

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Chapter 1: Commission and Ombudsman*

#### *Section 61: The Judicial Appointments Commission*

221. [Section 61](#) establishes a Judicial Appointments Commission. Schedule 12 makes further provision about the Commission itself. The appointments below the High Court in which the Commission will be involved are listed in Schedule 14.

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

#### **Part 1 The Commissioners**

222. This part of Schedule 12 sets out the size and balance of membership of the Judicial Appointments Commission.

#### *Paragraphs 1-6 The Commissioners*

223. [Paragraph 1](#) requires there to be a chairman and 14 other Commissioners, to be appointed by The Queen on the recommendation of the Lord Chancellor.
224. [Paragraph 2](#) provides for the chairman to be a lay member. Of the other Commissioners, 5 must be judicial members, 2 must be professional members, 5 must be lay members, 1 other must be the holder of an office listed in Part 3 of Schedule 12 (which lists members of tribunals and other similar office holders who will be appointed by the Lord Chancellor), and 1 other must be a lay justice member. The judicial members must be made up of one Lord Justice of Appeal, one puisne judge of the High Court, one judge who is either a Lord Justice of Appeal or a puisne judge of the High Court, one Circuit Judge and one District Judge or a person appointed to an office under section 89 of the Supreme Court Act 1981 (i.e. the offices of Senior Master of the Queen's Bench Division, Chief Chancery Master, Chief Taxing Master, Chief Bankruptcy Registrar and Senior District Judge of the Family Division). The two professional members must be a practising barrister and a practising solicitor. A Commissioner only counts towards the total in the category to which he was appointed, so that a lay member, for example, does not become a professional member if he qualifies as a practitioner.
225. [Paragraph 3](#) specifies that a person cannot be appointed as a Commissioner if he is a civil servant. This is to ensure that the Commission is not subject to any covert or improper Governmental influence.
226. [Paragraph 4](#) details what is meant by judicial, professional, lay and lay justice member. A judicial member holds one of the offices specified in paragraph 2(3) (set out above) and is not a practising lawyer (defined in paragraph 6 as a practising solicitor or barrister in England and Wales, a solicitor or advocate in Scotland and a Solicitor or member of the Bar in Northern Ireland which includes those employed to give legal advice or providing legal advice under a contract for services). A professional member is a

barrister or solicitor practising in England and Wales (again further defined in paragraph 6 to include employed lawyers and those who give legal advice under a contract for services). A lay member is an England and Wales resident who has never been a holder of a listed judicial office (by paragraph 6, an office listed in Schedule 14) or a practising lawyer.

227. [Paragraph 5](#) allows the Lord Chancellor to increase the size of the Commission, by increasing the size of any or all of the different categories of Commissioner. He can do this by order, but only with the agreement of the Lord Chief Justice, and subject to affirmative resolution in both Houses of Parliament (by virtue of section 144(5) (e) of this Act). This is to prevent a Lord Chancellor seeking improperly to influence selections by altering the balance of the Commission in one direction or another at his own unchecked discretion.
228. [Paragraph 6](#) provides definitions of terms used in the Schedule.

### ***Paragraph 7 Selection of Commissioners***

229. [Paragraph 7](#) provides that in appointing the three senior judicial members of the Commission (the judges drawn from the Court of Appeal and the High Court) the Lord Chancellor may recommend to Her Majesty only people selected by the Judges' Council, which must give reasons for its selection. The Judges' Council is defined as the body designated for that purpose by the Lord Chief Justice. Other Commissioners will be appointed after being selected by a panel convened by the Lord Chancellor. [Paragraph 7\(2\)](#) provides the Lord Chancellor may only recommend people as the other 12 Commissioners if he has appointed a panel for the purposes of selection of Commissioners and they have been selected by that panel. Provision about the composition of the panel is made in [paragraph 8](#).

### ***Paragraph 8 Panels***

230. [Paragraph 8](#) provides for a panel to select the Commissioners, with the exception of the three senior Judges. The panel will comprise four members, unless the appointment being made is that of the chairman of the Judicial Appointments Commission, when there will be no fourth member. The first member (who will be the chairman of the panel) is chosen by the Lord Chancellor with the agreement of the Lord Chief Justice (or if the post of Lord Chief Justice is vacant then with the agreement of the senior Head of Division). The second member will be the Lord Chief Justice or his nominee, unless the office of the Lord Chief Justice is vacant, when it will be the senior Head of Division or his nominee. The third member will be chosen by the chairman. The fourth member will be the chairman of the Judicial Appointments Commission, when there is one and that is not the post being appointed to. Members of the panel must not be civil servants. In addition the chairman of the panel must not be a Commissioner, a member of the Commission's staff, a practising lawyer, a judicial office holder listed in Schedule 14, or a member of the House of Commons. The third member must not be a member of the House of Commons. In selecting the first member, consideration must be given as to whether the person being appointed has previously exercised any judicial functions or has any past service as a civil servant, a Commissioner, a member of the Commission's staff, a practising lawyer, a judicial office holder listed in Schedule 14, or any past or present political activity or affiliations which would make them inappropriate for appointment. The first member must apply the same considerations in nominating the third member. These provisions are intended to ensure the neutrality of the panel, including its political neutrality.
231. [Paragraph 9](#) provides for the Lord Chancellor to pay the panel fees and expenses.

### ***Paragraph 10 Selection by a panel***

232. The panel must take account of any views expressed by the Bar Council and Law Society in appointing the barrister and solicitor members respectively. Before selecting

the chairman and the other lay members, the panel must consider the same questions that apply in selecting the first and third members of the panel, in relation to whether they have exercised any functions or have any political affiliations which make them inappropriate for the appointment. Those functions are expressed in broadly the same terms as for the first member as set out above, but also include past employment in the civil service. In selecting lay members, the panel must seek to ensure, as far as practicable, that one of the selected lay members has special knowledge of Wales.

### ***Paragraph 11 Vice-chairman***

233. This paragraph provides that the senior judicial member of the Commission will be the vice-chairman. The vice-chairman will be able to exercise the functions of the chairman, other than those of sitting on the panel for selecting members of the Commission and sitting on the selection panels for Heads of Division and for Lords Justices of Appeal, for which, in the absence of the chairman, a lay Commissioner is required.

### ***Paragraphs 12- 15 Term of office etc. of Commissioners***

234. Paragraphs 12 to 15 provide for the term of office of the Commissioners. They will serve for two fixed terms of up to five years, meaning that their maximum period of service is 10 years. Commissioners cease to be Commissioners if they cease to qualify for the category of membership under which they were appointed. However, the Lord Chancellor may allow Commissioners to continue in office for a specified period even if they have ceased to fall within the category to which they were appointed. For example, if a member had particular skills or a background which was required for a particular competition that was being run by the Commission, then the Lord Chancellor might allow him to continue in office until the competition was over. Commissioners also lose office if they are appointed to the civil service, but they may not be continued in office where this is the case. If a Commissioner resigns he must do so in writing to The Queen. Commissioners can be removed from office by The Queen on the recommendation of the Lord Chancellor. Paragraph 15 (2) specifies the conditions in which the Lord Chancellor may recommend that a Commissioner be removed from office. They are that the person has failed to exercise their functions for a continuous period of six months; or they have been convicted of an offence; or they have been made bankrupt; or are otherwise unfit to hold office or unable to exercise its functions.

### ***Paragraph 16 Salary, allowances and expenses***

235. This paragraph makes provision for the Commission to pay fees, expenses, pensions and any other allowances in respect of Commissioners and former Commissioners. These payments will be determined by the Lord Chancellor.

### ***Paragraph 17 Code of conduct***

236. This paragraph provides for the Lord Chancellor to issue and revise a code of conduct to be observed by the Commissioners.

## **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 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

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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.

### ***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.

### ***Schedule 13: The Judicial Appointments and Conduct Ombudsman***

256. **Schedule 13** provides for the constitution and procedure of the Judicial Appointments and Conduct Ombudsman.

### ***Paragraphs 1 and 2 The Ombudsman***

257. These paragraphs provide for the Ombudsman to be appointed by The Queen on the recommendation of the Lord Chancellor. A person may not be appointed if he is a civil servant or if he has ever been a practising lawyer (defined in paragraph 2 in the same terms as the definitions in Schedule 12) or a holder of a judicial office listed in Schedule 14. Before recommending a person the Lord Chancellor must also consider whether the person has exercised functions of a judicial nature, or has been a member of the Judicial Appointments Commission, member of staff of the Commission, member of the House of Commons, a civil servant or whether any present or past political activity or affiliations would make the person inappropriate for the appointment.

### ***Paragraphs 3-5 Term of office etc. of Ombudsman***

258. These paragraphs provide that the Ombudsman will be appointed for a fixed period of no more than 5 years in the first instance. He may serve for no more than ten years in all. There are provisions for his resignation or removal from office, and grounds for the latter are set out. They are that the Ombudsman has ceased to meet the conditions for appointment set out above or has ceased to be appropriate for appointment because of the considerations set out above, has failed to exercise their functions for a continuous period of six months; or that he has been convicted of an offence; or that he has been made bankrupt; or that he is otherwise unfit to hold office or unable to discharge its functions.

### ***Paragraph 6 Salary, allowances and expenses***

259. This paragraph provides for the Ombudsman's remuneration and pension, and for the possibility of the payment of compensation in special circumstances on his ceasing to hold office.

### ***Paragraph 7 Acting Ombudsman***

260. This paragraph allows for the appointment of an acting Ombudsman in the circumstances set out in sub-paragraph 7(1). These are if the office becomes vacant, if the Lord Chancellor considers that the Ombudsman is unable to exercise his functions or if there is a conflict of interest in relation to a particular matter. The person so appointed would have to be eligible for appointment as Ombudsman. The paragraph also provides for the payment and pension of the acting Ombudsman and for the circumstances in which his appointment may come to an end, for instance because the situation that gave rise to him being needed has ended.

### ***Paragraph 8 Status of the Ombudsman***

261. This paragraph provides that the Ombudsman is to be a corporation sole.

### ***Paragraph 9 Powers of the Ombudsman***

262. Paragraph 9 allows the Ombudsman to do anything to enable him to perform his functions, but does not allow him to borrow money or acquire real property, or to appoint staff other than in accordance with paragraph 10.

### ***Paragraph 10 Arrangements for assistance***

263. Paragraph 10 allows the Ombudsman, with the agreement of the Lord Chancellor, to make arrangements for assistance to be provided to him. This would include contracting out services as it sees fit and in doing so to pay for such services. It is intended that the Ombudsman will be supported by civil servants seconded to his office, as happens with the Parliamentary Commissioner.

### ***Paragraph 11 Arrangements by the Lord Chancellor***

264. Paragraph 11 allows the Lord Chancellor to make such arrangements for assistance for the Ombudsman if the latter has not done so.

### ***Paragraph 12 Delegation of functions***

265. Paragraph 12 allows the Ombudsman to delegate his functions, but requires him to sign any report or recommendation.

### ***Paragraph 13 Financial provisions and directions***

266. Paragraph 13 provides for the Ombudsman's expenses to be met by the Lord Chancellor, and for the latter to be able to issue him with directions on the procedures to

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be used in relation to his costs and expenditure, and on limits in relation to expenditure, or any particular type of expenditure, above which the Lord Chancellor's prior approval must be obtained.

#### ***Paragraph 14 Code of conduct***

267. As with the Commissioners, the Lord Chancellor may issue a code of conduct to be observed by the Ombudsman.

#### ***Paragraph 15 Reports***

268. **Paragraph 15** provides that the Ombudsman must produce an annual report which must be laid before Parliament and published. The Lord Chancellor may direct him to deal with a particular matter in either that report or an ad hoc one. There is no statutory requirement for an ad hoc report to be laid before Parliament or published.

#### ***Paragraph 16 Documentary evidence***

269. **Paragraph 16** provides that a document signed by or on behalf of the Ombudsman is to be received in evidence, unless proved to be inauthentic.

#### ***Paragraph 17 General***

270. **Paragraph 17** specifies what is meant by financial year, the first of which will begin when the Commission is established and end the following 31 March. The Ombudsman will be barred from election to the House of Commons by inserting a reference to the post into Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975; and the Ombudsman will be listed as a public authority for the purposes of the Freedom of Information Act 2000 by inserting a reference to the post into Part 6 of Schedule 1 to that Act.

### **Chapter 2: Appointments**

#### ***General Provisions***

##### ***Section 63: Merit and good character***

271. **Section 63** requires that selections by the Commission (or a selection panel, in relation to senior appointments) must be solely on merit, and that the selecting body must be satisfied that the person selected is of good character.

##### ***Section 64: Encouragement of diversity***

272. **Section 64** requires the Commission to have regard to the need to encourage diversity in the range of people available for selection, subject to the duty to select solely on merit and the duty to select a person of good character.

##### ***Section 65: Guidance about procedures***

273. **Section 65** provides a power for the Lord Chancellor to issue guidance to the Commission or a selection panel about the exercise, firstly, of its function of identifying persons willing to be considered for selection and, secondly, of its function of assessing them. The purposes for which guidance may be given include the encouragement of diversity in the range of persons available for selection. The Commission and any selection panel under it must have regard to such guidance. Guidance cannot overrule the statutory requirements that selections be made solely on merit, and that those selected be of good character. The procedure for issuing the guidance is set out in section 66.



***Section 66: Guidance: supplementary***

274. **Section 66** provides that before issuing any guidance under section 65 the Lord Chancellor must consult the Lord Chief Justice and lay a draft of the proposed guidance before Parliament. The draft guidance will be subject to the affirmative resolution procedure. Guidance may be revised and reissued from time to time, in which case the same procedures must be complied with. Guidance may also be revoked by order; such an order is subject to the negative resolution procedure by virtue of section 144(6). The Lord Chancellor must consult the Lord Chief Justice before revoking any guidance.

**Lord Chief Justice and Heads of Division**

***Section 67: Selection of Lord Chief Justice and Heads of Division***

275. **Section 67** provides that recommendations to The Queen to appoint candidates to the senior judicial posts of the Lord Chief Justice and the Heads of Division (the Master of the Rolls, President of the Queen's Bench Division, President of the Family Division and Chancellor of the High Court) can only be made in accordance with the procedures set out in the Act.

***Section 68: Duty to fill vacancies***

276. **Section 68** imposes a duty on the Lord Chancellor to fill any vacancies in the offices of Lord Chief Justice or the Heads of Division. But, for as long as the Lord Chief Justice agrees, he may leave a vacancy in any of the offices of the Heads of Division unfilled.

***Section 69: Request for selection***

277. **Section 69** provides for the Lord Chancellor to request the Commission to select someone for appointment as Lord Chief Justice or as one of the Heads of Division. Before making a request the Lord Chancellor must consult the Lord Chief Justice unless that post is vacant, or the holder of that post is incapacitated.

***Section 70: Selection Process***

278. **Section 70** provides that on receiving a request to select a person for appointment as Lord Chief Justice or one of the Heads of Division, the Commission must appoint a selection panel, which will decide the process to be followed and make the selection of one person for each vacant post. The panel must consult the current holder of the relevant office, if that is practicable, and will be given administrative support by the Commission, of which it will be a committee. Selection panels for senior appointments are a special form of committee of the Commission.

***Section 71: Selection Panel***

279. The selection panel will have four members. The first member will be the most senior judge of the Supreme Court established by the Act who was a judge of England and Wales before being appointed to the Supreme Court and who is not disqualified, or another senior judge nominated by him. He will chair and will have a casting vote. The second member will be the Lord Chief Justice or his nominee, except where the Lord Chief Justice is disqualified or there is no Lord Chief Justice, in which case it will be another senior judge chosen by the most senior Supreme Court Judge. The third member will be the chairman of the Commission or his nominee, or if that post is vacant or the chairman is unavailable and has been unable to make a nomination, one of the lay members of the Commission chosen by themselves. The fourth member will be a lay member of the Commission chosen by the third member. A person is disqualified from being a member of the panel if that person is the current holder of the office being selected for, or if that person is willing to be considered for selection for that office.

***Section 72: Report***

280. After making its selection the panel must report to the Lord Chancellor, in a form approved by him, telling him who has been selected and providing him with any other information he requires. After submitting its report the panel must provide any further information the Lord Chancellor requires.

***Section 73: The Lord Chancellor's options***

281. When the Lord Chancellor receives the report informing him of the person selected by the panel, he has the options of accepting the selection; rejecting that person and requiring a different name to be put forward; or requiring the selection panel to reconsider its selection. This is stage 1 of the process. If the Lord Chancellor rejects the selection or requires reconsideration, the process moves into stage 2. At this stage the panel puts a name to the Lord Chancellor, and the Lord Chancellor has these options: he may accept the selection; he may reject the selection (but only if he has not already used that power at stage 1); or he may require reconsideration (but only if he has not already used that power at stage 1). If the Lord Chancellor rejects the selection or requires reconsideration, the process moves into stage 3. At this stage the panel again puts a name to the Lord Chancellor. This time he must accept the selection of the latest selected candidate, or of a candidate selected in stage 1 or stage 2 whose name was not resubmitted by the panel after reconsideration, but who has not been rejected.

***Section 74: Exercise of powers to reject or require reconsideration***

282. The Lord Chancellor can only reject a selection outright if, in his opinion, the person selected is not suitable for the office concerned. He can only require reconsideration if, in his opinion, there is not enough evidence that the selected person is suitable for the office concerned, or there is evidence that the person is not the best candidate on merit. If the Lord Chancellor either rejects a selection or requires it to be reconsidered, he must give his reasons in writing.

***Section 75: Selection following rejection or requirement to reconsider***

283. If the Lord Chancellor rejects a candidate at stage 1 or stage 2, the panel must make a new selection, and may not reselect the rejected candidate, or reselect a candidate whose selection it previously withdrew after reconsideration. If the Lord Chancellor requires reconsideration at stage 1 or stage 2, the panel may confirm its selection, or may select a different person, but may not select a candidate who has already been rejected. The panel must inform the Lord Chancellor of its selection. These provisions do not prevent a rejected candidate, or one whose selection was withdrawn after reconsideration, from being selected for appointment on a subsequent occasion when the Lord Chancellor makes a request for a selection.

**Lords Justices of Appeal**

***Section 76: Selection of Lords Justices of Appeal***

284. A similar process applies to the appointment of Lords Justices of Appeal. Section 76 provides that a person may only be recommended for appointment to one of these posts in accordance with the procedures in the Act.

***Section 77: Duty to fill vacancies***

285. [Section 77](#) imposes a duty on the Lord Chancellor to fill any vacancy in the office of Lord Justice of Appeal. The Lord Chancellor can only decide not to fill a vacancy whilst the Lord Chief Justice agrees that it may remain unfilled.

***Section 78: Request for selection***

286. **Section 78** provides for the Lord Chancellor to request the Commission to select someone for appointment as a Lord Justice of Appeal. Before asking the Commission to select someone the Lord Chancellor must consult the Lord Chief Justice. Any request may relate to more than one post and recommendation.

***Section 79: Selection Process***

287. When the Lord Chancellor makes a request the Commission must appoint a selection panel, which will determine the procedure to be applied, apply the process and make a selection of one person for each vacancy. The panel is a committee of the Commission, which will provide it with administrative support.

***Section 80: Selection Panel***

288. For the appointment of Lords Justices of Appeal, the selection panel will consist of four members. The first member is the Lord Chief Justice or another senior judge nominated by him, who will chair and have a casting vote; the second member is one of the Heads of Division or a Lord Justice chosen by the Lord Chief Justice; the third member is the Chairman of the Commission or his nominee, or if that post is vacant or the chairman is unavailable and has been unable to make a nomination, one of the lay members of the Commission chosen by themselves; and the fourth member is another lay member of the Commission chosen by the third member. No one who is willing to be considered for selection may be a member of the panel. No nominee may represent more than one person or be a member of the panel in another capacity.

***Section 81: Report***

289. When the panel has selected someone, it must report to the Lord Chancellor, in a form approved by him, with the name of the person selected and any other information he requires. After submitting the report it must provide any further information the Lord Chancellor requires.

***Section 82: The Lord Chancellor's options***

290. As in relation to the appointment of the Heads of Division, when the Lord Chancellor receives the report informing him of the person selected by the panel, he has the options of accepting the person selected; rejecting that person and requiring a different name to be put forward; or requiring the selection panel to reconsider its selection. This is stage 1 of the process. If the Lord Chancellor rejects the selection or requires reconsideration, the process moves into stage 2. At this stage the panel puts a name to the Lord Chancellor, and the Lord Chancellor has these options: he may accept the person selected; he may reject the selection (but only if he has not already used that power at stage 1); or he may require reconsideration (but only if he has not already used that power at stage 1). If the Lord Chancellor rejects the selection or requires reconsideration, the process moves into stage 3. At this stage the panel again puts a name to the Lord Chancellor. This time he must accept the selection of the latest selected candidate, or of a candidate selected in stage 1 or stage 2 whose name was not resubmitted by the panel after reconsideration, but who has not been rejected.

***Section 83: Exercise of powers to reject or require reconsideration***

291. The Lord Chancellor can only reject a selection outright if, in his opinion, the person selected is not suitable for the office concerned. He can only require reconsideration if, in his opinion, there is not enough evidence that the selected person is suitable for the office concerned, or there is evidence that the person is not the best candidate on merit. If the Lord Chancellor either rejects a selection or requires it to be reconsidered, he must give his reasons in writing.

***Section 84: Selection following rejection or requirement to reconsider***

292. If the Lord Chancellor rejects a selection, the panel cannot put forward the same candidate, or one whose selection has already been withdrawn after being reconsidered. If he requires reconsideration, the panel may reselect the same candidate, but not one who has already been rejected. In either case, the panel must inform the Lord Chancellor of its new or reconsidered selection. A person who has been reconsidered or rejected is not prevented from being selected by the panel in response to a subsequent new request from the Lord Chancellor to select someone for appointment as a Lord Justice.

**Puisne judges and other office holders**

***Section 85: Selection of puisne judges and other office holders***

293. **Section 85** provides that sections 86 to 93 of the Act apply to a recommendation for the appointment by The Queen of a puisne judge of the High Court; a recommendation for the appointment by The Queen to any of the offices listed in Part 1 of Schedule 14; and an appointment by the Lord Chancellor to any of the offices listed in parts 2 and 3 of Schedule 14. The Lord Chancellor has a power to amend the Schedule by order in order to add or delete offices and references to statutes. Section 144 provides that any such order is subject to the negative resolution procedure in parliament, unless the order amends Part 1 of the Schedule 14 (which lists offices below the High Court to which The Queen makes appointments), in which case by section 144(5)(a) it is subject to affirmative resolution in both Houses.

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

294. **Schedule 14** lists in Part 1 judicial and tribunal appointments below the High Court which are formally made by the Queen, with the relevant appointing powers; Part 2 lists judicial and other appointments made by the Lord Chancellor to posts whose holders will not be eligible to be appointed as a member of the Judicial Appointments Commission under Schedule 12 paragraph 2(2)(d); Part 3 lists appointments made by the Lord Chancellor to those tribunal and similar posts whose holders will be eligible to be appointed as a member of the Judicial Appointments Commission under Schedule 12 paragraph 2(2)(d). None of these appointments may be made unless the Commission has selected the person concerned.

***Section 86: Duty to fill vacancies***

295. **Section 86** imposes a duty on the Lord Chancellor to fill vacancies in the office of puisne judge of the High Court and the other offices listed in Parts 1, 2 and 3 of Schedule 14. But, whilst the Lord Chief Justice agrees, the Lord Chancellor can leave any such vacancy unfilled.

***Section 87: Request for selection***

296. **Section 87** enables the Lord Chancellor to request the Commission to select someone for appointment as a puisne judge of the High Court or to any of the offices listed in Schedule 14. Before asking the Commission to select someone the Lord Chancellor must consult the Lord Chief Justice. Any request may relate to more than one recommendation or appointment. The Lord Chancellor is able to withdraw or modify requests in accordance with the provisions of section 95.

***Section 88: Selection Process***

297. **Section 88** requires the Commission to decide on and run a selection process and make a selection of one person for each post. In the course of doing so it must consult the Lord Chief Justice and another person who has held the office concerned or has relevant experience. If the selection process has not identified candidates of sufficient merit to

be appointed, the Commission will not be able to make a selection, and section 88(2) and section 93 will apply.

### ***Section 89: Report***

298. **Section 89** provides that after it has run the selection process, the Commission must submit a report to the Lord Chancellor, in a form approved by him, which describes the process; names the person selected for each post, or states if it has not been able to make a selection; states any recommendations which the Lord Chief Justice and the other person with relevant experience made when they were consulted under section 88 and gives reasons if the Commission has not followed their recommendations; and contains any other information required by the Lord Chancellor. After submitting the report the Commission must provide any further information required by the Lord Chancellor.

### ***Section 90: The Lord Chancellor's options***

299. In the same way as in relation to more senior appointments, when the Lord Chancellor receives the report informing him of the person selected by the Commission, he has three options. He can accept the selected person; reject that person and require a different name to be put forward; or require the Commission to reconsider its selection. This is stage 1 of the process. If the Lord Chancellor rejects the selection or requires reconsideration, the process moves into stage 2. At this stage the Commission puts a name to the Lord Chancellor, and the Lord Chancellor has these options: he may accept the selected person; he may reject the selection (but only if he has not already used that power at stage 1); or he may require reconsideration (but only if he has not already used that power at stage 1). If the Lord Chancellor rejects the selection or requires reconsideration, the process moves into stage 3. At this stage the Commission again puts a name to the Lord Chancellor. This time he must accept the selection of the latest selected candidate, or of a candidate selected in stage 1 or stage 2 whose name was not resubmitted by the Commission after reconsideration, but who has not been rejected.

### ***Section 91: Exercise of powers to reject or require reconsideration***

300. The Lord Chancellor can only use his power in section 90 to reject a selection outright if, in his opinion, the person selected is not suitable for the office concerned, or for particular functions of that office. He can only require reconsideration if, in his opinion, there is not enough evidence that the selected person is suitable for the office concerned or for particular functions of that office, or there is evidence that the person is not the best candidate on merit. If the Lord Chancellor either rejects a selection or requires it to be reconsidered, he must give his reasons in writing.

### ***Section 92: Selection following rejection or requirement to reconsider***

301. If the Lord Chancellor rejects a selection, the Commission must submit a new name it has not previously selected for the post. If the Lord Chancellor requires the Commission to reconsider, it may submit the same name, but not the name of someone who has already been selected and rejected. This does not prevent someone being selected in a subsequent appointments process. Having made its selection, the Commission must inform the Lord Chancellor.

### ***Section 93: Reconsideration of decision not to select***

302. **Section 88**, which provides for the Commission to apply a selection process in response to a request from the Lord Chancellor, allows for the fact that the Commission may find that the selection process has not identified candidates of sufficient merit for them to make a selection. **Section 93** provides that if the Commission informs the Lord Chancellor that it is unable to make a selection because there are no candidates of sufficient merit, he may require it to reconsider, and they must inform him of any

person then selected. If the Commission makes a selection on reconsideration, the Lord Chancellor will have the same options in relation to appointment as in ordinary cases.

#### ***Section 94: Duty to identify persons for future requests***

303. **Section 94** enables the Commission to recruit in advance a pool of potential candidates for appointment to a particular class of posts. As requests to fill specific appointments of that class arise, they can then select people from that pool. . These people will not be guaranteed selection for actual appointments. The Lord Chancellor will initially give the Commission an indication of the numbers of people that are expected to be needed at a particular level and over a specific time. The Commission will identify suitable people taking into account the number of appointments that have been requested and report to the Lord Chancellor saying how far it has identified suitable people and provide any other information to assist the Lord Chancellor. As part of the process the Commission will be required to consult the Lord Chief Justice and someone with experience of the office concerned. If the Commission decides not to follow a recommendation made during the consultation process it must give reasons for not doing so in its report on the competition.

#### ***Section 95: Withdrawal and modification of requests***

304. **Section 95** enables the Lord Chancellor to withdraw or modify a request under section 69, 78 or 87 of the Act in three particular circumstances. First, if the request was to fill a vacancy, he may only withdraw or modify the request with the agreement of the Lord Chief Justice (who has to agree to any decision not to fill an existing post). This situation could arise where there is a change in circumstances or simply because the predictions as to the number of vacancies likely to arise was wrong. Secondly, if the request was other than to fill a vacancy and would have resulted in the creation of additional posts, he may withdraw or modify such a request after consulting the Lord Chief Justice. Thirdly, if he considers that the process of identifying candidates by the Commission or the selection panel was not satisfactory or not applied satisfactorily, he may withdraw a request as a whole, after consulting the Lord Chief Justice, provided that he has not made any recommendations or appointments resulting from that request. The withdrawal or modification of a request (for whatever reason) must be by notice in writing from the Lord Chancellor to the Commission. The notice must state the circumstances and, if it relates to an unsatisfactory process, the reasons why the Lord Chancellor considers it to be so.

#### ***Section 96: Effect of acceptance of selection***

305. **Section 96** allows the Commission to perform health checks on successful candidates for appointment, if the Lord Chancellor requires, and to report the results to the Lord Chancellor. If the checks are satisfactory the Lord Chancellor will appoint or recommend for appointment the person selected. If for any reason the Lord Chancellor rejects the candidate on health grounds he must consult the Lord Chief Justice. Selections can also be disregarded where the candidate does not accept an appointment when it is offered or is not available within a reasonable time to take up post.

#### ***Section 97: Scotland and Northern Ireland***

306. The Lord Chancellor has responsibility for appointing members of certain tribunals with a UK-wide jurisdiction, some of whose members sit wholly or mainly in Scotland or in Northern Ireland. Section 97 provides that, where consultation with the Lord Chief Justice is required under section 87(2), 88(3), 94(3), 95(2)(a), (b) or (c) or 96(4)(a), and where the consultation appears to relate to an appointment of a person that exercises functions wholly or mainly in Scotland or Northern Ireland, the Lord President of the Court of Session, or the Lord Chief Justice of Northern Ireland respectively will be consulted, rather than the Lord Chief Justice of England and Wales.

## **Assistance in connection with other appointments**

### ***Section 98: Assistance in connection with other appointments***

307. In addition to his responsibilities for senior judicial appointments in England and Wales and the other judicial appointments listed in Schedule 14, the Lord Chancellor has a role in identifying, nominating or recommending candidates for other judicial posts, including, for example, members of various international courts and tribunals. Many of these are ad hoc appointments, not judicial appointments in England and Wales. In some cases the appointments are not formally within the remit of the United Kingdom Government. It is therefore not possible for them to be listed in Schedule 14 and placed formally within the remit of the Judicial Appointments Commission. Section 98 therefore gives the Lord Chancellor the power to ask the Commission for assistance in such cases. This assistance may range from merely giving advice on how to proceed to running a selection process and selecting a candidate. Before requiring the Commission to give ad hoc assistance of this kind, the Lord Chancellor must consult the Lord Chief Justice and the Commission itself.

## **Complaints and references**

### ***Section 99 : Complaints: interpretation***

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

### ***Section 100: Complaints to the Commission or the Lord Chancellor***

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

### ***Section 101: Complaints to the Ombudsman***

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

***Section 102: Report and recommendations***

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

***Section 103: Report procedure***

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

***Section 104: References by the Lord Chancellor***

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

***Section 105: Information***

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

**Miscellaneous**

***Section 106 : Consultation on appointment of lay justices***

315. **Section 106** inserts a new subsection (2A) into Section 10 of the Courts Act 2003, which sets out the appointments process for lay justices. This provision provides that, in following the two stage process of appointment and assignment provided for in the Courts Act, the Lord Chancellor will be obliged to consult people who have special knowledge of matters relevant to the appointment of a lay justice for a particular area. In practice, the Lord Chancellor is likely to meet this requirement by consulting the local Advisory Committee.

***Section 107: Disclosure of information to Commission***

316. **Section 107** allows the Commission to carry out confidential checks on applicants for judicial appointment. If an applicant is selected for appointment checks may be carried out with the police, the National Criminal Intelligence Service, the National Crime Squad and HM Revenue and Customs. The Lord Chancellor will also be able to designate by order under the negative resolution procedure other bodies with which confidential checks may be made. These are likely to include the Law Society in relation to solicitors, the Bar Council in relation to barristers, and the General Medical Council in relation to the appointment of medical practitioners to certain tribunals. The material that is required is for the purposes of deciding whether the applicant is suitable to hold judicial office.



### ***Chapter 3: Discipline***

#### **Procedures**

##### ***Section 108 : Disciplinary Powers***

317. **Section 108** will form the basis of a disciplinary system in relation to senior judicial office holders in England and Wales and the holders of offices listed in Schedule 14. In accordance with the section the Lord Chancellor may only exercise his statutory powers to remove judicial office holders in accordance with prescribed procedures (which are defined by section 122 as procedures prescribed by the Lord Chief Justice with the agreement of the Lord Chancellor in regulations made under section 115 or rules made under section 117). Following the formal disciplinary process the Lord Chief Justice may formally advise or formally warn or reprimand, a judicial office holder, but only in accordance with prescribed procedures and with the agreement of the Lord Chancellor. As provided in subsection (3) this does not affect the ability of the Lord Chief Justice to speak informally to any judge about any matter of concern, or to issue general advice or warnings to the judiciary.
318. The Lord Chief Justice may also, with the agreement of the Lord Chancellor, suspend a judicial office holder from exercising the functions of his office if the office holder is subject to criminal proceedings; is serving a sentence for a criminal offence; is subject to disciplinary proceedings following a conviction; or if, following a criminal conviction, it has been decided not to remove the judicial office holder from office, but the Lord Chief Justice and Lord Chancellor agree that a period of suspension is required in order to maintain confidence in the judiciary. Senior judges may be suspended during proceedings for an Address in Parliament to remove them from office. Office holders who are listed in Schedule 14 may be suspended during criminal or disciplinary investigations, prior to any conviction.

##### ***Section 109: Disciplinary powers: interpretation***

319. **Section 109** defines for the purposes of section 108 when a judge is subject to criminal proceedings, or to proceedings for an Address in Parliament, and what the meanings of 'judicial office', 'senior judge' and 'sentence' are. It provides that 'subject to prescribed procedures' and 'under investigation for an offence' may be defined in regulations.

##### ***Section 110: Applications to the Ombudsman***

320. **Section 110** gives the Judicial Appointments and Conduct Ombudsman the powers to carry out a review of how a disciplinary case about a judge has been handled, at the application of an interested party, and sets out the conditions for a review. An interested party is either the judge concerned or the person, if any, who complained about his conduct. Applications for a review must be based on the grounds that those who have investigated the complaint have failed to comply with the prescribed procedures, contained in regulations made by the Lord Chief Justice under section 115 and rules made by him under section 117, or that there has been some other maladministration. The Ombudsman is not involved in reviewing the judge's conduct itself, and cannot make determinations about the merits of the decision made in a disciplinary case. For the Ombudsman to review a case, he must be satisfied that the issue is of sufficient substance for a review to be necessary. The application must have been made within the 28 days which the section prescribes, or within a time the Ombudsman considers reasonable in the circumstances, both generally and when a review is sought on the grounds that a case has taken too long to reach a conclusion. The application must be made in a form approved by the Ombudsman.
321. The section then lists the scope of the disciplinary functions which the Ombudsman will be able to investigate, which are: the exercise of the Lord Chancellor's power to remove judicial office holders as dealt with in section 108(1) of the Act; the Lord Chief

*These notes refer to the Constitutional Reform Act 2005 (c.4)  
which received Royal Assent on 24 March 2005*

Justice's new disciplinary powers dealt with in section 108(3)-(7); and any exercise of the disciplinary regulations and rules to be made by the Lord Chief Justice under section 115 and section 117.

### ***Section 111: Review by the Ombudsman***

322. **Section 111** sets out the duties of the Ombudsman when carrying out a review of how a disciplinary case about a judge has been handled (in terms of alleged failure to comply with prescribed procedures or other alleged maladministration). It requires the Ombudsman to decide to what extent any application to him is justified and to make recommendations, which may include a recommendation for the payment of compensation resulting from any failure or maladministration to which the application relates. If the Ombudsman finds that the result of a disciplinary process was unreliable because of a failure to apply prescribed procedures or other procedural flaws, he will be able to set aside the decision, and require that the matter be subject to further investigation and reconsideration, in accordance with prescribed procedures. In exercising these powers, the Ombudsman will be able to direct the extent to which any previous investigation or review may be taken into account. This will mean that the whole of a previous investigation need not be disregarded if, for example, only the decision-making process at the end was procedurally flawed.

### ***Section 112: Reports on reviews***

323. **Section 112** provides that, after the Ombudsman has conducted a review on an application, he must submit a report in draft to the Lord Chief Justice and the Lord Chancellor. He must have regard to any proposals they make for amendment, and if their proposals are not reflected in his final report he must include a statement of those proposals.
324. The final report must be sent separately to both the Lord Chief Justice and the Lord Chancellor. He will also send a copy of the report to the applicant, but this version is not to contain confidential information relating to someone other than the applicant.

### ***Section 113: References to the Ombudsman relating to conduct***

325. **Section 113** provides for the Lord Chief Justice or the Lord Chancellor to be able to refer to the Ombudsman any matters relating to the exercise of their disciplinary functions, either generally or in relation to particular cases. It will enable the Lord Chancellor and the Lord Chief Justice, together or separately, to ask the Ombudsman to examine aspects of the complaints handling process – if for example they had become concerned by repeated issues in a number of cases - and report to them generally.

### ***Section 114: Reports on references***

326. **Section 114** provides for the Ombudsman to report on his investigations under section 113. The report, which must be signed by the Ombudsman, will include his findings and any action he recommends. After the Ombudsman has conducted an investigation he must submit a report in draft to the Lord Chief Justice and the Lord Chancellor. He must then have regard to any proposals they make for amendment, and if their proposals are not reflected in his final report he must include a statement of those proposals. He must send the final report in duplicate to the Lord Chief Justice and the Lord Chancellor.

### ***Section 115: Regulations about procedures***

327. **Section 115** provides that the Lord Chief Justice may, with the agreement of the Lord Chancellor make regulations governing the handling of judicial disciplinary cases. These regulations will be made by statutory instrument as though they had been made by a Minister, and will (by virtue of section 144) be subject to the negative resolution procedure in Parliament. It is intended that the regulations will provide the structure of

the complaints and discipline system, and will include, for example, provisions relating to the judicial investigation of serious complaints and the possibility of referring serious complaints to a review body to consider the relevant facts and allegations and advise the Lord Chief Justice and Lord Chancellor.

### ***Section 116: Contents of regulations***

328. **Section 116** provides some more detail about what regulations made by the Lord Chief Justice under section 115 may contain. These matters include the procedures to be followed; any time limits for an investigation; the persons by whom an investigation is to be conducted; the matters to be decided by the Lord Chief Justice, the Minister or anyone else; any requirements as to record-keeping and confidentiality; or any requirements as to publicity. Regulations may require the Lord Chief Justice and Minister to make their eventual decision in accordance with findings of fact made by some other person or body (such as a review body of the kind referred to in paragraphs 96 to 99 of the Concordat (as to which see paragraph 7 above)); they may require that prescribed procedural steps be taken by the Lord Chief Justice or the Minister before they can exercise their functions, or in exercising those functions. Regulations may provide for the Lord Chief Justice and Minister to disapply requirements if they both agree. Where the regulations impose a requirement on an office holder or complainant, they may provide a procedural penalty (such as suspension or dismissal of a complaint) for failure to comply.

### ***Section 117: Procedural Rules***

329. **Section 117** allows the regulations made under section 115 to provide for a more limited category of detailed procedural rules in relation to complaints and discipline to be made by the Lord Chief Justice with the agreement of the Minister. It is envisaged that these would address the detailed matters covered by the existing protocol governing complaints against judges, which was agreed by the Lord Chancellor and the judiciary and published in 2003. These rules will not be subject to Parliamentary approval and might change from time to time, but they must be published. The rules may not include provision of the kind referred to in section 109(7) or (8) (which allow certain definitions to be prescribed) or section 116(2) or (3) (which allow the regulations to make certain provision about procedural steps in decision-making and procedural penalties).

### ***Section 118: Extension of discipline provisions to other offices***

330. **Section 118** allows the Lord Chancellor to extend the new judicial disciplinary regime by order to office holders who are not senior judges and not listed in Schedule 14. It is envisaged that this will include certain office holders, such as coroners and some tribunal members, whom the Lord Chancellor has the power to remove but who are not currently appointed by him and who are therefore not currently included in Schedule 14. Such an order can only be made with the agreement of the Lord Chief Justice and is subject to the negative approval procedure in Parliament.

### ***Section 119: Delegation of functions***

331. **Section 119** provides that the Lord Chief Justice may share the complaints caseload with other senior judges, by giving him a power to delegate the greater part of his functions in this Chapter of this Part of the Act (specifically, his functions under section 108(3) to (7), 111(2), 112 and 116(3)(b)). There are two areas which he will not be able to delegate his functions: only he will be able to give the agreement which will be needed before the Lord Chancellor removes any judicial office-holder. And he will not delegate the power to refer issues to the Ombudsman, since that is likely to involve issues of policy, involving a number of complaints.

### ***Section 120: Scotland***

332. **Section 120** provides that where a member of a tribunal with UK-wide or Great Britain-wide jurisdiction who is appointed after selection by the Judicial Appointments Commission sits wholly or mainly in Scotland it is not the Lord Chief Justice of England and Wales who will have disciplinary responsibilities in relation to him, but the Lord President of the Court of Session. In performing those functions, he will work within the procedures prescribed by the Lord Chief Justice of England and Wales, so that the same procedures apply to all members of the same tribunal; but the Lord Chief Justice will have to consult the Lord President before making the regulations containing the procedures, to make sure that any relevant provisions of Scottish law are reflected in them. The greater part of these disciplinary responsibilities (in parallel with the situation in England and Wales) may also be delegated to other senior judges in Scotland.

### ***Section 121: Northern Ireland***

333. **Section 121** provides that where a member of a tribunal with UK-wide jurisdiction who is appointed after selection by the Judicial Appointments Commission sits wholly or mainly in Northern Ireland it is not the Lord Chief Justice of England and Wales who will have disciplinary responsibilities in relation to him, but the Lord Chief Justice of Northern Ireland. These responsibilities may also be delegated to other senior judges in Northern Ireland. In performing those functions, he will work within the procedures prescribed by the Lord Chief Justice of England and Wales, so that the same procedures apply to all members of the same tribunal; but the Lord Chief Justice will have to consult the Lord Chief Justice of Northern Ireland before making the regulations containing the procedures, to make sure that any relevant provisions of Northern Ireland law are reflected in them. The greater part of these disciplinary responsibilities (in parallel with the situation in England and Wales) may also be delegated to other senior judges in Northern Ireland.

## ***Chapter 4: Interpretation of Part 4***

### ***Section 122: Interpretation of Part 4***

334. **Section 122** provides definitions of certain terms in Part 4 of the Act.

## **Part 5: Judicial Discipline: Northern Ireland**

### **Summary**

335. **Part 5** amends the Justice (Northern Ireland) Act 2002 to make provision in relation to the office of the Northern Ireland Judicial Appointments Ombudsman and to provide a statutory power of disclosure of information, held by permitted persons, to the Northern Ireland Judicial Appointments Commission. It also provides for the removal of judicial office holders in Northern Ireland.
336. By virtue of section 147, Part 5 extends only to Northern Ireland.