



Justice (Northern Ireland) Act 2002

2002 CHAPTER 26

PART 1

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 First Minister and deputy First Minister, acting jointly, 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—
 - “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.

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 First Minister and deputy First Minister, acting jointly.
- (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.
- (8) In appointing persons to be lay members, the First Minister and deputy First Minister must so far as possible secure that the lay members (taken together) are representative of the community in Northern Ireland.

4 **Appointment to most senior judicial offices**

For section 12 of the Judicature (Northern Ireland) Act 1978 (c. 23) (appointment of Lord Chief Justice, Lords Justices of Appeal and judges of High Court) substitute—

“12 Appointment of Lord Chief Justice and Lords Justices of Appeal

- (1) Whenever the office of Lord Chief Justice is vacant, Her Majesty may, on the recommendation of the Prime Minister, appoint a qualified person to that office by letters patent under the Great Seal of Northern Ireland.
- (2) Her Majesty may from time to time, on the recommendation of the Prime Minister, appoint a qualified person as a Lord Justice of Appeal by letters patent under the Great Seal of Northern Ireland (but subject to the limit on numbers for the time being imposed by section 3).
- (3) The power of the Prime Minister to make recommendations under subsections (1) and (2) is exercisable only after consultation with—
 - (a) the First Minister and deputy First Minister; and
 - (b) the Lord Chief Justice or, if the office of Lord Chief Justice is vacant or he is not available, the senior Lord Justice of Appeal who is available.
- (4) The Northern Ireland Judicial Appointments Commission shall give to the First Minister and deputy First Minister advice as to the procedure which, whenever they are consulted by the Prime Minister under subsection (3)(a), they should adopt for formulating their response to him.
- (5) After considering that advice, the First Minister and deputy First Minister acting jointly shall, with the approval of the Prime Minister, determine the procedure which, whenever they are consulted by the Prime Minister under subsection (3)(a), they are to adopt for formulating their response to him; and on each occasion on which they are so consulted, they shall adopt that procedure.

12A Appointment of judges of High Court

Her Majesty may from time to time, on the recommendation of the First Minister and deputy First Minister acting jointly, appoint a qualified person as a judge of the High Court by letters patent under the Great Seal of Northern Ireland (but subject to the limit on numbers for the time being imposed by section 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 First Minister and deputy First Minister, acting jointly, 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 Office of the First Minister and deputy First Minister of the person selected to be appointed, or recommended for appointment, to the office, and

- (b) make a report to that Office on its process of selection, indicating the basis of its decision to select that person.
- (5) If the First Minister and deputy First Minister do not (within a reasonable time after receiving the report under subsection (4)(b)) appoint or recommend for appointment the person selected by the Commission, they must by notice require the Commission to reconsider its decision; and the notice must include a statement of their 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,
 - (b) inform the Office of the First Minister and deputy First Minister of the outcome of its reconsideration, and
 - (c) make a report to that Office indicating the basis of the decision made by it after its reconsideration.
- (7) The First Minister and deputy First Minister 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.
- (8) The Commission must, so far as it is reasonably practicable to do so, 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.
- (9) But the selection of the person to be appointed, or recommended for appointment, to the listed judicial office (whether initially or after reconsideration) must be made solely on the basis of merit.

6 Removal from most senior judicial offices

After section 12A of the Judicature (Northern Ireland) Act 1978 (c. 23) (inserted by section 4 of this Act) insert—

“12B Tenure of office

- (1) The Lord Chief Justice, Lords Justices of Appeal and judges of the High Court hold office during good behaviour (subject to section 26 of, and Schedule 7 to, the Judicial Pensions and Retirement Act 1993 (c. 8)).
- (2) Her Majesty may on an address presented to Her Majesty by both Houses of Parliament remove a person from office as Lord Chief Justice, a Lord Justice of Appeal or a judge of the High Court.
- (3) A motion for the presentation of an address to Her Majesty for the removal of a person from any of those offices may be made—
 - (a) to the House of Commons only by the Prime Minister; and
 - (b) to the House of Lords only by the Lord Chancellor.
- (4) Neither the Prime Minister nor the Lord Chancellor may make a motion for the presentation of such an address unless—

Status: This is the original version (as it was originally enacted).

- (a) they have been advised to do so by the First Minister and deputy First Minister acting jointly; or
 - (b) they have consulted the First Minister and deputy First Minister about doing so.
- (5) Neither the Prime Minister nor the Lord Chancellor may make a motion for the presentation of such an address unless a tribunal convened under section 8 of the Justice (Northern Ireland) Act 2002 has reported to the First Minister and deputy First Minister recommending that the person be removed from the office on the ground of misbehaviour.
- (6) If such a tribunal has so recommended, the First Minister and deputy First Minister shall send a copy of the report of the tribunal to the Prime Minister and the Lord Chancellor, together with any comments they wish to make about the report.
- (7) The Prime Minister shall lay a copy of the report and any advice, response to consultation or comments of the First Minister and deputy First Minister before the House of Commons before making a motion for the presentation of an address in that House; and the Lord Chancellor shall lay a copy of them before the House of Lords before making such a motion in that House.
- (8) If the Prime Minister and Lord Chancellor are considering the making of motions for the presentation of an address to Her Majesty in relation to the Lord Chief Justice, the Prime Minister may suspend him from office; and if they are considering the making of such motions in relation to a Lord Justice of Appeal or a judge of the High Court the Prime Minister may suspend him from office with the agreement of the Lord Chief Justice.
- (9) If a person is suspended from an office under subsection (8), he may not perform any of the functions of the office (but his other rights as holder of the office are unaffected).
- (10) Nothing in subsections (1) to (9) applies to a judge of the High Court appointed after the coming into force of section 7 of the Justice (Northern Ireland) Act 2002 (as to the removal and suspension of whom see that section).”

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.

8 Tribunals for considering removal

- (1) A tribunal to consider the removal of the Lord Chief Justice may be convened by the First Minister and deputy First Minister, acting jointly.
- (2) A tribunal to consider the removal of the holder of any other protected judicial office may be convened—
 - (a) by the First Minister and deputy First Minister, acting jointly, after consulting the Lord Chief Justice, or
 - (b) by the Lord Chief Justice, after consulting the First Minister and deputy First Minister.
- (3) A tribunal to consider the removal of the Lord Chief Justice or a Lord Justice of Appeal may not be convened unless the Prime Minister has been consulted.
- (4) A tribunal to consider the removal of the Lord Chief Justice, a Lord Justice of Appeal or a judge of the High Court is to consist of—
 - (a) a person who holds the office of Lord of Appeal in Ordinary or high judicial office as defined in section 25 of the Appellate Jurisdiction Act 1876 (c. 59) (ignoring for this purpose section 5 of the Appellate Jurisdiction Act 1887 (c. 70)) and does not hold (and has never held) the office of Lord Chief Justice, Lord Justice of Appeal or judge of the High Court,
 - (b) a person who is, or has been, a judge of the Court of Appeal of England and Wales or the Inner House of the Court of Session, and
 - (c) a person who does not hold (and has never held) a protected judicial office and is not (and has never been) a barrister or solicitor.
- (5) A tribunal to consider the removal of the holder of any other protected judicial office is to consist of—
 - (a) a person who holds, or has held, the office of Lord Chief Justice or Lord Justice of Appeal,
 - (b) a person who holds the office of judge of the High Court, and
 - (c) a person who does not hold (and has never held) a protected judicial office and is not (and has never been) a barrister or solicitor.
- (6) The chairman of a tribunal is the person mentioned in paragraph (a) of subsection (4) or (5).
- (7) The selection of the persons to be the members of a tribunal under paragraphs (a) and (b) of subsection (4) is to be made by the Lord Chancellor.

- (8) The selection of the persons to be the members of a tribunal under paragraphs (a) and (b) of subsection (5) is to be made by the Lord Chief Justice.
- (9) The selection of the person who is to be the member of a tribunal under paragraph (c) of subsection (4) or (5) is to be made by the First Minister and deputy First Minister, acting jointly.
- (10) The procedure of a tribunal is to be determined by the Lord Chief Justice except where—
 - (a) the office of Lord Chief Justice is vacant,
 - (b) he is not available, or
 - (c) the tribunal is to consider his removal from office;and in such a case its procedure is to be determined by its chairman.
- (11) The First Minister and deputy First Minister, acting jointly, may pay to a member of a tribunal any such allowances or fees as they may determine.