

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 12: The Judicial Appointments Commission*

##### **Part 2 The Commission**

237. Part 2 sets out the status and functions of the Commission.

##### *Paragraph 18 Status of the Commission and its property*

238. This paragraph specifies that the Commission is not to be regarded as part of the Crown or, therefore, of the Government; it will be a non-departmental public body.

##### *Paragraph 19 Powers*

239. This paragraph allows the Commission to do anything to enable it to perform its functions, but does not allow the Commission to borrow money unless the Lord Chancellor has given permission for it to do so.

##### *Paragraph 20 Committees*

240. This paragraph allows the Commission to establish committees, and its committees to establish sub-committees, in order for it to undertake its business, and allows activities to be delegated by the Commission to a committee and by a committee to a sub-committee. Only Commissioners may be members of the committees and sub-committees. Committees or sub-committees charged with making selections for judicial appointments must include at least one judicial and one lay member. The Commission will of course be advised by its staff, and by anyone else invited to give advice, and it may rely on interviewing panels made up of non-Commissioners, but final decisions are the responsibility of the Commissioners. The requirements of this paragraph in relation to committees and sub-committees do not apply to the selection panels for senior appointments, which are provided for separately in sections 71 and 80 of the Act.

##### *Paragraph 21 Procedure and proceedings*

241. This paragraph specifies that the Commission may control how it conducts its business and those of its committees and sub-committees including the numbers of members that must be present to make the proceedings valid, which in the case of a committee or sub-committee exercising functions of selection set out in Part 4 of the Act must be 3. The proceedings of the Commission or a committee or a sub-committee are still valid even if one of the posts on the Commission is unoccupied or if the appointment of a member is defective.

##### *Paragraph 22 Staff*

242. This paragraph makes provision requiring the Commission to appoint a Chief Executive and allowing it to appoint staff (which may include staff who transfer from other

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Government departments) to enable it to undertake its objectives. The Lord Chancellor has to agree the appointment of the Chief Executive. The terms and conditions of service with the Commission will be set by the Commission and agreed by the Lord Chancellor. The Commission will pay staff, as set out in their terms and conditions and in doing so will take account of the pay and terms and conditions operating in the Civil Service. The Commission is added to Schedule 1 to the Superannuation Act 1972. The Commission must pay for any increase attributable to its inclusion in the Schedule to the Superannuation Act 1972 that the Minister of the Civil Service requires. Staff of the Commission are not servants or agents of the Crown, neither do they have the Crown's status, immunity or privileges.

***Paragraph 23 Arrangements for assistance***

243. This paragraph allows for the Commission, with the agreement of the Lord Chancellor, to make arrangements for people to provide assistance to it. This would enable it to contract out services as it sees fit and in doing so to pay for such services.

***Paragraphs 24 and 25 Appointments and arrangements by the Lord Chancellor***

244. This paragraph allows the Lord Chancellor to appoint a Chief Executive for an interim period prior to a Chief Executive being appointed in accordance with paragraph 23(1) (a). The Chief Executive appointed by the Lord Chancellor may undertake matters on behalf of the Commission including incurring expenditure, appointing staff and making arrangements for people to provide assistance to the Commission subject to any directions given by the Lord Chancellor.
245. **Paragraph 25** allows the Lord Chancellor to appoint staff to the Commission and to make contracting out arrangements as appropriate. The Lord Chancellor cannot exercise these powers after the end of 3 years from the date on which the Commission is first constituted under paragraph 1, or at such earlier time as the Commission itself may decide. If a Chief Executive has been appointed to the Commission, the Lord Chancellor cannot exercise these powers without the Chief Executive's agreement.

***Paragraph 26 Power to transfer staff to employment of the Commission***

246. This paragraph makes provision for the Lord Chancellor to make regulations for relevant staff to be transferred to the Commission. Such staff must be current civil servants who are providing assistance in the Commission. Before making these regulations the Lord Chancellor must consult organisations that appear to him to represent the interests of those likely to be affected by the regulations, such as trade unions. The Lord Chancellor can only exercise this power before the Commission is first constituted in accordance with paragraph 1 and, with the agreement of the Commission, during the period of 3 years from that time.

***Paragraph 27 Delegation***

247. This paragraph provides for the Commission, a committee or sub-committee or the Chief Executive to delegate any activities to staff, secondees, and to people providing assistance e.g. those with whom contracting out arrangements are made or who are providing services in connection with such arrangements. The Commission, a committee or a sub-committee cannot delegate its function of making selections in relation to judicial appointments.

***Paragraph 28 Delegation and contracting out of superannuation functions***

248. This paragraph allows powers in relation to the Superannuation Act 1972 to be delegated to the Chief Executive and then allows such powers to be delegated by the Chief Executive to anyone he authorises. The Chief Executive or his delegate may authorise the contracting out of any superannuation functions but the Commission or the Chief Executive may revoke such an authorisation at any time.

***Paragraph 29 Inspection of documents***

249. This paragraph requires the Commission to allow anyone authorised by the Lord Chancellor, for example auditors, to look at or to copy accounts and any other papers which the Lord Chancellor considers relate to the Commission's expenditure. In doing this, the Commission must give such explanations of the material as the Lord Chancellor may require.

***Paragraph 30 Financial provisions and directions***

250. This paragraph provides for the Lord Chancellor to pay the amount of money to the Commission that he determines to be appropriate for it to exercise its functions. It also allows the Lord Chancellor to require the Commission not to incur specific or total expenditure above a specified threshold without the consent of the Lord Chancellor and to follow specified procedures in relation to its costs and expenditure, to ensure he has the appropriate financial control over the Commission, for which he will be ultimately accountable to Parliament.

***Paragraph 31 Accounts and audit***

251. This paragraph obliges the Commission to maintain proper financial systems and to prepare accounts each financial year, which are an accurate reflection of its income and expenditure. In preparing its accounts, which must be sent to the Lord Chancellor when he directs, the Commission must comply with any instructions from the Lord Chancellor and the Treasury. The accounts must be sent to the Comptroller and Auditor General on or before 31 August for the financial year last ended, who will scrutinise them and prepare a report which, together with the accounts, will be laid before each House of Parliament.

***Paragraph 32 Reports***

252. This paragraph specifies that the Commission will produce annually for the Lord Chancellor a report detailing its activities. The Lord Chancellor, after consulting the Lord Chief Justice, may oblige the Commission to deal with any particular subject in all or any of its annual reports. In addition, the Lord Chancellor may require the Commission to report at any time on any matter he directs. The annual report must be laid before Parliament and published. Other reports which, for example, might contain confidential information, would not be laid before Parliament.

***Paragraphs 33 - 35 Documentary evidence***

253. These paragraphs allow for a Commissioner or an authorised member of the Commission's staff to sign under the Seal of the Commission to authorise documentary evidence. Contracts and instruments need not be under the Seal if entered into by properly authorised individuals designated for a general or specific purpose. A document that is under the Seal of the Commission or signed on behalf of the Commission is to be received in evidence and is to be taken to be duly authorised unless the contrary is proved.

***Paragraph 36 General***

254. This paragraph specifies that the Commission's first financial year begins when the Commission is established and ends the following 31 March. Subsequent financial years run from 1 April to 31 March. Commissioners are disqualified from election to the House of Commons by inserting a reference to the Judicial Appointments Commission into Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975. The Commission is included in the list of public authorities for the purposes of the Freedom of Information Act 2000 by inserting a reference to the Commission into Part 6 of Schedule 1 to that Act.

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***Section 62: The Judicial Appointments and Conduct Ombudsman***

255. **Section 62** establishes a Judicial Appointments and Conduct Ombudsman. Provisions about this office appear in sections 99 to 105, sections 110 to 114 and in Schedule 13.