

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 2: Removals

Section 133: Removal from most senior judicial offices

355. **Section 133** inserts a new section 12B in the Judicature (Northern Ireland) Act 1978 to make provision for the removal of senior judicial office holders in Northern Ireland. Her Majesty may remove the Lord Chief Justice, a Lord Justice of Appeal or a High Court judge on an address presented by both Houses of Parliament. A motion for the presentation of an address may be made to the House of Commons by the Prime Minister and to the House of Lords 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. However, a motion for the presentation of an address can be made only if a removals tribunal convened under section 135 of the Act (see below) has reported to the Lord Chancellor recommending removal on the ground of misbehaviour. The report must be laid before each House of Parliament. Subsection (6) of the new section 12B provides for the suspension of a senior judicial office holder while the making of motions for the presentation of an address is under consideration. The Prime Minister may suspend the Lord Chief Justice. A Lord Justice of Appeal or a High Court judge may be suspended by the Prime Minister with the agreement of the Lord Chief Justice.

Section 134: Removal from listed judicial offices

356. **Section 134** gives the Lord Chancellor the power to remove a judicial office holder below the level of High Court judge but only if a tribunal convened under section 135 of the Act (see below) has recommended removal on the ground of misbehaviour or inability to perform the functions of the office and after consultation with the Lord Chief Justice. The section also gives the Lord Chancellor the power to suspend a judicial office holder below the level of High Court judge pending a decision on their removal but only if a tribunal considering whether to recommend removal has recommended suspension and after consultation with the Lord Chief Justice.

Section 135: Tribunals for considering removal

357. **Section 135** provides for the convening of tribunals to consider the removal of holders of protected judicial office (as defined in section 136 of the Act). A tribunal to consider the removal of the Lord Chief Justice may be convened by the Lord Chancellor provided the Prime Minister has been consulted. A tribunal to consider the removal of a Lord Justice of Appeal may be convened by the Lord Chancellor after consulting the Lord Chief Justice and the Prime Minister, or by the Lord Chief Justice after consulting the Lord Chancellor and the Prime Minister. A tribunal to consider the removal of all other holders of protected judicial office may be convened by the Lord Chancellor after consulting the Lord Chief Justice, or by the Lord Chief Justice after consulting the Lord Chancellor.

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

358. A tribunal will consist of three members: a judicial chairman, a judicial member and a layperson. The judicial members of a tribunal to consider the removal of the Lord Chief Justice of Northern Ireland, a Lord Justice of Appeal or a High Court judge are to be selected by the Lord Chancellor after consultation with the Lord Chief Justice of Northern Ireland (unless the tribunal is to consider his removal), the President of the Supreme Court of the United Kingdom, the Lord Chief Justice of England and Wales and the Lord President of the Court of Session. Such a tribunal will be chaired by a person who holds high judicial office (within the meaning of Part 3 of the Act) and has never been a senior judicial office holder in Northern Ireland. The other judicial member will be a current or retired judge of the Court of Appeal of England and Wales or the Inner House of the Court of Session.
359. The judicial members of a tribunal to consider the removal of any other holder of protected judicial office are to be selected by the Lord Chief Justice and such a tribunal will be chaired by a person who holds, or has held, the office of Lord Chief Justice or Lord Justice of Appeal. The other judicial member will be a High Court judge. The lay member of a tribunal will be appointed by the Lord Chancellor.
360. This section further provides that the procedure of a tribunal is to be determined by the Lord Chief Justice unless this office is vacant, he is unavailable or the tribunal is to consider his removal from office, in which case the procedure is to be determined by the chairman.

Section 136: Interpretation of Part 5

361. **Section 136** defines, for the purpose of Part 5 of the Act, the meaning of “listed judicial office”, “Lord Chief Justice”, “Lord Justice of Appeal” and “protected judicial office”.