

**EXPLANATORY MEMORANDUM TO
THE JUDICIAL APPOINTMENTS AND DISCIPLINE (MODIFICATION OF
OFFICES) (No 2) ORDER 2006**

2006 No. 1551

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The order is made under the Constitutional Reform Act 2005 (c.4) ('the Act'). It adds to Schedule 14 of the Act the two new additional judicial offices comprising the Gambling Appeal Tribunal established under the Gambling Act 2005 (c.19), so bringing them within the appointment and discipline provisions of Part 4 of the Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The order is made under section 85(3) of the Act in preparation for the implementation of the Gambling Act 2005. It is the second exercise of that power.

5. Extent

5.1 The order extends to England and Wales and Scotland.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not substantively amend primary legislation, no statement is required.

7. Policy background

The Act

7.1 Part 4 of the Act makes provision for a Judicial Appointments Commission (JAC) to be responsible for recruiting and selecting judges for the courts of England and Wales and members of certain tribunals. It changes the arrangements for investigating complaints against judges, to reflect the new division of responsibilities between the Lord Chancellor and the Lord Chief Justice. The Lord Chancellor's powers to remove judicial office holders from office are amended by Schedule 4 of the Act so that they are exercisable only with the agreement of the Lord Chief Justice or a judicial office holder to whom he has delegated that responsibility. (The Lord Chancellor has also indicated that he will only initiate the processes for removing from office a senior judge with the Lord Chief Justice's agreement). The Lord Chief Justice is given new powers formally to advise, warn or reprimand a judicial office holder for disciplinary purposes; and to suspend the person from judicial office in specified circumstances.

7.2 These provisions apply mainly to members of the judiciary in England and Wales, but may also extend to judicial office holders in the small number of tribunals, which cover the whole of the United Kingdom, or England and Wales and either Scotland or Northern Ireland. The Lord Chief Justice's new disciplinary powers are conferred upon the Lord President of the Court of Session in relation to members of those tribunal members who sit wholly or mainly in Scotland, and on the Lord Chief Justice of Northern Ireland in the case of those sitting wholly or mainly there. The Gambling Appeal Tribunal covers England and Wales and Scotland.

7.3 Parts 2 and 4 are intended to give substantial effect to the agreement between the Lord Chief Justice of England and Wales and the Lord Chancellor on the proposals relating to the transfer of the Lord Chancellor's judiciary-related functions. This was set out in a document called "Constitutional Reform: the Lord Chancellor's judiciary-related functions: Proposals" (usually referred to as the 'Concordat'). This was placed in the libraries of both Houses of Parliament at the time of the Oral Statement made to the House of Lords by the Lord Chancellor, and repeated in the House of Commons, on 26th January 2004. The text was also printed as Appendix 6 to the House of Lord Select Committee's Report on the Bill.

The Judicial Appointments and Discipline (Modification of Offices)(No 2) Order 2006

7.4 This order brings within the judicial appointments and discipline provisions of the Act the offices of President and members of the Gambling Appeal Tribunal, to hear appeals against the refusal of an operating licence or a personal licence, or a number of other decisions of the Gambling Commission. Both the Tribunal and the Commission are established under the Gambling Act 2005. It will enable arrangements for recruiting holders of these offices to proceed.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no additional impact on business, charities or voluntary bodies, or on the public sector.

9. Contact

9.1 Alistair Shaw at the Department for Constitutional Affairs, Tel: 020 7210 2101 or e-mail: alistair.shaw@dca.gsi.gov.uk can answer any queries regarding the instrument.