

NORTHERN IRELAND ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2: Sections 12 to 12C of the Judicature (Northern Ireland) Act 1978

41. *Schedule 2* to the Act replaces section 12 of the Judicature (Northern Ireland) Act 1978 (*Appointment of judges*) with new sections 12 and 12A which make provision for the appointment of judges of the Northern Ireland Supreme Court.
42. New section 12 provides for the appointment of the Lord Chief Justice and Lords Justices of Appeal by Her Majesty on the recommendation of the Prime Minister. Before making a recommendation, the Prime Minister must consult 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 the Northern Ireland Judicial Appointments Commission.
43. New section 12A provides for the appointment of High Court judges by Her Majesty. Such appointments will be made on the recommendation of the Lord Chancellor, following selection by the Northern Ireland Judicial Appointments Commission (Schedule 3 to the 2002 Act as substituted by *Schedule 3, paragraph 13 to the Act*).
44. *Schedule 2* also replaces section 12B of the Judicature (Northern Ireland) Act 1978 (*Tenure of office*) with new sections 12B and 12C.
45. New section 12B provides for the removal of the Lord Chief Justice by Her Majesty following an address by both Houses of Parliament. A motion for an address may be made in the House of Commons only by the Prime Minister and in the House of Lords only by the Lord Chancellor, or if the Lord Chancellor is not a member of the House of Lords, by another Minister at his request. Subsections (4) to (6) provide that no motion may be made unless a tribunal convened by the Prime Minister, after consulting the Lord Chancellor, has recommended removal from office on the ground of misbehaviour and a copy of the tribunal's report has been laid before Parliament. Section 12B also provides that the Lord Chief Justice may be suspended from office if the Prime Minister and the Lord Chancellor are considering the making of motions.
46. New section 12B(9) to (13) makes provision regarding the procedure before, and constitution of, the removals tribunal. New section 12B(9) requires the tribunal to consist of a person who holds high judicial office (not including anyone who holds or has ever held the office of Lord Chief Justice, Lord Justice of Appeal or judge of the High Court); a present or former judge of the Court of Appeal in England and Wales or the Inner House of the Court of Session; and a lay member of the Northern Ireland Judicial Appointments Commission.
47. New section 12C provides for the removal of Lords Justices of Appeal and also High Court judges appointed before section 7 of the 2002 Act (*Removal from listed judicial offices*) comes into force. It provides for removal by Her Majesty following an address by both Houses of Parliament. A motion for an address may be made in the House of Commons only by the Prime Minister and in the House of Lords only by the Lord Chancellor, or if the Lord Chancellor is not a member of the House of Lords, by another

*These notes refer to the Northern Ireland Act 2009
(c.3) which received Royal Assent on 12 March 2009*

Minister at his request. By virtue of subsection (4), no such motion may be made unless a removals tribunal, convened by either the Lord Chief Justice or the Northern Ireland Judicial Appointments Ombudsman, has recommended that the office holder be removed on the ground of misbehaviour and the Lord Chancellor and the Prime Minister have consulted with the Lord Chief Justice or have been advised by the Lord Chief Justice to accept the recommendation. Subsections (7) and (8) provide that an office holder may, with the agreement of the Lord Chief Justice, be suspended from office if the Prime Minister and the Lord Chancellor are considering the making of motions.

48. Section 12C(9) to (13) makes provision for the procedure before, and constitution of, the removals tribunal.