

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### BACKGROUND

10. The office of Lord Chancellor is currently both a ministerial and a judicial office. In the main, ministerial powers currently exercisable by the Lord Chancellor that do not relate to the judiciary or the administration of the courts are not affected by the Act. However, some of the Lord Chancellor's functions have been exercised in his capacity as 'Head of the Judiciary' (although this has not historically been a formal or statutory title). Other functions, statutory and otherwise, are currently exercisable by the Lord Chancellor in relation to the judiciary or to the Lord Chancellor's judicial role. The Act ends the judicial role of the Lord Chancellor and precludes the office-holder from holding judicial office. It also modifies the Lord Chancellor's judiciary-related functions in line with the Concordat (see "Overview", above).
11. [Section 15](#) and Schedule 4 provide for judiciary-related functions currently vested in the Lord Chancellor to be transferred to another office holder or otherwise disposed of, and for the modification of certain other functions of the Lord Chancellor. Some of the judiciary-related functions are transferred to the Lord Chief Justice or to another member of the senior judiciary. In many instances, as appropriate to the nature of a particular function, the Lord Chancellor will be required to consult, or obtain the concurrence of, the Lord Chief Justice (or vice versa) before exercising the function. In others, functions may be exercised by the Lord Chancellor or the Lord Chief Justice acting alone. The division of functions into these categories is intended to reflect the principles set out in the Concordat referred to in paragraph 7 above, which are summarised in paragraph 36 below. While the Lord Chief Justice is named as having a role in exercising many of these functions, the Act enables him to delegate any of his functions to holders of other judicial offices, except those functions relating to removals from judicial office. The Act also provides a role for the Lord Chief Justice of Northern Ireland and the Lord President of the Court of Session as appropriate for functions that extend to the jurisdictions of Northern Ireland and Scotland.
12. Statutory provisions that refer to the Lord Chancellor in his capacity as Speaker of the House of Lords are amended by the Act so that they refer to the Speaker of the House of Lords in general terms, rather than the Lord Chancellor. It is a matter for the House of Lords itself to determine any changes to the current arrangements for the office of its Speaker.
13. [Section 19](#) of the Act also makes provision for the transfer, modification and abolition of other functions of the Lord Chancellor, for example those in local and private acts, not yet identified, or functions created by legislation passed in the 2003-04 or 2004-05 Sessions or in secondary legislation. The section also provides a power to amend charters and other prerogative instruments to take account of the reform of the office of the Lord Chancellor. In addition, section 20 of the Act will ensure that certain protected functions (set out in Schedule 7) may not be transferred away from the office of Lord Chancellor by an order under the Ministers of the Crown Act 1975. Section 21 provides for further functions to be added to Schedule 7 (although functions will not be able to be removed from the Schedule by secondary legislation).