

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

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 Duty to Convene Commission: Special Rules**

##### **Supplementary**

##### ***Section 55: Seal***

197. This section makes provision for the Supreme Court to have an official seal, and for that seal to be judicially recognised so as not to require further proof of documents emanating from the Court.

##### ***Section 56: Records of the Supreme Court***

198. This section amends the Public Records Act 1958 to ensure that records of the Supreme Court are included among the "court records" under the general supervision of the Public Records Office. This is achieved by amending the list in paragraph 4(1) of Schedule 1 to the Public Records Act 1958 to add to the list of courts therein an entry for the Supreme Court.
199. In addition this section makes provision for the Chief Executive of the Supreme Court to have custody of the records of the Court by virtue of his office as chief executive, rather than by virtue of a determination by the Lord Chancellor to this effect.

##### ***Section 57 and Schedule 10: Proceedings under jurisdiction transferred to Supreme Court***

200. **Section 57** introduces Schedule 10, which makes transitional provision relating to proceedings which, at the time the Supreme Court is established, are pending in the House of Lords or Judicial Committee of the Privy Council under jurisdiction which is transferred to the Supreme Court. The essence of the approach is that such proceedings may be continued in the Supreme Court after the transfer of the jurisdiction as if they had commenced in the Supreme Court, and anything done in accordance with the rules applicable to proceedings in the House of Lords or Judicial Committee (as the case may be) is to be treated as having been done in accordance with the corresponding rules of the Supreme Court. In addition, there is a saving for any acts, decisions or orders of the House of Lords or Judicial Committee in proceedings under a transferred jurisdiction, which will have the same effect, with further proceedings pursuant to or in respect of them being possible, as if they were acts, decisions or orders of the Supreme Court.

##### ***Section 58: Northern Ireland Act 1998: excepted and reserved matters relating to the Supreme Court***

201. This section relates to the status of the UK Supreme Court under the Northern Ireland Act 1998. It provides that the Supreme Court is to be an excepted matter but that rights of appeal to the Supreme Court and legal aid for such appeals are to be reserved matters.

In so doing it ensures that the position of the UK Supreme Court reflects the current status of the judicial function of the House of Lords.

***Section 59: Renaming of Supreme Courts for England and Wales and Northern Ireland***

202. This section makes provision for the renaming of the Supreme Court of England and Wales and the Supreme Court of Judicature of Northern Ireland.
203. Subsection (1) provides that the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales. Subsections (2) and (3) provide respectively that the Supreme Court of Judicature of Northern Ireland is renamed the Court of Judicature of Northern Ireland and that the Northern Ireland Supreme Court Rules Committee is renamed the Northern Ireland Court of Judicature Rules Committee.
204. Subsection (4) provides for references to those bodies in other legislation and in any “instrument or other document” (so as to cover, for example, court forms) to have effect as references to those bodies as renamed.
205. Subsection (5) introduces Schedule 11, which provides additionally for direct textual amendment of numerous references in other legislation to one or other of the existing Supreme Courts.

***Schedule 11: Renaming of Supreme Courts for England and Wales and Northern Ireland***

206. **Schedule 11** works in conjunction with section 59 to give effect to the renaming of the Supreme Court of England and Wales and the Supreme Court of Judicature of Northern Ireland. Schedule 11 provides for direct textual amendments of the numerous references in other legislation to one or other of the existing Supreme Courts.
207. **Part 1** re-titles the Supreme Court Act 1981, Supreme Court (Offices) Act 1997, the Rules of the Supreme Court (Northern Ireland) 1980 and the Rules of the Supreme Court (Northern Ireland) (Revision) 1980, and provides for references to those enactments wherever they occur in any other enactment to be changed to references to those enactments as retitled.
208. **Part 2** covers the vast majority of the legislation which refers to the Supreme Court of England and Wales: paragraph 4 lists legislation in which the only references needing amendment are simply to “the Supreme Court”, and provides for all those references to be changed to references to “the Senior Courts”.
209. **Part 3** corresponds to Part 2: Paragraph 5 provides for references to a person being required to be a solicitor of the Supreme Court of Northern Ireland (which constitute the majority of references in UK legislation to the Supreme Court of Northern Ireland) to be replaced by references to a solicitor of the Court of Judicature; and paragraph 6 covers, in the same way as paragraph 4, legislation which refers to the Supreme Court of Northern Ireland.
210. **Part 4** deals with references in other legislation which require more tailored amendment. Of particular importance are the amendments made to the Interpretation Act 1978 by paragraph 18 of the Schedule. The definition of “Supreme Court” in Schedule 1 to the 1978 Act is amended so that “Supreme Court” is defined as the Supreme Court of the United Kingdom and will have that meaning wherever it appears in the statute book unless a contrary intention appears. In addition, the existing entries defining “Supreme Court” are replaced by entries defining “Senior Courts” and “Court of Judicature” respectively.

***Section 60: Interpretation of Part 3***

211. Subsection (1) defines ‘part of the United Kingdom’, ‘the senior judges’ and ‘the Supreme Court’ for the purposes of Part 3 of the Act.
212. Subsection (2) defines the term ‘high judicial office’ for the purposes of Part 3 of the Act. This expression is used in the requirements of eligibility for qualification as a Supreme Court judge in section 25, and in the requirements of eligibility to serve as an acting judge under sections 38 and 39. This definition replaces that in section 25 of the Appellate Jurisdiction Act 1876.
213. Subsection (3) defines the terms ‘ordinary judge’ and ‘senior ordinary judge’ (which are of particular importance in determining the person before whom oaths are to be taken on appointment, and who will chair and sit on the selection commission provided for in Schedule 8, should the President and Deputy President be unable to sit). An “ordinary judge” is defined in subsection (3)(a) as a judge of the Supreme Court other than the President or Deputy President. The “senior ordinary judge” is defined in subsection (3) (b) as the ordinary judge who has served longest as a judge of the Court (whether over one or more periods and whether or not always as an ordinary judge). Subsection (4) “carries over” seniority for this purpose, providing that service as a Lord of Appeal in Ordinary counts as service as judge of the Court in defining the senior ordinary judge.