

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

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 1 Appointments Commission

Disclosure of information to the Commission

Section 123: Disclosure of information to the Northern Ireland Judicial Appointments Commission

343. The Justice (Northern Ireland) Act 2002 provides for the creation of the Northern Ireland Judicial Appointments Commission. There is currently no provision in the 2002 Act for disclosure of information, held by permitted persons, to the Commission for the purposes of selection for appointment to judicial office. This section makes provision equivalent to that made in section 107 of the Constitutional Reform Act for disclosure to the Judicial Appointments Commission in England and Wales. Permitted persons are defined as:

- a chief officer of police of a police force in England and Wales;
- a chief constable of a police force in Scotland;
- the Chief Constable of the Police Service of Northern Ireland;
- the Director General of the National Criminal Intelligence Service;
- the Director General of the National Crime Squad;
- the Commissioners of Inland Revenue; and
- the Commissioners of Customs and Excise.

344. This section also provides that the Lord Chancellor may, by order, designate other persons who exercise functions, which he considers are of a public nature, as ‘permitted persons’.

Ombudsman

Section 124: Northern Ireland Judicial Appointments Ombudsman

345. [Sections 124 to 131](#) amend the Justice (Northern Ireland) Act 2002 to establish the office of Judicial Appointments Ombudsman for Northern Ireland. Section 124 inserts section 9A into the 2002 Act to establish the Ombudsman’s office and provide that he shall be appointed by Her Majesty the Queen on the recommendation of the Lord Chancellor.

Schedule 15: Northern Ireland Judicial Appointments Ombudsman

346. [Schedule 15](#) inserts Schedule 3A into the 2002 Act. Schedule 3A makes further provision in relation to the qualification, tenure of office and powers of the

Ombudsman. The eligibility provisions reflect those that currently apply to the Judicial Appointments Commissioner for Northern Ireland, namely that he must not engage in political activity during the term of his appointment. Previous political activity will not constitute a bar to appointment.

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.