

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Chapter 1 Appointments Commission*

#### **Complaints and references**

##### *Section 125: Complaints: interpretation*

347. **Section 125** inserts section 9B into the 2002 Act to provide an interpretation of the different types of complaint which may be made to the Ombudsman, namely a Commission complaint (where the complaint is about the Commission's handling of a candidate for judicial appointment's application) and a departmental complaint (where the complaint is about alleged maladministration by the Lord Chancellor or the Northern Ireland Court Service's handling of an application). Those entitled to complain are those who have applied for selection or have been selected for appointment to a listed judicial office, (that is, offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002, which includes the judicial office of High Court Judge and below) and claim to have been adversely affected by the maladministration about which they are complaining.

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

348. **Section 126** inserts section 9C into the 2002 Act to require the Commission and the Lord Chancellor each to make arrangements for handling complaints made to them in relation to judicial appointments but provides that the arrangements need not apply to complaints made more than 28 days after the matter complained of.

##### *Section 127: Complaints to the Ombudsman*

349. **Section 127** inserts section 9D into the 2002 Act to provide that the Ombudsman must investigate any complaints relating to judicial appointments that are made within 28 days of the person concerned being notified of the Minister's or Commission's decision on their complaint unless he considers that investigation is not necessary. The Ombudsman also has discretion whether or not to investigate complaints received at any other time. Any complaint made to the Ombudsman must be in a form approved by him. This section also makes transitional provision to allow for any ongoing complaints to be transferred from the Northern Ireland Commissioners for Judicial Appointments to the Northern Ireland Ombudsman upon the commencement of this section.

##### *Section 128: Report and recommendations*

350. **Section 128** inserts section 9E into the 2002 Act to provide that the Ombudsman must prepare a report in relation to any complaint investigated by him. In his report he may make recommendations for action to be taken by the Commission or by the Lord Chancellor, including payment of compensation (albeit that any compensation is limited

to loss suffered as a result of maladministration, and not in respect of any earnings the complainant would have received had his application for appointment been successful.)

***Section 129: Report procedure***

351. **Section 129** inserts section 9F into the 2002 Act to provide that the Ombudsman shall send his report in draft to the Lord Chancellor, and, if the complaint related to the Judicial Appointments Commission, to the Commission also. Before finalising the report, the Ombudsman must have regard to any proposals they make for amendment, and if their proposals are not reflected in his final report he must include a statement of those proposals. In addition to sending the finalised report to the Lord Chancellor, and where appropriate the Commission, the Ombudsman shall send a copy (which must not include confidential information) to the complainant.

***Section 130: References by the Lord Chancellor***

352. **Section 130** inserts section 9G into the 2002 Act to provide that the Lord Chancellor may refer to the Ombudsman any matters relating to the Commission's procedures, and for the Ombudsman to report on his investigations.

***Section 131: Information***

353. **Section 131** inserts section 9H into the 2002 Act to require the Commission and the Lord Chancellor to provide the Judicial Appointments Ombudsman with such information, or produce any such documentation that he may need to perform his functions in relation to complaints about judicial appointments.

***Section 132: Confidentiality in relation to judicial appointments and discipline***

354. **Section 132** inserts section 9I into the 2002 Act to provide that any person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of any relevant provision relating to judicial appointments and discipline, must not disclose that confidential information without lawful authority.