

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

EUROPEAN CONVENTION ON HUMAN RIGHTS

400. Convention issues do not arise in relation to any specific provisions in the Constitutional Reform Act. The Act is in seven parts.
401. [Part 2](#) modifies the office of the Lord Chancellor and provides for the transfer and future exercise of certain functions presently vested in that office. The treatment of the Lord Chancellor's functions differs according to whether they are of a legislative, executive or judicial character. This part also confers a duty on Ministers of the Crown generally and particular duties on the Lord Chancellor to uphold the independence of the judiciary.
402. The balance struck in this Part of the Act between the separation of powers and the need for democratic accountability does not infringe the ECHR, and in particular, Article 6. In the most sensitive matters (such as the discipline and removal of Judges) the concurrence of the Lord Chief Justice will act as a crucial counterweight to the powers of the Lord Chancellor. In general, the degree of autonomy of the judiciary combined with procedural checks and balances such as this, will ensure that the independence and impartiality of the judiciary will be preserved as required by Article 6.
403. [Part 3](#) contains provisions for the creation, constitution, jurisdiction and resourcing of a new Supreme Court for the United Kingdom. The new court will exercise the existing appellate jurisdiction of the House of Lords (the Appellate Committee) and the jurisdiction of the Judicial Committee of the Privy Council in respect of devolution issues under the Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998.
404. The arrangements are considered to be sufficient to entrench and safeguard judicial independence as required by Article 6, and to prevent any legitimate or objectively-justified fear of a lack of impartiality on the part of those coming before the new Supreme Court.
405. [Part 4](#) creates a new system for the appointment of judges in England and Wales, and for the appointment of those persons holding office of a judicial nature in England, Scotland and Wales who are currently appointed by the Lord Chancellor. The Part also makes provision for the creation of a judicial ombudsman, with responsibility for dealing with complaints about the appointment process and sets out the framework for judicial discipline.
406. Although it is not legally binding on questions of compatibility, these provisions have regard to the Council of Europe Committee of Ministers Recommendation No. R(94) 12 on the Independence, Efficiency and Role of Judges (adopted on 13th October 1994). That Recommendation states that judicial appointments should be made by a body independent of government and the administration. However, it also states that where national constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions

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

will not be influenced by any reasons other than those related to objective criteria. The Recommendation goes on to state that these guarantees could take the form of a special independent and competent body to give the government advice which it follows in practice, and/or the right for an individual to appeal against a decision to an independent authority. The provisions are considered to be drafted in such a way as to ensure that the Judicial Appointments Commission will be an independent and competent body of the kind described in the Recommendation, and the process of review by the ombudsman will be a limited form of appeal to an independent authority.

407. [Part 6](#) removes the right of the Lord President of the Council to sit judicially. This removes a potential incompatibility with the ECHR, which could arise out of a Minister sitting as a judge.
408. No specific sections in any of these Parts give rise to particular issues under the convention.