



# Constitutional Reform Act 2005

## 2005 CHAPTER 4

### PART 2

#### ARRANGEMENTS TO MODIFY THE OFFICE OF LORD CHANCELLOR

##### *Qualifications for office of Lord Chancellor*

### **2 Lord Chancellor to be qualified by experience**

- (1) A person may not be recommended for appointment as Lord Chancellor unless he appears to the Prime Minister to be qualified by experience.
- (2) The Prime Minister may take into account any of these—
  - (a) experience as a Minister of the Crown;
  - (b) experience as a member of either House of Parliament;
  - (c) experience as a qualifying practitioner;
  - (d) experience as a teacher of law in a university;
  - (e) other experience that the Prime Minister considers relevant.
- (3) In this section “qualifying practitioner” means any of these—
  - (a) a person who has a Senior Courts qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);
  - (b) an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary;
  - (c) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

*Continued judicial independence*

**3 Guarantee of continued judicial independence**

- (1) The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.
- (2) Subsection (1) does not impose any duty which it would be within the legislative competence of the Scottish Parliament to impose.
- (3) A person is not subject to the duty imposed by subsection (1) if he is subject to the duty imposed by section 1(1) of the Justice (Northern Ireland) Act 2002 (c. 26).
- (4) The following particular duties are imposed for the purpose of upholding that independence.
- (5) The Lord Chancellor and other Ministers of the Crown must not seek to influence particular judicial decisions through any special access to the judiciary.
- (6) The Lord Chancellor must have regard to—
  - (a) the need to defend that independence;
  - (b) the need for the judiciary to have the support necessary to enable them to exercise their functions;
  - (c) the need for the public interest in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.
- (7) In this section “the judiciary” includes the judiciary of any of the following—
  - (a) the Supreme Court;
  - (b) any other court established under the law of any part of the United Kingdom;
  - (c) any international court.
- (8) In subsection (7) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—
  - (a) an agreement to which the United Kingdom or Her Majesty’s Government in the United Kingdom is a party, or
  - (b) a resolution of the Security Council or General Assembly of the United Nations.

**4 Guarantee of continued judicial independence: Northern Ireland**

- (1) For section 1 of the Justice (Northern Ireland) Act 2002 (c. 26) (guarantee of continued judicial independence) substitute—

**“1 Guarantee of continued judicial independence**

- (1) The following persons must uphold the continued independence of the judiciary—
  - (a) the First Minister,
  - (b) the deputy First Minister,
  - (c) Northern Ireland Ministers, and

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- (d) all with responsibility for matters relating to the judiciary or otherwise to the administration of justice, where that responsibility is to be discharged only in or as regards Northern Ireland.
- (2) The following particular duty is imposed for the purpose of upholding that independence.
- (3) The First Minister, the deputy First Minister and Northern Ireland Ministers must not seek to influence particular judicial decisions through any special access to the judiciary.
- (4) In this section “the judiciary” includes the judiciary of any of the following—
  - (a) the Supreme Court;
  - (b) any other court established under the law of any part of the United Kingdom;
  - (c) any international court.
- (5) In subsection (4) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—
  - (a) an agreement to which the United Kingdom or Her Majesty’s Government in the United Kingdom is a party, or
  - (b) a resolution of the Security Council or General Assembly of the United Nations.”
- (2) In section 91(2) of that Act (extent: provisions not restricted to Northern Ireland), before paragraph (a) insert—
  - “(za) section 1,”.

#### *Representations by senior judges*

### **5 Representations to Parliament**

- (1) The chief justice of any part of the United Kingdom may lay before Parliament written representations on matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in that part of the United Kingdom.
- (2) In relation to Scotland those matters do not include matters within the legislative competence of the Scottish Parliament, unless they are matters to which a Bill for an Act of Parliament relates.
- (3) In relation to Northern Ireland those matters do not include transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates.
- (4) In subsection (3) the reference to transferred matters has the meaning given by section 4(1) of the Northern Ireland Act 1998 (c. 47).
- (5) In this section “chief justice” means—
  - (a) in relation to England and Wales or Northern Ireland, the Lord Chief Justice of that part of the United Kingdom;
  - (b) in relation to Scotland, the Lord President of the Court of Session.

## **6 Representations to the Northern Ireland Assembly**

- (1) The Lord Chief Justice of Northern Ireland may lay before the Northern Ireland Assembly written representations on matters within subsection (2) that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in Northern Ireland.
- (2) The matters are—
  - (a) excepted or reserved matters to which a Bill for an Act of the Northern Ireland Assembly relates;
  - (b) transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates.
- (3) In subsection (2) references to excepted, reserved and transferred matters have the meaning given by section 4(1) of the Northern Ireland Act 1998.

### *Judiciary and courts in England and Wales*

## **7 President of the Courts of England and Wales**

- (1) The Lord Chief Justice holds the office of President of the Courts of England and Wales and is Head of the Judiciary of England and Wales.
- (2) As President of the Courts of England and Wales he is responsible—
  - (a) for representing the views of the judiciary of England and Wales to Parliament, to the Lord Chancellor and to Ministers of the Crown generally;
  - (b) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales within the resources made available by the Lord Chancellor;
  - (c) for the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales and the allocation of work within courts.
- (3) The President of the Courts of England and Wales is president of the courts listed in subsection (4) and is entitled to sit in any of those courts.
- (4) The courts are—
  - the Court of Appeal
  - the High Court
  - the Crown Court
  - the county courts
  - the magistrates' courts.
- (5) In section 1 of the Supreme Court Act 1981 (c. 54), subsection (2) (Lord Chancellor to be president of the Supreme Court of England and Wales) ceases to have effect.

## **8 Head and Deputy Head of Criminal Justice**

- (1) There is to be a Head of Criminal Justice.
- (2) The Head of Criminal Justice is—
  - (a) the Lord Chief Justice, or
  - (b) if the Lord Chief Justice appoints another person, that person.

- (3) The Lord Chief Justice may appoint a person to be Deputy Head of Criminal Justice.
- (4) The Lord Chief Justice must not appoint a person under subsection (2)(b) or (3) unless these conditions are met—
  - (a) the Lord Chief Justice has consulted the Lord Chancellor;
  - (b) the person to be appointed is an ordinary judge of the Court of Appeal.
- (5) A person appointed under subsection (2)(b) or (3) holds the office to which he is appointed in accordance with the terms of his appointment.

## **9 Head and Deputy Head of Family Justice**

- (1) The President of the Family Division is Head of Family Justice.
- (2) The Lord Chief Justice may appoint a person to be Deputy Head of Family Justice.
- (3) The Lord Chief Justice must not appoint a person under subsection (2) unless these conditions are met—
  - (a) the Lord Chief Justice has consulted the Lord Chancellor;
  - (b) the person to be appointed is an ordinary judge of the Court of Appeal.
- (4) A person appointed as Deputy Head of Family Justice holds that office in accordance with the terms of his appointment.

### *Judiciary and courts in Northern Ireland*

## **10 The Lord Chancellor and Northern Ireland courts**

In the Judicature (Northern Ireland) Act 1978 (c. 23) after section 68 insert—

### **“68A Lord Chancellor’s duty**

- (1) The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of—
  - (a) the Supreme Court,
  - (b) county courts,
  - (c) magistrates' courts, and
  - (d) coroners' courts,and that appropriate services are provided for those courts.
- (2) The Lord Chancellor must, within 18 months of the coming into force of this section, and afterwards annually, prepare and lay before both Houses of Parliament a report as to the way in which he has discharged his duty under subsection (1).”

## **11 Lord Chief Justice of Northern Ireland**

For subsection (1) of section 12 of the Justice (Northern Ireland) Act 2002 (c. 26) (role of the Lord Chief Justice) substitute—

- “(1A) The Lord Chief Justice holds the office of President of the Courts of Northern Ireland and is Head of the Judiciary of Northern Ireland.

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- (1B) As President of the Courts of Northern Ireland he is responsible—
- (a) for representing the views of the judiciary of Northern Ireland to Parliament, the Lord Chancellor and Ministers of the Crown generally;
  - (b) for representing the views of the judiciary of Northern Ireland to the Northern Ireland Assembly, the First Minister and deputy First Minister and Northern Ireland Ministers;
  - (c) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of Northern Ireland within the resources made available by the Lord Chancellor;
  - (d) for the maintenance of appropriate arrangements for the deployment of the judiciary of Northern Ireland and the allocation of work within courts.

(1C) The President of the Courts of Northern Ireland is president of the courts listed in subsection (1D) and is entitled to sit in any of those courts.

- (1D) The courts are—
- the Court of Appeal
  - the High Court
  - the Crown Court
  - the county courts
  - the magistrates' courts.”

*Other provisions about the judiciary and courts*

## **12 Powers to make rules**

- (1) Part 1 of Schedule 1 sets out a process for the exercise of rule-making powers.
- (2) Part 2 of the Schedule contains amendments of Acts that contain rule-making powers.
- (3) Those amendments—
  - (a) provide for those powers to be exercised in accordance with the process set out in Part 1 of the Schedule, and
  - (b) make consequential provision.

## **13 Powers to give directions**

- (1) Part 1 of Schedule 2 sets out a process for the exercise of powers to give directions.
- (2) Part 2 of the Schedule contains amendments of Acts that contain powers to give directions.
- (3) Those amendments—
  - (a) provide for those powers to be exercised in accordance with the process set out in Part 1 of the Schedule, and
  - (b) make consequential provision.

## **14 Transfer of appointment functions to Her Majesty**

Schedule 3 provides for—

- (a) Her Majesty instead of the Lord Chancellor to make appointments to certain offices, and
- (b) the modification of enactments relating to those offices.

## **15 Other functions of the Lord Chancellor and organisation of the courts**

- (1) Schedule 4 provides for—
  - (a) the transfer of functions to or from the Lord Chancellor,
  - (b) the modification of other functions of the Lord Chancellor,
  - (c) the modification of enactments relating to those functions, and
  - (d) the modification of enactments relating to the organisation of the courts.
- (2) Schedule 5 makes similar provision about functions under legislation relating to Northern Ireland.

## **16 Functions of the Lord Chief Justice during vacancy or incapacity**

- (1) This section applies during any period when—
  - (a) the office of Lord Chief Justice is vacant, or
  - (b) the Lord Chief Justice is incapacitated.
- (2) During such a period—
  - (a) any function of the Lord Chief Justice may be exercised by the senior Head of Division;
  - (b) anything which falls to be done in relation to the Lord Chief Justice may be done in relation to the senior Head of Division.
- (3) The senior Head of Division is—
  - (a) the Master of the Rolls, or
  - (b) the President of the Queen’s Bench Division, if the office in paragraph (a) is vacant, or
  - (c) the President of the Family Division, if the offices in paragraphs (a) and (b) are vacant, or
  - (d) the Chancellor of the High Court, if the offices in paragraphs (a), (b) and (c) are vacant.
- (4) For the purposes of this section—
  - (a) the Lord Chief Justice is to be regarded as incapacitated only if at least three of the Heads of Division declare in writing that they are satisfied that he is incapacitated;
  - (b) in such a case, the Lord Chief Justice is to be regarded as incapacitated until at least three of the Heads of Division declare in writing that they are satisfied that he is no longer incapacitated.
- (5) In this section—
  - (a) “Lord Chief Justice” means the Lord Chief Justice of England and Wales;
  - (b) “incapacitated”, in relation to the Lord Chief Justice, means unable to exercise the functions of that office;
  - (c) “Head of Division” means each of the office holders referred to in subsection (3).

*Lord Chancellor's oath*

**17 Lord Chancellor's oath**

(1) In the Promissory Oaths Act 1868 (c. 72) after section 6 insert—

**“6A Lord Chancellor's Oath**

(1) The oath set out in subsection (2) shall be tendered to and taken by the Lord Chancellor, after and in the same manner as the official oath, as soon as may be after his acceptance of office.

(2) The oath is—

““I, , do swear that in the office of Lord High Chancellor of Great Britain I will respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible. So help me God.””

(2) The section inserted by subsection (1) does not apply in the case of acceptance of office before the coming into force of this section.

*Speakership of the House of Lords*

**18 Speakership of the House of Lords**

Schedule 6 contains amendments relating to the Speakership of the House of Lords.

*Functions subject to transfer, modification or abolition*

**19 Transfer, modification or abolition of functions by order**

(1) The Lord Chancellor may by order make provision for any of these purposes—

- (a) to transfer an existing function of the Lord Chancellor to another person;
- (b) to direct that an existing function of the Lord Chancellor is to be exercisable concurrently with another person;
- (c) to direct that an existing function of the Lord Chancellor exercisable concurrently with another person is to cease to be exercisable by the Lord Chancellor;
- (d) to modify an existing function of the Lord Chancellor;
- (e) to abolish an existing function of the Lord Chancellor.

(2) An order under subsection (1) may in particular—

- (a) amend or repeal any of the following—
  - (i) an enactment other than one contained in an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;
  - (ii) subordinate legislation other than subordinate legislation made under an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;



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- (iii) any other instrument or document, including a prerogative instrument;
- (b) include—
  - (i) any supplementary, incidental or consequential provision, and
  - (ii) any transitory, transitional or saving provision,which the Lord Chancellor considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, provision made under subsection (1).
- (3) The amendments that may be made by virtue of subsection (2)(a) are in addition to those made by or under any other provision of this Act.
- (4) An order under subsection (1) may not include provision that may be made under section 1(1) of the Ministers of the Crown Act 1975 (c. 26) (power to transfer functions to other Ministers etc).
- (5) An order under subsection (1) may not be made in relation to any function of the Lord Chancellor that is within Schedule 7.
- (6) An order under subsection (1) may amend Schedule 7 so as to include any function which, by virtue of provision in the order—
  - (a) becomes exercisable by the Lord Chancellor concurrently with another person, or
  - (b) is modified.
- (7) An order under subsection (1) may not, to the extent that it amends Schedule 7, be revoked by another order under subsection (1).
- (8) In this section—
  - “existing function” means any function other than one that is conferred by—
    - (a) an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed, or
    - (b) subordinate legislation made under an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;
  - “prerogative instrument” means an Order in Council, warrant, charter or other instrument made under the prerogative.

## **20 Protected functions not transferable under Ministers of the Crown Act 1975**

- (1) The Ministers of the Crown Act 1975 (c. 26) is amended as follows.
- (2) In section 1 (power by Order in Council to transfer functions of Ministers), after subsection (5) insert—
  - “(6) This section does not apply to the functions of the Lord Chancellor that are within Schedule 7 to the Constitutional Reform Act 2005.
  - (7) An Order in Council under this section may amend Schedule 7 to the Constitutional Reform Act 2005 so as to include any function which, by virtue of provision in the Order in Council—
    - (a) is transferred to the Lord Chancellor,

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- (b) becomes exercisable by the Lord Chancellor concurrently with another person, or
  - (c) remains exercisable by the Lord Chancellor but ceases to be exercisable concurrently with another person.
- (8) An Order in Council under this section may not, to the extent that it amends Schedule 7 to the Constitutional Reform Act 2005, be revoked by another Order in Council under this section.”
- (3) After section 5(3) (Orders under Act to be revocable) insert—
- “(3A) Subsection (3) is subject to section 1(8).”

## **21 Amendment of Schedule 7**

- (1) The Lord Chancellor may by order amend Schedule 7 so as to include within that Schedule any function of the Lord Chancellor under an enactment, other than an enactment contained in an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed.
- (2) For the purposes of subsection (1) it does not matter whether a function of the Lord Chancellor is exercisable by him alone or concurrently with another person.
- (3) An order made under this section may not be revoked by an order made under this section.

### *Supplementary*

## **22 Transfers: supplementary**

- (1) This section applies where a function of the Lord Chancellor is transferred to another person (“the transferee”) by any provision of this Act or of an order under section 19 (“the amending provision”).
- (2) Where the transferee is Her Majesty, references to the transferee in the following provisions of this section are to be read as references to the Lord Chancellor.
- (3) The transfer does not affect the validity of anything done (or having effect as if done) by or in relation to the Lord Chancellor before the commencement of the amending provision.
- (4) So far as is necessary in consequence of the transfer, an enactment or instrument passed or made before the commencement of the provision has effect, subject to any amendment made by the amending provision or any other provision of this Act, as if—
  - (a) a reference to the Lord Chancellor were a reference to the transferee;
  - (b) a reference to the Lord Chancellor’s Department were a reference to the department of the transferee;
  - (c) a reference to an officer of the Lord Chancellor were a reference to an officer of the transferee.
- (5) Anything done by or in relation to the Lord Chancellor in connection with the function has effect, so far as is necessary for continuing its effect after the commencement of the amending provision, as if done by or in relation to the transferee.

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- (6) Anything which relates to the function and which is in the process of being done by or in relation to the Lord Chancellor at the commencement of the amending provision may be continued by or in relation to the transferee.
- (7) Legal proceedings to which the Lord Chancellor is party in relation to the function at the commencement of the amending provision may be continued by or against the transferee.
- (8) Documents or forms printed for use in connection with the function may be used in connection with it even though they contain (or are to be read as containing) references to the Lord Chancellor, his Department or an officer of his.
- (9) For the purposes of the use of any such documents after the commencement of the amending provision, those references are to be read as references to the transferee, his department or an officer of his.