

Preface

On 12th June 2003, the Blair Government announced its intention to abolish the ancient office of Lord Chancellor and to establish a new Supreme Court to replace the Appellate Committee of the House of Lords as the highest court in the United Kingdom. Only it did not do so after consultation and open debate: these policies were put forward in the context of a Cabinet reshuffle.

Unfortunately, the Government's cavalier attitude to such important constitutional reforms meant that the principles underlying them were overshadowed by criticism of the way they in which were presented. This book aims to articulate and evaluate these principles. In recent years, a number of specialist legal publications have debated the merits of the law lords sitting in Parliament and of the Lord Chancellor combining the roles of Cabinet minister, judge, head of the judiciary and appointer of judges. We have tried to cover the subject in a manner that is more accessible to those without a background in law, whilst at the same time contributing to the academic debate by putting the arguments in the context of the Government's proposals for reform.

Our other principal aim is to examine the various alternative models for the new judicial infrastructure. During the summer of 2003, the Department for Constitutional Affairs published consultation papers on the features of the Supreme Court, the future of the judicial appointments process and the reallocation of the functions of the Lord Chancellor. This book forms Policy Exchange's reply: we have structured our chapters to mirror the three papers, offering detailed responses to the most important questions asked. We have also attempted to answer many key questions which the Government has regrettably passed over, such as whether it is time for a fully-blown Ministry of Justice. However, we do not cover all the issues raised by the consultation papers, since a number of them are too specialised and technical for a publication of this nature - for example, the process of granting litigants 'leave to appeal' to the highest court.

Given the Government's lack of consultation before announcing its proposals, we ourselves have interviewed a wide range of constitutional experts on the merits of reform and the various models for the new judicial infrastructure. Our discussions with them have formed the backbone of this book and are quoted at length throughout.

Most of our consultees were keen to talk about the future of the Queen's Counsel system, which the Government has also contemplated abolishing. Although not strictly a 'judicial' reform, this subject does interlink with that of judicial appointments: currently applicants for judicial office and for QC both depend upon the patronage of the Lord Chancellor, a Cabinet minister. Therefore, we have included a short chapter at the end of this book in response to the Government's consultation paper on Queen's Counsel.

We should like to thank all of our consultees for generously giving us their time and insight. Particular mention should be made of Michael Beloff QC, for adding weight to this book with his incisive foreword. We are also grateful to Richard Cornes, for clarifying some obscure points

and providing us with his forthcoming article on this subject, Noel Worswick, for general guidance and advice, and Toby Boutle, for thoughtful comments on our early drafts. In addition, we owe thanks to John Schwartz for typesetting our manuscript and to our publishers, Imprint Academic, for their general support. In writing and researching what follows, Charles Banner had primary responsibility for Chapters 1-3; Alexander Deane for Chapters 4-5.

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