



# Constitutional Reform Act 2005

## 2005 CHAPTER 4

### PART 5

#### JUDICIAL APPOINTMENTS AND REMOVALS: NORTHERN IRELAND

#### CHAPTER 1

#### APPOINTMENTS

#### *Complaints and references*

#### 125 **Complaints: interpretation**

After section 9A of the 2002 Act insert—

#### **“9B Complaints: interpretation**

- (1) This section applies for the purposes of this Part.
- (2) A Commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission.
- (3) A departmental complaint is a complaint by a qualifying complainant of maladministration by the Lord Chancellor or the Northern Ireland Court Service in connection with any of the following—
  - (a) recommendation for or appointment to a listed judicial office;
  - (b) appointment under section 2 of the Taxes Management Act 1970 as a Commissioner for the general purposes of the income tax for Northern Ireland.
- (4) A qualifying complainant is a complainant who claims to have been adversely affected, as an applicant for selection or as a person selected under this Part, by the maladministration complained of.”

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*Changes to legislation: Constitutional Reform Act 2005, Cross Heading: Complaints and references is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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#### Commencement Information

- II** S. 125 partly in force; s. 125 not in force at Royal Assent see. s. 148; s. 125 in force for specified purposes at 25.9.2006 by S.I. 2006/1537, art. 3(b)

### 126 Complaints to the Commission or the Lord Chancellor

After section 9B of the 2002 Act insert—

#### “9C Complaints to the Commission or the Lord Chancellor

- (1) The Commission must make arrangements for investigating any Commission complaint made to it.
- (2) The Lord Chancellor must make arrangements for investigating any departmental complaint made to him.
- (3) Arrangements under this section need not apply to a complaint made more than 28 days after the matter complained of.”

### 127 Complaints to the Ombudsman

After section 9C of the 2002 Act insert—

#### “9D Complaints to the Ombudsman

- (1) Subsections (2) and (3) apply to a complaint which the complainant—
  - (a) has made to the Commission or Lord Chancellor in accordance with arrangements under section 9C, and
  - (b) makes to the Ombudsman not more than 28 days after being notified of the Commission's or Lord Chancellor's decision on the complaint.
- (2) If the Ombudsman considers that investigation of the complaint is not necessary, he must inform the complainant.
- (3) Otherwise he must investigate the complaint.
- (4) The Ombudsman may investigate a complaint which the complainant—
  - (a) has made to the Commission or the Lord Chancellor in accordance with arrangements under section 9C, and
  - (b) makes to the Ombudsman at any time.
- (5) The Ombudsman may investigate a transferred complaint made to him, and no such complaint may be made under the Judicial Appointments Order after the commencement of this section.
- (6) The Judicial Appointments Order is the Judicial Appointments Order in Council 2001, which sets out the functions of Her Majesty's Commissioners for Judicial Appointments.
- (7) A transferred complaint is a complaint that lay to those Commissioners (whether or not it was made to them) in respect of the application of procedures for appointment to listed judicial offices before the commencement

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of this section, but not a complaint that those Commissioners had declined to investigate or on which they had concluded their investigation.

- (8) Any complaint to the Ombudsman under this section must be in a form approved by him.”

## 128 Report and recommendations

After section 9D of the 2002 Act insert—

### “9E Report and recommendations

- (1) The Ombudsman must prepare a report on any complaint he has investigated under section 9D.
- (2) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) whether he considers the complaint should be upheld in whole or part;
  - (c) if he does, what if any action he recommends should be taken by the Commission or the Lord Chancellor as a result of the complaint.
- (3) The recommendations that may be made under subsection (2)(c) include recommendations for the payment of compensation.
- (4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the complainant as a result of maladministration and not as a result of any failure to be appointed to an office to which the complaint related.”

## 129 Report procedure

After section 9E of the 2002 Act insert—

### “9F Report procedure

- (1) This section applies to a report under section 9E.
- (2) The Ombudsman must submit a draft of the report—
  - (a) to the Lord Chancellor, and
  - (b) if the complaint was a Commission complaint, to the Commission.
- (3) In finalising the report the Ombudsman—
  - (a) must have regard to any proposal by the Lord Chancellor or the Commission for changes in the draft report;
  - (b) must include in the report a statement of any such proposal not given effect to.
- (4) The report must be signed by the Ombudsman.
- (5) If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission.
- (6) Otherwise the Ombudsman must send the report to the Lord Chancellor.

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- (7) The Ombudsman must send a copy of the report to the complainant, but that copy must not include information—
- (a) which relates to an identified or identifiable individual other than the complainant, and
  - (b) whose disclosure by the Ombudsman to the complainant would (apart from this subsection) be contrary to section 9I.”

### 130 References by the Lord Chancellor

After section 9F of the 2002 Act insert—

#### “9G References by the Lord Chancellor

- (1) If the Lord Chancellor refers to the Ombudsman any matter relating to the procedures of the Commission or a committee of the Commission, the Ombudsman must investigate it.
- (2) The matter may relate to such procedures generally or in a particular case.
- (3) The Ombudsman must report to the Lord Chancellor on any investigation under this section.
- (4) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) what if any action he recommends should be taken by any person in relation to the matter.
- (5) The report must be signed by the Ombudsman.”

### 131 Information

After section 9G of the 2002 Act insert—

#### “9H Information

The Commission and the Lord Chancellor must provide the Ombudsman with such information as he may reasonably require relating to the subject matter of an investigation under section 9D or 9G.”

### 132 Confidentiality in relation to judicial appointments and discipline

After section 9H of the 2002 Act insert—

#### “9I Confidentiality in relation to judicial appointments and discipline

- (1) A person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of a relevant provision must not disclose it except with lawful authority.
- (2) These are the relevant provisions—

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- (a) section 12, 12A and 12B of the Judicature (Northern Ireland) Act 1978 (appointment and removal of Lord Chief Justice, Lords Justices of Appeal and judges of High Court);
  - (b) sections 3, 5, 7 and 9 to 9H of this Act (appointment and removal of judicial officers, and appointment and removal of lay magistrates);
  - (c) sections 134 and 135 of the Constitutional Reform Act 2005 (removal from judicial offices);
  - (d) section 16 of this Act (complaints about judicial officers);
- (3) Information is confidential if it relates to an identified or identifiable individual (a “subject”).
- (4) Confidential information is disclosed with lawful authority only if and to the extent that any of the following applies—
  - (a) the disclosure is with the consent of each person who is a subject of the information (but this is subject to subsection (5));
  - (b) the disclosure is for (and is necessary for) the exercise by any person of functions under a relevant provision or a decision whether to exercise them;
  - (c) the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description.
- (5) An opinion or other information given by one identified or identifiable individual (A) about another (B)—
  - (a) is information that relates to both;
  - (b) must not be disclosed to B without A's consent.
- (6) This section does not prevent the disclosure with the agreement of the Lord Chancellor and the Lord Chief Justice of information as to disciplinary action taken in accordance with a relevant provision.
- (7) This section does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.
- (8) A contravention of this section in respect of any information is actionable, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (9) But it is actionable only at the suit of a person who is a subject of the information.

*Transfer of functions of justices of the peace”*

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 132(4A) words substituted by [2015 c. 2 s. 83\(1\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(2\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(3\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(4\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(6\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(8\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(9\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(10\)\(a\)](#)
- Sch. 7 para. 4Pt. A words substituted by [2007 c. 15 s. 144\(10\)\(b\)](#)