

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### **Acting Judges**

##### *Section 38: Acting Judges*

147. This section makes provision enabling the Supreme Court to have access to additional Judges beyond its permanent membership to supplement the permanent members of the Supreme Court where necessary; sets out the mechanism for determining the “pool” from which acting judges will be drawn; and sets out the terms and conditions of any service as an acting judge.
148. Subsection (1) sets out the basic proposition that certain persons may act as judges of the Court if the President so requests. The persons who may be so requested are those who presently hold office as “senior territorial judges” (defined in subsection (8)), and those who are members of the supplementary panel (about which provision is made in section 39). As provided for in subsection (2) the Deputy President can make such a request if circumstances require.
149. Subsection (3) amends the Judicial Pensions and Retirement Act 1993 with the effect that acting judges cannot sit in the Supreme Court after the age of 75, bringing them into line with the provisions for continued sitting by retired Lords of Appeal in Ordinary and other “Lords of Appeal” (other than the Lord Chancellor) entitled to sit in the House of Lords at present.
150. Subsection (4) provides that any acting judge sitting in the Supreme Court should be treated for all purposes as a permanent judge of the Supreme Court (with the exception of the provisions as to appointment, tenure, remuneration, etc. listed in subsections (5) and (6)), and may accordingly perform any of the functions of a permanent judge of the Court.
151. Subsection (7) provides for the remuneration and allowances for acting judges, which are to be determined by the Lord Chancellor with the agreement of the Treasury and paid from money provided by Parliament.
152. Subsection (8) defines “senior territorial judge”, as judges of the Court of Appeal in England and Wales and their counterparts at senior appellate level in Scotland and Northern Ireland.