

JUSTICE (NORTHERN IRELAND) ACT 2002

EXPLANATORY NOTES

COMMENTARY

Part 1: the Judiciary

Appointment and Removal

Section 2: Introductory

11. This section sets out the offices which are covered by the sections dealing with judicial appointment and removal. These include the offices of Lord Chief Justice, Lords Justices of Appeal and any other office listed in Schedule 1. *Subsection (2)* provides for the First Minister and deputy First Minister, acting jointly, to be able to amend this list of offices (although they cannot add the offices of the Lord Chief Justice or Lord Justice of Appeal). The list may only be amended with the agreement of the Lord Chief Justice (*subsection (3)*).

Section 3: Judicial Appointments Commission

12. The Lord Chancellor is currently responsible for making or advising on all judicial appointments in Northern Ireland.
13. The Review recommended that on devolution a Judicial Appointments Commission should be set up to enhance public confidence in the judicial appointments system. This section provides for the creation of a Judicial Appointments Commission (which would be put in place on devolution of justice functions). The Commission will be responsible for making recommendations to the First Minister and deputy First Minister on judicial appointments from the level of High Court judge downwards.
14. The Commission will have 13 members, including the Lord Chief Justice as chairman (*subsections (2) and (4)*). *Subsection (4)* provides for the senior Lord Justice of Appeal to act as chairman in the Lord Chief Justice's absence. As well as the chairman, there will be five judicial members (*subsection (5)(a)*). These will be drawn from the judicial tiers listed in *subsection (6)*. In addition, there will be a barrister, a solicitor and five lay members appointed by the First Minister and deputy First Minister (*subsection (5)(b) and (c)*). *Subsection (7)* requires lay members of the Judicial appointments Commission to declare in writing their commitment to non-violence and exclusively peaceful and democratic means before being appointed. *Subsection (8)* requires the First Minister and deputy First Minister to ensure, so far as possible, that the lay membership is representative of the community in Northern Ireland in overall terms.
15. *Subsection (3)* gives effect to Schedule 2 which provides for the Commission's status, staff, funding and procedural arrangements.

Section 4: Appointment to most senior judicial offices

16. This section replaces section 12 of the Judicature (Northern Ireland) Act 1978. It requires the Prime Minister to consult the First Minister and deputy First Minister and

the Lord Chief Justice (or the senior Lord Justice of Appeal in his absence) before making recommendations to Her Majesty The Queen as to who should fill the posts of Lord Chief Justice and Lords Justices of Appeal. As recommended by the Review (para 6.109), new section 12(4) provides for the Commission to advise the First Minister and deputy First Minister over the procedure they should adopt for formulating their response to the Prime Minister. This procedure will be submitted to the Prime Minister for approval (new section 12(5)).

17. **Section 4** also amends the Judicature (Northern Ireland) Act 1978 to provide that the First Minister and deputy First Minister must advise Her Majesty The Queen on appointments to the post of High Court judge based on the Commission's recommendation (new section 12A and section 5(2)).

Section 5: Appointment to listed judicial offices

18. *Subsection (1)* gives effect to Schedule 3 which transfers to the First Minister and deputy First Minister the power to make appointments, or recommendations for appointment, to offices listed in Schedule 1. *Subsection (2)* provides that only a person selected by the Commission can be appointed, or recommended for appointment, to an office listed in Schedule 1. The section also sets out the procedure to be adopted by the Commission and the First Minister and deputy First Minister for filling those offices.
19. Once the Commission is informed by the First Minister and deputy First Minister of a vacancy it must select a person to be appointed or recommended for appointment, solely on the basis of merit (*subsection (9)*). The Commission is required (*subsection (4)*) to inform the First Minister and deputy First Minister of the person selected and provide them with a report explaining why that candidate was selected. If the First Minister and deputy First Minister do not (within a reasonable time after receiving the report) appoint, or recommend for appointment, the person selected by the Commission they must require the Commission to reconsider its decision once (*subsection (5)*), giving their reasons for doing so. The Commission can either reaffirm its selection or select a different person, reporting the reason for its decision to the First Minister and deputy First Minister (*subsection (6)*). The First Minister and deputy First Minister must appoint, or recommend for appointment, the person selected by the Commission after its reconsideration (*subsection (7)*). The Commission must, so far as it is practicable to do so, secure a range of persons reflective of the community in Northern Ireland is available for consideration by the Commission whenever it is required to select a person to be appointed, or recommended for appointment, to a listed judicial office (*subsection (8)*).

Section 6: Removal from most senior judicial offices

20. This section amends the Judicature (Northern Ireland) Act 1978 to provide for the removal of the Lord Chief Justice or a Lord Justice of Appeal or of a judge of the High Court appointed before section 7 comes into force. It requires the Prime Minister and the Lord Chancellor to consult the First Minister and deputy First Minister before making a motion for an address to Her Majesty The Queen by both Houses of Parliament recommending removal of a person from office, and no such motion may be presented in respect of any person unless a tribunal convened by the First Minister and deputy First Minister under section 8 has recommended that the person be removed from the office and reported this recommendation to the First Minister and deputy First Minister.
21. The First Minister and deputy First Minister must send a copy of this report, together with any response of their own, to the Lord Chancellor and Prime Minister to be laid before both Houses of Parliament before the Lord Chancellor and Prime Minister make a motion for removal. New section 12B(8) provides for the suspension of the Lord Chief Justice, Lord Justice of Appeal or judge of the High Court while the Lord Chancellor and Prime Minister consider making any such motion.

22. New section 12B(10) provides that removal and suspension of judges of the High Court appointed after the coming into force of section 7 are dealt with under section 7 of the Act instead of under the Judicature (Northern Ireland) Act 1978.

Section 7: Removal from listed judicial offices

23. This section gives the First Minister and deputy First Minister the power to remove a person holding a judicial office listed in Schedule 1 for misbehaviour or inability to perform the functions of the office, but only on the basis of the recommendation of a tribunal convened under section 8 and only with the agreement of the Lord Chief Justice.
24. This section also provides for the First Minister and deputy First Minister to suspend persons from judicial offices pending a decision on their removal, if a tribunal recommends this and the Lord Chief Justice agrees.

Section 8: Tribunals for considering removal

25. This section provides for the creation of tribunals for the purpose of considering the removal of the Lord Chief Justice, a Lord Justice of Appeal or a holder of any of the offices listed in Schedule 1. A tribunal to consider the removal of the Lord Chief Justice may only be convened by the First Minister and deputy First Minister (acting jointly) after consulting the Prime Minister (*subsections (1) and (3)*). A tribunal to consider the removal of a Lord Justice of Appeal may be convened by the First Minister and deputy First Minister after consulting the Lord Chief Justice and the Prime Minister or by the Lord Chief Justice after consulting the First Minister and deputy First Minister and the Prime Minister (*subsections (2) and (3)*). Tribunals to consider the removal of any other listed judicial office-holder may be convened by the First Minister and deputy First Minister (after consulting the Lord Chief Justice) or by the Lord Chief Justice (after consulting the First Minister and deputy First Minister) (*subsection (2)*).
26. Three members are to be appointed to the tribunal (*subsections (4) and (5)*). These are a chairman, a judicial member and a lay person. The chairman and judicial member are to be selected by the Lord Chancellor or the Lord Chief Justice (*subsections (7) and (8)*) and the lay person is to be selected by the First Minister and deputy First Minister (*subsection (9)*).
27. *Subsection (10)* provides for the Lord Chief Justice or, in the Lord Chief Justice's absence or when the Lord Chief Justice is under consideration for removal by a tribunal, the tribunal chairman to determine the procedure of the tribunal.