

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 13: The Judicial Appointments and Conduct Ombudsman

256. *Schedule 13* provides for the constitution and procedure of the Judicial Appointments and Conduct Ombudsman.

Paragraphs 1 and 2 The Ombudsman

257. These paragraphs provide for the Ombudsman to be appointed by The Queen on the recommendation of the Lord Chancellor. A person may not be appointed if he is a civil servant or if he has ever been a practising lawyer (defined in paragraph 2 in the same terms as the definitions in Schedule 12) or a holder of a judicial office listed in Schedule 14. Before recommending a person the Lord Chancellor must also consider whether the person has exercised functions of a judicial nature, or has been a member of the Judicial Appointments Commission, member of staff of the Commission, member of the House of Commons, a civil servant or whether any present or past political activity or affiliations would make the person inappropriate for the appointment.

Paragraphs 3-5 Term of office etc. of Ombudsman

258. These paragraphs provide that the Ombudsman will be appointed for a fixed period of no more than 5 years in the first instance. He may serve for no more than ten years in all. There are provisions for his resignation or removal from office, and grounds for the latter are set out. They are that the Ombudsman has ceased to meet the conditions for appointment set out above or has ceased to be appropriate for appointment because of the considerations set out above, has failed to exercise their functions for a continuous period of six months; or that he has been convicted of an offence; or that he has been made bankrupt; or that he is otherwise unfit to hold office or unable to discharge its functions.

Paragraph 6 Salary, allowances and expenses

259. This paragraph provides for the Ombudsman's remuneration and pension, and for the possibility of the payment of compensation in special circumstances on his ceasing to hold office.

Paragraph 7 Acting Ombudsman

260. This paragraph allows for the appointment of an acting Ombudsman in the circumstances set out in sub-paragraph 7(1). These are if the office becomes vacant, if the Lord Chancellor considers that the Ombudsman is unable to exercise his functions or if there is a conflict of interest in relation to a particular matter. The person so appointed would have to be eligible for appointment as Ombudsman. The paragraph also provides for the payment and pension of the acting Ombudsman and for the circumstances in which his appointment may come to an end, for instance because the situation that gave rise to him being needed has ended.

Paragraph 8 Status of the Ombudsman

261. This paragraph provides that the Ombudsman is to be a corporation sole.

Paragraph 9 Powers of the Ombudsman

262. Paragraph 9 allows the Ombudsman to do anything to enable him to perform his functions, but does not allow him to borrow money or acquire real property, or to appoint staff other than in accordance with paragraph 10.

Paragraph 10 Arrangements for assistance

263. Paragraph 10 allows the Ombudsman, with the agreement of the Lord Chancellor, to make arrangements for assistance to be provided to him. This would include contracting out services as it sees fit and in doing so to pay for such services. It is intended that the Ombudsman will be supported by civil servants seconded to his office, as happens with the Parliamentary Commissioner.

Paragraph 11 Arrangements by the Lord Chancellor

264. Paragraph 11 allows the Lord Chancellor to make such arrangements for assistance for the Ombudsman if the latter has not done so.

Paragraph 12 Delegation of functions

265. Paragraph 12 allows the Ombudsman to delegate his functions, but requires him to sign any report or recommendation.

Paragraph 13 Financial provisions and directions

266. Paragraph 13 provides for the Ombudsman's expenses to be met by the Lord Chancellor, and for the latter to be able to issue him with directions on the procedures to be used in relation to his costs and expenditure, and on limits in relation to expenditure, or any particular type of expenditure, above which the Lord Chancellor's prior approval must be obtained.

Paragraph 14 Code of conduct

267. As with the Commissioners, the Lord Chancellor may issue a code of conduct to be observed by the Ombudsman.

Paragraph 15 Reports

268. Paragraph 15 provides that the Ombudsman must produce an annual report which must be laid before Parliament and published. The Lord Chancellor may direct him to deal with a particular matter in either that report or an ad hoc one. There is no statutory requirement for an ad hoc report to be laid before Parliament or published.

Paragraph 16 Documentary evidence

269. Paragraph 16 provides that a document signed by or on behalf of the Ombudsman is to be received in evidence, unless proved to be inauthentic.

Paragraph 17 General

270. Paragraph 17 specifies what is meant by financial year, the first of which will begin when the Commission is established and end the following 31 March. The Ombudsman will be barred from election to the House of Commons by inserting a reference to the post into Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975; and the Ombudsman will be listed as a public authority for the purposes of the Freedom

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

of Information Act 2000 by inserting a reference to the post into Part 6 of Schedule 1 to that Act.