

Department of
Justice

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Committee for Justice Review

Arrangements for Judicial Appointments and Removals under
Schedules 2 to 5 to the Northern Ireland Act 2009

Response of the Department of Justice

Summary

- 1.1 One of the Department of Justice's responsibilities is to ensure that there is an efficient and effective system to support the business of the courts. Delivery of that function depends on the availability of appropriate judicial resource and, therefore, on the effectiveness of the system for judicial appointments and removals.
- 1.2 The Department has a keen interest in the operation of Schedules 2 to 5 to the Northern Ireland Act 2009. This response notes that, although the arrangements created by the 2009 Act have only been in place for a short period of time, their operation to date has not given rise to any particular concerns. As a key stakeholder in the system, however, the Department will be keen to note the experience and comments of others and any recommendations for change which may be made by the Committee.
- 1.3 The Department's particular functions under Schedules 2 to 5 to the Northern Ireland Act 2009 extend to agreeing the maximum numbers of judicial office holders with the Northern Ireland Judicial Appointments Commission ('the Commission') and the terms and conditions of appointment of certain tribunal members determined by the Commission. This response notes that the Department's experience of the 2009 Act arrangements for delivery of those functions has been positive thus far.
- 1.4 The Department is currently considering options for reform of the tribunal system in Northern Ireland, including future arrangements for delivery of functions related to the appointment, removal and terms and conditions of appointment of tribunal members. This response notes that the Department

will be alert to any Justice Committee recommendations in settling its proposals for reform.

- 1.5 The Department is also considering alternative options for delivery of functions of the Northern Ireland Judicial Appointments Ombudsman. Policy will be developed in light of any recommendations made by the Committee as a result of this Review in respect of the Ombudsman's removal functions.

Response

- 2.1 An effective justice system is a cornerstone of a democratic society and an independent and impartial judiciary is critical to confidence in the administration of justice. We are fortunate in the calibre of the judiciary in Northern Ireland and that the highest standards prevail. An effective system for judicial appointments and removals is a key component in the infrastructure underscoring judicial independence, and, therefore, of paramount importance in maintaining those standards.
- 2.2 It is vital that any system for judicial appointments and removals is based on selection on merit, through fair and open competition and from the widest range of eligible candidates. It is equally important that both appointment and tenure are immune from political or partisan interest, in terms of perception and reality.
- 2.3 The Department of Justice recognises the significant work taken forward in recent years in that regard and acknowledges the extent to which judicial independence has been recognised in constitutional structures and statutory arrangements.
- 2.4 Provision made in the Justice (Northern Ireland) Act 2002 established new appointments and removals processes focusing on the need for independence and transparency. The statutory responsibility placed by that Act on the independent Judicial Appointments Commission to develop a strategy to ensure that persons appointed to listed judicial office and the range of persons available for consideration for selection are reflective of the community in Northern Ireland is also to be

welcomed. A Judiciary which is visibly reflective of society can only enhance public confidence in the justice system.

- 2.5 The Department notes that research commissioned by the Northern Ireland Judicial Appointments Commission in 2008 on barriers and disincentives to applying for judicial office was largely positive about the Commission's role. In that context, the modified arrangements for appointments under the Northern Ireland Act 2009, which were designed to reinforce judicial independence by limiting executive involvement and which increased the role of the Commission further still, must be seen as a positive development.
- 2.6 Arrangements for judicial appointments are particularly pertinent for the Department of Justice which is charged under section 68A of the Judicature (Northern Ireland) Act 1978 with ensuring an effective and efficient system to support the business of the courts. The ability to discharge that responsibility is clearly reliant on the availability of appropriate judicial resource and, therefore, on the effectiveness of the system for judicial appointments.
- 2.7 While the Department recognises that the changes made by the 2009 Act have been in place for only a short period of time, and that some arrangements have yet to be operated, it is not aware of any difficulties which have arisen and there has been no negative impact on the delivery of Departmental functions. The Department acknowledges, however, that those with the most substantive roles under the Act are best placed to comment on the operation of provisions, and to have identified any difficulties with them. The Department is keen to note their experience of the arrangements and any recommendations for change made by the Committee.

2.8 Similarly the Department notes that the changes made to the arrangements for removal from judicial office under the 2009 Act have only been exercised on one occasion since the devolution of justice. It nonetheless recognises that the transfer of responsibility for removals to the Lord Chief Justice afforded additional protection for judicial independence. Judicial discipline and removal are properly matters for the Lord Chief Justice as Head of the Judiciary. The requirement to act on recommendation of a removals tribunal and involvement of the Northern Ireland Judicial Appointments Ombudsman ensures appropriate checks and balances are in place.

2.9 The particular responsibilities of the Department of Justice under the 2009 Act are relatively few in number:

- agreeing the terms and conditions of appointment of certain tribunal members determined by the Northern Ireland Judicial Appointments Commission; and
- agreeing the maximum numbers of judicial office holders with the Commission.

They are nonetheless important to the operation of the overall framework and consequently to the administration of justice in general. To date, engagement with the Commission on these issues has been effective and the Department is satisfied with arrangements made for setting judicial complement and terms and conditions of appointment.

2.10 The Office of the Northern Ireland Judicial Appointments Ombudsman, which was established by the Justice (Northern Ireland) Act 2002, is primarily responsible for the investigation of complaints alleging maladministration in the conduct of judicial appointments schemes.

2.11 As noted above, the 2009 Act extended the remit of the Ombudsman so that he now also exercises functions in relation

to the removal of judicial office holders from office. Both the Ombudsman and the Lord Chief Justice may, after consulting the other, convene a tribunal to consider the removal of a listed judicial office holder. The Ombudsman is also responsible for appointing lay members of the Northern Ireland Judicial Appointments Commission to tribunals convened to consider the removal of all office holders.

2.12 The Department of Justice is responsible for recommending persons to Her Majesty, The Queen for appointment as the Northern Ireland Judicial Appointments Ombudsman. The Department is also responsible for:

- sponsorship of the Ombudsman's Office;
- determining tenure;
- determining terms and conditions of appointment; and
- making arrangements for the provision of assistance to the Ombudsman.

2.13 In delivering those responsibilities, the Department has been mindful that only a small number of complaints have been made to the Ombudsman since the Office was established (five complaints in five years) and, in light of the Executive Review of Arms length bodies, is considering possible, alternative options for delivery of his functions. Consideration is being given to whether it would be appropriate for those functions to be delivered in conjunction with those of another Ombudsman. In developing proposals the Department will consider any recommendations made by the Justice Committee in relation to the Ombudsman's removal functions.

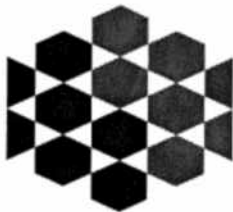
2.14 As the Committee is aware, the Department is currently considering options for reform of the tribunal system in Northern Ireland. Proposals may include recommendations for change to:

- arrangements for the appointment of the small number of tribunal members currently within the remit of the Department rather than the Northern Ireland Judicial Appointments Commission (*eg. certain members of the tribunal established under Schedule 11 to the Health and Personal Social Services (Northern Ireland) Order 1972, Special Educational Needs and Disability Tribunal, Care Tribunal and Health and Safety Tribunal*);
- arrangements for the removal of tribunal members whose tenure is a matter for the Department rather than the Lord Chief Justice (*eg. certain members of the Special Educational Needs and Disability Tribunal, Care Tribunal, Health and Safety Tribunal and the Members of the Tribunal established under Schedule 11 of the Health and Personal Social Services (NI) Order 1972*); and
- arrangements for the determination of those terms and conditions of appointment which are within the remit of the Department rather than the Commission (*e.g. certain members of the Lands Tribunal, Special Educational Needs and Disability Tribunal, Mental Health Review Tribunal, Charity Tribunal, Northern Ireland Valuation Tribunal, Care Tribunal, members of the Tribunal appointed under Schedule 11 to the Health and Personal Social Services (Northern Ireland) Order 1972, Criminal Injuries Compensation Appeals Panel and Traffic Management Adjudicators*).

2.15 To help inform the development of proposals for reform, the Department has recently issued a discussion document seeking views on the current system. Responses to that document are currently being analysed but, in bringing forward recommendations for change, the Department will also be mindful of comments of respondents to this review and any recommendations made by the Committee.

Department of Justice

February 2012



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