

# CONSTITUTIONAL REFORM ACT 2005

---

## EXPLANATORY NOTES

### BACKGROUND

337. The Justice (Northern Ireland) Act 2002 makes provision for the establishment of the Northern Ireland Judicial Appointments Commission (“the NIJAC”). There is no provision in that Act in relation to disclosure of information pursuant to applications for judicial appointment. In line with England and Wales, provision is made in Part 5 to provide that information held by, or on behalf of “permitted persons”, may be disclosed to the NIJAC, for the purpose of selecting individuals for judicial appointment. Security and financial checks are to be carried out with a number of law-enforcement organisations, with regard to the background of individuals, before they can be appointed to judicial office.
338. [Part 5](#) also makes provision for the establishment of the office of the Northern Ireland Judicial Appointments Ombudsman. The Ombudsman will exercise an independent external complaints function in relation to individual judicial appointments in Northern Ireland recommended by the Northern Ireland Judicial Appointments Commission. (This will be in addition to the internal procedure established by the Commission to address complaints in the first instance.) He will receive and investigate individual complaints in respect of procedural conduct of judicial appointments, where maladministration, discrimination or unfairness is alleged to have occurred during competitions for particular posts. The Ombudsman will not have a role in relation to maladministration in relation to appointments to the most senior offices (Lord Chief Justice and Lord Justice of Appeal) as appointment to those offices will not fall within the remit of Northern Ireland Judicial Appointments Commission.
339. At present, the Lord Chief Justice, Lords Justices of Appeal and High Court Judges hold office during good behaviour subject to removal by Her Majesty after an address by Parliament. The Lord Chancellor can remove most other judicial office holders on grounds of misbehaviour or incapacity.
340. The Justice (Northern Ireland) Act 2002, as amended by the Justice (Northern Ireland) Act 2004, makes provision for removal of judicial office holders when responsibility for judicial appointments is devolved to the Northern Ireland Assembly.
341. [Sections 133 to 136](#) of the Act make provision for the removal of judicial office holders on reform of the office of the Lord Chancellor, taking account of the post devolution provisions in the 2002 Act. As at present, the Lord Chief Justice, Lords Justices of Appeal and High Court judges will hold office during good behaviour and may only be removed by Her Majesty after an address by Parliament. A motion for the presentation of an address may be made to the House of Commons by the Prime Minister and to the House of Lords by the Lord Chancellor or, if the Lord Chancellor is not a member of the House of Lords, another Minister of the Crown at his request. The Act empowers the Lord Chancellor to remove judicial office holders below High Court judge level, on the ground of misbehaviour or inability to perform the functions of the office, after consultation with the Lord Chief Justice.

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

342. A judicial office holder can only be removed from office following a recommendation by a removals tribunal. The Act details how such a tribunal may be convened and provides for its membership. The power to convene and the membership of a removals tribunal varies depending on the level of judge whose removal is under consideration.