



# Northern Ireland Act 2009

## 2009 CHAPTER 3

An Act to make provision in relation to policing and justice in Northern Ireland; and to amend section 86 of the Northern Ireland Act 1998. [12th March 2009]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Northern Ireland department with policing and justice functions**

Schedule 1 (Northern Ireland department with policing and justice functions) has effect.

VALID FROM 26/09/2009

### **2 Judicial appointments and removals**

- (1) For sections 12 and 12B of the Judicature (Northern Ireland) Act 1978 (c. 23) substitute the sections 12 to 12C set out in Schedule 2.
- (2) The Justice (Northern Ireland) Act 2002 (c. 26) is amended as set out in Schedule 3.
- (3) Schedule 4 (which transfers appointment and other related functions from the Lord Chancellor to the Northern Ireland Judicial Appointments Commission etc) has effect.
- (4) Schedule 5 (which contains consequential amendments and transitional provision) has effect.
- (5) Schedule 6 (which makes provision for reviewing arrangements for judicial appointments and removals etc) has effect.

**Status:** Point in time view as at 12/03/2009. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Northern Ireland Act 2009. (See end of Document for details)

#### Commencement Information

- II** S. 2 partly in force; s. 2 not in force at Royal Assent see s. 5; s. 2(3) in force for certain purposes at 26.9.2009 by S.I. 2009/2466, art. 2(a)

### 3 Miscellaneous amendments

- (1) In Article 26C(5) of the Juries (Northern Ireland) Order 1996 (S.I. 1996/1141 (N.I. 6))—
- (a) for “Attorney General” substitute “relevant authority”, and
  - (b) at the end insert “; and for this purpose “relevant authority” means—
    - (a) in relation to cases in which national security or terrorism is involved, the Advocate General for Northern Ireland;
    - (b) in relation to other cases, the Attorney General for Northern Ireland.”
- (2) After section 30 of the Justice (Northern Ireland) Act 2002 (c. 26) insert—

#### “30A Corporation sole etc

- (1) The Director of Public Prosecutions for Northern Ireland is a corporation sole.
- (2) The Director may do anything, apart from borrowing money, which is calculated to facilitate the exercise of the Director's functions or which is incidental or conducive to the exercise of those functions.
- (3) An instrument or other document purporting to be signed or otherwise executed by or on behalf of the Director is to be received in evidence and is, unless the contrary is proved, to be taken to be so signed or executed.”

#### Commencement Information

- I2** S. 3 partly in force; s. 3(1) not in force at Royal Assent see s. 5(6)(7)(b)

### 4 Amendments to section 86 of the Northern Ireland Act 1998

- (1) Section 86 of the Northern Ireland Act 1998 (c. 47) is amended as follows.
- (2) In subsections (2)(a) and (3)(a) for “(whether by virtue of an Order under section 4 or otherwise)” substitute “other than by virtue of an Order under section 4”.
- (3) After subsection (3) insert—
- “(3A) An Order under subsection (1) in relation to an Order under section 4 may make provision doing any of the following—
- (a) transferring to a United Kingdom authority, with effect from any date specified in the Order under subsection (1), any function which immediately before that date is exercisable by a Northern Ireland authority;
  - (b) transferring to a Northern Ireland authority, with effect from any date specified in the Order under subsection (1), any function which

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- immediately before that date is exercisable by a United Kingdom authority;
- (c) conferring a function on a United Kingdom authority or a Northern Ireland authority;
  - (d) removing a function from a United Kingdom authority or a Northern Ireland authority.”

## 5 Final provisions

- (1) This Act may be cited as the Northern Ireland Act 2009.
- (2) An amendment or repeal contained in this Act has the same extent as the enactment or instrument or relevant part of the enactment or instrument to which the amendment or repeal relates.
- (3) The Secretary of State may by order made by statutory instrument make supplementary, incidental or consequential provision for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (4) An order under subsection (3) may contain—
  - (a) provision amending any Act or Northern Ireland legislation or any instrument made under an Act or Northern Ireland legislation;
  - (b) transitory and transitional provision and savings.
- (5) A statutory instrument containing an order under subsection (3) may not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (6) Subject to subsection (7), this Act comes into force on the day it is passed.
- (7) The following provisions come into force on the day appointed by the Secretary of State by order made by statutory instrument—
  - (a) section 2 and the Schedules mentioned in that section;
  - (b) section 3(1);and different days may be appointed for different purposes.
- (8) The Secretary of State may by order made by statutory instrument make transitory or transitional provision or savings in connection with the coming into force of any provision of this Act.

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### Subordinate Legislation Made

- P1** [S. 5\(7\)](#) power partly exercised; 26.9.2009 appointed for specified provisions and purposes by [{S.I. 2009/2466}](#), art. 2

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## SCHEDULES

### SCHEDULE 1

Section 1

#### NORTHERN IRELAND DEPARTMENT WITH POLICING AND JUSTICE FUNCTIONS

#### PART 1

##### PRELIMINARY

- 1 In this Schedule “the 1998 Act” means the Northern Ireland Act 1998 (c. 47).
- 2 For the purposes of paragraph 22 of Schedule 2 to the 1998 Act, treat this Schedule as being contained in Part 3 of the 1998 Act.

#### PART 2

##### AMENDMENTS TO THE 1998 ACT RELATING TO DEPARTMENTAL MODEL FOR POLICING AND JUSTICE FUNCTIONS

- 3 (1) Amend section 21A of the 1998 Act as follows.
  - (2) In subsections (1) and (6) after “(3)” insert “, (3A) ”.
  - (3) After subsection (3) insert—
    - “(3A) The Act may provide for the department to be in the charge of a Northern Ireland Minister appointed by virtue of a nomination—
      - (a) made by one or more members of the Assembly, and
      - (b) approved by a resolution of the Assembly passed with the support of a majority of the members voting on the motion for the resolution, a majority of the designated Nationalists voting and a majority of the designated Unionists voting.”
- 4 (1) Amend Schedule 4A to the 1998 Act as follows.
  - (2) At the end of the heading for Part 1 insert “ by virtue of section 21A(3) ”.
  - (3) After Part 1 insert—

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## “PART 1A

### DEPARTMENT IN THE CHARGE OF MINISTER APPROVED BY RESOLUTION OF THE ASSEMBLY BY VIRTUE OF SECTION 21A(3A)

#### Introduction

3A (1) This Part of this Schedule has effect in relation to a Northern Ireland department—

- (a) the functions of which consist wholly or mainly of devolved policing and justice functions, and
- (b) in relation to which an Act of the Assembly provides, by virtue of section 21A(3A), for it to be in the charge of a Northern Ireland Minister (the “relevant Minister”) appointed by virtue of a nomination—
  - (i) made by one or more members of the Assembly, and
  - (ii) approved by a resolution of the Assembly passed with the support of a majority of the members voting on the motion for the resolution, a majority of the designated Nationalists voting and a majority of the designated Unionists voting.

(2) In this paragraph “devolved policing and justice function” has the same meaning as in section 21A (see subsection (8) of that section).

#### Modification of section 16A

3B (1) Section 16A(3) shall have effect with the following modifications.

- (2) It shall have effect as if in paragraph (b) after “Ministers” there were inserted “ (other than the relevant Ministerial office (within the meaning of Part 1A of Schedule 4A)) ”.
- (3) It shall have effect as if after paragraph (b) there were inserted “; and
  - (c) once the offices to be filled under paragraphs (a) and (b) have been filled, the relevant Ministerial office (within the meaning of Part 1A of Schedule 4A) shall be filled by applying paragraph 3D(4) to (8) of that Schedule”.

#### Section 18 not to apply to relevant Minister

3C Section 18 (Northern Ireland Ministers) shall not apply in relation to—

- (a) the relevant Minister, or
- (b) the Ministerial office held by the relevant Minister (the “relevant Ministerial office”),

and paragraph 3D shall apply instead.

#### Provisions relating to relevant Minister

3D (1) Where any of the following conditions is satisfied—

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- (a) the relevant Minister shall (if holding office at the time) cease to hold office, and
  - (b) the relevant Ministerial office shall be filled by applying sub-paragraphs (4) to (8) within a period specified in standing orders.
- (2) The conditions are—
- (a) a determination under section 17(1) takes effect;
  - (b) a resolution which causes the relevant Ministerial office to become vacant is passed under section 30(2);
  - (c) a direction which causes the relevant Ministerial office to become vacant is given under section 30A(5);
  - (d) a period of exclusion under section 30(2) or 30A(5) comes to an end (otherwise than by virtue of section 95A(6) or (7));
  - (e) such other circumstances obtain as may be specified in standing orders for the purposes of section 18(1)(e) but only so far as standing orders provide for those circumstances to be applicable for the purposes of this sub-paragraph.
- (3) If relevant, the relevant Ministerial office shall be filled by applying sub-paragraphs (4) to (8) after section 18(2) to (6) is applied in relation to the other Ministerial offices.
- (4) One or more members of the Assembly may nominate another member of the Assembly to hold the relevant Ministerial office.
- (5) The nomination shall not take effect unless it is approved by a resolution of the Assembly passed with the support of—
- (a) a majority of the members voting on the motion for the resolution,
  - (b) a majority of the designated Nationalists voting, and
  - (c) a majority of the designated Unionists voting.
- (6) Once one member has been nominated, no further nominations may be made unless and until sub-paragraph (7) applies.
- (7) If—
- (a) the nomination does not take effect within a period specified in standing orders, or
  - (b) the nominated person does not take up the office for which the person has been nominated within that period,
- a further nomination of a member of the Assembly may be made under sub-paragraph (4).
- (8) Sub-paragraphs (4) to (7) shall be applied as many times as may be necessary to secure that the relevant Ministerial office is filled.
- (9) The holding of office as First Minister or deputy First Minister shall not prevent a person being nominated to hold the relevant Ministerial office.
- (10) The relevant Minister shall not take up office until the Minister has affirmed the terms of the pledge of office.
- (11) The relevant Minister shall cease to hold office if—
- (a) the Minister resigns by notice in writing to the First Minister and the deputy First Minister,

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- (b) the Minister ceases to be a member of the Assembly otherwise than by virtue of a dissolution, or
    - (c) the Assembly resolves that the Minister is to cease to hold office.
  - (12) A resolution for the purposes of sub-paragraph (11)(c) must be passed with the support of—
    - (a) a majority of the members voting on the motion for the resolution,
    - (b) a majority of the designated Nationalists voting, and
    - (c) a majority of the designated Unionists voting.
  - (13) A motion for a resolution for the purposes of sub-paragraph (11)(c) shall not be moved unless—
    - (a) it is supported by at least 30 members of the Assembly, or
    - (b) it is moved by the First Minister and the deputy First Minister acting jointly.
  - (14) If the relevant Minister ceases to hold office at any time, otherwise than by virtue of sub-paragraph (1), the relevant Ministerial office shall be filled by applying sub-paragraphs (4) to (8) within a period specified in standing orders.
  - (15) Where—
    - (a) the Assembly has resolved under section 30(2) that a political party does not enjoy its confidence, and
    - (b) the party's period of exclusion under that provision has not come to an end,no member of that party may be nominated under sub-paragraph (4).
  - (16) Where—
    - (a) the Secretary of State has given a direction under section 30A(5) in respect of a political party, and
    - (b) the party's period of exclusion under that provision has not come to an end,no member of that party may be nominated under sub-paragraph (4).
  - (17) In this paragraph, a reference to a period of exclusion under any provision is, in the case of a period of exclusion under that provision which has been extended, a reference to that period as extended.”
- (4) In paragraph 12(1) after “21A(3),” insert “ (3A), ”.
- (5) After paragraph 12 insert—
- “13 Paragraphs 3(10), 3D(14), 7(10), 11(10) and (11) and 11E(10) of this Schedule shall have effect subject to paragraphs 2 and 3 of Schedule 12A (as those paragraphs are modified at any time by virtue of paragraph 12 of this Schedule).”

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### PART 3

#### SPECIAL PROVISION APPLYING TO FIRST POLICING AND JUSTICE DEPARTMENT

##### *Application*

- 5 (1) Paragraphs 6 to 8 apply in relation to the first Northern Ireland department established by an Act of the Northern Ireland Assembly the purpose of which is to exercise functions consisting wholly or mainly of devolved policing and justice functions (as defined in section 21A(8) of the 1998 Act).
- (2) But—
- (a) they apply only if that Act of the Assembly makes provision of the kind mentioned in section 21A(3A) of the 1998 Act (“the initial ministerial provision”), and
  - (b) they are not to apply at all if an Order in Council has been made under section 21A(7C) of the 1998 Act.

##### *Section 18(1)(b) of the 1998 Act not to apply on establishment of department*

- 6 Section 18(1)(b) of the 1998 Act does not apply to the determination under section 17(1) of the 1998 Act required by virtue of section 17(2) in relation to the establishment of the department.

##### *Filling of Ministerial office after election*

- 7 (1) This paragraph applies before 1 May 2012.
- (2) For the purposes of section 16A(3) of the 1998 Act the relevant Ministerial office (within the meaning of Part 1A of Schedule 4A to the 1998 Act) may be filled after the end of the period mentioned.
- (3) Accordingly—
- (a) section 16A(8) of the 1998 Act does not apply to a person taking up office as the relevant Minister (within the meaning of Part 1A of Schedule 4A to the 1998 Act), and
  - (b) section 32(3)(a) of the 1998 Act applies as if the reference to the Ministerial offices to be held by Northern Ireland Ministers excluded the relevant Ministerial office.

##### *Dissolution of department etc*

- 8 (1) The department dissolves on 1 May 2012 unless, before 1 May 2012—
- (a) the Assembly resolves that the department is to continue operating from 1 May 2012, or
  - (b) a second Act of the Assembly (“the second Act”) makes provision authorised by sub-paragraph (3).
- (2) A resolution for the purposes of sub-paragraph (1)(a) must be passed with cross-community support (as defined in section 4(5) of the 1998 Act).
- (3) The second Act may provide that the department is to continue operating from 1 May 2012.



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- (4) The second Act may repeal the initial ministerial provision with effect from a specified date.
- (5) If the second Act repeals the initial ministerial provision, it may also—
  - (a) replace the initial ministerial provision with provision of the kind mentioned in section 21A(3), (4), (5) or (5A) of the 1998 Act with effect from the specified date (and the relevant provisions of Schedule 4A to the 1998 Act apply), or
  - (b) provide for the department to be in the charge of the First Minister and the deputy First Minister acting jointly with effect from the specified date (and section 21(3)(a) and (b) of the 1998 Act apply);and if no provision is made within paragraph (a) or (b), the Ministerial office of the Minister in charge of the department is to be filled under section 18 of the 1998 Act.
- (6) If the second Act repeals the initial ministerial provision, a determination under section 17(1) of the 1998 Act must be made on the specified date.
- (7) That determination takes effect immediately (and, accordingly, section 17(5) of the 1998 Act does not apply in relation to it).
- (8) If the second Act replaces the initial ministerial provision with provision of the kind mentioned in section 21A(5A) of the 1998 Act, paragraph 11E(1) of Schedule 4A to the 1998 Act applies as if devolved policing and justice functions were first transferred to, or conferred on, the department when the determination required by sub-paragraph (6) takes effect in accordance with sub-paragraph (7).
- (9) Nothing in this paragraph stops an Act of the Assembly dissolving the department at any time.

*Amendments to sections 21B and 21C of the 1998 Act*

- 9 In section 21B(1)(a) of the 1998 Act for “and to make” to “21A(5A)” substitute “ the purpose of which is to exercise functions consisting wholly or mainly of devolved policing and justice functions but only if the Act makes provision of the kind mentioned in section 21A(5A) (other than by virtue of paragraph 8(5) of Schedule 1 to the Northern Ireland Act 2009) ”.
- 10 In section 21C(1) of the 1998 Act—
  - (a) for “a new Northern Ireland department” substitute “ the first Northern Ireland department the purpose of which is to exercise functions consisting wholly or mainly of devolved policing and justice functions (as defined in section 21A(8)) ”;
  - (b) in paragraph (a) after “21A(5A)” insert “ (other than by virtue of paragraph 8(5) of Schedule 1 to the Northern Ireland Act 2009) ”.

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## SCHEDULE 2

Section 2

### SECTIONS 12 TO 12C OF THE JUDICATURE (NORTHERN IRELAND) ACT 1978

#### Commencement Information

**I3** Sch. 2 in force at 12.4.2010 by [S.I. 2010/812](#), [art. 2](#)

#### *Appointment of the Lord Chief Justice and Lords Justices of Appeal*

- 12 (1) Whenever the office of Lord Chief Justice is vacant, Her Majesty may appoint a qualified person to that office by letters patent under the Great Seal of Northern Ireland.
- (2) Her Majesty may, from time to time, appoint a qualified person as a Lord Justice of Appeal by letters patent under the Great Seal of Northern Ireland (but subject to the limit on numbers for the time being imposed by section 3).
- (3) Her Majesty's powers of appointment under this section are exercisable on the Prime Minister's recommendation.
- (4) The Prime Minister must make a recommendation to fill any vacancy in the office of Lord Chief Justice or Lord Justice of Appeal.
- (5) Subsection (4) does not apply to a vacancy in the office of Lord Justice of Appeal while the Lord Chief Justice agrees that it may remain unfilled.
- (6) Before making a recommendation, the Prime Minister must consult—
- (a) the Lord Chief Justice or, if that office is vacant or the Lord Chief Justice is not available, the senior Lord Justice of Appeal who is available, and
  - (b) the Northern Ireland Judicial Appointments Commission.

#### *Appointment of judges of the High Court*

- 12A Her Majesty may, from time to time, appoint a qualified person as a judge of the High Court by letters patent under the Great Seal of Northern Ireland (but subject to the limit on numbers for the time being imposed by section 2).

#### *Tenure of office: Lord Chief Justice*

- 12B (1) The Lord Chief Justice holds office during good behaviour (subject to section 26 of, and Schedule 7 to, the Judicial Pensions and Retirement Act 1993).
- (2) Her Majesty may, on an address of both Houses of Parliament, remove a person (“P”) from office as Lord Chief Justice.
- (3) A motion for such an address may be made—
- (a) in the House of Commons, only by the Prime Minister;
  - (b) in the House of Lords, only by the Lord Chancellor or, if the Lord Chancellor is not a member of that House, only by another Minister of the Crown at the Lord Chancellor's request.
- (4) No motion is to be made for the purposes of subsection (3) unless—

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- (a) the Prime Minister has, after consulting the Lord Chancellor, convened a tribunal as set out below, and
  - (b) the tribunal has reported to the Prime Minister recommending that P be removed from the office on the ground of misbehaviour.
- (5) No motion is to be made in the House of Commons for the purposes of subsection (3) unless the Prime Minister has laid a copy of the tribunal's report before that House.
- (6) No motion is to be made in the House of Lords for the purposes of subsection (3) unless the person making it has laid a copy of the tribunal's report before that House.
- (7) If the Prime Minister and the Lord Chancellor are considering the making of motions for the purposes of subsection (3), the Prime Minister may suspend P from the office.
- (8) If P is suspended, P may not carry out any functions of the office (but P's other rights as holder of the office are unaffected).
- (9) A tribunal is to consist of—
- (a) a person who holds high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005) and who does not hold (and has never held) the office of Lord Chief Justice, Lord Justice of Appeal or judge of the High Court,
  - (b) a person who is or has been a judge of the Court of Appeal of England and Wales or the Inner House of the Court of Session, and
  - (c) a lay member of the Northern Ireland Judicial Appointments Commission (see section 3(5)(c) of the Justice (Northern Ireland) Act 2002).
- (10) The persons within subsection (9)(a) and (b) are to be selected by the Lord Chancellor after consulting—
- (a) the President of the Supreme Court of the United Kingdom,
  - (b) the Lord Chief Justice of England and Wales, and
  - (c) the Lord President of the Court of Session;
- (or, where an office is vacant or an office holder is not available, some other appropriate person).
- (11) The person within subsection (9)(c) is to be selected by the Northern Ireland Judicial Appointments Ombudsman.
- (12) The person within subsection (9)(a) is to be the chair of the tribunal.
- (13) The tribunal's procedure is to be determined by the chair.
- (14) The justice department (within the meaning of the Justice (Northern Ireland) Act 2002) may pay a member of a tribunal any such allowances or fees as it may determine.
- (15) Before the coming into force of section 23 of the Constitutional Reform Act 2005, in subsection (10)(a) the reference to the President of the Supreme Court of the United Kingdom is to be read as a reference to the senior Lord of Appeal in Ordinary.

*Tenure of office: Lords Justices of Appeal and certain High Court judges*

- 12C (1) Lords Justices of Appeal and judges of the High Court hold office during good behaviour (subject to section 26 of, and Schedule 7 to, the Judicial Pensions and Retirement Act 1993).

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- (2) Her Majesty may, on an address of both Houses of Parliament, remove a person (“P”) from office as Lord Justice of Appeal or judge of the High Court.
- (3) A motion for such an address may be made—
  - (a) in the House of Commons, only by the Prime Minister;
  - (b) in the House of Lords, only by the Lord Chancellor or, if the Lord Chancellor is not a member of that House, only by another Minister of the Crown at the Lord Chancellor's request.
- (4) No motion is to be made for the purposes of subsection (3) unless—
  - (a) the Lord Chief Justice or the Northern Ireland Judicial Appointments Ombudsman has, after consulting the other, convened a tribunal as set out below,
  - (b) the tribunal has reported to the Lord Chief Justice recommending that P be removed from the office on the ground of misbehaviour, and
  - (c) the following has occurred—
    - (i) the Lord Chief Justice has advised the Prime Minister and the Lord Chancellor to accept the tribunal's recommendation, or
    - (ii) if the Lord Chief Justice does not so advise, the Prime Minister and the Lord Chancellor have consulted the Lord Chief Justice about the recommendation.
- (5) No motion is to be made in the House of Commons for the purposes of subsection (3) unless the Prime Minister has laid a copy of the tribunal's report before that House.
- (6) No motion is to be made in the House of Lords for the purposes of subsection (3) unless the person making it has laid a copy of the tribunal's report before that House.
- (7) If the Prime Minister and the Lord Chancellor are considering the making of motions for the purposes of subsection (3), the Prime Minister may, with the agreement of the Lord Chief Justice, suspend P from the office.
- (8) If P is suspended, P may not carry out any functions of the office (but P's other rights as holder of the office are unaffected).
- (9) A tribunal is to consist of—
  - (a) a person who holds high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005) and who does not hold (and has never held) the office of Lord Chief Justice, Lord Justice of Appeal or judge of the High Court,
  - (b) a person who is or has been a judge of the Court of Appeal of England and Wales or the Inner House of the Court of Session, and
  - (c) a lay member of the Northern Ireland Judicial Appointments Commission (see section 3(5)(c) of the Justice (Northern Ireland) Act 2002).
- (10) The persons within subsection (9)(a) and (b) are to be selected by the Lord Chief Justice after consulting—
  - (a) the Lord Chancellor,
  - (b) the President of the Supreme Court of the United Kingdom,
  - (c) the Lord Chief Justice of England and Wales, and
  - (d) the Lord President of the Court of Session;

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- (or, where an office is vacant or an office holder is not available, some other appropriate person).
- (11) The person within subsection (9)(c) is to be selected by the Northern Ireland Judicial Appointments Ombudsman.
- (12) The person within subsection (9)(a) is to be the chair of the tribunal.
- (13) The tribunal's procedure is to be determined by the Lord Chief Justice.
- (14) If the tribunal recommends as mentioned in subsection (4)(b), the Lord Chief Justice must send the Prime Minister and the Lord Chancellor—
- (a) a copy of the tribunal's report,
  - (b) any comments that the Lord Chief Justice wishes to make on the report, and
  - (c) any comments that the Northern Ireland Judicial Appointments Ombudsman wishes to make on the report.
- (15) The justice department (within the meaning of the Justice (Northern Ireland) Act 2002) may pay a member of a tribunal any such allowances or fees as it may determine.
- (16) Nothing in subsections (1) to (15) applies to a judge of the High Court appointed after the coming into force of section 7 of the Justice (Northern Ireland) Act 2002 (as to the removal and suspension of whom see that section).
- (17) Before the coming into force of section 23 of the Constitutional Reform Act 2005, in subsection (10)(b) the reference to the President of the Supreme Court of the United Kingdom is to be read as a reference to the senior Lord of Appeal in Ordinary.

VALID FROM 12/04/2010

### SCHEDULE 3

Section 2

#### AMENDMENTS TO THE JUSTICE (NORTHERN IRELAND) ACT 2002

- 1 (1) Amend section 2 as follows.
- (2) Omit subsection (1)(a).
- (3) In subsection (5) before the definition of “listed judicial office” insert—
- ““the justice department” means the Northern Ireland department which for the time being meets the following conditions—
- (a) it is established by an Act of the Northern Ireland Assembly, and
  - (b) its purpose is to exercise functions consisting wholly or mainly of devolved policing and justice functions (as defined in section 21A(8) of the Northern Ireland Act 1998),”.
- 2 Omit section 4.
- 3 For section 5 substitute—

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### **“5 Appointment to listed judicial offices**

Schedule 3 (which is about the making of appointments to listed judicial offices) has effect.”

4 In section 5A(1) for “section 5” substitute “ Schedule 3 ”.

5 Omit section 6.

6 (1) Amend section 7 as follows.

(2) In subsection (2) for “First Minister and deputy First Minister, acting jointly” substitute “ Lord Chief Justice ”.

(3) In subsection (3) for “First Minister and deputy First Minister” substitute “ Lord Chief Justice ”.

(4) In subsection (4) for “them” substitute “ the Lord Chief Justice ”.

(5) Omit subsection (5).

(6) After subsection (6) insert—

“(6A) If the Lord Chief Justice does not remove or suspend a person (“P”) in accordance with a recommendation as mentioned in subsection (3) or (4), the Lord Chief Justice must notify the following of the Lord Chief Justice’s reasons for not removing or suspending P—

(a) P;

(b) the tribunal;

(c) if the tribunal was convened by the Northern Ireland Judicial Appointments Ombudsman, the Ombudsman.”

(7) In subsection (7)—

(a) for “(6)” substitute “ (6A) ”;

(b) for “section 12B” substitute “ section 12C ”;

(c) omit “(inserted by section 6 of this Act)”.

7 For section 8 substitute—

### **“8 Tribunals for considering removal**

(1) A tribunal to consider the removal of the holder of a listed judicial office may be convened—

(a) by the Lord Chief Justice after consulting the Northern Ireland Judicial Appointments Ombudsman, or

(b) by the Ombudsman after consulting the Lord Chief Justice.

(2) A tribunal is to consist of—

(a) a Lord Justice of Appeal or a judge of the High Court,

(b) a person who holds an office within section 3(6)(a) to (e), and

(c) a lay member of the Commission (see section 3(5)(c)).

(3) The persons within subsection (2)(a) and (b) are to be selected by the Lord Chief Justice and the person within subsection (2)(c) is to be selected by the Ombudsman.

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- (4) Unless the Commission otherwise agrees, the persons within subsection (2)(a) and (b) must be judicial members of the Commission (see section 3(5)(a)).
- (5) The person within subsection (2)(a) is to be the chair of the tribunal.
- (6) The tribunal's procedure is to be determined by the Lord Chief Justice.
- (7) The justice department may pay a member of a tribunal any such allowances or fees as it may determine.”

- 8 (1) Amend section 9B as follows.
- (2) In subsection (3) omit “or the Northern Ireland Court Service”.
- (3) In subsection (4) after “Part” insert “or paragraph 2A of Schedule 11 to the Northern Ireland Act 1998 ”.

9 Omit section 9G.

10 In section 9H omit “or 9G”.

- 11 (1) Amend section 9I(2) as follows.
- (2) In paragraph (a) for “section 12, 12A and 12B” substitute “ sections 12 to 12C ”.
- (3) In paragraph (b) omit “5,”.
- (4) After paragraph (b) insert—
- “(ba) Schedule 3 to this Act and paragraph 2A of Schedule 11 to the Northern Ireland Act 1998;”.

12 In section 88 before “ “listed judicial office”” insert “the justice department”, ”.

13 For Schedule 3 substitute—

“SCHEDULE  
3

APPOINTMENT TO LISTED JUDICIAL OFFICES

**PART 1**

APPOINTMENTS BY HER MAJESTY

*Application*

- 1 This Part of this Schedule applies to a listed judicial office to which persons are appointed by Her Majesty; and “listed judicial office” is to be read accordingly.

*Process*

- 2 (1) Her Majesty's power to appoint a person to a listed judicial office is exercisable on the Lord Chancellor's recommendation.

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- (2) The Lord Chancellor's power to recommend a person for appointment to a listed judicial office is exercisable only (and must be exercised) as follows.
- (3) The Commission is responsible for the selection of persons for recommendation for appointment to listed judicial offices (including, for deciding the timing of any selection or selection process).
- (4) When the Commission selects a person under sub-paragraph (3) it must notify the Lord Chancellor.
- (5) The Lord Chancellor must, as soon as reasonably practicable, recommend the selected person for appointment to the office in question.
- (6) The Commission must (in particular) exercise its power under sub-paragraph (3) to ensure that any vacancy in a listed judicial office is filled.
- (7) Sub-paragraph (6) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

## PART 2

### APPOINTMENTS BY THE COMMISSION

#### *Application*

- 3 This Part of this Schedule applies to a listed judicial office to which persons are appointed by the Commission; and “listed judicial office” is to be read accordingly.

#### *Process*

- 4 (1) The Commission is responsible for the selection of persons for appointment to listed judicial offices (including, for deciding the timing of any selection or selection process).
- (2) When the Commission selects a person under sub-paragraph (1) it must appoint the person to the office in question.
- (3) The Commission must (in particular) exercise its power under sub-paragraph (1) to ensure that any vacancy in a listed judicial office is filled.
- (4) Sub-paragraph (3) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

## PART 3

### MAXIMUM NUMBERS

- 5 (1) This Part of this Schedule applies to a listed judicial office—
- (a) to which Part 1 or 2 of this Schedule applies, and
  - (b) which (apart from this Part of this Schedule) may be held by more than one person at any time.



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- (2) The Commission must, with the agreement of the justice department, determine the maximum number of persons who may hold the office at any time.
- (3) The Commission may from time to time, with the agreement of the justice department, revise the determination.
- (4) A determination (or any revision) does not affect any appointments that have already been made.

#### PART 4

##### GENERAL PROVISION ABOUT SELECTIONS

- 6 (1) The selection under this Schedule of a person to be appointed, or recommended for appointment, to a listed judicial office must be made solely on the basis of merit.
- (2) Subject to that, the Commission must at all times engage in a programme of action which complies with sub-paragraph (3).
- (3) A programme of action complies with this sub-paragraph if—
  - (a) it is designed to secure, so far as it is reasonably practicable to do so, that appointments to listed judicial offices are such that those holding such offices are reflective of the community in Northern Ireland,
  - (b) it requires the Commission, so far as it is reasonably practicable to do so, to secure that a range of persons reflective of the community in Northern Ireland is available for consideration by the Commission whenever it is selecting a person to be appointed, or recommended for appointment, to a listed judicial office, and
  - (c) it is for the time being approved by the Commission for the purposes of this Schedule.”

14 After paragraph 12(2) of Schedule 3A insert—

“(3) Sub-paragraph (1) does not apply to the Ombudsman's functions under section 7 or 8 of this Act or section 12B or 12C of the Judicature (Northern Ireland) Act 1978.”

VALID FROM 26/09/2009

#### SCHEDULE 4

Section 2

##### TRANSFER OF APPOINTMENT AND RELATED FUNCTIONS

.....

*Status: Point in time view as at 12/03/2009. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Northern Ireland Act 2009. (See end of Document for details)*

VALID FROM 12/04/2010

## SCHEDULE 5

Section 2

### CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISION

#### PART 1

#### CONSEQUENTIAL AMENDMENTS

##### *County Courts Act (Northern Ireland) 1959 (c. 25 (N.I.))*

1 For section 102(1) substitute—

“(1) Her Majesty may appoint a qualified person to be a judge.”

2 For section 134 substitute—

#### “134 Evidence of health

Before selecting any person for recommendation for appointment as a county court judge, the Northern Ireland Judicial Appointments Commission must take steps to satisfy itself that that person's health is satisfactory.”

##### *Magistrates' Courts Act (Northern Ireland) 1964 (c. 21 (N.I.))*

3 In section 9(1) omit “, on the recommendation of the Lord Chancellor,”.

##### *Northern Ireland Act 1998 (c. 47)*

4 After paragraph 2 of Schedule 11 insert—

“2A (1) The Lord Chancellor may only appoint persons to the Tribunal who have been selected by the Northern Ireland Judicial Appointments Commission as follows.

(2) The Lord Chancellor may at any time by notice require the Commission to select a person for appointment.

(3) The Commission must then select a person for appointment and notify the Lord Chancellor accordingly.

(4) The Lord Chancellor must then appoint the selected person.

(5) Section 5A of, and Part 4 of Schedule 3 to, the Justice (Northern Ireland) Act 2002 apply for the purposes of selections under this paragraph as they apply for the purposes of selections under that Schedule.”

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*Justice (Northern Ireland) Act 2004 (c. 4)*

5 Omit sections 3 to 5 and paragraph 3 of Schedule 1.

*Constitutional Reform Act 2005 (c. 4)*

6 (1) Amend Schedule 5 as follows.

(2) In paragraph 115(2) omit “8(7),”.

(3) Omit paragraphs 116 and 123.

7 (1) Amend paragraph 4 of Schedule 7 as follows.

(2) Omit the entries for the following—

(a) section 102(1) of the County Courts Act (Northern Ireland) 1959 (c. 25 (N.I.));

(b) sections 9(1) and 12A(2) of the Magistrates' Courts Act (Northern Ireland) 1964 (c. 21 (N.I.));

(c) sections 1(2) and 3(1) and (2) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 (c. 29 (N.I.));

(d) sections 12, 12B, 70(1), (3), (5) and (6) and 103(3) of the Judicature (Northern Ireland) Act 1978 (c. 23);

(e) paragraphs 1, 2 and 3 of Schedule 3 to the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));

(f) Article 22(2)(a) and (b) and (4)(b) of the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1));

(g) Articles 6(1) and 7(1) and (4) of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10));

(h) Article 82(1), (3) and (6) of the Fair Employment and Treatment (Northern Ireland) Order 1998 (S.I. 1998/3162 (N.I. 21));

(i) sections 5(3), (4), (5), (6) and (7) and 9(1) and (11) of the Justice (Northern Ireland) Act 2002 (c. 26);

(j) paragraph 3(2) of Schedule 2 to the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)).

(3) In the entries relating to the County Courts Act (Northern Ireland) 1959 (c. 25 (N.I.)) for “107(1), (3) and (7)” substitute “ 107(7) ”.

(4) In the entries relating to the Judicature (Northern Ireland) Act 1978—

(a) at the appropriate places insert “ Sections 12B and 12C ” and “ Section 70(1B) ”;

(b) for “74(1), (3) and (5)” substitute “ 74(5) ”.

(5) In the entries relating to the Northern Ireland Act 1998 (c. 47) after “2(1) and (3),” insert “ 2A, ”.

(6) In the entries relating to the Justice (Northern Ireland) Act 2002 (c. 26) at the appropriate place insert “ Schedule 3, Part 1 ”.

8 Omit paragraphs 36 to 39 of Schedule 17.

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*Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33)*

9 Omit section 28.

**PART 2**

TRANSITIONAL PROVISION

- 10 (1) This paragraph applies if—
- (a) before the coming into force of this paragraph the Prime Minister has selected a person for recommendation for appointment to the office of Lord Chief Justice or Lord Justice of Appeal under section 12 of the Judicature (Northern Ireland) Act 1978 (c. 23), but
  - (b) when this paragraph comes into force the person has not been appointed.
- (2) Section 12 of the 1978 Act applies in relation to the appointment of the person, ignoring its substitution by this Act.
- 11 (1) This paragraph applies if before the coming into force of this paragraph a tribunal is convened under section 135 of the Constitutional Reform Act 2005 (c. 4) in relation to a matter (“the relevant matter”) for the purposes of—
- (a) section 134 of that Act, or
  - (b) section 12B of the Judicature (Northern Ireland) Act 1978.
- (2) In a case covered by sub-paragraph (1)(a), for the purpose of dealing with the relevant matter sections 134 and 135 of the 2005 Act continue to apply, ignoring their repeal by the Justice (Northern Ireland) Act 2002.
- (3) In a case covered by sub-paragraph (1)(b), for the purpose of dealing with the relevant matter section 135 of the 2005 Act and section 12B of the 1978 Act continue to apply, ignoring—
- (a) the repeal of section 135 by the Justice (Northern Ireland) Act 2002, and
  - (b) the substitution of section 12B by this Act.
- 12 (1) This paragraph applies if—
- (a) before the coming into force of this paragraph a notice under section 5(3) of the Justice (Northern Ireland) Act 2002 is given requiring the Northern Ireland Judicial Appointments Commission to select a person for appointment, or recommendation for appointment, to a listed judicial office (“the relevant requirement”), and
  - (b) at the time this paragraph comes into force, no appointment has been made.
- (2) Section 5 of the 2002 Act, and any other relevant provision made by or under an Act or Northern Ireland legislation, continues to apply in relation to the relevant requirement as it applied immediately before the coming into force of this paragraph and, accordingly, the appointment is to be made as it would have been made immediately before the coming into force of this paragraph.
- 13 Paragraph 8(2) of Schedule 3 to this Act has no effect in relation to maladministration alleged to have occurred before the coming into force of paragraph 8(2) (whether or not a complaint is made before then).
- 14 Despite its repeal by paragraph 9 of Schedule 3 to this Act, section 9G of the Justice (Northern Ireland) Act 2002 (c. 26) continues to apply in relation to any matter arising before the coming into force of paragraph 9 (whether or not the

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15	<p>matter is referred to the Ombudsman before then) and section 9H of the 2002 Act continues to apply accordingly, ignoring paragraph 10 of Schedule 3 to this Act.</p> <p>In section 9I(2) of the Justice (Northern Ireland) Act 2002 (as amended by paragraph 11 of Schedule 3 to this Act)—</p> <ul style="list-style-type: none"> <li>(a) in paragraph (a) the reference to sections 12 to 12C of the Judicature (Northern Ireland) Act 1978 (c. 23) is to be read as including a reference to sections 12 and 12B of the 1978 Act before their substitution by this Act (including as applied by paragraph 10 or 11 of this Schedule);</li> <li>(b) in paragraph (ba) the reference to Schedule 3 to the 2002 Act is to be read as including a reference to section 5 of the 2002 Act before its substitution by this Act (including as applied by paragraph 12 of this Schedule).</li> </ul>
16	<p>(1) This paragraph applies in relation to a function which, by virtue of Schedule 4 to this Act, is transferred from one person (“A”) to another person (“B”).</p> <p>This includes cases where a function is exercisable by B with the agreement of a third person (and references below to B are to be read accordingly as necessary or appropriate).</p> <p>(2) Anything done by, on behalf of or in relation to A in relation to the function has effect as if done by, on behalf of or in relation to B, so far as necessary or appropriate for continuing its effect after the transfer.</p> <p>(3) Anything (including legal proceedings) which, immediately before the transfer, is in the process of being done by, on behalf of or in relation to A in relation to the function may be continued by, on behalf of or in relation to B.</p> <p>(4) So far as necessary or appropriate in consequence of the transfer or sub-paragraph (2) or (3) above, in any provision made by or under an Act or Northern Ireland legislation or in any instrument, agreement or other document a reference to A is to be treated as a reference to, or as including a reference to, B.</p> <p>(5) In sub-paragraphs (2) to (4) above, references to A include references to any person who had the function before A.</p> <p>(6) This paragraph is subject to paragraph 12 of this Schedule.</p>

VALID FROM 12/04/2010

## SCHEDULE 6

Section 2

### REVIEW OF ARRANGEMENTS FOR JUDICIAL APPOINTMENTS AND REMOVALS ETC

1 After section 29B of the Northern Ireland Act 1998 (c. 47) insert—

**“29C Review of functions relating to judicial appointments and removals**

Standing orders shall require one of the committees established by virtue of section 29 or the committee established by virtue of section 29A—

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- (a) to review the operation of the amendments made by Schedules 2 to 5 to the Northern Ireland Act 2009,
  - (b) to report on its review by a specified date that is before 1 May 2012, and
  - (c) to include in its report any recommendations it has for changes to the way in which judicial office holders are appointed and removed.”
- 2 (1) From 1 May 2012, no new members may be appointed to the Northern Ireland Judicial Appointments Commission, unless the Northern Ireland Assembly resolves that this sub-paragraph is not to apply (or an Act of the Assembly overrides this sub-paragraph).

(This does not stop the re-appointment of existing members.)
- (2) A resolution for the purposes of sub-paragraph (1) must be passed with the support of—
  - (a) a majority of the members voting on the motion for the resolution,
  - (b) a majority of the designated Nationalists voting, and
  - (c) a majority of the designated Unionists voting.

“Designated Nationalist” and “designated Unionist” have the meanings given by section 4(5) of the Northern Ireland Act 1998.
- (3) If the resolution is passed on or after 1 May 2012, new members may be appointed to the Commission from the day after the day on which it is passed.

**Status:**

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**Changes to legislation:**

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