

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 14: the Judicial Appointments Commission: relevant functions and offices

Complaints and references

Section 99 : Complaints: interpretation

308. **Section 99** describes two types of complaint about the appointment process: a Commission complaint, where the complaint is about the Commission's handling of a candidate for judicial appointment's application; and a departmental complaint, where the complaint is about the Lord Chancellor or his Department's handling of the application. Those entitled to complain are those who have applied for selection or have been selected, and claim to have been adversely affected by the maladministration about which they are complaining. It will not be possible under the Act for other members of the public to complain about the fact that someone else has, or has not, been selected for judicial appointment.

Section 100: Complaints to the Commission or the Lord Chancellor

309. **Section 100** requires the Commission and the Lord Chancellor to make arrangements for handling the complaints made to them. It will not, however, be mandatory for either of them to investigate a complaint that is made more than 28 days after the matter complained of. Complainants will need to make a complaint under this section before they can complain to the Ombudsman about maladministration in making an appointment.

Section 101: Complaints to the Ombudsman

310. **Section 101** provides that the Ombudsman must consider complaints which have been made under section 100 if the complainant refers the complaint to the Ombudsman within 28 days of the complainant being notified of the Commission or Lord Chancellor's decision in relation to their original complaint. If the Ombudsman does not think the complaint requires investigation he must inform the complainant; otherwise he must conduct an investigation. The Ombudsman has discretion to consider complaints received out of time. Any complaints made to the Ombudsman must be in a form approved by him. Section 101 goes on to provide that unresolved complaints made to the existing Commissioners for Judicial Appointments at the time these provisions are brought into force will be transferred to the Ombudsman, who will have a discretion to investigate them. No further complaints to the Commissioners for Judicial Appointments about such matters will be possible.

Section 102: Report and recommendations

311. The Ombudsman must prepare a report on his findings on a complaint, with any recommendations, including any recommendation for the payment of compensation. Compensation would only be payable for loss suffered as a result of maladministration, and not in respect of any earnings the complainant would have received had his application for appointment been successful.

Section 103: Report procedure

312. The Ombudsman must submit his report in draft to the Lord Chancellor, and to the Commission, if it was a Commission complaint. The Ombudsman must have regard to their proposals for amendment, and if their proposals are not reflected in his final report he must include a statement of those proposals. The Ombudsman must send the final report to the Lord Chancellor and, if it was a Commission complaint, to the Commission. He will also send a copy of the report to the complainant, but this version is not to contain confidential information relating to someone other than the complainant and the disclosure of which would otherwise be prohibited by section 139.

Section 104: References by the Lord Chancellor

313. [Section 104](#) allows the Lord Chancellor to refer to the Ombudsman any matters relating to the Commission's procedures, and for the Ombudsman to report on his investigations. The report, which must be signed by the Ombudsman personally, will include his findings and any action he recommends.

Section 105: Information

314. The Commission and the Lord Chancellor must provide the Ombudsman with any information he reasonably requires relating to his investigations.