

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Supplementary

Section 19: Transfer, modification or abolition of functions by order

48. **Section 19** gives the Lord Chancellor power to do any of the following things by order: to transfer, modify or abolish an existing function of his office; to provide for such a function to be exercised concurrently with another person; or to provide that such a function that is exercisable concurrently with another person ceases to be so exercisable. Subsection (2) makes it clear that such an order can, if necessary, amend or repeal other enactments, subordinate legislation, and other instruments or documents. The power does not apply in respect of functions of the Lord Chancellor that are listed in Schedule 7 to the Act.
49. This power extends wider than the power to transfer ministerial functions under the Ministers of the Crown Act 1975. There are two main differences compared with the power in the 1975 Act: the new power is not restricted to the transfer of functions to other Ministers; and the new power also allows for the modification or abolition of a function. The new power also extends wider than the power to make supplementary provision in section 143 of the Constitutional Reform Act 2005. The power in section 143 may only be used if the Lord Chancellor considers it necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of the Act. There is no such restriction on the power under section 19.
50. An order under section 19 is subject to affirmative resolution procedure in any case where it amends a public general act and in most cases where it amends subordinate legislation which was itself subject to affirmative resolution procedure (see section 144(5)(b) and (c) of the Act). In any other case an order under section 19 is subject to negative resolution procedure. .
51. One of the purposes of this power is to ensure that effect may be given to the Concordat agreed with the Lord Chief Justice (see paragraph 7 above), in particular with regard to functions set out in legislation (whether primary or secondary) made during, or soon after, the passage of the Constitutional Reform Bill through Parliament. (The power is limited to amending legislation made in, or under, Acts passed up to and including in the session in which this Act is enacted). These provisions are also intended to be used in relation to, for example, functions of the Lord Chancellor conferred by private, personal or local Acts which may have been missed and thus have not been addressed in the substantive provisions of the Act. This power is also intended for use in relation to the functions of the Lord Chancellor under charters or other governing instruments of private institutions, such as colleges or universities. Where they wish to alter or remove the role of the Lord Chancellor, this power would avoid the need for each of the institutions concerned to make their own separate arrangements.
52. Where, by an order under this section, a function has been modified or has become exercisable concurrently with another person, the order may also provide for the

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

function to be added to Schedule 7 (Protected Functions of the Minister). The effect of this will be that the power will not thereafter be transferable to another Minister under the Ministers of the Crown Act 1975: see below. This power is intended to avoid the need for a separate order under section 20 of the Act where a function is modified under this section and there is a need to include it within Schedule 7. It is expected to apply principally to functions of the Lord Chancellor created in primary legislation since the introduction of the Bill.