

# NORTHERN IRELAND ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 3: Amendments to the Justice (Northern Ireland) Act 2002*

49. *Schedule 3* to the Act amends the appointment and removal provisions contained in the 2002 Act so as to transfer functions which were prospectively conferred on the First and deputy First Ministers.
50. Section 5 of and Schedule 3 to the 2002 Act prospectively transferred responsibility from the Lord Chancellor to the First and deputy First Ministers, acting jointly, for the appointment of persons, and for recommending persons to Her Majesty for appointment, as listed judicial office holders. *Paragraphs 3 and 13* to Schedule 3 substitute section 5 and Schedule 3 to provide that appointments made by Her Majesty will continue to be made on the recommendation of the Lord Chancellor following selection by the Northern Ireland Judicial Appointments Commission, post devolution. The Schedule further provides that, after devolution, office holders currently appointed by the Lord Chancellor who would, under the 2002 Act as originally passed, have been appointed by the First and deputy First Ministers acting jointly, will instead be appointed by the Northern Ireland Judicial Appointments Commission (but see *paragraph 4* of *Schedule 5* to the Act).
51. Part 1 of new Schedule 3 sets out the process for the appointment of those listed judicial office holders appointed by Her Majesty.
52. It provides that the appointments shall, as is currently the case, be made on the recommendation of the Lord Chancellor following selection by the Northern Ireland Judicial Appointments Commission (paragraph 2). The Commission must inform the Lord Chancellor of the person selected to be recommended for appointment (paragraph 2(4)). The Commission is also responsible for deciding the timing of any selection or selection process.
53. Part 2 of new Schedule 3 sets out the appointment process of listed judicial office holders currently appointed by the Lord Chancellor who, post devolution of justice functions, will be appointed by the Judicial Appointments Commission. As with office holders appointed by Her Majesty, paragraph 4(1) provides that the Commission is responsible for deciding the timing of the selection process.
54. Part 1 and Part 2 of the new Schedule 3 do not include a provision for the Lord Chancellor to ask the Judicial Appointments Commission to reconsider their selection. Previously, the Judicial Appointments Commission made a selection for the Lord Chancellor to consider, who could ask them to review their choice. This amendment enhances the Commission's role.
55. Part 3 of the new Schedule 3 places a duty on the Commission to agree with the justice department the maximum number of persons who may hold a listed judicial office at any time.

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

56. Part 4 of the new Schedule 3 makes general provision in respect of the selection process. Replicating provision contained in section 5(8) to (10) of the 2002 Act, Part 4 provides that persons must be selected to be appointed, or recommended for appointment, solely on the basis of merit. Subject to that, the Commission must engage in a programme of action designed to secure, as far as reasonably practicable, that appointments to listed judicial offices are such that those holding listed judicial office will be reflective of the community in Northern Ireland.
57. The 2002 Act also anticipated that, following devolution, the First Minister and deputy First Minister would be responsible for the removal of listed judicial office holders. Section 7 of that Act prospectively provided that the power to remove or suspend a person from a listed judicial office (other than a High Court judge appointed before the section comes into force) would be exercisable by the First and deputy First Ministers after a tribunal convened under section 8 of the Act had recommended removal or suspension on the ground of misbehaviour or inability to perform the functions of the office.
58. *Paragraphs 5 to 7* of Schedule 3 amend sections 6 to 8 of the 2002 Act to provide that the First Minister and deputy First Minister will not have executive functions in relation to the removal of office holders as intended by the 2002 Act. Instead the Act provides that responsibility for the removal of listed judicial office holders will be conferred on the Lord Chief Justice as head of the judiciary in Northern Ireland. Removal of a listed judicial office holder will require a recommendation for removal to have been made by a tribunal drawn from the Judicial Appointments Commission's membership and convened by the Lord Chief Justice or the Judicial Appointments Ombudsman (after consulting the other).
59. *Paragraph 6(6)* inserts a new subsection (6A) into section 7 of the 2002 Act to place a duty on the Lord Chief Justice to explain to the tribunal, the listed judicial office holder whose removal was being considered and the Judicial Appointments Ombudsman (should the Ombudsman have convened the tribunal), where the Lord Chief Justice has decided not to give effect to a removals tribunal recommendation.
60. *Paragraph 7* of Schedule 3 substitutes section 8 of the 2002 Act which makes provision regarding the procedure and constitution of a removals tribunal. New section 8 provides that a tribunal must consist of a Lord Justice of Appeal or judge of the High Court, a person who holds office listed within section 3(6)(a) to (e) of the 2002 Act (that is, a Lord Justice of Appeal, a judge of the High Court, a county court judge, a district judge (magistrates' courts) or a lay magistrate), both of whom shall be selected by the Lord Chief Justice and must be members of the Judicial Appointments Commission (unless the Commission agrees otherwise) and a lay member of the Judicial Appointments Commission appointed by the Judicial Appointments Ombudsman. New section 8 also provides that the tribunal's procedure will be determined by the Lord Chief Justice.