

Constitutional Reform Act 2005 and its Consequences

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Origins of CRA 2005: the Concordat

- Attempted abolition of LC shocked the judges
- Lord Woolf stays in office to negotiate Concordat with Lord Falconer
- Concordat is detailed White Paper for Constitutional Reform Bill
- CR Bill referred to Select Cttee in House of Lords
- LC is saved, rest of bill largely unamended

Constitutional Reform Act main provisions

1. The Rule of Law
2. Modify office of Lord Chancellor
3. The new Supreme Court
4. Judicial Appointments, Conduct and Discipline
5. Judicial Appointments, Complaints and Removals: Northern Ireland

But CRA excessively detailed and prescriptive

Changes to Judicial Appointments in Crime and Courts Act 2013



- Detailed rules moved to regulations made by Lord Chancellor – CRA now provides skeleton rules
- Appointments below HC level now made by LCJ
- Appointments to tribunals now made by SPT
- Senior judges no longer permitted to participate in process to select their successors
- Fractional working arrangements introduced for HC, CA and UKSC
- Diversity-based ‘tipping point’ may now be applied where two candidates are of equal merit

Some other changes in CCA 2013

- Single County Court and single Family Court
- Court judges can sit in tribunals and vice versa
- Immigration and nationality judicial reviews can be transferred from High Court to Upper Tribunal
- Court proceedings can be televised
- Offence of Scandalising the judiciary abolished
- Implementation of the Leveson Report framework

Consequences of CRA

- Introduced new Politics of Judicial/Govt relations
- More formal, fragmented, politicised
- Judicial independence has emerged stronger, not weaker
- Judicial accountability has also been strengthened

Old Politics under the old Lord Chancellor

- Informal
- Closed
- Secretive
- Conservative
- Stable
- New politics are different in every respect

New Politics are more Formal

- More formal structures: JAC, JACO, OJC/JCIO
- More formal processes: Concordat. Framework Documents 2008 and 2011 for Courts Service
- Formal recruitment processes for judiciary, advertisement and open competition
- Regular meetings between LCJ/LC, LCJ/PM, LCJ/Lords Constitution Committee

New Politics are more fragmented, multiple channels

- Less reliance on LC as single guardian
- Others include AG, TSol, CPS, OPC
- Leaders of judiciary include Snr Presiding Judge, Snr President Tribunals, President Supreme Court
- In Parliament include Speakers and Clerks of both House

New Politics are more politicised

- Tensions come out in the open
- Ld Phillips frustrated at failure of DCA to discuss budget of Courts Service in 2007
- Ld Phillips complained about budget of Supreme Court in 2011
- Chris Grayling wanted to 'draw blood' over judicial pensions

Judicial Independence has become stronger

- Judges still in mourning for the old LC, their voice in Cabinet
- But judiciary are institutionally more independent of the executive, and the legislature
- Have greater autonomy and responsibility for running judicial system, and the courts
- Multiple guardians of judicial independence instead of single LC

Judicial Independence strengthened by incorporation of Tribunals

- Tribunals were dependent on government departments for their funding, and appointments
- Appointments now made by JAC and SPT
- Funding now comes from HMCTS
- Judiciary has grown from 3,600 to 5,600 judges

Judicial Appointments are much more independent

- Judicial appointments were sole responsibility of LC
- Now managed by independent Judicial Appointments Commission
- LC has limited power of veto or reference back
- JAC heavily influenced by the judiciary
- JAC too independent, insufficiently accountable?

New Supreme Court is more independent

- No longer hidden in the House of Lords
- Cramped accommodation, restrictive procedures
- Transformed website. Proceedings televised
- More Judicial Assistants
- Capacity to sit in panels of seven or nine

Judiciary have greater institutional autonomy

- More independent, self governing branch of govt
- LCJ appoints all judges below the High Court
- Judicial discipline now joint responsibility of LCJ and LC
- Courts Service run as partnership between executive and judiciary; may become even more independent

Why do judges feel matters are worse?

- LC is non lawyer, mid career politician
- Economic crisis of 2007
- 20 per cent cuts in Courts funding, more to come
- Freeze on judicial salaries
- Reductions in judicial pensions

Judiciary has also become more accountable

- Wider transparency initiatives in government apply also to judiciary
- Annual reports of HMCTS, UKSC, SPT, JAC, JACO, OJC
- Periodic reviews from LCJ. Patchy reporting from different parts of courts system
- Frequent appearances before parliamentary committees

Judicial evidence to Select Committees

- Evidence from 124 judges from 2003 to 2012
- 20 judges gave evidence to Constitutional Reform Bill Select Committee in 2004
- 65 appearances before HC Justice Committee, 24 HL Constitution Committee, 15 EU Committee
- LCJ has annual session with Constitution Cttee