

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 Duty to Convene Commission: Special Rules

Practice and Procedure

Section 44: Specially qualified advisers

174. This section makes provision for the Supreme Court to have specially qualified advisers to assist it in its work for the purpose of hearings that may require specialist support. This derives from existing provision in the Supreme Court of Judicature Act 1891 (section 3) and the Judicial Standing Orders of the House of Lords (Order XVI).
175. Subsection (1) makes the basic provision empowering the Court, if it thinks it is necessary, to hear and dispose of proceedings, either wholly or in part, with the assistance of one or more specially qualified advisers.
176. Subsection (2) provides that any remuneration payable to an expert adviser is to be determined by the Court unless otherwise agreed between the adviser and the parties to the proceedings. This remuneration, as set out in subsection (3), will form part of the costs of the proceedings.

Section 45: Making of Rules

177. This section, together with section 46, sets out how Rules of Court will be made for the Supreme Court.
178. Subsection (1) provides for the President of the Supreme Court to make rules dealing with the Court's practice and procedure. This power is in part analogous to the way in which the House of Lords regulates its work through its Standing Orders and Practice Directions.
179. Subsection (2) provides that the power to make rules includes the power to provide rules for different cases, including different proceedings such as civil and criminal proceedings and on devolution matters.
180. Under subsection (3) the President is obliged to exercise the rule-making power with a view to ensuring that the Court is accessible, fair and efficient and the rules are simple and simply expressed.
181. Subsection (4) places a duty on the President, before making Supreme Court Rules, to consult the Lord Chancellor, the principal legal professional bodies of the different parts of the United Kingdom (listed in subsection (5)), and such other bodies, representing persons likely to be affected by the Rules, as the President considers it appropriate to consult.

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

Section 46: Procedure after Rules made

182. By virtue of subsection (1), Rules made by the President are to be submitted to the Lord Chancellor, and by virtue of subsection (2), Rules so allowed are to come into force on such day as the Lord Chancellor directs, and be contained in a statutory instrument to which the Statutory Instruments Act 1946 will apply as if it contained rules made by a Minister of the Crown. Such an instrument is, by virtue of subsection (3), to be subject to negative resolution procedure.

Section 47: Photography etc

183. This section removes the prohibition on photography in section 41 of the Criminal Justice Act 1925 and in section 29 of the Criminal Justice Act (Northern Ireland) 1945 (both of which prohibit the taking of photographs in all courts) in relation to the Supreme Court, by changing the definition of ‘court’ in those provisions to include all courts of justice except the Supreme Court.