Judge Advocate General, or Assistant Judge Advocate General.

- (3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4)) to exercise his function under subsection (1)(b).
- (4) In this section “salaried” and “fee-paid” have the meaning given by paragraph 1(2) of Schedule 7 to the Judicial Pensions and Retirement Act 1993 (c. 8).

#### **Textual Amendments**

**F14** Ss. 94A, 94B inserted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 53(2)

### **94B Appointments not subject to section 85: tribunals**

- (1) Where this section applies to a recommendation or appointment—
- (a) section 85 does not apply, but
  - (b) the Lord Chancellor may not make the recommendation or appointment without the concurrence of the Senior President of Tribunals.
- (2) In the case of the appointment of a person as a deputy judge of the Upper Tribunal, if the person holds or has held an office listed in section 6(1) of the Tribunals, Courts and Enforcement Act 2007, the Lord Chancellor must also consult the Lord Chief Justice before making the appointment.
- (3) This section applies to, or to a recommendation to Her Majesty for, the appointment of a person, on a fee-paid basis, to an office in the table below (the “proposed appointment”) if the person—
- (a) holds the corresponding qualifying office (or one of them) on a salaried basis, or
  - (b) subject to subsection (4), ceased to hold the corresponding qualifying office (or one of them) within two years ending with the date when the proposed appointment takes effect and, immediately before ceasing to hold that office, held it on a salaried basis.

<b><i>Proposed appointment (fee-paid)</i></b>	<b><i>Qualifying office (salaried)</i></b>
An office listed in Part 3 of Schedule 14 (other than the office of Chamber President or Deputy Chamber President)	The same office, or a more senior office, listed in Part 3 of Schedule 14, in the same tribunal or



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<p>of a chamber of the Upper Tribunal or the First-tier Tribunal).</p> <p>F15 .....</p> <p>F15 .....</p>	<p>body (but excluding the Upper Tribunal and the First-tier Tribunal).</p> <p>F15 .....</p> <p>F15 .....</p>
<p>Deputy judge of the Upper Tribunal.</p>	<p>Ordinary judge of the Court of Appeal in England and Wales,                  Lord Justice of Appeal in Northern Ireland,                  Judge of the Court of Session,                  Puisne judge of the High Court in England and Wales or Northern Ireland,                  Circuit judge,                  Sheriff in Scotland,                  County court judge in Northern Ireland,                  District judge in England and Wales or Northern Ireland,                  District Judge (Magistrates' Courts), or                  Judge of the Upper Tribunal by virtue of any of paragraphs (a) to (f) or (i) of section 5(1) of the Tribunals, Courts and Enforcement Act 2007.</p>
<p>Judge of the First-tier Tribunal by appointment under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007.</p>	<p>Transferred-in judge of the First-tier Tribunal (see section 31(2) of that Act).</p>
<p>Other member of the First-tier Tribunal by appointment under paragraph 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007.</p>	<p>Transferred-in other member of the First-tier Tribunal (see section 31(2) of that Act).</p>
<p>Judge of the Upper Tribunal by appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.</p>	<p>Transferred-in judge of the Upper Tribunal (see section 31(2) of that Act).</p>
<p>Other member of the Upper Tribunal by appointment under paragraph 2(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.</p>	<p>Transferred-in other member of the Upper Tribunal (see section 31(2) of that Act).</p>
<p>Deputy judge of the Upper Tribunal by appointment under paragraph 7(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.</p>	<p>Deputy judge of the Upper Tribunal under section 31(2) of that Act.</p>

- (4) In subsection (3)(b) the words “within two years ending with the date when the proposed appointment takes effect” do not apply if—
- (a) the proposed appointment is to the office of deputy judge of the Upper Tribunal, and
  - (b) the corresponding qualifying office is—
    - (i) ordinary judge of the Court of Appeal in England and Wales,

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- (ii) Lord Justice of Appeal in Northern Ireland,
  - (iii) judge of the Court of Session, or
  - (iv) puisne judge of the High Court in England and Wales or Northern Ireland.
- (5) In this section “salaried” and “fee-paid” have the meaning given by paragraph 1(2) of Schedule 7 to the Judicial Pensions and Retirement Act 1993.]

#### Textual Amendments

- F14** Ss. 94A, 94B inserted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), s. 53\(2\)](#)
- F15** [S. 94B\(3\)](#): table entries omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), [art. 9](#), [Sch. 3 para. 218](#)

#### *Supplementary provisions about selection*

### 95 Withdrawal and modification of requests

- (1) This section applies to a request under section 69, 78 or 87 [<sup>F16</sup>or paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007] .
- (2) The Lord Chancellor may withdraw or modify a request only as follows—
  - (a) so far as a request relates to any recommendation or appointment to fill a vacancy, he may withdraw or modify it with the agreement of the Lord Chief Justice;
  - (b) so far as a request relates to any recommendation or appointment otherwise than to fill a vacancy, he may withdraw or modify it after consulting the Lord Chief Justice;
  - (c) he may withdraw a request as respects all recommendations or appointments to which it relates if, after consulting the Lord Chief Justice, he considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily.
- (3) If a request is withdrawn in part or modified, the Commission or selection panel may, if it thinks it appropriate because of the withdrawal or modification, change any selection already made pursuant to the request, except a selection already accepted.
- (4) The Lord Chancellor may not withdraw a request under subsection (2)(c) if he has exercised any of his powers under section 73(2), [<sup>F17</sup>75E(2),] 82(2) or 90(2) in relation to a selection made pursuant to the request.
- (5) Any withdrawal or modification of a request must be by notice in writing to the Commission.
- (6) The notice must state whether the withdrawal or modification is under subsection (2) (a), (b) or (c).
- (7) In the case of a withdrawal under subsection (2)(c), the notice must state why the Lord Chancellor considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily.
- (8) If or to the extent that a request is withdrawn—
  - (a) the preceding provisions of this Part cease to apply in relation to it, and

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- (b) any selection made on it is to be disregarded.
- (9) Withdrawal of a request to any extent does not affect the power of the Lord Chancellor to make another request in the same or different terms.

#### Textual Amendments

- F16** Words in s. 95(1) inserted (19.9.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 2, 148, Sch. 1 para. 5(2); S.I. 2007/2709, art. 2(g)
- F17** Words in s. 95(4) inserted (19.9.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 2, 148, Sch. 1 para. 5(3); S.I. 2007/2709, art. 2(g)

## 96 Effect of acceptance of selection

- (1) This section applies where the Lord Chancellor accepts a selection under this Chapter.
- (2) Subject to the following provisions of this section, the Lord Chancellor—
  - (a) must make the appointment, or recommendation, for which the selection has been made, and
  - (b) must appoint, or recommend, the person selected.
- (3) Before making the appointment or recommendation the Lord Chancellor may direct the Commission to make arrangements in accordance with the direction—
  - (a) for any assessment of the health of the person selected that the Lord Chancellor considers appropriate, and
  - (b) for a report of the assessment to be made to the Lord Chancellor.
- (4) Subsection (5) applies in any of the following circumstances—
  - (a) the Lord Chancellor notifies the Commission that he is not satisfied on the basis of a report under subsection (3)(b), having consulted the Lord Chief Justice, that the health of the person selected is satisfactory for the purposes of the appointment or recommendation;
  - (b) the person selected declines to be appointed or recommended, or does not agree within a time specified to him for that purpose;
  - (c) the person selected is otherwise not available within a reasonable time to be appointed or recommended.
- (5) Where this subsection applies—
  - (a) the selection accepted and any previous selection for the same appointment or recommendation are to be disregarded;
  - (b) the request pursuant to which the selection was made continues to have effect;
  - (c) any subsequent selection pursuant to that request may be made in accordance with the same or a different selection process.

## 97 Scotland and Northern Ireland

- (1) [<sup>F18</sup>Subsections (2) and (3) apply] to consultation that a person is required to undertake under any of these provisions—
  - (a) section 87(2);
  - (b) section 88(3);
  - (c) section 94(3);

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- [<sup>F19</sup>(ca) section 94B(2);]  
 (d) section 95(2)(a), (b) or (c),  
 (e) section 96(4)(a).
- (2) If the consultation appears to that person to relate to the appointment (or a recommendation for the appointment) of a person to exercise functions wholly or mainly in Scotland, any reference in the provision to the Lord Chief Justice is to be read as a reference to the Lord President of the Court of Session.
- (3) If the consultation appears to that person to relate to the appointment (or a recommendation for the appointment) of a person to exercise functions wholly or mainly in Northern Ireland, any reference in the provision to the Lord Chief Justice is to be read as a reference to the Lord Chief Justice of Northern Ireland.
- [<sup>F20</sup>(4) Subsections (2) and (3) apply to the reference in section 94A(1) to the Lord Chancellor obtaining the concurrence of the Lord Chief Justice as they apply to a reference in a provision specified in subsection (1) to the Lord Chancellor consulting the Lord Chief Justice.
- (5) The Lord President of the Court of Session may nominate any of the following to exercise his function under section 94A(1)(b)—  
 (a) a judge who is a member of the First or Second Division of the Inner House of the Court of Session;  
 (b) the Senior President of Tribunals.
- (6) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his function under section 94A(1)(b)—  
 (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;  
 (b) a Lord Justice of Appeal (as defined in section 88 of that Act);  
 (c) the Senior President of Tribunals.]

#### Textual Amendments

- F18** Words in s. 97(1) substituted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), s. 53\(6\)\(a\)](#)
- F19** S. 97(1)(ca) inserted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), s. 53\(6\)\(b\)](#)
- F20** S. 97(4)-(6) added (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), s. 53\(7\)](#)

#### *Assistance in connection with other appointments*

### 98 Assistance in connection with other appointments

- (1) The Commission must provide any assistance requested by the Lord Chancellor under this section.
- (2) The Lord Chancellor may request assistance for the making by him or by another Minister of the Crown of an appointment or recommendation for appointment, other than one to which section 26 or a provision of this Part applies.

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- (3) The Lord Chancellor may only request assistance under this section if it appears to him appropriate because of the Commission's other functions under this Part and the nature of the appointment concerned.
- (4) Without limiting the assistance that may be requested, it may include—
  - (a) determining a selection process;
  - (b) applying a selection process;
  - (c) selecting a person;
  - (d) selecting a short list;
  - (e) advice on any of those matters.
- (5) Before making a request the Lord Chancellor must consult—
  - (a) the Lord Chief Justice, and
  - (b) the Commission.
- (6) In this section “appointment” includes the conferring of any public function.
- (7) In this Part references to selection under this Part include references to selection by the Commission pursuant to a request under this section (and references to a person selected under this Part are to be read accordingly).

#### *Complaints and references*

### **99 Complaints: interpretation**

- (1) This section applies for the purposes of this Part.
- (2) A Commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission.
- (3) A departmental complaint is a complaint by a qualifying complainant of maladministration by the Lord Chancellor or his department in connection with any of the following—
  - (a) selection under this Part;
  - (b) recommendation for or appointment to an office listed in Schedule 14.
- (4) A qualifying complainant is a complainant who claims to have been adversely affected, as an applicant for selection or as a person selected under this Part, by the maladministration complained of.

### **100 Complaints to the Commission or the Lord Chancellor**

- (1) The Commission must make arrangements for investigating any Commission complaint made to it.
- (2) The Lord Chancellor must make arrangements for investigating any departmental complaint made to him.
- (3) Arrangements under this section need not apply to a complaint made more than 28 days after the matter complained of.

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## **101 Complaints to the Ombudsman**

- (1) Subsections (2) and (3) apply to a complaint which the complainant—
  - (a) has made to the Commission or the Lord Chancellor in accordance with arrangements under section 100, and
  - (b) makes to the Ombudsman not more than 28 days after being notified of the Commission's or Lord Chancellor's decision on the complaint.
- (2) If the Ombudsman considers that investigation of the complaint is not necessary, he must inform the complainant.
- (3) Otherwise he must investigate the complaint.
- (4) The Ombudsman may investigate a complaint which the complainant—
  - (a) has made to the Commission or the Lord Chancellor in accordance with arrangements under section 100, and
  - (b) makes to the Ombudsman at any time.
- (5) The Ombudsman may investigate a transferred complaint made to him, and no such complaint may be made under the Judicial Appointments Order after the commencement of this section.
- (6) The Judicial Appointments Order is the Judicial Appointments Order in Council 2001, which sets out the functions of Her Majesty's Commissioners for Judicial Appointments.
- (7) A transferred complaint is a complaint that lay to those Commissioners (whether or not it was made to them) in respect of the application of appointment procedures before the commencement of this section, but not a complaint that those Commissioners had declined to investigate or on which they had concluded their investigation.
- (8) Any complaint to the Ombudsman under this section must be in a form approved by him.

## **102 Report and recommendations**

- (1) The Ombudsman must prepare a report on any complaint he has investigated under section 101.
- (2) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) whether he considers the complaint should be upheld in whole or part;
  - (c) if he does, what if any action he recommends should be taken by the Commission or the Lord Chancellor as a result of the complaint.
- (3) The recommendations that may be made under subsection (2)(c) include recommendations for the payment of compensation.
- (4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the complainant as a result of maladministration and not as a result of any failure to be appointed to an office to which the complaint related.

## **103 Report procedure**

- (1) This section applies to a report under section 102.

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- (2) The Ombudsman must submit a draft of the report—
  - (a) to the Lord Chancellor, and
  - (b) if the complaint was a Commission complaint, to the Commission.
- (3) In finalising the report the Ombudsman—
  - (a) must have regard to any proposal by the Lord Chancellor or the Commission for changes in the draft report;
  - (b) must include in the report a statement of any such proposal not given effect to.
- (4) The report must be signed by the Ombudsman.
- (5) If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission.
- (6) Otherwise the Ombudsman must send the report to the Lord Chancellor.
- (7) The Ombudsman must send a copy of the report to the complainant, but that copy must not include information—
  - (a) which relates to an identified or identifiable individual other than the complainant, and
  - (b) whose disclosure by the Ombudsman to the complainant would (apart from this subsection) be contrary to section 139.

#### **104 References by the Lord Chancellor**

- (1) If the Lord Chancellor refers to the Ombudsman any matter relating to the procedures of the Commission or a committee of the Commission, the Ombudsman must investigate it.
- (2) The matter may relate to such procedures generally or in a particular case.
- (3) The Ombudsman must report to the Lord Chancellor on any investigation under this section.
- (4) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) what if any action he recommends should be taken by any person in relation to the matter.
- (5) The report must be signed by the Ombudsman.

#### **105 Information**

The Commission and the Lord Chancellor must provide the Ombudsman with such information as he may reasonably require relating to the subject matter of any investigation by him under section 101 or 104.

#### *Miscellaneous*

#### **106 Consultation on appointment of lay justices**

In section 10 of the Courts Act 2003 (c. 39) (appointment of lay justices etc.) after subsection (2) insert—

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“(2A) The Lord Chancellor must ensure that arrangements for the exercise, so far as affecting any local justice area, of functions under subsections (1) and (2) include arrangements for consulting persons appearing to him to have special knowledge of matters relevant to the exercise of those functions in relation to that area.”

## 107 Disclosure of information to the Commission

- (1) Information which is held by or on behalf of a permitted person (whether obtained before or after this section comes into force) may be disclosed to the Commission or a committee of the Commission for the purposes of selection under this Part.
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (3) But nothing in this section authorises the making of a disclosure—
  - (a) which contravenes the Data Protection Act 1998 (c. 29), or
  - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (4) This section does not affect a power to disclose which exists apart from this section.
- (5) The following are permitted persons—
  - (a) a chief officer of police of a police force in England and Wales;
  - (b) a chief constable of a police force in Scotland;
  - (c) the Chief Constable of the Police Service of Northern Ireland;
  - (d) the Director General of the National Criminal Intelligence Service;
  - (e) the Director General of the National Crime Squad;
  - (f) the Commissioners of Inland Revenue;
  - (g) the Commissioners of Customs and Excise.
- (6) The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which he considers are of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).
- (7) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.
- (8) The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose)—
  - (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue,
  - (b) in the case of the Commissioners of Customs and Excise, to a customs officer.
- (9) For the purposes of this section a customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2).



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## CHAPTER 3

### DISCIPLINE

#### Modifications etc. (not altering text)

- C5** Pt. 4 Ch. 3 applied (prosp.) by Coroners and Justice Act 2009 (c. 25), ss. 23, 182, Sch. 3 para. 14 (with s. 180, Sch. 22)

#### *Disciplinary powers*

### 108 Disciplinary powers

- (1) Any power of the Lord Chancellor to remove a person from an office listed in Schedule 14 is exercisable only after the Lord Chancellor has complied with prescribed procedures (as well as any other requirements to which the power is subject).
- (2) The Lord Chief Justice may exercise any of the following powers but only with the agreement of the Lord Chancellor and only after complying with prescribed procedures.
- (3) The Lord Chief Justice may give a judicial office holder formal advice, or a formal warning or reprimand, for disciplinary purposes (but this section does not restrict what he may do informally or for other purposes or where any advice or warning is not addressed to a particular office holder).
- (4) He may suspend a person from a judicial office for any period during which any of the following applies—
  - (a) the person is subject to criminal proceedings;
  - (b) the person is serving a sentence imposed in criminal proceedings;
  - (c) the person has been convicted of an offence and is subject to prescribed procedures in relation to the conduct constituting the offence.
- (5) He may suspend a person from a judicial office for any period if—
  - (a) the person has been convicted of a criminal offence,
  - (b) it has been determined under prescribed procedures that the person should not be removed from office, and
  - (c) it appears to the Lord Chief Justice with the agreement of the Lord Chancellor that the suspension is necessary for maintaining confidence in the judiciary.
- (6) He may suspend a person from office as a senior judge for any period during which the person is subject to proceedings for an Address.
- (7) He may suspend the holder of an office listed in Schedule 14 for any period during which the person—
  - (a) is under investigation for an offence, or
  - (b) is subject to prescribed procedures.
- (8) While a person is suspended under this section from any office he may not perform any of the functions of the office (but his other rights as holder of the office are not affected).

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## 109 Disciplinary powers: interpretation

- (1) This section has effect for the purposes of section 108.
- (2) A person is subject to criminal proceedings if in any part of the United Kingdom proceedings against him for an offence have been begun and have not come to an end, and the times when proceedings are begun and come to an end for the purposes of this subsection are such as may be prescribed.
- (3) A person is subject to proceedings for an Address from the time when notice of a motion is given in each House of Parliament for an Address for the removal of the person from office, until the earliest of the following events—
  - (a) either notice is withdrawn;
  - (b) either motion is amended so that it is no longer a motion for an address for removal of the person from office;
  - (c) either motion is withdrawn, lapses or is disagreed to;
  - (d) where an Address is presented by each House, a message is brought to each House from Her Majesty in answer to the Address.
- (4) “Judicial office” means—
  - (a) office as a senior judge, or
  - (b) an office listed in Schedule 14;
 and “judicial office holder” means the holder of a judicial office.
- (5) “Senior judge” means any of these—
  - (a) Master of the Rolls;
  - (b) President of the Queen's Bench Division;
  - (c) President of the Family Division;
  - (d) Chancellor of the High Court;
  - [<sup>F21</sup>(da) Senior President of Tribunals;]
  - (e) Lord Justice of Appeal;
  - (f) puisne judge of the High Court.
- (6) “Sentence” includes any sentence other than a fine (and “serving” is to be read accordingly).
- (7) The times when a person becomes and ceases to be subject to prescribed procedures for the purposes of section 108(4) or (7) are such as may be prescribed.
- (8) “Under investigation for an offence” has such meaning as may be prescribed.

### Textual Amendments

**F21** S. 109(5)(da) inserted (19.9.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), ss. 48\(1\), 148, Sch. 8 para. 63; S.I. 2007/2709, art. 2\(c\)](#)

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### *Applications for review and references*

#### **110 Applications to the Ombudsman**

- (1) This section applies if an interested party makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been—
  - (a) a failure to comply with prescribed procedures, or
  - (b) some other maladministration.
- (2) The Ombudsman must carry out a review if the following three conditions are met.
- (3) The first condition is that the Ombudsman considers that a review is necessary.
- (4) The second condition is that—
  - (a) the application is made within the permitted period,
  - (b) the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or
  - (c) the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made within a reasonable time.
- (5) The third condition is that the application is made in a form approved by the Ombudsman.
- (6) But the Ombudsman may not review the merits of a decision made by any person.
- (7) If any of the conditions in subsections (3) to (5) is not met, or if the grounds of the application relate only to the merits of a decision, the Ombudsman—
  - (a) may not carry out a review, and
  - (b) must inform the applicant accordingly.
- (8) In this section and sections 111 to 113, “regulated disciplinary function” means any of the following—
  - (a) any function of the Lord Chancellor that falls within section 108(1);
  - (b) any function conferred on the Lord Chief Justice by section 108(3) to (7);
  - (c) any function exercised under prescribed procedures in connection with a function falling within paragraph (a) or (b).
- (9) In this section, in relation to an application under this section for a review of the exercise of a regulated disciplinary function—
  - “interested party” means—
    - (a) the judicial office holder in relation to whose conduct the function is exercised, or
    - (b) any person who has made a complaint about that conduct in accordance with prescribed procedures;
  - “permitted period” means the period of 28 days beginning with the latest of—
    - (a) the failure or other maladministration alleged by the applicant;
    - (b) where that failure or maladministration occurred in the course of an investigation, the applicant being notified of the conclusion or other termination of that investigation;

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(c) where that failure or maladministration occurred in the course of making a determination, the applicant being notified of that determination.

(10) References in this section and section 111 to the exercise of a function include references to a decision whether or not to exercise the function.

**Modifications etc. (not altering text)**

**C6** S. 110 applied (3.4.2006) by The Judicial Discipline (Prescribed Procedures) Regulations 2006 (S.I. 2006/676), reg. 44 (with reg. 45)

## 111 Review by the Ombudsman

- (1) Where the Ombudsman is under a duty to carry out a review on an application under section 110, he must—
  - (a) on the basis of any findings he makes about the grounds for the application, decide to what extent the grounds are established;
  - (b) decide what if any action to take under subsections (2) to (7).
- (2) If he decides that the grounds are established to any extent, he may make recommendations to the Lord Chancellor and Lord Chief Justice.
- (3) A recommendation under subsection (2) may be for the payment of compensation.
- (4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the applicant as a result of any failure or maladministration to which the application relates.
- (5) If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates, he may set aside the determination.
- (6) If a determination is set aside under subsection (5)—
  - (a) the prescribed procedures apply, subject to any prescribed modifications, as if the determination had not been made, and
  - (b) for the purposes of those procedures, any investigation or review leading to the determination is to be disregarded.
- (7) Subsection (6) is subject to any direction given by the Ombudsman under this subsection—
  - (a) for a previous investigation or review to be taken into account to any extent, or
  - (b) for any investigation or review which may form part of the prescribed procedures to be undertaken, or undertaken again.
- (8) This section is subject to section 112.

**Modifications etc. (not altering text)**

**C7** S. 111 applied (3.4.2006) by The Judicial Discipline (Prescribed Procedures) Regulations 2006 (S.I. 2006/676), {reg. 44} (with reg. 45)

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## 112 Reports on reviews

- (1) In this section references to the Ombudsman's response to an application are references to the findings and decisions referred to in section 111(1).
- (2) Before determining his response to an application the Ombudsman must prepare a draft of a report of the review carried out on the application.
- (3) The draft report must state the Ombudsman's proposed response.
- (4) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.
- (5) If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response to the application should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.
- (6) The Ombudsman must produce a final report that sets out—
  - (a) the Ombudsman's response to the application, including any changes made to it to give effect to a proposal under subsection (5);
  - (b) a statement of any proposal under subsection (5) that is not given effect to.
- (7) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
- (8) The Ombudsman must also send a copy of the final report to the applicant, but that copy must not include information—
  - (a) which relates to an identified or identifiable individual other than the applicant, and
  - (b) whose disclosure by the Ombudsman to the applicant would (apart from this subsection) be contrary to section 139.
- (9) Each copy must be signed by the Ombudsman.
- (10) No part of the Ombudsman's response to an application has effect until he has complied with subsections (2) to (9).

### Modifications etc. (not altering text)

- C8** S. 112 applied (3.4.2006) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2006 \(S.I. 2006/676\)](#), [reg. 44](#) (with [reg. 45](#))

## 113 References to the Ombudsman relating to conduct

- (1) The Ombudsman must investigate any matter referred to him by the Lord Chancellor or the Lord Chief Justice that relates to the exercise of one or more regulated disciplinary functions.
- (2) A matter referred to the Ombudsman under subsection (1) may relate to the particular exercise of a regulated disciplinary function or to specified descriptions of the exercise of such functions.

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**Modifications etc. (not altering text)**

- C9** S. 113 applied (3.4.2006) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2006 \(S.I. 2006/676\)](#), [reg. 44](#) (with [reg. 45](#))

**114 Reports on references**

- (1) Where the Ombudsman carries out an investigation under section 113 he must prepare a draft of a report of the investigation.
- (2) If the investigation relates to a matter which is the subject of a review on an application under section 110, subsection (1) applies only when the Ombudsman has sent a copy of the final report on that review to the Lord Chancellor, the Lord Chief Justice and the applicant.
- (3) The draft report must state the Ombudsman's proposals as to—
  - (a) the findings he will make;
  - (b) any recommendations he will make for action to be taken by any person in relation to the matter subject to investigation.
- (4) Those findings and recommendations are referred to in this section as the Ombudsman's response on the investigation.
- (5) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.
- (6) If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response on the investigation should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.
- (7) The Ombudsman must produce a final report that sets out—
  - (a) the Ombudsman's response on the investigation, including any changes made to it to give effect to a proposal under subsection (6);
  - (b) a statement of any proposal under subsection (6) that is not given effect to.
- (8) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
- (9) Each copy must be signed by the Ombudsman.

*General*

**115 Regulations about procedures**

The Lord Chief Justice may, with the agreement of the Lord Chancellor, make regulations providing for the procedures that are to be followed in—

- (a) the investigation and determination of allegations by any person of misconduct by judicial office holders;
- (b) reviews and investigations (including the making of applications or references) under sections 110 to 112.

*Status: Point in time view as at 06/11/2009.*

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#### Commencement Information

- 18** S. 115 wholly in force at 3.4.2006; s. 115 not in force at Royal Assent see s. 148; s. 115 in force for specified purposes at 1.10.2005 by S.I. 2005/2505, art. 2(b); s. 115 in force at 3.4.2006 by S.I. 2006/1014, art. 2(a), Sch. 1 para. 23

## 116 Contents of regulations

- (1) Regulations under section 115(a) may include provision as to any of the following—
- (a) circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise);
  - (b) steps to be taken by a complainant before a complaint is to be investigated;
  - (c) the conduct of an investigation, including steps to be taken by the office holder under investigation or by a complainant or other person;
  - (d) time limits for taking any step and procedures for extending time limits;
  - (e) persons by whom an investigation or part of an investigation is to be conducted;
  - (f) matters to be determined by the Lord Chief Justice, the Lord Chancellor, the office holder under investigation or any other person;
  - (g) requirements as to records of investigations;
  - (h) requirements as to confidentiality of communications or proceedings;
  - (i) requirements as to the publication of information or its provision to any person.
- (2) The regulations—
- (a) may require a decision as to the exercise of functions under section 108, or functions mentioned in subsection (1) of that section, to be taken in accordance with findings made pursuant to prescribed procedures;
  - (b) may require that prescribed steps be taken by the Lord Chief Justice or the Lord Chancellor in exercising those functions or before exercising them.
- (3) Where regulations under section 115(a) impose any requirement on the office holder under investigation or on a complainant, a person contravening the requirement does not incur liability other than liability to such procedural penalty if any (which may include the suspension or dismissal of a complaint)—
- (a) as may be prescribed by the regulations, or
  - (b) as may be determined by the Lord Chief Justice and the Lord Chancellor or either of them in accordance with provisions so prescribed.
- (4) Regulations under section 115 may—
- (a) provide for any prescribed requirement not to apply if the Lord Chief Justice and the Lord Chancellor so agree;
  - (b) make different provision for different purposes.
- (5) Nothing in this section limits the generality of section 115.

*Status: Point in time view as at 06/11/2009.*

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#### Commencement Information

- 19** S. 116 wholly in force at 3.4.2006; s. 116 not in force at Royal Assent see s. 148; s. 116 in force for specified purposes at 1.10.2005 by S.I. 2005/2505, **art. 2(b)**; s. 116 in force at 3.4.2006 by S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 23

### 117 Procedural rules

- (1) Regulations under section 115 may provide for provision of a prescribed description that may be included in the regulations to be made instead by rules made by the Lord Chief Justice with the agreement of the Lord Chancellor.
- (2) But the provision that may be made by rules does not include—
  - (a) provision within section 116(2);
  - (b) provision made for the purposes of section 108(7) or (8) or 116(3).
- (3) The rules are to be published in such manner as the Lord Chief Justice may determine with the agreement of the Lord Chancellor.

#### Commencement Information

- 110** S. 117 wholly in force at 3.4.2006; s. 117 not in force at Royal Assent see s. 148; s. 117 in force for specified purposes at 1.10.2005 by S.I. 2005/2505, **art. 2(b)**; s. 117 in force at 3.4.2006 by S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 23

### 118 Extension of discipline provisions to other offices

- (1) This Chapter applies in relation to an office designated by the Lord Chancellor under this section as it would apply if the office were listed in Schedule 14.
- (2) The Lord Chancellor may by order designate any office, not listed in Schedule 14, the holder of which he has power to remove from office.
- (3) An order under this section may be made only with the agreement of the Lord Chief Justice.

#### Commencement Information

- 111** S. 118 wholly in force at 3.4.2006; s. 118 not in force at Royal Assent see s. 148; s. 118 in force for specified purposes at 1.10.2005 by S.I. 2005/2505, **art. 2(b)**; s. 118 in force at 3.4.2006 by S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 23

### 119 Delegation of functions

- (1) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4)) to exercise any of his functions under the relevant sections.
- (2) The relevant sections are—
  - (a) section 108(3) to (7);
  - (b) section 111(2);



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- (c) section 112;
- (d) section 116(3)(b).

### *Scotland and Northern Ireland*

#### **120 Scotland**

- (1) In section 108, in relation to a judicial office holder who exercises functions wholly or mainly in Scotland, references to the Lord Chief Justice are to be read as references to the Lord President of the Court of Session.
- (2) Regulations under section 115 and rules under section 117 do not apply in relation to a judicial office holder who exercises functions wholly or mainly in Scotland unless they are made with the agreement of the Lord President of the Court of Session.
- (3) In section 116(1)(f), (3)(b) and (4)(a) the references to the Lord Chief Justice include references to the Lord President of the Court of Session.
- (4) In section 118(3), where the description of offices designated by the order is limited to (or includes) offices in which the holder exercises functions wholly or mainly in Scotland, the reference to the Lord Chief Justice is to be read as (or as including) a reference to the Lord President of the Court of Session.
- (5) The Lord Chief Justice may by regulations provide for sections 110 to 113 to apply in relation to judicial office holders who exercise functions wholly or mainly in Scotland—
  - (a) as if in section 110(8)(b) the reference to the Lord Chief Justice were a reference to the Lord President of the Court of Session, and
  - (b) with any other modifications specified in the regulations.
- (6) Regulations under subsection (5) may be made only with the agreement of the Lord Chancellor and the Lord President of the Court of Session.
- (7) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise any of his functions under the relevant sections.
- (8) The relevant sections are—
  - (a) section 108(3) to (7);
  - (b) section 111(2);
  - (c) section 112;
  - (d) section 116(3)(b).

#### **121 Northern Ireland**

- (1) In section 108, in relation to a judicial office holder who exercises functions wholly or mainly in Northern Ireland, references to the Lord Chief Justice are to be read as references to the Lord Chief Justice of Northern Ireland.
- (2) Regulations under section 115 and rules under section 117 do not apply in relation to a judicial office holder who exercises functions wholly or mainly in Northern Ireland, unless they are made with the agreement of the Lord Chief Justice of Northern Ireland.

*Status: Point in time view as at 06/11/2009.*

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- (3) In section 116(1)(f), (3)(b) and (4)(a) the references to the Lord Chief Justice include references to the Lord Chief Justice of Northern Ireland.
- (4) In section 118(3), where the description of offices designated by the order is limited to (or includes) offices in which the holder exercises functions wholly or mainly in Northern Ireland, the reference to the Lord Chief Justice is to be read as (or as including) a reference to the Lord Chief Justice of Northern Ireland.
- (5) The Lord Chief Justice may by regulations provide for sections 110 to 113 to apply in relation to judicial office holders who exercise functions wholly or mainly in Northern Ireland—
- (a) as if in section 110(8)(b) the reference to the Lord Chief Justice were a reference to the Lord Chief Justice of Northern Ireland, and
  - (b) with any other modifications specified in the regulations.
- (6) Regulations under subsection (5) may be made only with the agreement of the Lord Chancellor and the Lord Chief Justice of Northern Ireland.
- (7) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise any of his functions under the relevant sections—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).
- (8) The relevant sections are—
- (a) section 108(3) to (7);
  - (b) section 111(2);
  - (c) section 112;
  - (d) section 116(3)(b).

## CHAPTER 4

### INTERPRETATION OF PART 4

#### 122 Interpretation of Part 4

In this Part—

“appoint” includes nominate or designate (and “appointment” is to be read accordingly);

the “Commission” means the Judicial Appointments Commission;

“Head of Division” means any of these—

- (a) the Master of the Rolls;
- (b) the President of the Queen's Bench Division;
- (c) the President of the Family Division;
- (d) the Chancellor of the High Court;

“High Court” means the High Court in England and Wales;

“high judicial office” has the meaning given by section 60;

“lay member” of the Commission has the meaning given by paragraph 4 of Schedule 12;

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“Lord Chief Justice”, unless otherwise stated, means the Lord Chief Justice of England and Wales;

“Lord Justice of Appeal” means a Lord Justice of Appeal in England and Wales;

“office” includes a position of any description;

the “Ombudsman” means the Judicial Appointments and Conduct Ombudsman;

“prescribed” means prescribed by regulations under section 115 or, subject to section 117(2), by rules under section 117;

“vacancy” in relation to an office to which one of sections 68, 77 and 86 applies, means a vacancy arising on a holder of the office vacating it at any time after the commencement of that section.

## PART 5

### JUDICIAL APPOINTMENTS AND REMOVALS: NORTHERN IRELAND

#### CHAPTER 1

##### APPOINTMENTS

###### *Disclosure of information to Commission*

### **123 Disclosure of information to the Northern Ireland Judicial Appointments Commission**

- (1) The Justice (Northern Ireland) Act 2002 (c. 26) (“the 2002 Act”) is amended as follows.
- (2) After section 5 of the 2002 Act insert—

#### **“5A Disclosure of information to the Commission**

- (1) Information which is held by or on behalf of a permitted person (whether obtained before or after this section comes into force) may be disclosed to the Commission or a committee of the Commission for the purposes of selection under section 5.
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (3) But nothing in this section authorises the making of a disclosure—
  - (a) which contravenes the Data Protection Act 1998, or
  - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.
- (4) This section does not affect a power to disclose which exists apart from this section.
- (5) The following are permitted persons—

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- (a) a chief officer of police of a police force in England and Wales;
  - (b) a chief constable of a police force in Scotland;
  - (c) the Chief Constable of the Police Service of Northern Ireland;
  - (d) the Director General of the National Criminal Intelligence Service;
  - (e) the Director General of the National Crime Squad;
  - (f) the Commissioners of Inland Revenue;
  - (g) the Commissioners of Customs and Excise.
- (6) The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which he considers are of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).
- (7) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.
- (8) The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose)—
- (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue,
  - (b) in the case of the Commissioners of Customs and Excise, to a customs officer.
- (9) For the purposes of this section a customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979.”

#### **Commencement Information**

**I12** S. 123 partly in force; s. 123 not in force at Royal Assent see s. 148; s. 123 in force for specified purposes at 15.6.2005 by S.I. 2005/1431, art. 2(a)

### *Ombudsman*

#### **124 Northern Ireland Judicial Appointments Ombudsman**

- (1) The italic cross-heading before section 9 of the 2002 Act is omitted.
- (2) After that section insert—

*“The Ombudsman*

#### **9A Judicial Appointments Ombudsman**

- (1) There is to be a Northern Ireland Judicial Appointments Ombudsman.
- (2) The Ombudsman is appointed by Her Majesty on the recommendation of the Lord Chancellor.

*Status: Point in time view as at 06/11/2009.*

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(3) Schedule 3A makes further provision about the Ombudsman.”

(3) Schedule 15 inserts Schedule 3A to the 2002 Act.

### *Complaints and references*

## **125 Complaints: interpretation**

After section 9A of the 2002 Act insert—

### **“9B Complaints: interpretation**

- (1) This section applies for the purposes of this Part.
- (2) A Commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission.
- (3) A departmental complaint is a complaint by a qualifying complainant of maladministration by the Lord Chancellor or the Northern Ireland Court Service in connection with any of the following—
  - (a) recommendation for or appointment to a listed judicial office;
  - (b) appointment under section 2 of the Taxes Management Act 1970 as a Commissioner for the general purposes of the income tax for Northern Ireland.
- (4) A qualifying complainant is a complainant who claims to have been adversely affected, as an applicant for selection or as a person selected under this Part, by the maladministration complained of.”

### **Commencement Information**

**113** S. 125 partly in force; s. 125 not in force at Royal Assent see. s. 148; s. 125 in force for specified purposes at 25.9.2006 by S.I. 2006/1537, art. 3(b)

## **126 Complaints to the Commission or the Lord Chancellor**

After section 9B of the 2002 Act insert—

### **“9C Complaints to the Commission or the Lord Chancellor**

- (1) The Commission must make arrangements for investigating any Commission complaint made to it.
- (2) The Lord Chancellor must make arrangements for investigating any departmental complaint made to him.
- (3) Arrangements under this section need not apply to a complaint made more than 28 days after the matter complained of.”

## **127 Complaints to the Ombudsman**

After section 9C of the 2002 Act insert—

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### **“9D Complaints to the Ombudsman**

- (1) Subsections (2) and (3) apply to a complaint which the complainant—
  - (a) has made to the Commission or Lord Chancellor in accordance with arrangements under section 9C, and
  - (b) makes to the Ombudsman not more than 28 days after being notified of the Commission's or Lord Chancellor's decision on the complaint.
- (2) If the Ombudsman considers that investigation of the complaint is not necessary, he must inform the complainant.
- (3) Otherwise he must investigate the complaint.
- (4) The Ombudsman may investigate a complaint which the complainant—
  - (a) has made to the Commission or the Lord Chancellor in accordance with arrangements under section 9C, and
  - (b) makes to the Ombudsman at any time.
- (5) The Ombudsman may investigate a transferred complaint made to him, and no such complaint may be made under the Judicial Appointments Order after the commencement of this section.
- (6) The Judicial Appointments Order is the Judicial Appointments Order in Council 2001, which sets out the functions of Her Majesty's Commissioners for Judicial Appointments.
- (7) A transferred complaint is a complaint that lay to those Commissioners (whether or not it was made to them) in respect of the application of procedures for appointment to listed judicial offices before the commencement of this section, but not a complaint that those Commissioners had declined to investigate or on which they had concluded their investigation.
- (8) Any complaint to the Ombudsman under this section must be in a form approved by him.”

## **128 Report and recommendations**

After section 9D of the 2002 Act insert—

### **“9E Report and recommendations**

- (1) The Ombudsman must prepare a report on any complaint he has investigated under section 9D.
- (2) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) whether he considers the complaint should be upheld in whole or part;
  - (c) if he does, what if any action he recommends should be taken by the Commission or the Lord Chancellor as a result of the complaint.
- (3) The recommendations that may be made under subsection (2)(c) include recommendations for the payment of compensation.

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- (4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the complainant as a result of maladministration and not as a result of any failure to be appointed to an office to which the complaint related.”

## **129 Report procedure**

After section 9E of the 2002 Act insert—

### **“9F Report procedure**

- (1) This section applies to a report under section 9E.
- (2) The Ombudsman must submit a draft of the report—
  - (a) to the Lord Chancellor, and
  - (b) if the complaint was a Commission complaint, to the Commission.
- (3) In finalising the report the Ombudsman—
  - (a) must have regard to any proposal by the Lord Chancellor or the Commission for changes in the draft report;
  - (b) must include in the report a statement of any such proposal not given effect to.
- (4) The report must be signed by the Ombudsman.
- (5) If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission.
- (6) Otherwise the Ombudsman must send the report to the Lord Chancellor.
- (7) The Ombudsman must send a copy of the report to the complainant, but that copy must not include information—
  - (a) which relates to an identified or identifiable individual other than the complainant, and
  - (b) whose disclosure by the Ombudsman to the complainant would (apart from this subsection) be contrary to section 9I.”

## **130 References by the Lord Chancellor**

After section 9F of the 2002 Act insert—

### **“9G References by the Lord Chancellor**

- (1) If the Lord Chancellor refers to the Ombudsman any matter relating to the procedures of the Commission or a committee of the Commission, the Ombudsman must investigate it.
- (2) The matter may relate to such procedures generally or in a particular case.
- (3) The Ombudsman must report to the Lord Chancellor on any investigation under this section.
- (4) The report must state—

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- (a) what findings the Ombudsman has made;
- (b) what if any action he recommends should be taken by any person in relation to the matter.

(5) The report must be signed by the Ombudsman.”

### 131 Information

After section 9G of the 2002 Act insert—

#### “9H Information

The Commission and the Lord Chancellor must provide the Ombudsman with such information as he may reasonably require relating to the subject matter of an investigation under section 9D or 9G.”

### 132 Confidentiality in relation to judicial appointments and discipline

After section 9H of the 2002 Act insert—

#### “9I Confidentiality in relation to judicial appointments and discipline

- (1) A person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of a relevant provision must not disclose it except with lawful authority.
- (2) These are the relevant provisions—
  - (a) section 12, 12A and 12B of the Judicature (Northern Ireland) Act 1978 (appointment and removal of Lord Chief Justice, Lords Justices of Appeal and judges of High Court);
  - (b) sections 3, 5, 7 and 9 to 9H of this Act (appointment and removal of judicial officers, and appointment and removal of lay magistrates);
  - (c) sections 134 and 135 of the Constitutional Reform Act 2005 (removal from judicial offices);
  - (d) section 16 of this Act (complaints about judicial officers);
- (3) Information is confidential if it relates to an identified or identifiable individual (a “subject”).
- (4) Confidential information is disclosed with lawful authority only if and to the extent that any of the following applies—
  - (a) the disclosure is with the consent of each person who is a subject of the information (but this is subject to subsection (5));
  - (b) the disclosure is for (and is necessary for) the exercise by any person of functions under a relevant provision or a decision whether to exercise them;
  - (c) the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description.
- (5) An opinion or other information given by one identified or identifiable individual (A) about another (B)—
  - (a) is information that relates to both;



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- (b) must not be disclosed to B without A's consent.
- (6) This section does not prevent the disclosure with the agreement of the Lord Chancellor and the Lord Chief Justice of information as to disciplinary action taken in accordance with a relevant provision.
- (7) This section does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.
- (8) A contravention of this section in respect of any information is actionable, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (9) But it is actionable only at the suit of a person who is a subject of the information.

*Transfer of functions of justices of the peace”*

## CHAPTER 2

### REMOVALS

#### 133 Removal from most senior judicial offices

In the Judicature (Northern Ireland) Act 1978 (c. 23) before section 13 insert—

##### “12B Tenure of office

- (1) The Lord Chief Justice, Lords Justices of Appeal and judges of the High Court hold office during good behaviour (subject to section 26 of, and Schedule 7 to, the Judicial Pensions and Retirement Act 1993).
- (2) Her Majesty may on an address presented to Her Majesty by both Houses of Parliament remove a person from office as Lord Chief Justice, a Lord Justice of Appeal or a judge of the High Court.
- (3) A motion for the presentation of an address to Her Majesty for the removal of a person from any of those offices may be made—
  - (a) to the House of Commons only by the Prime Minister; and
  - (b) to the House of Lords only by the Lord Chancellor or, if the Lord Chancellor is not a member of that House, by another Minister of the Crown at his request.
- (4) No motion for the presentation of such an address may be made unless a tribunal convened under section 135 of the Constitutional Reform Act 2005 has reported to the Lord Chancellor recommending that the person be removed from the office on the ground of misbehaviour.
- (5) The Prime Minister shall lay a copy of the report before the House of Commons before making a motion for the presentation of an address in that House; and a person making such a motion in the House of Lords shall lay a copy of the report before that House before making the motion.

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- (6) If the Prime Minister and Lord Chancellor are considering the making of motions for the presentation of an address to Her Majesty in relation to the Lord Chief Justice, the Prime Minister may suspend him from office; and if they are considering the making of such motions in relation to a Lord Justice of Appeal or a judge of the High Court the Prime Minister may suspend him from office with the agreement of the Lord Chief Justice.
- (7) If a person is suspended from an office under subsection (6), he may not perform any of the functions of the office (but his other rights as holder of the office are unaffected)."

### 134 Removal from listed judicial offices

- (1) A person holding a listed judicial office other than as a judge of the High Court may be removed from office (and suspended from office pending a decision whether to remove him) but only in accordance with this section.
- (2) The power to remove or suspend him is exercisable by the Lord Chancellor.
- (3) He may only be removed if a tribunal convened under section 135 has reported to the Lord Chancellor recommending that he be removed on the ground of misbehaviour or inability to perform the functions of the office.
- (4) He may only be suspended if the tribunal, at any time when it is considering whether to recommend his removal, has recommended to the Lord Chancellor that he be suspended.
- (5) He may not be removed or suspended except after consultation with the Lord Chief Justice.
- (6) If he is suspended he may not perform any of the functions of the office until the decision whether to remove him has been taken (but his other rights as holder of the office are unaffected).

### 135 Tribunals for considering removal

- (1) A tribunal to consider the removal of the Lord Chief Justice may be convened by the Lord Chancellor.
- (2) A tribunal to consider the removal of the holder of any other protected judicial office may be convened—
  - (a) by the Lord Chancellor, after consulting the Lord Chief Justice, or
  - (b) by the Lord Chief Justice, after consulting the Lord Chancellor.
- (3) A tribunal to consider the removal of the Lord Chief Justice or a Lord Justice of Appeal may not be convened unless the Prime Minister has been consulted.
- (4) A tribunal to consider the removal of the Lord Chief Justice, a Lord Justice of Appeal or a judge of the High Court is to consist of—
  - (a) a person who holds high judicial office within the meaning of Part 3 and does not hold (and has never held) the office of Lord Chief Justice, Lord Justice of Appeal or judge of the High Court,
  - (b) a person who is, or has been, a judge of the Court of Appeal of England and Wales or the Inner House of the Court of Session, and

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- (c) a person who does not hold (and has never held) a protected judicial office and is not (and has never been) a barrister or solicitor.
- (5) A tribunal to consider the removal of the holder of any other protected judicial office is to consist of—
- (a) a person who holds, or has held, the office of Lord Chief Justice or Lord Justice of Appeal,
  - (b) a person who holds the office of judge of the High Court, and
  - (c) a person who does not hold (and has never held) a protected judicial office and is not (and has never been) a barrister or solicitor.
- (6) The chairman of a tribunal is the person mentioned in paragraph (a) of subsection (4) or (5).
- (7) The selection of the persons to be the members of a tribunal under paragraphs (a) and (b) of subsection (4) is to be made by the Lord Chancellor, after consultation with—
- (a) the Lord Chief Justice (unless the tribunal is to consider his removal from office),
  - (b) the President of the Supreme Court of the United Kingdom,
  - (c) the Lord Chief Justice of England and Wales, and
  - (d) the Lord President of the Court of Session.
- (8) The selection of the persons to be the members of a tribunal under paragraphs (a) and (b) of subsection (5) is to be made by the Lord Chief Justice.
- (9) The selection of the person who is to be the member of a tribunal under paragraph (c) of subsection (4) or (5) is to be made by the Lord Chancellor.
- (10) The procedure of a tribunal is to be determined by the Lord Chief Justice except where—
- (a) the office of Lord Chief Justice is vacant,
  - (b) he is not available, or
  - (c) the tribunal is to consider his removal from office;
- and in such a case its procedure is to be determined by its chairman.
- (11) The Lord Chancellor may pay to a member of a tribunal any such allowances or fees as he may determine.

## 136 Interpretation of Part 5

In this Part—

“listed judicial office” means an office listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);

“Lord Chief Justice”, unless otherwise stated, means the Lord Chief Justice of Northern Ireland;

“Lord Justice of Appeal” means a person styled as such under section 3 of the Judicature (Northern Ireland) Act 1978 (c. 23);

“protected judicial office” means the office of Lord Chief Justice, the office of Lord Justice of Appeal or a listed judicial office.

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## PART 6

### OTHER PROVISIONS RELATING TO THE JUDICIARY

#### 137 Parliamentary disqualification

- (1) In Part 1 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (judicial offices disqualifying for membership) at the beginning insert— “ Judge of the Supreme Court. ”
- (2) In Part 1 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (judicial offices disqualifying for membership) at the beginning insert— “ Judge of the Supreme Court. ”
- (3) A member of the House of Lords is, while he holds any disqualifying judicial office, disqualified for sitting or voting in—
  - (a) the House of Lords,
  - (b) a committee of that House, or
  - (c) a joint committee of both Houses.
- (4) In subsection (3) “disqualifying judicial office” means any of the judicial offices specified in—
  - (a) Part 1 of Schedule 1 to the House of Commons Disqualification Act 1975, or
  - (b) Part 1 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.
- (5) A member of the House of Lords who is disqualified under subsection (3) is not for that reason disqualified for receiving a writ of summons to attend that House, but any such writ is subject to that subsection.

#### 138 Judicial Committee of the Privy Council

Schedule 16 contains amendments about the Judicial Committee of the Privy Council.

## PART 7

### GENERAL

#### 139 Confidentiality

- (1) A person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of a relevant provision must not disclose it except with lawful authority.
- (2) These are the relevant provisions—
  - (a) sections 26 to 31;
  - (b) Part 4;
  - (c) regulations and rules under Part 4.
- (3) Information is confidential if it relates to an identified or identifiable individual (a “subject”).

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- (4) Confidential information is disclosed with lawful authority only if and to the extent that any of the following applies—
  - (a) the disclosure is with the consent of each person who is a subject of the information (but this is subject to subsection (5));
  - (b) the disclosure is for (and is necessary for) the exercise by any person of functions under a relevant provision;
  - (c) the disclosure is for (and is necessary for) the exercise of functions under section 11(3A) of the Supreme Court Act 1981 (c. 54) or a decision whether to exercise them;
  - (d) the disclosure is for (and is necessary for) the exercise of powers to which section 108 applies, or a decision whether to exercise them;
  - (e) the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description.
- (5) An opinion or other information given by one identified or identifiable individual (A) about another (B)—
  - (a) is information that relates to both;
  - (b) must not be disclosed to B without A's consent.
- (6) This section does not prevent the disclosure with the agreement of the Lord Chancellor and the Lord Chief Justice of information as to disciplinary action taken in accordance with a relevant provision.
- (7) This section does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.
- (8) A contravention of this section in respect of any information is actionable, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (9) But it is actionable only at the suit of a person who is a subject of the information.

## 140 “Enactment”

- (1) In this Act “enactment” includes—
  - (a) an enactment contained in this Act;
  - (b) an enactment contained in a local, personal or private Act;
  - (c) except in sections 19 and 143, an enactment contained in subordinate legislation;and any reference to an enactment includes a reference to an enactment whenever passed or made.
- (2) In section 22 “enactment” also includes an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (3) In Part 3 “enactment” also includes—
  - (a) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;
  - (b) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (4) In sections 19, 21 and 143 and in paragraph 3 of Schedule 7 “enactment” also includes—

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- (a) an enactment contained in Northern Ireland legislation;
- (b) an enactment contained in a Measure of the Church Assembly or of the General Synod of the Church of England.

#### **141 “Subordinate legislation”**

- (1) In this Act “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).
- (2) In sections 19 and 143 “subordinate legislation” also includes an enactment contained in an instrument made under Northern Ireland legislation.

#### **142 General interpretation**

In this Act—

- “functions” includes powers and duties;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26).

#### **143 Supplementary provision etc**

- (1) The Lord Chancellor may by order make—
  - (a) any supplementary, incidental or consequential provision, and
  - (b) any transitory, transitional or saving provision,
 which he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under this section may in particular—
  - (a) provide for any provision of this Act which comes into force before another such provision has come into force to have effect, until that other provision has come into force, with such modifications as are specified in the order;
  - (b) amend or repeal any of the following—
    - (i) an enactment other than one contained in an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;
    - (ii) subordinate legislation other than subordinate legislation made under an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;
    - (iii) any other instrument or document, including a prerogative instrument;
  - (c) amend or repeal an enactment or subordinate legislation, whenever passed or made, in consequence of section 59.
- (3) The amendments that may be made by virtue of subsection (2)(b) are in addition to those made by or under any other provision of this Act.
- (4) In this section “prerogative instrument” means an Order in Council, warrant, charter or other instrument made under the prerogative.

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## 144 Orders and regulations

- (1) Any power of a Minister of the Crown to make an order or regulations under this Act is exercisable by statutory instrument, except where subsection (2) applies.
- (2) Any power of the Lord Chancellor to make an order under section 19(1) or 143 amending an enactment contained in, or in an instrument made under, Northern Ireland legislation is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) Regulations under section 115, 120(5) or 121(5) are to be made in the form of a statutory instrument to which the Statutory Instruments Act 1946 (c. 36) applies as if the regulations were made by a Minister of the Crown.
- (4) A statutory instrument to which this subsection applies may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (5) Subsection (4) applies to a statutory instrument which contains any of the following—
  - (a) an order under section 85(3)(a) or (b) which amends Part 1 of Schedule 14;
  - (b) an order under section 19(1) which amends a public general Act, except where the only such amendment is the inclusion in Schedule 7 of a function of the Lord Chancellor;
  - (c) an order under section 19(1) which amends subordinate legislation of which a draft was required to be laid before and approved by a resolution of each House of Parliament, except where the only such amendment consists of provision that falls within subsection (2)(b) of section 19;
  - (d) an order under section 143 which amends a public general Act;
  - (e) an order under paragraph 5 of Schedule 12.
- (6) In any other case a statutory instrument containing an order or regulations under this Act, unless it contains only an order under section 66(5) or 148, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A statutory rule made under a power to which subsection (2) applies is subject to annulment in pursuance of a resolution of either House of Parliament.

## 145 Minor and consequential amendments

Schedule 17 (minor and consequential amendments) has effect.

### Commencement Information

**I14** S. 145 partly in force; s. 145 not in force at Royal Assent see s. 148; s. 145 in force for certain purposes at 3.4.2006 by S.I. 2006/1014, art. 2(a), Sch. 1 para. 27; 1.10.2009 by S.I. 2009/1604, art. 2

## 146 Repeals and revocations

The provisions listed in Schedule 18 are repealed or revoked to the extent specified.

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### Commencement Information

**115** S. 146 partly in force; s. 146 not in force at Royal Assent see s. 148; s. 146 in force for certain purposes at 3.4.2006 by S.I. 2006/1014, art. 2(a), Sch. 1 para. 29; 1.10.2009 by S.I. 2009/1604, art. 2

## 147 Extent

- (1) Sections 7, 8 and 9 extend to England and Wales only.
- (2) Section 6 and Part 5 extend to Northern Ireland only.
- (3) Any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.
- (4) Subject to subsections (1) to (3), this Act extends to Northern Ireland.

## 148 Commencement

- (1) This Act, except the following provisions, comes into force in accordance with provision to be made by the Lord Chancellor by order.
- (2) The provisions excepted from subsection (1) are—
  - (a) section 4;
  - (b) sections 18 to 22;
  - (c) sections 140 to 144;
  - (d) section 147;
  - (e) this section;
  - (f) section 149;
  - (g) Schedules 6 and 7.
- (3) Section 4 comes into force in accordance with provision to be made by the Secretary of State by order.
- (4) An order by which section 23(1) comes into force at any time may not be made unless the Lord Chancellor is satisfied that the Supreme Court will at that time be provided with accommodation in accordance with written plans that he has approved.
- (5) The Lord Chancellor may approve plans only if, having consulted the Lords of Appeal in Ordinary holding office at the time of the approval, he is satisfied that accommodation in accordance with the plans will be appropriate for the purposes of the Court.
- (6) An order under this section may make different provision for different purposes.

### Subordinate Legislation Made

**P1** S. 148 power partly exercised: 15.6.2005 appointed for specified provision by {S.I. 2005/1431}, art. 2; 31.5.2005 by {S.I. 2005/2284}, art. 2; 1.10.2005 by {S.I. 2005/2505}, art. 2; 27.2.2006 by {S.I. 2006/228}, art. 2; 3.4.2006 by {S.I. 2006/1014}, art. 2, Schs. 1, 2; 15.6.2006 by {S.I. 2006/1537}, arts. 2, 3; 20.3.2007 appointed for specified provisions by {S.I. 2007/967}, art. 2; 8.5.2007 appointed for further specified provisions and purposes by {S.I. 2007/1252}, art. 2; 2.10.2008 appointed for further specified provision by {S.I. 2008/2597}, art. 2; 1.10.2009 appointed for further specified provisions and purposes by {S.I. 2009/1604}, art. 2



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**P2** [S. 148\(3\)](#) power wholly exercised: 8.5.2007 appointed for specified provision by [{S.I. 2007/1121}](#), art. 2

## 149 Short title

This Act may be cited as the Constitutional Reform Act 2005.

**Status:**

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**Changes to legislation:**

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