



# Justice (Northern Ireland) Act 2002

## 2002 CHAPTER 26

### PART 1

#### THE JUDICIARY

##### *General*

#### **1 Guarantee of continued judicial independence**

Those with responsibility for the administration of justice must uphold the continued independence of the judiciary.

##### *Appointment and removal*

#### **2 Introductory**

- (1) Sections 3 to 8 make provision about appointment to and removal from—
  - (a) the offices of Lord Chief Justice and Lord Justice of Appeal, and
  - (b) the offices listed in Schedule 1.
- (2) The [<sup>F1</sup>Lord Chancellor] may by order amend Schedule 1 by—
  - (a) adding an office (other than the office of Lord Chief Justice or Lord Justice of Appeal),
  - (b) omitting an office, or
  - (c) altering the description of an office.
- (3) No order under subsection (2) may be made without the agreement of the Lord Chief Justice.
- (4) An order under subsection (2) may make appropriate consequential amendments in any enactment or instrument (whenever passed or made).
- (5) In this Act—

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“listed judicial office” means an office listed in Schedule 1, and  
 “protected judicial office” means the office of Lord Chief Justice, the office of Lord Justice of Appeal or a listed judicial office.

#### Textual Amendments

**F1** Words in s. 2(2) substituted (15.6.2005) by [Justice \(Northern Ireland\) Act 2004 \(c. 4\), ss. 1, 19\(1\), Sch. 1 para. 1; S.R. 2005/282, art. 3](#)

### 3 Judicial Appointments Commission

- (1) There is to be a body corporate known as the Northern Ireland Judicial Appointments Commission.
- (2) The Commission is to consist of—
  - (a) a chairman, and
  - (b) twelve other members appointed by the [<sup>F2</sup>Lord Chancellor].
- (3) Schedule 2 makes further provision about the Commission.
- (4) The Lord Chief Justice is to be the chairman of the Commission; but for any time during which—
  - (a) the office of Lord Chief Justice is vacant, or
  - (b) he is not available,
 the senior Lord Justice of Appeal who is available is to act as the chairman (whether or not he is already a member).
- (5) The following are to be appointed as the other members—
  - (a) five persons nominated by the Lord Chief Justice (referred to in this section and Schedule 2 as “judicial members”),
  - (b) a barrister nominated by the General Council of the Bar of Northern Ireland and a solicitor nominated by the Law Society of Northern Ireland (so referred to as “legal profession members”), and
  - (c) five persons who do not hold (and have never held) a protected judicial office and are not (and have never been) barristers or solicitors (so referred to as “lay members”);
 and a reference in Schedule 2 to a non-judicial member is to a member who is either a legal profession member or a lay member.
- (6) The judicial members are to be—
  - (a) a Lord Justice of Appeal,
  - (b) a judge of the High Court,
  - (c) a county court judge,
  - (d) a resident magistrate, and
  - (e) a lay magistrate.
- (7) A person may not be appointed to be a lay member unless he has declared in writing his commitment to non-violence and exclusively peaceful and democratic means.

[<sup>F3</sup>(8) It is the duty of—

- (a) the Lord Chancellor, and

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(b) those responsible for making nominations under subsection (5)(a) and (b), to make such arrangements in connection with the exercise of their functions under this section as will, so far as is practicable, secure that the membership of the Commission is reflective of the community in Northern Ireland.]

#### Textual Amendments

- F2** Words in s. 3(2)(b) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 1, 19(1), **Sch. 1 para. 2**; S.R. 2005/282, **art. 3**
- F3** S. 3(8) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), **ss. 2(1)**, 19(1); S.R. 2005/282, **art. 3**

PROSPECTIVE

#### **F4** Appointment to most senior judicial offices

#### Textual Amendments

- F4** S. 4 omitted (12.4.2010) by virtue of Northern Ireland Act 2009 (c. 3), s. 5(7), **Sch. 3 para. 2**; S.I. 2010/812, **art. 2**

## 5 Appointment to listed judicial offices

- (1) Schedule 3 transfers to the First Minister and deputy First Minister, acting jointly, the power to make appointments, or recommendations for appointment, to listed judicial offices and makes provision about associated functions.
- (2) Only a person selected by the Commission may be appointed, or recommended for appointment, to a listed judicial office.
- (3) The [<sup>F5</sup>Lord Chancellor] may at any time by notice require the Commission to select a person to be appointed, or recommended for appointment, to a listed judicial office.
- (4) When the Commission is so required, it must—
  - (a) inform the [<sup>F6</sup>Lord Chancellor] of the person selected to be appointed, or recommended for appointment, to the office, and
  - (b) make a report to [<sup>F7</sup>the Lord Chancellor] on its process of selection, indicating the basis of its decision to select that person.
- (5) If the [<sup>F8</sup>Lord Chancellor does] not (within a reasonable time after receiving the report under subsection (4)(b)) appoint or recommend for appointment the person selected by the Commission, [<sup>F9</sup>he] must by notice require the Commission to reconsider its decision; and the notice must include a statement of [<sup>F10</sup>his] reasons for requiring it to do so.
- (6) If the Commission is required to reconsider its decision, it must—
  - (a) after doing so, either re-affirm its selection or select a different person to be appointed, or recommended for appointment, to the office,

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- (b) inform the <sup>F11</sup>[Lord Chancellor] of the outcome of its reconsideration, and
  - (c) make a report to <sup>F12</sup>[the Lord Chancellor] indicating the basis of the decision made by it after its reconsideration.
- (7) The <sup>F13</sup>[Lord Chancellor] must, on being informed by the Commission of the outcome of the reconsideration of its decision, appoint, or recommend for appointment, the person selected by the Commission after the reconsideration.
- <sup>F14</sup>(8) The selection of a person to be appointed, or recommended for appointment, to a listed judicial office (whether initially or after reconsideration) must be made solely on the basis of merit.
- (9) Subject to that, the Commission must at all times engage in a programme of action which complies with subsection (10).
- (10) A programme of action complies with this subsection if—
- (a) it is designed to secure, so far as it is reasonably practicable to do so, that appointments to listed judicial offices are such that those holding such offices are reflective of the community in Northern Ireland;
  - (b) it requires the Commission, so far as it is reasonably practicable to do so, to secure that a range of persons reflective of the community in Northern Ireland is available for consideration by the Commission whenever it is required to select a person to be appointed, or recommended for appointment, to a listed judicial office; and
  - (c) it is for the time being approved by the Commission for the purposes of this section.]

#### Textual Amendments

- F5** Words in s. 5(3) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 1, 19(1), **Sch. 1 para. 3(2)**; S.R. 2005/282, **art. 3**
- F6** Words in s. 5(4) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 1, 19(1), **Sch. 1 para. 3(3)**; S.R. 2005/282, **art. 3**
- F7** Words in s. 5(3) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 1, 19(1), **Sch. 1 para. 3(3)**; S.R. 2005/282, **art. 3**
- F8** Words in s. 5(5) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 1, 19(1), **Sch. 1 para. 3(4)(a)**; S.R. 2005/282, **art. 3**
- F9** Word in s. 5(5) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 1, 19(1), **Sch. 1 para. 3(4)(b)**; S.R. 2005/282, **art. 3**
- F10** Word in s. 5(5) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 1, 19(1), **Sch. 1 para. 3(4)(c)**; S.R. 2005/282, **art. 3**
- F11** Words in s. 5(6) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 1, 19(1), **Sch. 1 para. 3(5)**; S.R. 2005/282, **art. 3**
- F12** Words in s. 5(5) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 1, 19(1), **Sch. 1 para. 3(5)**; S.R. 2005/282, **art. 3**
- F13** Words in s. 5(7) substituted (15.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 1, 19(1), **Sch. 1 para. 3(6)**; S.R. 2005/282, **art. 3**
- F14** S. 5(8)-(10) substituted (15.6.2005) for s. 5(8)(9) by Justice (Northern Ireland) Act 2004 (c. 4), **ss. 3, 19(1)**; S.R. 2005/282, **art. 3**

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#### Commencement Information

- II** S. 5 partly in force; s. 5 not in force at Royal Assent see s. 87; s. 5(2)-(9) in force for certain purposes at 15.6.2005 and 10.12.2005 by S.R. 2005/281, art. 3, Sch. 2

#### [<sup>F15</sup>5A Disclosure of information to the Commission

- (1) Information which is held by or on behalf of a permitted person (whether obtained before or after this section comes into force) may be disclosed to the Commission or a committee of the Commission for the purposes of selection under section 5.
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (3) But nothing in this section authorises the making of a disclosure—
  - (a) which contravenes the Data Protection Act 1998, or
  - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.
- (4) This section does not affect a power to disclose which exists apart from this section.
- (5) The following are permitted persons—
  - (a) a chief officer of police of a police force in England and Wales;
  - (b) a chief constable of a police force in Scotland;
  - (c) the Chief Constable of the Police Service of Northern Ireland;
  - (d) the Director General of the National Criminal Intelligence Service;
  - (e) the Director General of the National Crime Squad;
  - (f) the Commissioners of Inland Revenue;
  - (g) the Commissioners of Customs and Excise.
- (6) The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which he considers are of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).
- (7) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.
- (8) The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose)—
  - (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue,
  - (b) in the case of the Commissioners of Customs and Excise, to a customs officer.
- (9) For the purposes of this section a customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979.]

#### Textual Amendments

- F15** S. 5A inserted (15.6.2005 for specified purposes, 12.4.2010 in so far as not already in force) by Constitutional Reform Act 2005 (c. 4), ss. 123(2), 148(1); S.I. 2005/1431, art. 2(a); S.I. 2010/883, art. 2(b)

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PROSPECTIVE

## **F16<sup>6</sup> Removal from most senior judicial offices**

.....

### **Textual Amendments**

**F16** S. 6 omitted (12.4.2010) by virtue of [Northern Ireland Act 2009 \(c. 3\)](#), s. 5(7), [Sch. 3 para. 5](#); S.I. 2010/812, art. 2

VALID FROM 12/04/2010

## **7 Removal from listed judicial offices**

- (1) A person holding a listed judicial office may be removed from office (and suspended from office pending a decision whether to remove him) but only in accordance with this section.
- (2) The power to remove or suspend him is exercisable by the First Minister and deputy First Minister, acting jointly.
- (3) He may only be removed if a tribunal convened under section 8 has reported to the First Minister and deputy First Minister recommending that he be removed on the ground of misbehaviour or inability to perform the functions of the office.
- (4) He may only be suspended if the tribunal, at any time when it is considering whether to recommend his removal, has recommended to them that he be suspended.
- (5) He may not be removed or suspended without the agreement of the Lord Chief Justice.
- (6) If he is suspended he may not perform any of the functions of the office until the decision whether to remove him has been taken (but his other rights as holder of the office are unaffected).
- (7) Nothing in subsections (1) to (6) applies to a judge of the High Court appointed before the coming into force of this section (as to the removal and suspension of whom see section 12B of the Judicature (Northern Ireland) Act 1978 (c. 23) (inserted by section 6 of this Act)).
- (8) But, subject to that, those subsections apply whatever the date of a person's appointment.

PROSPECTIVE

## **[F17<sup>8</sup> Tribunals for considering removal**

- (1) A tribunal to consider the removal of the holder of a listed judicial office may be convened—

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- (a) by the Lord Chief Justice after consulting the Northern Ireland Judicial Appointments Ombudsman, or
  - (b) by the Ombudsman after consulting the Lord Chief Justice.
- (2) A tribunal is to consist of—
- (a) a Lord Justice of Appeal or a judge of the High Court,
  - (b) a person who holds an office within section 3(6)(a) to (e), and
  - (c) a lay member of the Commission (see section 3(5)(c)).
- (3) The persons within subsection (2)(a) and (b) are to be selected by the Lord Chief Justice and the person within subsection (2)(c) is to be selected by the Ombudsman.
- (4) Unless the Commission otherwise agrees, the persons within subsection (2)(a) and (b) must be judicial members of the Commission (see section 3(5)(a)).
- (5) The person within subsection (2)(a) is to be the chair of the tribunal.
- (6) The tribunal's procedure is to be determined by the Lord Chief Justice.
- (7) The [<sup>F18</sup>Department of Justice] may pay a member of a tribunal any such allowances or fees as it may determine.]

#### Textual Amendments

- F17** S. 8 substituted (12.4.2010) by Northern Ireland Act 2009 (c. 3), s. 5(7), **Sch. 3 para. 7**; S.I. 2010/812, art. 2
- F18** Words in s. 8(7) substituted (12.4.2010) by Department of Justice Act (Northern Ireland) 2010 (c. 3), s. 3(2), **Sch. para. 14(2)**; S.R. 2010/147, art. 2(2)

### *Magistrates*

#### <sup>x19</sup> **Lay magistrates**

- (1) The Lord Chancellor must, for each county court division, appoint persons to be lay magistrates for the division.
- (2) A person may not be appointed to be a lay magistrate unless—
  - (a) he has completed a course of training [<sup>F19</sup>approved by the Lord Chief Justice after consultation with the Lord Chancellor, or]
  - (b) he has given an undertaking in writing to attend such a course of training.
- (3) It is a condition of the appointment of a person under subsection (2)(b) that he will complete such a course of training within the period of one year beginning with the date of his appointment or [<sup>F20</sup>such longer period as the Lord Chief Justice may, after consulting the Lord Chancellor, allow.]
- (4) The Lord Chancellor may [<sup>F21</sup>, after consultation with the Lord Chief Justice,] by order make further provision about eligibility for appointment to be a lay magistrate.
- (5) The provision which may be made by an order under subsection (4) includes (in particular) provision that a person may not be appointed to be a lay magistrate—
  - (a) if he does not reside or work in, or within a prescribed distance of, the county court division to which the appointment relates,

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- (b) if he, or a person related to or otherwise connected with him in a prescribed manner, holds an office of a prescribed description, has an occupation of a prescribed description or has been selected as a candidate for election to a prescribed body,
  - (c) if a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors, or
  - (d) if he has been convicted of a prescribed offence, unless [<sup>F22</sup>, after consultation with the Lord Chief Justice,] the Lord Chancellor otherwise determines in the case of a particular person.
- (6) “Prescribed” means prescribed in the order.
- (7) No act by a person appointed to be a lay magistrate is invalidated by reason only that he is not a lay magistrate because he was not eligible to be appointed.
- (8) A lay magistrate ceases to hold office on the day on which he attains the age of 70.
- (9) No act by a person who has been a lay magistrate is invalidated by reason only that he has ceased to hold office under subsection (8).
- (10) <sup>F23</sup> .....
- (11) The Lord Chancellor must pay to lay magistrates any such allowances as he may determine.
- (12) The Lord Chief Justice, Lords Justices of Appeal, judges of the High Court and county court judges may exercise any function of a lay magistrate (in relation to any matter arising within any county court division).
- (13) In paragraph 11 of Schedule 2 to the Northern Ireland Act 1998 (c. 47) (excepted matters: judicial offices), after “resident magistrates,” insert “lay magistrates,”.
- (14) “County court division” means a division specified under Article 3(1) of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)).

#### Editorial Information

- X1** The omission of the cross-heading before s. 9 on 25.9.2006 gives rise to a change in the structure of this legislation on legislation.gov.uk which breaks the continuity of historical versions of s. 9.

#### Textual Amendments

- F19** Words in s. 9(2)(a) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 5 para. 117\(2\)](#); S.I. 2006/1014, [art. 2](#), Sch. 1 para. 12
- F20** Words in s. 9(3) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 5 para. 117\(3\)](#); S.I. 2006/1014, [art. 2](#), Sch. 1 para. 12
- F21** Words in s. 9(4) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 5 para. 117\(4\)](#); S.I. 2006/1014, [art. 2](#), Sch. 1 para. 12
- F22** Words in s. 9(5) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 5 para. 117\(5\)](#); S.I. 2006/1014, [art. 2](#), Sch. 1 para. 12
- F23** S. 9(10) repealed (3.4.2006) by [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#), ss. 86, 87(1), [Sch. 13](#); S.R. 2006/124, [art. 2](#), Sch.



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### Commencement Information

- I2** S. 9 wholly in force at 1.4.2005; s. 9 not in force at Royal Assent see s. 87; s. 9(4)(5)(6)(14) in force at 15.10.2002 by S.R. 2002/319, art. 2, Sch.; s. 9(1)-(3)(7)-(11)(13) in force at 1.9.2004 by S.R. 2004/301, art. 2; s. 9(12) in force at 1.4.2005 by S.R. 2005/109, art. 2, Sch.

## <sup>x2</sup>9I Confidentiality in relation to judicial appointments and discipline

- (1) A person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of a relevant provision must not disclose it except with lawful authority.
- (2) These are the relevant provisions—
  - (a) section 12, 12A and 12B of the Judicature (Northern Ireland) Act 1978 (appointment and removal of Lord Chief Justice, Lords Justices of Appeal and judges of High Court);
  - (b) sections 3, 5, 7 and 9 to 9H of this Act (appointment and removal of judicial officers, and appointment and removal of lay magistrates);
  - (c) sections 134 and 135 of the Constitutional Reform Act 2005 (removal from judicial offices);
  - (d) section 16 of this Act (complaints about judicial officers);
- (3) Information is confidential if it relates to an identified or identifiable individual (a “subject”).
- (4) Confidential information is disclosed with lawful authority only if and to the extent that any of the following applies—
  - (a) the disclosure is with the consent of each person who is a subject of the information (but this is subject to subsection (5));
  - (b) the disclosure is for (and is necessary for) the exercise by any person of functions under a relevant provision or a decision whether to exercise them;
  - (c) the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description.
- (5) An opinion or other information given by one identified or identifiable individual (A) about another (B)—
  - (a) is information that relates to both;
  - (b) must not be disclosed to B without A's consent.
- (6) This section does not prevent the disclosure with the agreement of the Lord Chancellor and the Lord Chief Justice of information as to disciplinary action taken in accordance with a relevant provision.
- (7) This section does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.
- (8) A contravention of this section in respect of any information is actionable, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (9) But it is actionable only at the suit of a person who is a subject of the information.

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### Editorial Information

- X2** The insertion of the new heading "The Ombudsman" on 25.9.2006 gives rise to a change in the structure of this legislation on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

VALID FROM 25/09/2006

## <sup>F24</sup>The Ombudsman

### Textual Amendments

- F24** S. 9A and preceding cross-heading inserted (25.9.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), [ss. 124\(2\), 148](#); S.I. 2006/1537, [art. 3\(a\)](#)

### 9A Judicial Appointments Ombudsman

- (1) There is to be a Northern Ireland Judicial Appointments Ombudsman.
- (2) The Ombudsman is appointed by Her Majesty on the recommendation of the Lord Chancellor.
- (3) Schedule 3A makes further provision about the Ombudsman.

### <sup>F25</sup>9B Complaints: interpretation

- (1) This section applies for the purposes of this Part.
- (2) A Commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission.
- (3) A departmental complaint is a complaint by a qualifying complainant of maladministration by the Lord Chancellor or the Northern Ireland Court Service in connection with any of the following—
  - (a) recommendation for or appointment to a listed judicial office;
  - (b) appointment under section 2 of the Taxes Management Act 1970 as a Commissioner for the general purposes of the income tax for Northern Ireland.
- (4) A qualifying complainant is a complainant who claims to have been adversely affected, as an applicant for selection or as a person selected under this Part, by the maladministration complained of.]

### Textual Amendments

- F25** S. 9B inserted (25.9.2006 for certain purposes and otherwise prosp.) by [Constitutional Reform Act 2005 \(c. 4\)](#), [ss. 125, 148](#); S.I. 2006/1537, [art. 3\(b\)](#)

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### **Complaints to the Commission or the Lord Chancellor**

**F26**  
**9C**

- (1) The Commission must make arrangements for investigating any Commission complaint made to it.
- (2) The Lord Chancellor must make arrangements for investigating any departmental complaint made to him.
- (3) Arrangements under this section need not apply to a complaint made more than 28 days after the matter complained of.]

#### **Textual Amendments**

**F26** S. 9C inserted (25.9.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 126, 148; S.I. 2006/1537, art. 3(c)

### **Complaints to the Ombudsman**

**F27**  
**9D**

- (1) Subsections (2) and (3) apply to a complaint which the complainant—
  - (a) has made to the Commission or Lord Chancellor in accordance with arrangements under section 9C, and
  - (b) makes to the Ombudsman not more than 28 days after being notified of the Commission's or Lord Chancellor's decision on the complaint.
- (2) If the Ombudsman considers that investigation of the complaint is not necessary, he must inform the complainant.
- (3) Otherwise he must investigate the complaint.
- (4) The Ombudsman may investigate a complaint which the complainant—
  - (a) has made to the Commission or the Lord Chancellor in accordance with arrangements under section 9C, and
  - (b) makes to the Ombudsman at any time.
- (5) The Ombudsman may investigate a transferred complaint made to him, and no such complaint may be made under the Judicial Appointments Order after the commencement of this section.
- (6) The Judicial Appointments Order is the Judicial Appointments Order in Council 2001, which sets out the functions of Her Majesty's Commissioners for Judicial Appointments.
- (7) A transferred complaint is a complaint that lay to those Commissioners (whether or not it was made to them) in respect of the application of procedures for appointment to listed judicial offices before the commencement of this section, but not a complaint that those Commissioners had declined to investigate or on which they had concluded their investigation.
- (8) Any complaint to the Ombudsman under this section must be in a form approved by him.]

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### Textual Amendments

**F27** S. 9D inserted (25.9.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), **ss. 127**, 148; S.I. 2006/1537, **art. 3(c)**

### Report and recommendations

[**F28** 9E

- (1) The Ombudsman must prepare a report on any complaint he has investigated under section 9D.
- (2) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) whether he considers the complaint should be upheld in whole or part;
  - (c) if he does, what if any action he recommends should be taken by the Commission or the Lord Chancellor as a result of the complaint.
- (3) The recommendations that may be made under subsection (2)(c) include recommendations for the payment of compensation.
- (4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the complainant as a result of maladministration and not as a result of any failure to be appointed to an office to which the complaint related.]

### Textual Amendments

**F28** S. 9E inserted (25.9.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), **ss. 128**, 148; S.I. 2006/1537, **art. 3(c)**

### Report procedure

[**F29** 9F

- (1) This section applies to a report under section 9E.
- (2) The Ombudsman must submit a draft of the report—
  - (a) to the Lord Chancellor, and
  - (b) if the complaint was a Commission complaint, to the Commission.
- (3) In finalising the report the Ombudsman—
  - (a) must have regard to any proposal by the Lord Chancellor or the Commission for changes in the draft report;
  - (b) must include in the report a statement of any such proposal not given effect to.
- (4) The report must be signed by the Ombudsman.
- (5) If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission.
- (6) Otherwise the Ombudsman must send the report to the Lord Chancellor.
- (7) The Ombudsman must send a copy of the report to the complainant, but that copy must not include information—

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- (a) which relates to an identified or identifiable individual other than the complainant, and
- (b) whose disclosure by the Ombudsman to the complainant would (apart from this subsection) be contrary to section 9I.]

#### Textual Amendments

**F29** S. 9F inserted (25.9.2006) by Constitutional Reform Act 2005 (c. 4), ss. 129, 148; S.I. 2006/1537, art. 3(c)

#### <sup>F30</sup>9G References by the Lord Chancellor

- (1) If the Lord Chancellor refers to the Ombudsman any matter relating to the procedures of the Commission or a committee of the Commission, the Ombudsman must investigate it.
- (2) The matter may relate to such procedures generally or in a particular case.
- (3) The Ombudsman must report to the Lord Chancellor on any investigation under this section.
- (4) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) what if any action he recommends should be taken by any person in relation to the matter.
- (5) The report must be signed by the Ombudsman.]

#### Textual Amendments

**F30** S. 9G inserted (25.9.2006) by Constitutional Reform Act 2005 (c. 4), ss. 130, 148; S.I. 2006/1537, art. 3(c)

#### <sup>F31</sup>9H Information

The Commission and the Lord Chancellor must provide the Ombudsman with such information as he may reasonably require relating to the subject matter of an investigation under section 9D or 9G.]]

#### Textual Amendments

**F31** S. 9H inserted (25.9.2006) by Constitutional Reform Act 2005 (c. 4), ss. 131, 148; S.I. 2006/1537, art. 3(c)

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### <sup>F32</sup>Transfer of functions of justices of the peace

#### Textual Amendments

**F32** By [Constitutional Reform Act 2005 \(c. 4\)](#), [ss. 132, 148](#); [S.I. 2005/1431](#), [art. 2\(b\)](#) it is provided (15.6.2005) that s. 9I and the cross-heading following that provision is inserted after s. 9H

#### <sup>X3</sup>10 Transfer of functions of justices of the peace

- (1) Subject as follows, the functions of justices of the peace (including their functions as members of a court) are transferred to lay magistrates.
- (2) A lay magistrate sitting out of petty sessions may not exercise any function conferred or imposed on a magistrates' court in relation to the conduct of proceedings for an offence, apart from a function to which subsection (3) applies.
- (3) This subsection applies to —
  - (a) any function of issuing a warrant or summons,
  - (b) any function of remanding an accused who has not previously been remanded for the offence,
  - (c) any function of ordering a person to enter into a recognisance to keep the peace or to be of good behaviour,
  - (d) the function under section 21(3) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29 (N.I.)) (committal where offence committed during suspended sentence etc.),
  - (e) the function under Article 5(4) of the Treatment of Offenders (Northern Ireland) Order 1976 (S.I. 1976/226 (N.I. 4)) (committal where offence committed after early discharge),
  - (f) the functions under section 51(8) of the Judicature (Northern Ireland) Act 1978 (c. 23) (committal etc. of person in custody in pursuance of Crown Court warrant),
  - (g) any function relating to perjury, misbehaviour or failure to testify in proceedings before a lay magistrate exercising any function to which this subsection applies,
  - (h) any function relating to adjournment of, or any other ancillary matter concerning, such proceedings,
  - (i) the function of granting a criminal aid certificate in respect of a person where the lay magistrate is dealing, or has previously dealt, with him by virtue of paragraph (b), (c) or (g), and
  - (j) the function of granting a criminal aid certificate in relation to an appeal against anything done by a lay magistrate by virtue of paragraph (c) or (g).
- (4) The Lord Chancellor may [<sup>F33</sup>, after consultation with the Lord Chief Justice,] by order amend subsection (3).
- (5) Subsection (1) is subject to paragraphs 1 to 3 of Schedule 4 which specify functions which are to remain functions of justices of the peace (instead of, or as well as, becoming functions of lay magistrates) or to become functions only of resident magistrates.
- (6) Schedule 4 also contains amendments consequential on this section.

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- (7) In this section references to a function are to a function conferred or imposed by an enactment or instrument passed or made before the time when this section comes into force (including a function conferred or imposed by a provision not in force at that time).

#### Editorial Information

- X3** The insertion of the new heading "Transfer of functions of justices of the peace" on 15.6.2005 gives rise to a change in the structure of this legislation on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

#### Textual Amendments

- F33** Words in s. 10(4) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 5 para. 118](#); S.I. 2006/1014, [art. 2](#), [Sch. 1 para. 12](#)

#### Commencement Information

- I3** [S. 10](#) partly in force; [s. 10](#) not in force at Royal Assent see [s. 87](#); [s. 10\(1\)-\(5\)\(7\)](#) in force and [s. 10\(6\)](#) in force for certain purposes at 1.4.2005 by [S.R. 2005/109](#), [art. 2](#), [Sch.](#)

### <sup>x4</sup>11 **Transfer of functions of lay panellists**

- (1) In paragraph 3(1) of Schedule 2 to the Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.)) (composition of juvenile courts), for "persons selected from one or more of the panels mentioned in sub-paragraph (2)" substitute "lay magistrates for the county court division which includes the petty sessions district or districts for which the court acts or any other county court division which adjoins that county court division".

- (2) In section 178 of that Act (assessors for county court in appeals from juvenile courts)

- (a) in subsection (1), for "persons selected from one or more than one of the appropriate juvenile court panels," substitute "appropriate lay magistrates, at least one of whom (where practicable) is a woman,"
- (b) in subsection (2), for "person" (in each place) substitute "lay magistrate", and
- (c) in subsection (4), for the definition of "the appropriate juvenile courts panels" substitute—

““appropriate lay magistrate” means a lay magistrate for the county court division for which the county court is held or any other county court division which adjoins that county court division;”.

- (3) In Article 165(2)(i) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (rules of court: discharge of functions of court of summary jurisdiction by member of juvenile court panel), for "member of a juvenile court panel" substitute "lay magistrate".]

#### Editorial Information

- X4** The insertion of the new heading "Transfer of functions of justices of the peace" on 15.6.2005 gives rise to a change in the structure of this legislation on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

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*Lord Chief Justice*

**12 Role of Lord Chief Justice**

[<sup>F34</sup>(1A) The Lord Chief Justice holds the office of President of the Courts of Northern Ireland and is Head of the Judiciary of Northern Ireland.

(1B) As President of the Courts of Northern Ireland he is responsible—

- (a) for representing the views of the judiciary of Northern Ireland to Parliament, the Lord Chancellor and Ministers of the Crown generally;
- (b) for 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;
- (c) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of Northern Ireland within the resources made available by the Lord Chancellor;
- (d) for the maintenance of appropriate arrangements for the deployment of the judiciary of Northern Ireland and the allocation of work within courts.

(1C) The President of the Courts of Northern Ireland is president of the courts listed in subsection (1D) and is entitled to sit in any of those courts.

(1D) The courts are—

- the Court of Appeal
- the High Court
- the Crown Court
- the county courts
- the magistrates' courts.]

(2) <sup>F35</sup> .....

(3) <sup>F35</sup> .....

**Textual Amendments**

**F34** S. 12(1A)-(1D) substituted (3.4.2006 for certain purposes and 8.5.2007 otherwise) for s. 12(1) by Constitutional Reform Act 2005 (c. 4), ss. 11, 148; S.I. 2006/1014, art. 2(a), Sch. 1 para. 6; S.I. 2007/1252, art. 2

**F35** S. 12(2)(3) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 5 para. 119, Sch. 18 Pt. 3; S.I. 2006/1014, art. 2(a), Sch. 1 paras. 12, 30

**13 Presiding county court judge**

(1) After section 102 of the County Courts Act (Northern Ireland) 1959 (c. 25 (N.I.)) insert—

**“102A Presiding judge**

(1) The Lord Chief Justice must appoint one of the judges to be the Presiding judge with responsibility for the county courts and the other judges and the deputy judges.



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(2) The person appointed as Presiding judge holds that office in accordance with the terms of his appointment.

(3) If the office of Presiding judge becomes vacant, the Lord Chief Justice may appoint a judge to act as Presiding judge, pending a new appointment.”

(2) The Lord Chief Justice may delegate any of his functions relating to county courts to the Presiding county court judge.

#### **14 Presiding resident magistrate**

(1) The Lord Chief Justice must appoint one of the resident magistrates to be the Presiding resident magistrate with responsibility for the magistrates’ courts, the other resident magistrates and the deputy resident magistrates.

(2) The person appointed as Presiding resident magistrate holds that office in accordance with the terms of his appointment.

(3) If the office of Presiding resident magistrate becomes vacant, the Lord Chief Justice may appoint a resident magistrate to act as Presiding resident magistrate, pending a new appointment.

(4) The Lord Chief Justice may delegate any of his functions relating to magistrates’ courts to the Presiding resident magistrate.

#### **15 Presiding lay magistrate**

(1) The Lord Chief Justice must appoint one of the lay magistrates to be the Presiding lay magistrate with responsibility for the other lay magistrates.

(2) The person appointed as Presiding lay magistrate holds that office in accordance with the terms of his appointment.

(3) If the office of Presiding lay magistrate becomes vacant, the Lord Chief Justice may appoint a lay magistrate to act as Presiding lay magistrate, pending a new appointment.

#### **16 Complaints about holders of judicial office**

(1) The Lord Chief Justice must prepare a code of practice relating to the handling of complaints against any person who holds a protected judicial office.

(2) The code must include provision for any complaints appearing to the Lord Chief Justice—

(a) to involve a serious allegation of misbehaviour or inability to perform the functions of an office, and

(b) to have a reasonable prospect of being substantiated,

to be referred to a tribunal for it to provide advice about any steps which should be taken to deal with the complaint.

(3) The Lord Chief Justice may from time to time prepare a new code or make alterations to a code.

(4) The Lord Chief Justice must publish each code prepared by him and any alterations which he makes to a code (or the code as altered).

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## 17 Secretaries to Lord Chief Justice

- (1) In Schedule 3 to the Judicature (Northern Ireland) Act 1978 (c. 23) (qualification for appointment to statutory offices), omit the entries relating to the Principal Secretary to the Lord Chief Justice and the Legal Secretary to the Lord Chief Justice.
- (2) In section 53(2) of that Act (secretary to Crown Court Rules Committee), for the words from “secretary to” to “such secretary” substitute “joint secretaries to the Crown Court Rules Committee shall be the Principal Secretary to the Lord Chief Justice and a person designated by the Lord Chancellor; and whichever of them is nominated by the Lord Chancellor”.
- (3) In section 54(5) of that Act (joint secretaries to Supreme Court Rules Committee), for the words from “such persons” to the end substitute “the Principal Secretary to the Lord Chief Justice and a person designated by the Lord Chancellor.”
- (4) In paragraph 6 of Schedule 2 to the Family Law (Northern Ireland) Order 1993 (S.I. 1993/1576 (N.I. 6)) (joint secretaries to Northern Ireland Family Proceedings Rules Committee), for the words from “such persons” to the end substitute “the Principal Secretary to the Lord Chief Justice and a person designated by the Lord Chancellor.”

### *Other provisions*

## 18 Qualification for appointment

- (1) In section 6 of the Appellate Jurisdiction Act 1876 (c. 59) (qualification for appointment as Lord of Appeal in Ordinary), for “practising member of the Bar of Northern Ireland” substitute “member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Judicature of Northern Ireland”.
- (2) In section 7(1)(a) of the Judicature (Northern Ireland) Act 1978 (c. 23) (further assistance for transaction of business of High Court or Court of Appeal by Lord of Appeal in Ordinary), for “had practised for not less than ten years at the Bar of Northern Ireland” substitute “was a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court, of at least ten years’ standing”.
- (3) For section 9 of that Act (qualification for appointment as judge of High Court or Court of Appeal) substitute—

### **“9 Qualification to be judge of High Court or Court of Appeal**

A person is not qualified for appointment as Lord Chief Justice, a Lord Justice of Appeal or a judge of the High Court unless he is—

- (a) a member of the Bar of Northern Ireland of at least ten years’ standing;  
or
  - (b) a solicitor of the Supreme Court of at least ten years’ standing.”
- (4) In section 103(1) of the County Courts Act (Northern Ireland) 1959 (c. 25 (N.I.)) (qualification for appointment as county court judge), for the words after “unless” substitute “he is—
    - (a) a member of the Bar of Northern Ireland of at least ten years’ standing;  
or
    - (b) a solicitor of the Supreme Court of at least ten years’ standing.”

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- (5) In section 107(1) of that Act (qualification for appointment as deputy county court judge), for the words after “deputy judge” substitute “a person who is—
- (a) a member of the Bar of Northern Ireland of at least ten years’ standing; or
  - (b) a solicitor of the Supreme Court of at least ten years’ standing.”
- (6) In section 9(1) of the Magistrates’ Courts Act (Northern Ireland) 1964 (c. 21 (N.I.)) (qualification for appointment as resident magistrate), for the words after “appointments” substitute “are—
- (a) members of the Bar of Northern Ireland of at least seven years’ standing; or
  - (b) solicitors of the Supreme Court of at least seven years’ standing.”
- (7) In section 2(3) of the Coroners Act (Northern Ireland) 1959 (c. 15 (N.I.)) (qualification for appointment as coroner), for the words after “unless” substitute “he is—
- (a) a member of the Bar of Northern Ireland of at least five years’ standing; or
  - (b) a solicitor of the Supreme Court of at least five years’ standing.”
- (8) In section 70(2) of the Judicature (Northern Ireland) Act 1978 (c. 23) (qualification for appointment to offices in Schedule 3), for the words after “unless” substitute “he is—
- (a) a barrister or solicitor, or in the case of the Official Solicitor a solicitor, who has at least the number of years’ standing specified in relation to that office in column 3 of that Schedule; or
  - (b) the holder of any other office so listed.”
- (9) In Schedule 3 to that Act, in each of the entries relating to a Master <sup>F36</sup> . . . , in column 3 (number of years’ standing), for “10” substitute “7”.
- (10) In section 35 of the Northern Ireland Constitution Act 1973 (c. 36) (Crown Solicitor for Northern Ireland), after subsection (1) insert—
- “(1A) A person is not qualified for appointment as Crown Solicitor unless he is—
- (a) a member of the Bar of Northern Ireland of at least ten years’ standing; or
  - (b) a solicitor of the Supreme Court of at least ten years’ standing.”

#### Textual Amendments

**F36** Words in s. 18(9) repealed (1.5.2004) by Courts Act 2003 (c. 39), ss. 109(3), 110(1), Sch. 10; S.I. 2004/1104, art. 3

#### Commencement Information

**I4** S. 18 wholly in force at 3.4.2006: s. 18 not in force at Royal Assent see s. 87; s. 18(1)-(9) in force at 15.10.2002 by S.R. 2002/319, art. 2 Sch.; s. 18(10) in force at 3.4.2006 by S.R. 2006/124, art. 2, Sch.

## 19 Judicial oath or affirmation

- (1) Every person appointed to an office specified in Schedule 6 must, before undertaking any functions of the office, either—
- (a) take the oath specified in subsection (2), or

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(b) make the affirmation and declaration specified in subsection (3).

(2) The oath is—

“I..... do swear that I will well and faithfully serve in the office of..... and that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm.”

(3) The affirmation and declaration is—

“I..... do solemnly and sincerely and truly affirm and declare that I will well and faithfully serve in the office of..... and that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm.”

(4) The Lord Chancellor may by order amend Schedule 6 by—

- (a) adding an office,
- (b) omitting an office, or
- (c) altering the description of an office.

(5) An order under subsection (4) may make appropriate consequential amendments in any enactment or instrument (whenever passed or made).

## 20 Crown Solicitor

In section 35 of the Northern Ireland Constitution Act 1973 (c. 36) (Crown Solicitor for Northern Ireland), for subsection (3) substitute—

“(3) The Crown Solicitor—

- (a) must make his services available to any Minister or department of the Government of the United Kingdom; and
- (b) may make his services available to any Northern Ireland Minister or Northern Ireland department or any other public body or holder of public office.”

## 21 Judicial pensions: pension sharing

(1) Article 40 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) (power to extend judicial pension schemes in connection with pension credits) is amended as follows.

(2) In paragraph (2), after sub-paragraph (g) insert—

- “(h) the Judicial Pensions Act 1981 (c. 20); and
- (i) the Judicial Pensions and Retirement Act 1993 (c. 8).”

(3) In paragraph (3)(a)—

- (a) for “(2)(d) and (e)” substitute “(2)(d) or (e)”, and
- (b) for “(2)(a) to (c), (f) and (g),” substitute “(2)(a), (b), (c), (f), (g), (h) or (i)”.

(4) In paragraph (4)(a), for “(2)(a) to (c), (f) and (g)” substitute “(2)(a), (b), (c), (f), (g), (h) or (i)”.

**Status:**

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**Changes to legislation:**

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