

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

BACKGROUND

215. The selection and appointment of judges in England and Wales has been primarily the responsibility of the Lord Chancellor. In carrying out this function, he is supported by officials from the Department for Constitutional Affairs. The precise responsibility for the actual appointments themselves varies according to the type of judicial appointment:
- Appointments to the offices of Lord of Appeal in Ordinary, the Heads of Division of the Supreme Court (retitled the Senior Courts by the Act) and Lord Justice of Appeal are made by The Queen on the recommendation of the Prime Minister as the Sovereign's principal adviser. It has been the practice that the Prime Minister seeks advice from the Lord Chancellor in the first instance.
 - Appointment to the offices of High Court Judge, Circuit Judge, Recorder, District Judge (Magistrates' Courts), Social Security Commissioners, the Judge Advocate General and the Judge Advocate of Her Majesty's Fleet are made by The Queen on the recommendation of the Lord Chancellor.
 - The Lord Chancellor bears personal responsibility for making a wide range of full-time and part-time appointments to the judiciary, including to the offices of District Judge (Civil) and Deputy District Judge, and to a wide range of tribunals, including certain tribunals with a UK-wide jurisdiction.
216. The administration of the judicial appointments system is carried out on the Lord Chancellor's behalf by staff of the Legal and Judicial Services Group in the Department for Constitutional Affairs. A principal function of the Group is to supply all the information and advice which the Lord Chancellor requires to enable him to fulfil his responsibilities in this field, and to provide him with the material on which to make a fair and informed judgement about every appointment. This includes corresponding with and informing and interviewing those who are, or may become, candidates for appointment; consulting judges, members of the profession and others as required; administering the selection procedures; following and executing the Lord Chancellor's instructions and guidance, both on individual appointments and candidates; providing feedback as required on individual applications and on his general policy.
217. The Act creates a new independent Judicial Appointments Commission, which will assume responsibility for the process of selecting people for judicial appointments in England and Wales and for those appointments to UK-wide tribunals made by the Lord Chancellor. The Judicial Appointments Commission will select one candidate for each vacancy and report that selection to the Lord Chancellor. Schedule 14 to the Act lists the offices below the High Court for which the Commission will make selections, and no one may be appointed to such office who has not been selected by the Commission. The Lord Chancellor will either appoint or recommend for appointment the selected candidate, or will have the ability to reject a candidate, once, and to ask the Commission to reconsider, once. Having exhausted these options, the Lord Chancellor must appoint or recommend for appointment whichever candidate is selected. The Act makes special provision for the appointment of the Lord Chief Justice and Heads of Division and of

Lords Justices of Appeal; in these cases the Commission will establish a selection panel of four members, consisting of two senior judges (normally including the Lord Chief Justice) and two lay members of the Commission. The appointments of Lords Justices and above will continue to be made by The Queen formally on the advice of the Prime Minister after the Commission has made a recommendation to the Lord Chancellor.

218. [Schedule 12](#) sets out the membership of the Judicial Appointments Commission, and its powers and responsibilities, which will reflect its status as an Executive Non-Departmental Public Body. There will be a lay Chairman and five other lay members, five judicial members, two legal professionals, a tribunal member and a lay magistrate. They will be supported by a Chief Executive and staff. The Act requires that selections for judicial appointment shall be made solely on merit. In addition, the Commission has a statutory duty to have regard to the need to encourage diversity in the range of persons available for selection. The Lord Chancellor will be able to issue guidance to the Commission, which they must have regard to, but the detailed appointments procedures they will follow are a matter for them, and not prescribed in the Act. Guidance can only be issued after consultation with the Lord Chief Justice and after being approved in draft by both Houses of Parliament.
219. The Lord Chancellor has statutory powers to remove judicial office holders below the High Court (including tribunal members and lay magistrates) from office for incapacity or misbehaviour. These powers are amended by Schedule 4 so that they can be exercised only with the agreement of the Lord Chief Justice (or in the case of certain UK tribunal members who sit mainly in Scotland or Northern Ireland, with the agreement of the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland as appropriate). The Lord Chancellor has also had a more general disciplinary power in relation to judicial office holders, and has considered complaints about judicial conduct, and where necessary has advised, warned or formally reprimanded office holders. Part 4 of the Act makes statutory provision for a disciplinary system in relation to judicial office holders, in cases falling short of removal, in which the Lord Chief Justice will have the power to advise, warn or reprimand judicial office holders following disciplinary proceedings, with the agreement of the Lord Chancellor. These provisions will apply to judicial office holders in England and Wales and to those members of UK-wide tribunals who are appointed after selection by the Judicial Appointments Commission. There is also provision in section 118 for the disciplinary provisions to be extended to other office holders who are removable by the Lord Chancellor. Section 108 makes it clear that these provisions do not affect the Lord Chief Justice's general ability to speak informally to any judge on any matter which concerns him without having to inform or obtain the agreement of the Lord Chancellor. The Lord Chief Justice will also be given a new statutory power to suspend judges from sitting in certain circumstances, with the agreement of the Lord Chancellor. The Lord Chief Justice will also have the power to make regulations and rules governing disciplinary cases, with the agreement of the Lord Chancellor, and subject to Parliamentary scrutiny in the case of regulations. The Judicial Appointments and Conduct Ombudsman will be able to consider complaints about disciplinary cases.
220. It will remain the case that judges of the High Court and above can be removed only by The Queen on an Address from both Houses of Parliament.