



Constitutional Reform Act 2005

2005 CHAPTER 4

PART 5

JUDICIAL APPOINTMENTS AND REMOVALS: NORTHERN IRELAND

CHAPTER 1

APPOINTMENTS

Disclosure of information to Commission

123 Disclosure of information to the Northern Ireland Judicial Appointments Commission

- (1) The Justice (Northern Ireland) Act 2002 (c. 26) (“the 2002 Act”) is amended as follows.
- (2) After section 5 of the 2002 Act insert—

“5A Disclosure of information to the Commission

- (1) Information which is held by or on behalf of a permitted person (whether obtained before or after this section comes into force) may be disclosed to the Commission or a committee of the Commission for the purposes of selection under section 5.
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (3) But nothing in this section authorises the making of a disclosure—
 - (a) which contravenes the Data Protection Act 1998, or
 - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

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- (4) This section does not affect a power to disclose which exists apart from this section.
- (5) The following are permitted persons—
 - (a) a chief officer of police of a police force in England and Wales;
 - (b) a chief constable of a police force in Scotland;
 - (c) the Chief Constable of the Police Service of Northern Ireland;
 - (d) the Director General of the National Criminal Intelligence Service;
 - (e) the Director General of the National Crime Squad;
 - (f) the Commissioners of Inland Revenue;
 - (g) the Commissioners of Customs and Excise.
- (6) The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which he considers are of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).
- (7) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.
- (8) The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose)—
 - (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue,
 - (b) in the case of the Commissioners of Customs and Excise, to a customs officer.
- (9) For the purposes of this section a customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979.”

Ombudsman

124 Northern Ireland Judicial Appointments Ombudsman

- (1) The italic cross-heading before section 9 of the 2002 Act is omitted.
- (2) After that section insert—

“The Ombudsman

9A Judicial Appointments Ombudsman

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

(3) Schedule 15 inserts Schedule 3A to the 2002 Act.

Complaints and references

125 Complaints: interpretation

After section 9A of the 2002 Act insert—

“9B Complaints: interpretation

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

126 Complaints to the Commission or the Lord Chancellor

After section 9B of the 2002 Act insert—

“9C Complaints to the Commission or the Lord Chancellor

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

127 Complaints to the Ombudsman

After section 9C of the 2002 Act insert—

“9D Complaints to the Ombudsman

- (1) Subsections (2) and (3) apply to a complaint which the complainant—
 - (a) has made to the Commission or Lord Chancellor in accordance with arrangements under section 9C, and

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

128 Report and recommendations

After section 9D of the 2002 Act insert—

“9E Report and recommendations

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

129 Report procedure

After section 9E of the 2002 Act insert—

“9F Report procedure

- (1) This section applies to a report under section 9E.
- (2) The Ombudsman must submit a draft of the report—
 - (a) to the Lord Chancellor, and
 - (b) if the complaint was a Commission complaint, to the Commission.
- (3) In finalising the report the Ombudsman—
 - (a) must have regard to any proposal by the Lord Chancellor or the Commission for changes in the draft report;
 - (b) must include in the report a statement of any such proposal not given effect to.
- (4) The report must be signed by the Ombudsman.
- (5) If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission.
- (6) Otherwise the Ombudsman must send the report to the Lord Chancellor.
- (7) The Ombudsman must send a copy of the report to the complainant, but that copy must not include information—
 - (a) which relates to an identified or identifiable individual other than the complainant, and
 - (b) whose disclosure by the Ombudsman to the complainant would (apart from this subsection) be contrary to section 9I.”

130 References by the Lord Chancellor

After section 9F of the 2002 Act insert—

“9G References by the Lord Chancellor

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

131 Information

After section 9G of the 2002 Act insert—

“9H Information

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

132 Confidentiality in relation to judicial appointments and discipline

After section 9H of the 2002 Act insert—

“9I Confidentiality in relation to judicial appointments and discipline

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

- (7) This section does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.
- (8) A contravention of this section in respect of any information is actionable, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (9) But it is actionable only at the suit of a person who is a subject of the information.

Transfer of functions of justices of the peace”

CHAPTER 2

REMOVALS

133 Removal from most senior judicial offices

In the Judicature (Northern Ireland) Act 1978 (c. 23) before section 13 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).
- (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 or, if the Lord Chancellor is not a member of that House, by another Minister of the Crown at his request.
- (4) No motion for the presentation of such an address may be made unless a tribunal convened under section 135 of the Constitutional Reform Act 2005 has reported to the Lord Chancellor recommending that the person be removed from the office on the ground of misbehaviour.
- (5) The Prime Minister shall lay a copy of the report before the House of Commons before making a motion for the presentation of an address in that House; and a person making such a motion in the House of Lords shall lay a copy of the report before that House before making the motion.
- (6) 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

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or a judge of the High Court the Prime Minister may suspend him from office with the agreement of the Lord Chief Justice.

- (7) If a person is suspended from an office under subsection (6), he may not perform any of the functions of the office (but his other rights as holder of the office are unaffected).”

134 Removal from listed judicial offices

- (1) A person holding a listed judicial office other than as a judge of the High Court 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 Lord Chancellor.
- (3) He may only be removed if a tribunal convened under section 135 has reported to the Lord Chancellor 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 the Lord Chancellor that he be suspended.
- (5) He may not be removed or suspended except after consultation with 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).

135 Tribunals for considering removal

- (1) A tribunal to consider the removal of the Lord Chief Justice may be convened by the Lord Chancellor.
- (2) A tribunal to consider the removal of the holder of any other protected judicial office may be convened—
 - (a) by the Lord Chancellor, after consulting the Lord Chief Justice, or
 - (b) by the Lord Chief Justice, after consulting the Lord Chancellor.
- (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 high judicial office within the meaning of Part 3 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—

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- (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, after consultation with—
- (a) the Lord Chief Justice (unless the tribunal is to consider his removal from office),
 - (b) the President of the Supreme Court of the United Kingdom,
 - (c) the Lord Chief Justice of England and Wales, and
 - (d) the Lord President of the Court of Session.
- (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 Lord Chancellor.
- (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 Lord Chancellor may pay to a member of a tribunal any such allowances or fees as he may determine.

136 Interpretation of Part 5

In this Part—

“listed judicial office” means an office listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);

“Lord Chief Justice”, unless otherwise stated, means the Lord Chief Justice of Northern Ireland;

“Lord Justice of Appeal” means a person styled as such under section 3 of the Judicature (Northern Ireland) Act 1978 (c. 23);

“protected judicial office” means the office of Lord Chief Justice, the office of Lord Justice of Appeal or a listed judicial office.