

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

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### OVERVIEW

3. The Constitutional Reform Act modifies the office of Lord Chancellor and makes changes to the way in which some of the functions vested in that office are to be exercised. The Act also creates the Supreme Court of the United Kingdom and abolishes the appellate jurisdiction of the House of Lords. It creates the Judicial Appointments Commission to select people for judicial appointments in England and Wales, and provides for judicial discipline in England and Wales. The Act modifies the jurisdiction of the Judicial Committee of the Privy Council and removes the right of the Lord President of the Council to sit judicially.
4. The explanatory notes are divided into parts reflecting the structure of the Act. In relation to each Part, there is a summary and background section. Commentary on particular sections is then set out in number order, with the commentary on the various schedules included with the section to which they relate.
5. Notes on the effects of the Act on: public expenditure; public sector manpower; cost to business and regulatory impact, follow the commentary on sections, as does a brief note on issues relating to the European Convention on Human Rights.
6. The Act is divided into 7 parts:

#### **Part 1: The Rule of Law**

- Part 1: provides that the Act does not adversely affect the Rule of Law or the Lord Chancellor's role in relation to that principle.

#### **Part 2: Arrangements to modify the office of Lord Chancellor**

- Part 2: Makes provision for modifying the office of Lord Chancellor so that the office-holder is no longer a judge nor exercises any judicial functions. It also sets out the qualifications for appointment to the office of Lord Chancellor. This Part also deals with functions relating to the judiciary and courts so that they are appropriately shared between the reformed ministerial office of Lord Chancellor and the Lord Chief Justice (and/or other senior members of the judiciary as appropriate). It also provides a guarantee of continued judicial independence. There are provisions in relation to the Speakership of the House of Lords. There are also provisions for the modification, abolition or transfer of other existing functions of the Lord Chancellor and provision that certain functions cannot be transferred from the Lord Chancellor to other Ministers by a Transfer of Functions Order under the Ministers of the Crown Act 1975.

#### **Part 3: The Supreme Court**

- Part 3: Makes provisions for a Supreme Court to replace the existing system of Law Lords operating as a committee of the House of Lords. It provides for the appointment of judges to the new Court, the Court's jurisdiction, its procedures, resources (including accommodation) and other matters.

#### **Part 4: Judicial appointments and discipline**

- Part 4: Makes provision for a Judicial Appointments Commission to be responsible for recruiting and selecting judges for the Courts of England and Wales and members of certain tribunals, and makes special arrangements for the appointment of the Lord Chief Justice and other Heads of Division and of the Lords Justices of Appeal. It provides for the Commission to report to the Lord Chancellor on who has been selected, and for the Lord Chancellor to make the appointment or the recommendation for appointment to The Queen. It also makes provision for a Judicial Appointments and Conduct Ombudsman, and for judicial discipline.

#### **Part 5: Judicial appointments and removals: Northern Ireland**

- Part 5 makes provision about the supply of information to the existing Northern Ireland Judicial Appointments Commission, creates a Northern Ireland Judicial Appointments Ombudsman, and provides a mechanism for the removal of judicial office holders in Northern Ireland. By virtue of section 147(2), Part 5 extends only to Northern Ireland.

#### **Part 6: Other provisions relating to the judiciary**

- Part 6: Makes provision regarding Parliamentary disqualification of certain judges; and makes amendments about the Judicial Committee of the Privy Council.

#### **Part 7: General**

- Part 7: Restricts the disclosure of confidential information obtained under certain provisions of the Act; makes provision about the interpretation of certain expressions used in the Act, including “enactment” and “subordinate legislation”; confers power to make supplementary provision by order; sets out the procedure for making orders and regulations under the Act; makes minor and consequential amendments and repeals and revocations; and makes provision about the extent, commencement and short title of the Act.

7. [Parts 2 and 4](#) are intended to give substantial effect to the agreement between the Lord Chief Justice of England and Wales and the Lord Chancellor on the proposals relating to the transfer of the Lord Chancellor’s judiciary-related functions. This was set out in a document called “Constitutional Reform. The Lord Chancellor’s judiciary-related functions: Proposals” (usually referred to as the ‘Concordat’). This was placed in the libraries of both Houses of Parliament at the time of the Oral Statement made to the House of Lords by the Lord Chancellor, and repeated in the House of Commons, on 26th January 2004. The text was also printed as Appendix 6 to the House of Lords Select Committee’s Report on the Bill.

#### **Part 1: the Rule of Law**

8. [Part 1](#) provides that the Act does not adversely affect the existing constitutional principle of the Rule of Law or the Lord Chancellor’s existing constitutional role in relation to that principle.

#### **Part 2: Arrangements to Modify the Office of Lord Chancellor**

##### **Summary**

9. [Part 2](#) modifies the office of Lord Chancellor and provides for the future exercise of certain functions of that office and for continued judicial independence. It provides:
  - (a) that in appointing a person to be Lord Chancellor the Prime Minister must be satisfied that the person is qualified for the post by relevant experience;

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- (b) that the Lord Chancellor must take a specified oath, in addition to the other oaths required of Ministers;
- (c) a guarantee of continued judicial independence in England and Wales, and (separately) in Northern Ireland;
- (d) for general statutory responsibilities of the Lord Chief Justice, who will assume the new additional titles of President of the Courts of England and Wales and Head of the Judiciary of England and Wales;
- (e) that the most senior Judge within the three legal jurisdictions of the UK (England & Wales, Scotland and Northern Ireland) may make written representations to Parliament on justice-related matters;
- (f) for new offices of the Head and Deputy Head of Criminal Justice and Head and Deputy Head of Family Justice;
- (g) for the transfer of certain of the Lord Chancellor's statutory functions relating to the judiciary to the Lord Chief Justice (and/or other senior members of the judiciary as appropriate), and for consultation or concurrence between them in the exercise of such functions to reflect the agreement set out in the 'Concordat';
- (h) for the amendment of certain statutory provisions that refer to the Lord Chancellor in his capacity as Speaker of the House of Lords, so that they will in future refer to the Speaker of the House of Lords in general terms;
- (i) for the modification, transfer and abolition of existing functions of the Lord Chancellor created or modified in primary legislation since the introduction of the Act, and in secondary legislation, local or private acts, charters and other prerogative instruments; and
- (j) for the amendment of the Ministers of the Crown Act 1975 to disapply section 1 of that Act to specified functions of the Lord Chancellor, so that they cannot be transferred to another Minister of the Crown by an order under that Act.