

SCHEDULES

SCHEDULE 4

Article 6(1)

Amendments relating to prisons

Prison Act (Northern Ireland) 1953

1. Amend the Prison Act (Northern Ireland) 1953(1) as follows.

2.—(1) In section 1(1) (functions in relation to prisons and prisoners) for “Ministry of Home Affairs (in this Act referred to as “the Ministry”)” substitute “Department of Justice (in this Act referred to as “the Department”)”.

(2) In section 1(2) for “Ministry” (where it occurs first) substitute “Department” and for “Ministry” (where it occurs second) substitute “Ministry of Home Affairs”.

(3) In sections 2, 3, 9, 12, 13, 15, 16, 24 and 38, for “Ministry” or “Minister” (in each place where those words referred to the Ministry of Home Affairs or the Minister of Home Affairs before functions were transferred to the Secretary of State) substitute “Department”.

(4) In sections 2(3), (4), (5) and (6) and 9(6) for “Ministry of Finance” substitute “Department of Finance and Personnel”.

(5) In sections 10, 19A, 19B, 34, 34A, 34C and 41 for “Secretary of State” (wherever occurring) substitute “Department”.

(6) In sections 24(1) and 41(1) for “he” substitute “the Department”.

3.—(1) After section 1 insert—

“1A Powers of the Secretary of State

(1) For purposes connected with any matter mentioned in subsection (2), the Secretary of State may continue to exercise the functions (except functions under prison rules) which the Secretary of State had by virtue of this Act immediately before the coming into force of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (notwithstanding the transfer of those functions to the Department by virtue of that Order).

(2) The matters are—

(a) activities regulated by, or otherwise relating to the subject matter of, Parts 1 to 3 of the Regulation of Investigatory Powers Act 2000(2), including (in particular) in relation to information obtained through any such activities—

(1) 1953 c. 18 (N.I.). Functions under the Act were transferred by, and sections 5 and 43 were amended by, S.I. 1973/2163. Section 10 was substituted by S.I. 2005/1965 (N.I. 15). Section 13 was amended by section 31 of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (N.I.), S.I. 1976/226 (N.I. 4), S.I. 1980/1084 (N.I. 10) and S.I. 2005/1965 (N.I. 15). Section 16 was amended by S.I. 1980/397 (N.I. 3) and S.I. 1986/1883 (N.I. 15). Sections 19A and 19B were inserted by S.I. 2004/704 (N.I. 5). Section 34 was substituted, and sections 34A to 34C inserted, by S.I. 2008/1216 (N.I. 1). Section 41 was substituted by S.I. 1982/713 (N.I. 10). Section 47 was amended by S.I. 1989/1344 (N.I. 15), S.I. 1998/1504 (N.I. 9) and S.I. 2005/1965 (N.I. 15), and the Interpretation Act (Northern Ireland) 1954 (c. 33) (N.I.). The Schedules were repealed by the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (N.I.) and S.I. 1980/1084 (N.I. 10). There are other amendments to the Act, but none are relevant.

(2) 2000 c. 23.

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- (i) the taking of decisions on the basis of the information;
 - (ii) the controlling of access to the information;
 - (iii) the holding and use of the information (so far as not covered by sub-paragraphs (i) and (ii));
- (b) where at any time the accommodation of prisoners in separated conditions on the grounds of security, safety or good order is provided for, decisions about whether a prisoner is to be so accommodated or is to cease to be so accommodated, including (in particular) the setting of any criteria upon which such decisions are to be based;
- (c) national security, including (in particular)—
- (i) the taking of decisions on the basis of protected information;
 - (ii) the controlling of access to protected information;
 - (iii) the holding and use of protected information (so far as not covered by sub-paragraphs (i) and (ii)).

“Protected information” means information the disclosure of which may, in the opinion of the Secretary of State, be against the interests of national security.

(3) In particular, the Secretary of State may continue to make prison rules.

(4) The Department must exercise its functions subject to any thing done by the Secretary of State under subsection (1) and, in particular, prison rules made by the Department have effect subject to prison rules made by the Secretary of State.

(5) Before making prison rules the Secretary of State or the Department (as the case may be) must consult the other.

(6) Prison rules may, in particular, confer or impose functions on the Secretary of State.

(7) The Secretary of State may from time to time, for purposes connected with any matter mentioned in subsection (2) and after consultation with the Department, give a direction setting out arrangements under which officers of the Department (including persons appointed under section 2(2)) who have duties in relation to prisons or prisoners are (so far as provided by, and in accordance with, the arrangements) to be treated as officers of the Secretary of State (rather than of the Department) and subject to his direction and control accordingly; and the officers covered by the direction are to act accordingly.

(8) The arrangements may (in particular) provide for officers to exercise functions of the Secretary of State.”

(2) The Secretary of State need not consult the Department of Justice before giving his first direction under section 1A(7) (as inserted by sub-paragraph (1) above).

(3) But the first direction ceases to have effect at the end of the period of six months beginning with the day on which it is given (unless, before then, it is revoked by a further direction).

4. In section 5 (annual report)—

(a) for subsection (1) substitute—

“(1) The Department shall prepare an annual report on the administration of this Act and shall lay the report before the Assembly.”; and

(b) in subsection (2)(c) for “Minister give the best information to Parliament” substitute “Department give the best information to the Assembly”.

5. For section 34(8) (parliamentary procedure for orders amending section 34) substitute—

“(8) An order made by the Department under subsection (7) is subject to negative resolution.

(9) Section 1A(1) does not apply to the power to make orders under subsection (7).”

6. For section 42 substitute—

“42 Laying of prison rules

(1) Prison rules made by the Department are subject to negative resolution.

(2) Prison rules made by the Secretary of State are subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946(3) applies accordingly.”

7. In section 47(1) (interpretation), at the appropriate place, insert—

““Department” means the Department of Justice;”.

Prison and Young Offenders Centre Rules (Northern Ireland) 1995

8. Amend the Prison and Young Offenders Centre Rules (Northern Ireland) 1995(4) as follows.

9. Subject to what follows, in Parts 1 to 16 for “Secretary of State” (wherever occurring) substitute “Department of Justice”.

10.—(1) Amend rule 4 as follows.

(2) In the definition of “the Ombudsman’s staff” for “Northern Ireland Office” substitute “Department of Justice”.

(3) In the definition of “separated prisoner” for “who has applied” to the end substitute “whom the Secretary of State has decided is to be accommodated in separated conditions on the grounds of security, safety or good order and who is so accommodated”.

11.—(1) Amend rule 7 as follows.

(2) After paragraph (2) insert—

“(3) In paragraph (1) the reference to these rules does not include rules 50A, 73A, 79MA and 109ZA.”

12. In rules 32(2L) and 48(3L) and (11) for “he” substitute “it”.

13. In rules 48B(2) and 48C(2) omit “by the Secretary of State”.

14. After rule 50 insert—

“National security

50A. In a case where evidence is not inspected by the independent monitoring board by virtue of rule 32(2H)(a) or 48(3H)(a), in rule 32(2J) to (2L) or 48(3J) to (3L) (as the case may be) references to the Department of Justice are to be read as references to the Secretary of State.”

15. In rule 59(6) for “him” substitute “the Department of Justice”.

16. In rule 67(2) for “he” substitute “the Department of Justice”.

17. In rule 71(2) for “Secretary of State’s” substitute “Department of Justice’s”.

18. After rule 73 insert—

(3) 1946 c. 36.

(4) S.R. (N.I.) 1995 No. 8; as amended by S.R. (N.I.) 1995 No. 264, S.R. (N.I.) 1997 No. 86, S.R. (N.I.) 2000 No. 4, S.R. (N.I.) 2000 No. 267, S.R. (N.I.) 2001 No. 221, S.R. (N.I.) 2005 No. 153, S.R. (N.I.) 2008 No. 452 and S.R. (N.I.) 2009 No. 429.

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“National security

73A.—(1) The Secretary of State may if he considers it necessary in the interests of national security—

- (a) exercise any power of the Department of Justice under rule 67(1), (2) or (5) to (9), 68(8) or 68A(1) or (2) above;
- (b) by direction provide for anything done by the Department of Justice in the exercise of any of those powers to cease to have effect to the extent set out in the direction.

(2) In relation to—

- (a) any intercepted material which is intercepted under a direction of the Secretary of State or which is otherwise information held by the governor as an officer of the Secretary of State in accordance with arrangements made under section 1A(7) of the Act, or
- (b) any information retained pursuant to rule 68B above in relation to any intercepted material within sub-paragraph (a),

rule 68C above has effect as if for the words “an officer of a prison or of the Department of Justice” there were substituted “an officer of the Secretary of State (including a person treated as such an officer under arrangements made under section 1A(7) of the Act).”

19.—(1) Amend rule 79L as follows.

(2) In paragraphs (2) and (6) for “he” substitute “the Department of Justice”.

(3) In paragraph (3) for “his” substitute “the Department’s”.

20. After rule 79M insert—

“National security etc

79MA.—(1) In carrying out any function under these Rules or otherwise, the Ombudsman (including members of the Ombudsman’s staff) must have regard to any guidance given by the Secretary of State for purposes connected with national security (including, in particular, any matter within section 1A(2)(c)(i) to (iii) of the Act).

(2) In relation to any matter mentioned in section 1A(2) of the Act, in rule 79M references to the Department of Justice are to be read as including references to the Secretary of State.”

21. In rule 92(2) and (3) for “he” substitute “the Department of Justice”.

22. At the beginning of Part 13A insert—

“Entry into separated accommodation etc

109ZA.—(1) This rule applies where at any time the accommodation of prisoners in separated conditions on the grounds of security, safety or good order is provided for.

(2) It is for the Secretary of State—

- (a) to decide whether a prisoner is to be accommodated in separated conditions on the grounds of security, safety or good order or is to cease to be so accommodated, and
- (b) to set the criteria upon which any such decision is to be based.”

23. In rule 122(3) for “he” (where it first occurs) substitute “the Department of Justice”.

24. In rule 124(3) for “him” substitute “the Department of Justice”.

25.—(1) Subject to sub-paragraph (2), the Prison and Young Offenders Centre Rules (Northern Ireland) 1995⁽⁵⁾ (as amended by paragraphs 8 to 24 above) continue in effect as if made by the Department of Justice under section 13 of the Prison Act (Northern Ireland) 1953⁽⁶⁾.

(2) Rules 7(3), 50A, 73A, 79MA and 109ZA have effect as if made by the Secretary of State under that section by virtue of section 1A of the 1953 Act (as inserted by paragraph 3(1) above).

Regulation of Investigatory Powers Act 2000

26. At the end of Part 1 of Schedule 1 to the Regulation of Investigatory Powers Act 2000⁽⁷⁾ (relevant authorities for the purposes of sections 28 and 29) insert—

“**23E.** The Department of Justice.”

27.—(1) Sub-paragraph (2) applies in relation to any order under section 25 of the 2000 Act—

- (a) which is in effect immediately before the coming into force of this Order, and
- (b) which contains provision specifying the Northern Ireland Office as a relevant public authority for the purposes of subsection (1) of that section.

(2) The provision mentioned in sub-paragraph (1)(b) has effect as if it were made in relation to the Department of Justice as well as the Northern Ireland Office.

28.—(1) Sub-paragraphs (2) and (3) apply in relation to any order under section 25 of the 2000 Act—

- (a) which is in effect immediately before the coming into force of this Order, and
- (b) which, in relation to the Northern Ireland Office, contains provision prescribing for the purposes of subsection (2) of that section any office, rank or position in the Northern Ireland Prison Service.

(2) The provision mentioned in sub-paragraph (1)(b) has effect as if it were made in relation to the Department of Justice as well as the Northern Ireland Office.

(3) But the provision has effect in relation to the Northern Ireland Office only for cases where the individual holding a prescribed office, rank or position is acting as an officer of the Secretary of State under arrangements made under section 1A(7) of the Prison Act (Northern Ireland) 1953 (as inserted by paragraph 3(1) above).

29.—(1) Sub-paragraphs (2) and (3) apply in relation to any order under section 30 of the 2000 Act—

- (a) which is in effect immediately before the coming into force of this Order, and
- (b) which, in relation to the Northern Ireland Office, contains provision prescribing for the purposes of subsection (1) of that section any office, rank or position in the Northern Ireland Prison Service.

(2) The provision mentioned in sub-paragraph (1)(b) has effect as if it were made in relation to the Department of Justice as well as the Northern Ireland Office.

(3) But the provision has effect in relation to the Northern Ireland Office only for cases where the individual holding a prescribed office, rank or position is acting as an officer of the Secretary

(5) S.R. (N.I.) 1995 No. 8.

(6) 1953 c. 18 (N.I.). Section 13 was amended by section 31 of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (N.I.), S.I. 1976/226 (N.I. 4), S.I. 1980/1084 (N.I. 10) and S.I. 2005/1965 (N.I. 15).

(7) 2000 c. 23. Amendments have been made to Schedule 1 but none are relevant.

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of State under arrangements made under section 1A(7) of the Prison Act (Northern Ireland) 1953
(as inserted by paragraph 3(1) above).