



Constitutional Reform Act 2005

2005 CHAPTER 4

PART 4

JUDICIAL APPOINTMENTS AND DISCIPLINE

CHAPTER 3

DISCIPLINE

Disciplinary powers

108 Disciplinary powers

- (1) Any power of the Lord Chancellor to remove a person from an office listed in Schedule 14 is exercisable only after the Lord Chancellor has complied with prescribed procedures (as well as any other requirements to which the power is subject).
- (2) The Lord Chief Justice may exercise any of the following powers but only with the agreement of the Lord Chancellor and only after complying with prescribed procedures.
- (3) The Lord Chief Justice may give a judicial office holder formal advice, or a formal warning or reprimand, for disciplinary purposes (but this section does not restrict what he may do informally or for other purposes or where any advice or warning is not addressed to a particular office holder).
- (4) He may suspend a person from a judicial office for any period during which any of the following applies—
 - (a) the person is subject to criminal proceedings;
 - (b) the person is serving a sentence imposed in criminal proceedings;
 - (c) the person has been convicted of an offence and is subject to prescribed procedures in relation to the conduct constituting the offence.

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- (5) He may suspend a person from a judicial office for any period if—
 - (a) the person has been convicted of a criminal offence,
 - (b) it has been determined under prescribed procedures that the person should not be removed from office, and
 - (c) it appears to the Lord Chief Justice with the agreement of the Lord Chancellor that the suspension is necessary for maintaining confidence in the judiciary.
- (6) He may suspend a person from office as a senior judge for any period during which the person is subject to proceedings for an Address.
- (7) He may suspend the holder of an office listed in Schedule 14 for any period during which the person—
 - (a) is under investigation for an offence, or
 - (b) is subject to prescribed procedures.
- (8) While a person is suspended under this section from any office he may not perform any of the functions of the office (but his other rights as holder of the office are not affected).

109 Disciplinary powers: interpretation

- (1) This section has effect for the purposes of section 108.
- (2) A person is subject to criminal proceedings if in any part of the United Kingdom proceedings against him for an offence have been begun and have not come to an end, and the times when proceedings are begun and come to an end for the purposes of this subsection are such as may be prescribed.
- (3) A person is subject to proceedings for an Address from the time when notice of a motion is given in each House of Parliament for an Address for the removal of the person from office, until the earliest of the following events—
 - (a) either notice is withdrawn;
 - (b) either motion is amended so that it is no longer a motion for an address for removal of the person from office;
 - (c) either motion is withdrawn, lapses or is disagreed to;
 - (d) where an Address is presented by each House, a message is brought to each House from Her Majesty in answer to the Address.
- (4) “Judicial office” means—
 - (a) office as a senior judge, or
 - (b) an office listed in Schedule 14;
 and “judicial office holder” means the holder of a judicial office.
- (5) “Senior judge” means any of these—
 - (a) Master of the Rolls;
 - (b) President of the Queen’s Bench Division;
 - (c) President of the Family Division;
 - (d) Chancellor of the High Court;
 - (e) Lord Justice of Appeal;
 - (f) puisne judge of the High Court.

- (6) “Sentence” includes any sentence other than a fine (and “serving” is to be read accordingly).
- (7) The times when a person becomes and ceases to be subject to prescribed procedures for the purposes of section 108(4) or (7) are such as may be prescribed.
- (8) “Under investigation for an offence” has such meaning as may be prescribed.

Applications for review and references

110 Applications to the Ombudsman

- (1) This section applies if an interested party makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been—
 - (a) a failure to comply with prescribed procedures, or
 - (b) some other maladministration.
- (2) The Ombudsman must carry out a review if the following three conditions are met.
- (3) The first condition is that the Ombudsman considers that a review is necessary.
- (4) The second condition is that—
 - (a) the application is made within the permitted period,
 - (b) the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or
 - (c) the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made within a reasonable time.
- (5) The third condition is that the application is made in a form approved by the Ombudsman.
- (6) But the Ombudsman may not review the merits of a decision made by any person.
- (7) If any of the conditions in subsections (3) to (5) is not met, or if the grounds of the application relate only to the merits of a decision, the Ombudsman—
 - (a) may not carry out a review, and
 - (b) must inform the applicant accordingly.
- (8) In this section and sections 111 to 113, “regulated disciplinary function” means any of the following—
 - (a) any function of the Lord Chancellor that falls within section 108(1);
 - (b) any function conferred on the Lord Chief Justice by section 108(3) to (7);
 - (c) any function exercised under prescribed procedures in connection with a function falling within paragraph (a) or (b).
- (9) In this section, in relation to an application under this section for a review of the exercise of a regulated disciplinary function—
 - “interested party” means—
 - (a) the judicial office holder in relation to whose conduct the function is exercised, or
 - (b) any person who has made a complaint about that conduct in accordance with prescribed procedures;

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“permitted period” means the period of 28 days beginning with the latest of—

- (a) the failure or other maladministration alleged by the applicant;
- (b) where that failure or maladministration occurred in the course of an investigation, the applicant being notified of the conclusion or other termination of that investigation;
- (c) where that failure or maladministration occurred in the course of making a determination, the applicant being notified of that determination.

- (10) References in this section and section 111 to the exercise of a function include references to a decision whether or not to exercise the function.

111 Review by the Ombudsman

- (1) Where the Ombudsman is under a duty to carry out a review on an application under section 110, he must—
 - (a) on the basis of any findings he makes about the grounds for the application, decide to what extent the grounds are established;
 - (b) decide what if any action to take under subsections (2) to (7).
- (2) If he decides that the grounds are established to any extent, he may make recommendations to the Lord Chancellor and Lord Chief Justice.
- (3) A recommendation under subsection (2) may be for the payment of compensation.
- (4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the applicant as a result of any failure or maladministration to which the application relates.
- (5) If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates, he may set aside the determination.
- (6) If a determination is set aside under subsection (5)—
 - (a) the prescribed procedures apply, subject to any prescribed modifications, as if the determination had not been made, and
 - (b) for the purposes of those procedures, any investigation or review leading to the determination is to be disregarded.
- (7) Subsection (6) is subject to any direction given by the Ombudsman under this subsection—
 - (a) for a previous investigation or review to be taken into account to any extent, or
 - (b) for any investigation or review which may form part of the prescribed procedures to be undertaken, or undertaken again.
- (8) This section is subject to section 112.

112 Reports on reviews

- (1) In this section references to the Ombudsman’s response to an application are references to the findings and decisions referred to in section 111(1).
- (2) Before determining his response to an application the Ombudsman must prepare a draft of a report of the review carried out on the application.

- (3) The draft report must state the Ombudsman's proposed response.
- (4) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.
- (5) If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response to the application should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.
- (6) The Ombudsman must produce a final report that sets out—
 - (a) the Ombudsman's response to the application, including any changes made to it to give effect to a proposal under subsection (5);
 - (b) a statement of any proposal under subsection (5) that is not given effect to.
- (7) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
- (8) The Ombudsman must also send a copy of the final report to the applicant, but that copy must not include information—
 - (a) which relates to an identified or identifiable individual other than the applicant, and
 - (b) whose disclosure by the Ombudsman to the applicant would (apart from this subsection) be contrary to section 139.
- (9) Each copy must be signed by the Ombudsman.
- (10) No part of the Ombudsman's response to an application has effect until he has complied with subsections (2) to (9).

113 References to the Ombudsman relating to conduct

- (1) The Ombudsman must investigate any matter referred to him by the Lord Chancellor or the Lord Chief Justice that relates to the exercise of one or more regulated disciplinary functions.
- (2) A matter referred to the Ombudsman under subsection (1) may relate to the particular exercise of a regulated disciplinary function or to specified descriptions of the exercise of such functions.

114 Reports on references

- (1) Where the Ombudsman carries out an investigation under section 113 he must prepare a draft of a report of the investigation.
- (2) If the investigation relates to a matter which is the subject of a review on an application under section 110, subsection (1) applies only when the Ombudsman has sent a copy of the final report on that review to the Lord Chancellor, the Lord Chief Justice and the applicant.
- (3) The draft report must state the Ombudsman's proposals as to—
 - (a) the findings he will make;
 - (b) any recommendations he will make for action to be taken by any person in relation to the matter subject to investigation.

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- (4) Those findings and recommendations are referred to in this section as the Ombudsman's response on the investigation.
- (5) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.
- (6) If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response on the investigation should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.
- (7) The Ombudsman must produce a final report that sets out—
 - (a) the Ombudsman's response on the investigation, including any changes made to it to give effect to a proposal under subsection (6);
 - (b) a statement of any proposal under subsection (6) that is not given effect to.
- (8) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
- (9) Each copy must be signed by the Ombudsman.

General

115 Regulations about procedures

The Lord Chief Justice may, with the agreement of the Lord Chancellor, make regulations providing for the procedures that are to be followed in—

- (a) the investigation and determination of allegations by any person of misconduct by judicial office holders;
- (b) reviews and investigations (including the making of applications or references) under sections 110 to 112.

116 Contents of regulations

- (1) Regulations under section 115(a) may include provision as to any of the following—
 - (a) circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise);
 - (b) steps to be taken by a complainant before a complaint is to be investigated;
 - (c) the conduct of an investigation, including steps to be taken by the office holder under investigation or by a complainant or other person;
 - (d) time limits for taking any step and procedures for extending time limits;
 - (e) persons by whom an investigation or part of an investigation is to be conducted;
 - (f) matters to be determined by the Lord Chief Justice, the Lord Chancellor, the office holder under investigation or any other person;
 - (g) requirements as to records of investigations;
 - (h) requirements as to confidentiality of communications or proceedings;
 - (i) requirements as to the publication of information or its provision to any person.
- (2) The regulations—

- (a) may require a decision as to the exercise of functions under section 108, or functions mentioned in subsection (1) of that section, to be taken in accordance with findings made pursuant to prescribed procedures;
 - (b) may require that prescribed steps be taken by the Lord Chief Justice or the Lord Chancellor in exercising those functions or before exercising them.
- (3) Where regulations under section 115(a) impose any requirement on the office holder under investigation or on a complainant, a person contravening the requirement does not incur liability other than liability to such procedural penalty if any (which may include the suspension or dismissal of a complaint)—
 - (a) as may be prescribed by the regulations, or
 - (b) as may be determined by the Lord Chief Justice and the Lord Chancellor or either of them in accordance with provisions so prescribed.
- (4) Regulations under section 115 may—
 - (a) provide for any prescribed requirement not to apply if the Lord Chief Justice and the Lord Chancellor so agree;
 - (b) make different provision for different purposes.
- (5) Nothing in this section limits the generality of section 115.

117 Procedural rules

- (1) Regulations under section 115 may provide for provision of a prescribed description that may be included in the regulations to be made instead by rules made by the Lord Chief Justice with the agreement of the Lord Chancellor.
- (2) But the provision that may be made by rules does not include—
 - (a) provision within section 116(2);
 - (b) provision made for the purposes of section 108(7) or (8) or 116(3).
- (3) The rules are to be published in such manner as the Lord Chief Justice may determine with the agreement of the Lord Chancellor.

118 Extension of discipline provisions to other offices

- (1) This Chapter applies in relation to an office designated by the Lord Chancellor under this section as it would apply if the office were listed in Schedule 14.
- (2) The Lord Chancellor may by order designate any office, not listed in Schedule 14, the holder of which he has power to remove from office.
- (3) An order under this section may be made only with the agreement of the Lord Chief Justice.

119 Delegation of functions

- (1) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4)) to exercise any of his functions under the relevant sections.
- (2) The relevant sections are—
 - (a) section 108(3) to (7);
 - (b) section 111(2);

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- (c) section 112;
- (d) section 116(3)(b).

Scotland and Northern Ireland

120 Scotland

- (1) In section 108, in relation to a judicial office holder who exercises functions wholly or mainly in Scotland, references to the Lord Chief Justice are to be read as references to the Lord President of the Court of Session.
- (2) Regulations under section 115 and rules under section 117 do not apply in relation to a judicial office holder who exercises functions wholly or mainly in Scotland unless they are made with the agreement of the Lord President of the Court of Session.
- (3) In section 116(1)(f), (3)(b) and (4)(a) the references to the Lord Chief Justice include references to the Lord President of the Court of Session.
- (4) In section 118(3), where the description of offices designated by the order is limited to (or includes) offices in which the holder exercises functions wholly or mainly in Scotland, the reference to the Lord Chief Justice is to be read as (or as including) a reference to the Lord President of the Court of Session.
- (5) The Lord Chief Justice may by regulations provide for sections 110 to 113 to apply in relation to judicial office holders who exercise functions wholly or mainly in Scotland—
 - (a) as if in section 110(8)(b) the reference to the Lord Chief Justice were a reference to the Lord President of the Court of Session, and
 - (b) with any other modifications specified in the regulations.
- (6) Regulations under subsection (5) may be made only with the agreement of the Lord Chancellor and the Lord President of the Court of Session.
- (7) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise any of his functions under the relevant sections.
- (8) The relevant sections are—
 - (a) section 108(3) to (7);
 - (b) section 111(2);
 - (c) section 112;
 - (d) section 116(3)(b).

121 Northern Ireland

- (1) In section 108, in relation to a judicial office holder who exercises functions wholly or mainly in Northern Ireland, references to the Lord Chief Justice are to be read as references to the Lord Chief Justice of Northern Ireland.
- (2) Regulations under section 115 and rules under section 117 do not apply in relation to a judicial office holder who exercises functions wholly or mainly in Northern Ireland, unless they are made with the agreement of the Lord Chief Justice of Northern Ireland.

- (3) In section 116(1)(f), (3)(b) and (4)(a) the references to the Lord Chief Justice include references to the Lord Chief Justice of Northern Ireland.
- (4) In section 118(3), where the description of offices designated by the order is limited to (or includes) offices in which the holder exercises functions wholly or mainly in Northern Ireland, the reference to the Lord Chief Justice is to be read as (or as including) a reference to the Lord Chief Justice of Northern Ireland.
- (5) The Lord Chief Justice may by regulations provide for sections 110 to 113 to apply in relation to judicial office holders who exercise functions wholly or mainly in Northern Ireland—
 - (a) as if in section 110(8)(b) the reference to the Lord Chief Justice were a reference to the Lord Chief Justice of Northern Ireland, and
 - (b) with any other modifications specified in the regulations.
- (6) Regulations under subsection (5) may be made only with the agreement of the Lord Chancellor and the Lord Chief Justice of Northern Ireland.
- (7) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise any of his functions under the relevant sections—
 - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
 - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).
- (8) The relevant sections are—
 - (a) section 108(3) to (7);
 - (b) section 111(2);
 - (c) section 112;
 - (d) section 116(3)(b).