

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Qualifications for office of Lord Chancellor*

##### *Section 2: Lord Chancellor to be qualified by experience*

14. **Section 2** provides that a person may not be recommended for appointment as Lord Chancellor unless he appears to the Prime Minister to be qualified by experience. Relevant experience for this purpose could include experience as a Minister of the Crown, or as a Member of either House of Parliament. Experience as a qualifying legal practitioner or as a teacher of law in a University could also be taken into account, as could any other experience considered by the Prime Minister to be relevant.

#### *Continued judicial independence*

##### *Section 3: Guarantee of continued judicial independence*

15. **Section 3** places a duty on Ministers of the Crown (including the Lord Chancellor), and all others with responsibility for matters relating to the judiciary or otherwise to the administration of justice to uphold the continued independence of the judiciary. It also sets out two particular duties that are to be exercised for the purpose of upholding that independence.
16. The first is a duty on Ministers of the Crown not to seek to influence particular judicial decisions through any special access to the judiciary. "Special access" is intended to refer to any access over and above that which might be exercised by a member of the general public. So the duty does not, for example, limit what may be said on a Minister's behalf in court in the course of presenting a case to the court in the usual way.
17. The second duty requires the Lord Chancellor to have regard to the need to defend the continued independence of the judiciary, the need for the judiciary to have proper support necessary to enable them to exercise their functions, and the need for the public interest in matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters. This section should be read in conjunction with Part 1 of the Courts Act 2003, which sets out the duty of the Lord Chancellor to ensure that there is an efficient and effective system to support the carrying on of the business of the courts of England and Wales.

##### *Section 4: Guarantee of continued judicial independence: Northern Ireland*

18. **Section 4** substitutes a new section 1 of the Justice (Northern Ireland) Act 2002 to ensure that the provision made by that Act in relation to Northern Ireland is consistent with the provision made in section 3 of the Constitutional Reform Act.
19. Section 1 of the 2002 Act, which has not yet been commenced, already contains provision designed to place those with responsibility for the administration of justice in Northern Ireland under a duty to uphold the continued independence of the judiciary.

The new section 1 specifies and extends the range of persons upon whom the duty is imposed. Under the new section, the First Minister, the deputy First Minister, Northern Ireland Ministers and anyone with responsibility for the judiciary or the administration of justice specific to Northern Ireland, will be subject to the duty to uphold judicial independence. The new section will also provide that in upholding judicial independence, Ministers must not seek to interfere with particular judicial decisions through any special access to the judiciary. The duties imposed by section 1 have UK wide territorial extent and include the judiciary throughout the United Kingdom.

### ***Representations by senior judges***

#### ***Section 5: Representations to Parliament***

20. **Section 5** provides that the Lord Chief Justice of England and Wales, the Lord Chief Justice of Northern Ireland and the Lord President of the Court of Session may table written representations to Parliament on matters relating to the judiciary or the administration of justice. In respect of the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, this function is qualified by subsections (2) and (3) in order to respect the devolution settlements with Scotland and Northern Ireland respectively.

#### ***Section 6: Representations to the Northern Ireland Assembly***

21. **Section 6** makes provision for the Lord Chief Justice of Northern Ireland to lay written representations before the Northern Ireland Assembly on matters relating to the judiciary, or to the administration of justice in Northern Ireland. The Lord Chief Justice may make such representations if they relate to excepted or reserved matters to which a Bill for an Act of the Assembly relates; or to transferred matters, unless they are transferred matters to which a Bill for an Act of Parliament relates.

### ***The Judiciary and the Courts in England and Wales***

#### ***Section 7: President of the Courts of England and Wales***

22. **Section 7** provides a new, additional, statutory title of President of the Courts of England and Wales for the Lord Chief Justice. This section also recognises that the Lord Chief Justice is the Head of the Judiciary of England and Wales.
23. The section sets out the responsibilities of the President of the Courts of England and Wales. It also sets out the courts to which the presidency applies. In his role as President of the Courts of England and Wales, the Lord Chief Justice is to be responsible for representing the views of the judiciary of England and Wales to Parliament, the Lord Chancellor and Ministers of the Crown generally. He is also to be responsible, within the resources made available by the Lord Chancellor, for maintaining appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales, and for maintaining appropriate arrangements for the deployment of the judiciary of England and Wales and allocating work within courts. In relation to the issue of deployment, it should be noted that the Lord Chief Justice will also have a role in the appointment of judicial office holders to committees, boards and similar bodies, as set out in paragraphs 46-49 of the 'Concordat'; his role in such appointments so far as governed by statute is provided for by amendments made by Schedule 4.

#### ***Section 8: Head and Deputy Head of Criminal Justice***

24. **Section 8** creates a new statutory post of Head of Criminal Justice, which will be held ex officio by the Lord Chief Justice of England and Wales or, after consultation with the Lord Chancellor, by his nominee. This section also provides that the Lord Chief Justice

may appoint a Deputy Head of Criminal Justice. The creation of these new posts mirrors the existing statutory posts of Head and Deputy Head of Civil Justice, established by section 62 of the Courts Act 2003.

### ***Section 9: Head and Deputy Head of Family Justice***

25. **Section 9** creates a new statutory post of Head of Family Justice, which will be held ex officio by the President of the Family Division. This section also provides that the Lord Chief Justice may appoint a Deputy Head of Family Justice. The creation of these new posts mirrors the existing statutory posts of Head and Deputy Head of Civil Justice, established by section 62 of the Courts Act 2003.

### ***Judiciary and Courts in Northern Ireland***

#### ***Section 10: The Lord Chancellor and Northern Ireland Courts***

26. **Section 10** provides for a new section to be inserted into the Judicature (Northern Ireland) Act 1978, corresponding to section 1 of the Courts Act 2003. It places a statutory duty on the Lord Chancellor to ensure there is an efficient and effective system to support the Supreme Court of Northern Ireland and the county courts, magistrates' courts and coroners' courts in Northern Ireland and to ensure that appropriate services are provided for those courts. It also requires the Lord Chancellor to lay before Parliament a report as to the way in which this duty has been discharged.

#### ***Section 11: Lord Chief Justice of Northern Ireland***

27. At present, the Lord Chief Justice of Northern Ireland is President of the Court of Appeal, High Court, and Crown Court but has no role in relation to the county courts or the magistrates' courts. Section 12 of the Justice (Northern Ireland) Act 2002 Act provides for the Lord Chief Justice to be president of the Court of Appeal, Crown Court, High Court, county courts and magistrates' courts and head of the judges and magistrates who sit in them. It does not, however, bestow any formal title.
28. **Section 11** amends section 12(1) of the Justice (Northern Ireland) Act 2002 to take account of reform of the office of the Lord Chancellor. It provides for a new statutory office and title of President of the Courts of Northern Ireland to be assumed by the Lord Chief Justice of Northern Ireland. It also provides for the Lord Chief Justice of Northern Ireland to be Head of the Judiciary of Northern Ireland.
29. The section sets out the responsibilities of the President of the Courts of Northern Ireland and the courts to which the presidency applies. The responsibilities, which are broadly similar to those of the Lord Chief Justice of England and Wales under section 7 of the Act, are:
- representing the views of the judiciary of Northern Ireland to Parliament, the Lord Chancellor and Ministers of the Crown generally;
  - representing the views of the judiciary of Northern Ireland to the Northern Ireland Assembly, the First Minister and deputy First Minister and Northern Ireland Ministers;
  - maintaining appropriate arrangements for the welfare, training and guidance of the judiciary of Northern Ireland within the resources made available by the Lord Chancellor; and
  - maintaining appropriate arrangements for the deployment of the judiciary of Northern Ireland and the allocation of work within the courts.

***Other provisions about the judiciary and courts***

***Section 12 and Schedule 1: Powers to make rules***

30. **Section 12** introduces Schedule 1, which deals with powers to make rules of court that are currently vested in the Lord Chancellor alone, rather than in a rule Committee. By virtue of these provisions, the rules will now be made by the Lord Chief Justice with the concurrence of the Lord Chancellor. Part 1 of Schedule 1 sets out the procedure by which the rules will now be made. Part 2 of the Schedule amends the statutes which confer the rule-making powers so as to incorporate the new procedure.
31. . The requirement that the Lord Chancellor should concur with any rules made by the Lord Chief Justice mirrors the existing statutory powers of the Lord Chancellor to allow or disallow rules made by rule committees. A new power to direct that the Lord Chief Justice make rules to achieve a specified purpose is vested in the Lord Chancellor. Again, this mirrors the situation for rules made by rule committees which are dealt with in Schedule 4 to the Act. In relation to certain family procedure rules, the procedure under part 1 of Schedule 1 to the Act will only have temporary effect, until sections 75 to 80 of the Courts Act 2003 are brought into effect and the Family Procedure Rule Committee is established.

***Section 13 and Schedule 2: Powers to Give Directions***

32. **Section 13** introduces Schedule 2, which deals with powers to give directions that are currently vested in the Lord Chancellor. By virtue of these provisions, the directions will now be given by the Lord Chief Justice, generally with the concurrence of the Lord Chancellor. Part 1 of Schedule 2 sets out the procedure by which the directions will now be given. Part 2 of the Schedule amends the statutes which confer the direction-giving powers so as to incorporate the new procedure. The Lord Chief Justice may, with the approval of the Lord Chancellor, delegate his functions under the new procedure; the expectation is that the powers would usually be delegated to the Head of Criminal, Civil or Family Justice (as appropriate). The new procedure is similar to that which will apply to the rules dealt with in section 12 and Schedule 1 (see paragraphs 30 and 31 above).
33. The concurrence of the Lord Chancellor is not needed for directions concerning guidance as to the application or interpretation of the law or the making of judicial decisions. Nor is the Lord Chancellor's concurrence needed for directions that relate to criteria for determining which judges may be allocated to hear particular categories of case; but the Lord Chancellor must be consulted before such directions are given.

***Section 14 and Schedule 3: Transfer of appointment functions to Her Majesty***

34. **Section 14** introduces Schedule 3, which provides that appointments to the judicial offices listed will in future be made by Her Majesty The Queen rather than the Lord Chancellor as currently. Paragraph 1 of the Schedule transfers to Her Majesty the power under section 6 of the County Courts Act 1984 to appoint civil District Judges to county courts and gives the Lord Chief Justice the power to assign them to their districts. It also provides that their salaries shall be determined by the Lord Chancellor with the concurrence of the Treasury, and may not be reduced. This protection brings civil District Judges more closely into line with District Judges (Magistrates' Courts) and with more senior members of the judiciary. Paragraph 2 makes corresponding provision for the assignment of civil District Judges to District Registries of the High Court. Paragraph 3 transfers to Her Majesty the power to appoint High Court Masters and Registrars, and re-enacts with amendments the qualifications for appointment or promotion to the posts of the senior High Court Masters and Registrars. The table in paragraph 3(4) refers to the qualifying office for appointment as Senior District Judge of the Family Division as 'Registrar of the Principal Registry of the Family Division'. This office was renamed 'District Judge of the Principal Registry of the Family Division' by the Courts and Legal Services Act 1990, and the reference is to that office. Paragraphs

5 and 6 transfer to Her Majesty the power to appoint the Senior District Judge (Chief Magistrate).

35. All of these offices are also listed in Schedule 14, and appointments will in future be made by Her Majesty on the advice of the Lord Chancellor, after selection by the Judicial Appointments Commission.

***Section 15 and Schedules 4 and 5: Other functions of the Lord Chancellor and organisation of the Courts***

36. **Section 15** introduces Schedule 4 which provides for the transfer of certain functions of the Lord Chancellor and the modification of other functions of the Lord Chancellor (including those functions that he exercises in relation to Northern Ireland under legislation with UK wide extent). The modified functions will, in general, now be exercised with either the concurrence of, or after consultation with, the Lord Chief Justice of England and Wales or another senior judge, as appropriate. Provision is made for some of those functions that are transferred away from the Lord Chancellor to be exercised either with the concurrence of, or after consultation with, the Lord Chancellor. Section 15 also introduces Schedule 5 which makes similar provision for functions that the Lord Chancellor exercises under legislation relating to Northern Ireland.

37. **Schedule 4** makes the amendments referred to in section 15 by modifying enactments containing or relating to the functions in question. The effect of the amendments made by this Schedule may be summarised as follows:

- The existing statutory functions of the Lord Chancellor that relate to the following matters in England and Wales will be transferred to the Lord Chief Justice: (i) the posting and roles of individual judges within the framework of the court system; (ii) the responsibility to make rules relating to deployment of magistrates; (iii) the authorisation and assignment of judges, allocation of work and the distribution of business within the same level of the court system, (e.g. between divisions of the High Court); and (iv) the nomination of judges to deal with specific areas of business and to fill judicial leadership posts such as the Presiding Judges.
- The existing statutory functions of the Lord Chancellor that enable him to determine the framework for the appointment of judicial office holders to committees, boards and similar bodies in England and Wales will remain with the Lord Chancellor, while the statutory functions that enable him to appoint individual judges to such bodies will be transferred to the Lord Chief Justice.
- As regards the making of court rules in respect of England and Wales, where statutory committees presently exist, the relevant provisions will be modified to take account of the division of the Lord Chancellor's functions between him and the Lord Chief Justice. The appointment of non-judicial members of rule committees will continue to be made by the Lord Chancellor and judicial members will be appointed by the Lord Chief Justice. In addition, there will be a new power for the Lord Chancellor to require rule committees to change rules or to make new rules to achieve a specified purpose, and to allow rules made by such committees. He may disallow rules but is required to provide written reasons. (See section 12 and Schedule 1 for rule making powers not related to rule making committees.)
- Statutory references to the Vice-Chancellor are amended to provide for the new title of "Chancellor of the High Court". Statutory references within the Courts Act 2003 relating to the Head of Civil Justice are amended to bring them in line with the positions of Head of Criminal Justice and Head of Family Justice in sections 8 and 9 of the Act. A new position of "President of the Queen's Bench Division" is also created; this post will not be held by the Lord Chief Justice, but by a separate office holder who will be a Head of Division in his own right.

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

- The Lord Chief Justice will replace the Lord Chancellor as the office holder before whom judges in England and Wales will take their oaths. The Lord Chief Justice will take his oath before the Master of the Rolls, the President of the Queen’s Bench Division, the President of the Family Division and the Chancellor of the High Court (formerly the Vice-Chancellor).
  - Certain existing statutory functions of the Lord Chancellor are now to be exercised only with the concurrence of, or after consultation with, the Lord Chief Justice of England and Wales. Where the function relates not only to England and Wales, but also to Northern Ireland or Scotland (or both), an equivalent concurring or consultative role has been provided for the Lord Chief Justice of Northern Ireland or the Lord President of the Court of Session (as appropriate). In addition, where the Lord Chancellor exercises an appointment or removal function in relation to an officer who sits wholly or mainly in Northern Ireland or Scotland, the Schedule provides that he must either consult with, or seek the concurrence of, the Lord Chief Justice of Northern Ireland or the Lord President of the Court of Session (as appropriate).
  - Where amendments are made to other Acts by the Schedule to confer functions on the Lord Chief Justice of England and Wales, the Lord Chief Justice of Northern Ireland or the Lord President of the Court of Session, a provision is added in each case permitting them to delegate the function to another judicial office-holder, except where the function relates to removals from judicial office. In the case of the Lord Chief Justice of England and Wales, the function may be delegated to any “judicial office holder”, as defined in section 109 of the Act. These are the Master of the Rolls, the President of the Queen’s Bench Division, the President of the Family Division, the Chancellor of the High Court, a Lord Justice of Appeal, a puisne judge of the High Court and the holder of any office listed in Schedule 14 to the Act. In the case of the Lord Chief Justice of Northern Ireland the function may be delegated to the holder of any office listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 or to a Lord Justice of Appeal. In the case of the Lord President of the Court of Session, the function may be delegated to any judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court.
  - All of this means that the following statutory functions will remain with the Lord Chancellor: (i) those concerning the framework for the organisation of the courts system, including setting the geographical and jurisdictional boundaries within England and Wales; (ii) the provision and allocation of financial, material and human resources for the administration of justice; (iii) those relating to the pay, pensions and terms and conditions of the judiciary and the provision of staff and resources for training of the judiciary; and (iv) the determination of the overall number of judges and the distribution of business between different levels of courts in England and Wales;
38. [Schedule 4](#) includes provisions preliminary to the making of arrangements for ending the Lord Chancellor’s ecclesiastical patronage and, as announced by the Government on 2 March 2004, for its future exercise by the Prime Minister. These changes will be completed by non-legislative means. Schedule 4 also transfers the Lord Chancellor’s functions in relation to appeals under section 11 of the Ecclesiastical Licences Act 1533 and section 5 of the Public Notaries Act 1843 to the Chancellor of the High Court.
39. [Schedule 4](#) further provides that the Lord Chancellor’s power (with the concurrence of HM Treasury) under section 14 of the Local Land Charges Act 1975 to set fees for local land charges will, with the exception of fees for personal searches, be devolved to registering authorities in England. Registering authorities are defined by section 3 of the 1975 Act and include most local authorities. Each registering authority in England will be required to set fees for the local land charge services they provide. Registering authorities will be able to set a fee for each service, description of service or group of services which recovers up to, but not more than, their costs of delivering that service.

These fees must be published shortly before the beginning of every financial year and before the date the local authority sets for any changes to take effect. In setting and publishing fees, registering authorities will have to have regard to such guidance as the Lord Chancellor may issue, which guidance will be laid before both Houses of Parliament.

40. [Schedule 5](#) transfers some of the Lord Chancellor's functions to the Lord Chief Justice of Northern Ireland. In some cases the concurrence of, or consultation with, the Lord Chancellor is required before the Lord Chief Justice may exercise the function. Schedule 5 also modifies some of the Lord Chancellor's functions to provide the Lord Chief Justice with a consultative or concurring role. The Schedule enables the Lord Chief Justice to delegate functions transferred to him by the Act (where there is no existing power of delegation) to other office holders to ensure flexibility and that the Lord Chief Justice can continue to fulfil his primary role as a judge. (The office holders to whom these functions may be delegated are the same as those referred to in relation to Schedule 4: the holder of any office listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 or a Lord Justice of Appeal.)
41. The Schedule provides that the Lord Chancellor, in consultation with the Lord Chief Justice of Northern Ireland, will be responsible for setting the organisational framework of the court system, the destination and allocation of proceedings and for providing resources for the administration of judges. The Lord Chief Justice will be responsible for sitting times and places of courts, the assignment and authorisation of judges and the distribution of business within the same level of court. The Lord Chief Justice, after consultation with the Lord Chancellor, will be responsible for nominating to various posts and providing judicial training.
42. The Lord Chancellor's functions of appointing members, or judicial members, of rule committees are transferred by the Schedule to the Lord Chief Justice, with a consultation role in relation to the appointment of non-judicial members for the Lord Chancellor. Provisions relating to rules made by a Committee are also amended to provide the Lord Chancellor with a power to require rules committees to make rules to achieve a specified purpose. There is also a requirement on the Lord Chancellor to provide written reasons in the event that he disallows rules made by a rules committee. The Lord Chancellor's function of making rules without a committee is, in general, to continue to be exercised by the Lord Chancellor but with a consultation role for the Lord Chief Justice.
43. The Justice (Northern Ireland) Act 2002 provides the framework for appointments in Northern Ireland, in particular for the establishment of a Judicial Appointments Commission for Northern Ireland, which will be established in June this year. This Schedule does not alter those arrangements other than to make a number of technical amendments or to correct anomalies. In particular, it brings a number of judicial appointments within the scope of the Northern Ireland Judicial Appointments Commission and makes a number of amendments to take account of changes flowing from the reform of the office of the Lord Chancellor, for example, prescribing qualification requirements.
44. The Schedule also provides for the repeal of certain functions of the Lord Chancellor, which are now redundant.

### ***Section 16: Functions of the Lord Chief Justice during vacancy or incapacity***

45. [Section 16](#) provides that if there is a vacancy in the office of Lord Chief Justice, or if he is incapacitated, the functions of the Lord Chief Justice may be exercised by the Master of the Rolls or the next most senior Head of Division, as set out in subsection (3). If any of these offices are themselves vacant the functions may be exercised by the next most senior Head of Division as specified in the section. Any decision as to whether the Lord Chief Justice is incapacitated, or has ceased to be incapacitated, must be agreed in writing by at least three of the four Heads of Division.

## ***Lord Chancellor's Oath***

### ***Section 17: Lord Chancellor's Oath***

46. **Section 17** amends the Promissory Oaths Act 1868 to provide for a new oath to be taken by the Lord Chancellor. The terms of the oath refer to the Lord Chancellor's roles in relation to the independence of the judiciary, the rule of law and supporting the running of the courts. It will be taken alongside the existing oath of allegiance and official oath (see sections 2 and 3 of the 1868 Act) upon taking up office. As the Lord Chancellor is no longer a judge, he will no longer take the judicial oath (see section 4 of the 1868 Act).

## ***Speakership of the House of Lords***

### ***Section 18 and Schedule 6: Speakership of the House of Lords***

47. **Section 18** introduces Schedule 6. Schedule 6 provides that references in primary legislation to the Lord Chancellor in his capacity as Speaker of the House of Lords are replaced with references to the 'Speaker of the House of Lords'. This change will ensure that the provisions amended are capable of applying to any Speaker of that House, who need not however be known formally by that title. The purpose of the provision is to enable the House of Lords to decide upon future arrangements for its Speakership without the need to amend existing references in primary legislation.

## ***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 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.

### ***Schedule 7: Protected Functions of the Lord Chancellor***

53. **Schedule 7** lists various protected functions of the Lord Chancellor which may not be transferred to other Ministers by a Transfer of Functions Order under the Ministers of the Crown Act. These include functions relating to the custody or use of the Great Seal; functions conferred on the Lord Chancellor by the Constitutional Reform Act or modified by that Act; other listed functions; and listed functions in relation to Northern Ireland. The listed functions may not be transferred by an order under section 19 of the Act or by an order under section 1 of the Ministers of the Crown Act 1975 (as amended by section 20 of the Act).
54. **Schedule 7** may be amended so as to include new functions by any of the following. First, an order under section 19 of the Act, if the order provides for a function of the Lord Chancellor to become exercisable concurrently with another person or for a function to be modified (see section 19(7) of the Act). Secondly, a Transfer of Functions Order under section 1 of the Ministers of the Crown Act 1975, if the order provides for a function to be transferred to the Lord Chancellor, to become exercisable by him concurrently with another person, or to remain exercisable by him but to cease to be exercisable by another person (see section 1(7) of the 1975 Act, inserted by section 20(2) of the Constitutional Reform Act 2005). Thirdly, an order under section 21 of the 2005 Act (see below)

### ***Section 20: Protected functions not transferable under Minister of the Crown Act 1975***

55. **Section 20** amends sections 1 and 5 of the Ministers of the Crown Act 1975 so that the power to transfer functions under section 1 of that Act does not apply to the functions of the Lord Chancellor specified in Schedule 7. In general, these functions relate to the Great Seal, the judiciary or the organisation of the courts. This will mean that the specified functions cannot be transferred to another Minister by a Transfer of Functions Order under the 1975 Act.

### ***Section 21: Amendment of Schedule 7***

56. **Section 21** provides a power for the Lord Chancellor to add statutory functions of the Lord Chancellor (including those exercisable by him concurrently with another person) to Schedule 7. This only applies to statutory functions under legislation passed in the same Session as, or in Sessions prior to, the Session in which the Act was passed. Its principal purpose is to add to Schedule 7 functions of the Lord Chancellor created in primary legislation since the introduction of the Bill for the Constitutional Reform Act.

**Section 22: Transfers: supplementary**

57. **Section 22** applies where a function of the Lord Chancellor is transferred to another person under the Act itself, or by an order made under section 19. Its purpose is to ensure that there will be a smooth transition when the function is transferred. It therefore provides for the continuing validity of actions relating to the function taken before the transfer. . References to the Lord Chancellor, his Department or any officer of his Department that occur in Acts or other instruments are to be read as referring to the person who will undertake the function in the future or his department or officers (as appropriate). Legal proceedings involving the Lord Chancellor in relation to a function which is transferred can be continued by or against the person who assumes the function. Printed documents and forms that relate to a transferred function also continue to be valid despite references to the Lord Chancellor, his Department or his staff. Subsection (2) provides that where Her Majesty will in future perform a function of the Lord Chancellor, the Lord Chancellor will still continue any associated action in relation to that function.

**Part 3 the Supreme Court**

**Summary**

58. **Part 3** of the Act creates a Supreme Court of the United Kingdom (which is generally to be known as ‘The Supreme Court’ in the Act and other legislation) and makes provision for the transfer to the Supreme Court of the appellate jurisdiction of the House of Lords and the devolution jurisdiction of the Judicial Committee of the Privy Council. The new Supreme Court will be separate from Parliament.