

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: General

Commentary on Sections

Section 139: Confidentiality

367. **Section 139** is a general confidentiality provision which applies to the selection and appointment of Justices of the Supreme Court under sections 26 to 31 in Part 3 of the Act and to the selection, appointment and discipline of judicial office holders under Part 4 and under any regulations and rules made under Part 4. All information which relates to an identified or identifiable individual is confidential and can be disclosed only with lawful authority. Disclosure without lawful authority is made subject to a civil action for breach of statutory duty.
368. Information may be lawfully disclosed with the consent of the person concerned; or where disclosure is necessary in order for a person to perform their functions in relation to the selection, appointment or disciplining of judicial office holders; or where disclosure is necessary in connection with the exercise of Parliamentary powers to remove a senior judge or a decision whether to exercise such powers; or where the disclosure is necessary in connection with the exercise of powers to remove, discipline or suspend a judicial office holder; or where the disclosure is required for the purposes of legal proceedings in order to comply with court rules or a court order.
369. Where confidential information has been provided by one identifiable person about another identifiable person, it relates to both, and may only be disclosed to the subject of the information with the consent of its provider.
370. Despite the confidentiality provisions, the Lord Chancellor and Lord Chief Justice may decide to disclose information about disciplinary action taken against an identifiable judicial office holder. Disclosure which would otherwise be prohibited by this section is also permitted if the information concerned is already available to the public from other sources, or has been so in the past.

Section 140 “Enactment”

371. **Section 140** defines “enactment” for the purposes of the Act. Different Parts of the Act extend to different parts of the United Kingdom. In those Parts of the Act that apply throughout the United Kingdom, “enactment” is defined to include Acts of the Scottish Parliament and Northern Ireland legislation. In those Parts that extend only to England and Wales and Northern Ireland, “enactment” refers only to Acts of the Westminster Parliament and Northern Ireland legislation (and, where necessary, Measures of the Church of England). The aim is to remove any uncertainty about the meaning of the term “enactment” in different Parts of the Act.

Section 141 “Subordinate Legislation”

372. **Section 141** defines “subordinate legislation” for the purposes of the Act, giving it the same meaning as in the Interpretation Act 1978, but also providing that in the context of making supplementary provisions about functions of the Lord Chancellor, and other transitional or consequential provisions, it also includes an enactment contained in an instrument made under Northern Ireland legislation.

Section 142: General Interpretation

373. The section defines “functions” to include powers and duties, and extends the definition of “Minister of the Crown” in the Ministers of the Crown Act 1975 so that it applies in this Act.

Section 143: Supplementary provision etc

374. **Section 143** provides for the Lord Chancellor to make, by order (made by statutory instrument), any supplementary, incidental, consequential, transitory, transitional or saving provision, as he considers necessary or expedient for the purposes of the Act, in consequence of it, or to give it full effect. Subsection (2) makes it clear that such an order can, if necessary, amend or repeal other enactments, subordinate legislation, and other instruments or documents.

Section 144: Orders and Regulations

375. **Section 144** regulates the way in which the Lord Chancellor may exercise the order making powers conferred on him elsewhere in the Act. These will generally be subject to the negative resolution procedure in Parliament, except for the following, which will be subject to the affirmative resolution procedure:
- an order under section 85(2)(a) or (b) (selection of puisne judges and other office holders) that amends Part 1 of Schedule 14 (The Judicial Appointments Commission: relevant offices and enactments);
 - an order under section 19(1) (transfer, modification or abolition of functions by order) which amends a public general Act, except where the only amendment is to include a function of the Lord Chancellor in Schedule 7 (protected functions of the Minister);
 - an order under section 19(1) (transfer, modification or abolition of functions by order) which amends subordinate legislation of which a draft was required to be laid before and approved by each House of Parliament, except where the only amendment consists of a provision that falls within subsection 2(b) of section 19
 - an order under section 143 (supplementary provision etc) which amends a public general Act;
 - an order under paragraph 5 of Schedule 12 (the Judicial Appointments Commission).
376. In addition, commencement orders made under sections 66(5) and 148 are, as usual with such instruments, not subject to Parliamentary scrutiny.

Section 145 and Schedule 17: Minor and Consequential amendments

377. **Section 145** introduces Schedule 17 which contains some minor and consequential amendments to other legislation that follow from the substantive sections of the Act.

Section 146 and Schedule 18: Repeals and revocations

378. **Section 146** introduces Schedule 18 which lists legislation repealed or revoked by, or in consequence of, other provisions in the Act.

Section 147: Extent

379. This section sets out the territorial extent of the Act. Different parts of the Act extend to different parts of the United Kingdom. Certain provisions relating to the President of the Courts of England and Wales and the Heads and Deputy Heads of Criminal and Family Justice extend to England and Wales only. Section 6 (Representations to the Northern Ireland Assembly) and Part 5 extend to Northern Ireland alone. Amendments made by the Act will have the same extent as the provisions being amended. The Act otherwise extends to the whole of the United Kingdom.

Section 148: Commencement

380. Provisions relating to the Speakership of the House of Lords, functions of the Lord Chancellor subject to transfer, modification or abolition, protected functions of the Lord Chancellor, interpretation, supplementary provision, ancillary provision for orders and regulations, extent, commencement and short title will come into force on Royal Assent. Section 4 (Guarantee of continued judicial independence: Northern Ireland) will be brought into force in accordance with an order made by the Secretary of State. All other provisions in the Act will be brought into force by order by the Lord Chancellor, who may make different arrangements for different purposes. Subsections (4) and (5) set out requirements relating to approval of accommodation for the Supreme Court, which must be fulfilled before the provision establishing the Supreme Court, section 23(1), may be brought into force.