

## SCHEDULES

### SCHEDULE 8

Article 6(5)

#### Transfer of prisoners

##### *Repatriation of Prisoners Act 1984*

1. Amend the Repatriation of Prisoners Act 1984(1) as follows.
2. In section 1(9) (issue of warrant for transfer: meaning of “relevant Minister”)—
  - (a) omit “and” at the end of paragraph (a); and
  - (b) after paragraph (a) insert—
    - “(aa) the Department of Justice in Northern Ireland in a case where the person who is the subject of the proposed transfer is for the time being required to be detained in a prison, a hospital or any other institution either—
      - (i) in Northern Ireland; or
      - (ii) in the country or territory referred to in subsection (1)(b) above if it is proposed to transfer him from that country or territory to Northern Ireland; and”.
3. In section 2(3A) (transfer out of the UK: meaning of “relevant Minister”)—
  - (a) omit “and” at the end of paragraph (a); and
  - (b) after paragraph (a) insert—
    - “(aa) the Department of Justice in Northern Ireland where the order referred to in subsection (2) above relates to a person who has been removed from Northern Ireland by virtue of a warrant issued under section 1 above; and”.
- 4.—(1) Amend section 4 (temporary return) as follows.
  - (2) In subsection (5) (meaning of “relevant Minister”)—
    - (a) omit “and” at the end of paragraph (a); and
    - (b) after paragraph (a) insert—
      - “(aa) the Department of Justice in Northern Ireland in a case where the prisoner is a person who is either—
        - (i) detained in Northern Ireland and the transfers are for the purpose of a temporary return of the prisoner to a country or territory outside the British Islands from which he has previously been transferred into Northern Ireland under this Act or any other enactment; or
        - (ii) detained in a country or territory outside the British Islands to which he has previously been transferred from Northern Ireland under this Act; and”.

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(1) 1984 c. 47. Sections 1(9), 2(3A), 4(5), 5(8), 6(5), 7(3A) and 8(4) were inserted by S.I. 1999/1820. The Act was modified by S.I. 1999/1748 and amended by the Criminal Justice and Immigration Act 2008 (c. 4), sections 93-96 and Schedule 26. There have been other amendments to the Act, but none are relevant.

*Status: This is the original version (as it was originally made).*

- (3) After subsection (6) insert—
- “(7) Any reference in subsection (5)(aa) to the prisoner having previously been transferred into or from Northern Ireland includes a reference to responsibility for his detention and release having previously been transferred to or from the Department of Justice in Northern Ireland (as the case may be).”
5. In section 4A (issue of warrant transferring responsibility for detention and release of offender)
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- (a) in subsection (5) for “that Minister” (in both places) substitute “the relevant Minister”; and
- (b) in subsection (10) after paragraph (a) insert—
- “(aa) the Department of Justice in Northern Ireland in a case where the person who is the subject of the proposed transfer of responsibility is—
- (i) a person to whom subsection (2) applies who is for the time being required to be detained at a place in Northern Ireland; or
- (ii) a person to whom subsection (3) applies, if it is proposed that he will be detained at a place in Northern Ireland;”.
6. In section 4B(4) (transfer of responsibility from the UK: meaning of “relevant Minister”) after paragraph (a) omit the “and” and insert—
- “(aa) the Department of Justice in Northern Ireland, where Northern Ireland is the part of the United Kingdom in which the order referred to in subsection (2) has effect; and”.
7. In section 4D(1) (issue of certificate to be sent to the appropriate judge with a view to obtaining the issue of a warrant under section 4D(3)) after “Scottish Ministers” insert “or the Department of Justice in Northern Ireland”.
8. In section 4E—
- (a) in subsection (1) (issue of certificate to be sent to the appropriate judge with a view to obtaining the issue of a warrant under section 4E(3)) after “Scottish Ministers” insert “or the Department of Justice in Northern Ireland”; and
- (b) in subsection (6) (application to the appropriate judge) after “Scottish Ministers” insert “or the Department of Justice in Northern Ireland”.
9. In section 4F(2) (designation of a person for the purposes of sections 4D and 4E) after “Scottish Ministers” insert “or the Department of Justice in Northern Ireland”.
- 10.—(1) Amend section 5 (operation of warrant and retaking prisoners) as follows.
- (2) In subsection (8) (meaning of “relevant Minister”)—
- (a) omit “and” at the end of paragraph (a); and
- (b) after paragraph (a) insert—
- “(aa) the Department of Justice in Northern Ireland where the warrant provides for the transfer of a prisoner to or from Northern Ireland; and”.
- (3) In subsection (10) (modifications for warrants under section 4A) omit the “and” after paragraph (c) and after paragraph (d) insert—
- “; and
- (e) in subsection (8)(aa) for “transfer of a prisoner to or from Northern Ireland” there were substituted “transfer of responsibility for the detention and release of the relevant person to the Department of Justice”.”.

11. In section 6(5) (revocation etc. of warrants: meaning of “relevant Minister”) after paragraph (a) insert—

- “(aa) the Department of Justice in Northern Ireland in a case where—
- (i) the warrant was issued under section 1 and provides for the transfer of the prisoner to or from Northern Ireland; or
  - (ii) the warrant was issued under section 4A and provides for the transfer of responsibility for the detention and release of the relevant person to the Department of Justice;”.

12. In section 7(3A) (expenses: meaning of “relevant Minister”)—

- (a) omit “and” at the end of paragraph (a); and
- (b) after paragraph (a) insert—

“(aa) the Department of Justice in Northern Ireland where the transfer is to Northern Ireland; and”.

13. In section 8(4) (certificates: meaning of “relevant Minister”)—

- (a) omit “and” at the end of paragraph (a); and
- (b) after paragraph (a) insert—

“(aa) the Department of Justice in Northern Ireland where the proceedings relate to a transfer which it has the responsibility under this Act to make or consider making; and”.

14. After section 8 insert—

**“8A Northern Ireland: national security**

(1) The Secretary of State may, by virtue of this subsection, make an agreement under section 1(1)(b) or 4A(5)(b) if—

- (a) the agreement is one that could be made by the Department of Justice in Northern Ireland by virtue of section 1(9)(aa) or 4A(10)(aa), and
- (b) the Secretary of State’s decision to make the agreement is arrived at (wholly or partly) on the basis of protected information.

(2) Subject to subsection (3), if the Secretary of State makes an agreement by virtue of subsection (1) in any case, in this Act references to the relevant Minister are to be read, for that case, as references to the Secretary of State (and the definitions of “relevant Minister” are to be read accordingly).

(3) In the case of an agreement under section 4A(5)(b), subsection (2) does not apply to—

- (a) the references in sections 4A(1) and 4B(1);
- (b) the last two references in section 4A(5);
- (c) the second reference in section 4A(6);
- (d) the first reference in section 4C(1);
- (e) the reference in paragraph 9 of the Schedule.

(4) The Secretary of State may notify the Department of Justice that no agreement is to be made under section 1(1)(b) or 4A(5)(b) in relation to a particular person without the Secretary of State’s agreement; and the Department may not make such an agreement in relation to that person without the Secretary of State’s agreement.

*Status: This is the original version (as it was originally made).*

(5) But the Secretary of State may give a notification or refuse his agreement only if his decision to do so is arrived at (wholly or partly) on the basis of protected information.

(6) In this section “protected information” means information the disclosure of which may, in the opinion of the Secretary of State, be against the interests of national security.”

*Crime (Sentences) Act 1997*

**15.** Amend Schedule 1 to the Crime (Sentences) Act 1997(2) (transfer of prisoners within the British Islands) as follows.

**16.**—(1) Amend paragraph 1 (transfer of prisoners: general) as follows.

(2) In sub-paragraph (2A)—

- (a) after “appears to” insert “the Department of Justice in Northern Ireland or”; and
- (b) for “the Secretary of State may” substitute “the Department of Justice in Northern Ireland or (as the case may be) the Secretary of State may”.

(3) After sub-paragraph (2A) insert—

“(2B) But the Secretary of State may make an order under sub-paragraph (2A) only if—

- (a) the Secretary of State is of the view that the transfer is in the interests of national security, or
- (b) the Secretary of State’s view that the person should be transferred is arrived at (wholly or partly) on the basis of protected information.

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

(4) After sub-paragraph (4) insert—

“(5) This paragraph has effect subject to the following modifications—

- (a) in relation to the transfer to another part of the United Kingdom of a person remanded in custody in Northern Ireland or serving a sentence of imprisonment in Northern Ireland, any reference in sub-paragraph (1) to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland;
- (b) in determining the meaning of “appropriate institution” in relation to a person transferred to Northern Ireland from another part of the United Kingdom, any reference in sub-paragraph (4) to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland.”

**17.** In paragraph 2 (transfer of prisoners for trial), after sub-paragraph (4) insert—

“(5) This paragraph has effect subject to the following modifications—

- (a) in relation to the transfer to another part of the United Kingdom of a person remanded in custody in Northern Ireland or serving a sentence of imprisonment in Northern Ireland, any reference in sub-paragraph (1) to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland;
- (b) in relation to a person who has been transferred from Northern Ireland to another part of the United Kingdom, any reference in sub-paragraph (3) or (4) to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland.”

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(2) 1997 c. 43. Schedule 1 was amended by the Crime and Disorder Act 1998 (c. 37) Schedule 8, paragraph 135; S.I. 1999/1820; S.I. 2001/2565; section 13 of the Justice (Northern Ireland) Act 2004 (c. 4); and S.I. 2008/1241.

**18.** In paragraph 3 (transfer of prisoners for other judicial purposes), after sub-paragraph (3) insert—

“(4) This paragraph has effect subject to the following modifications—

- (a) in relation to the attendance at a place in Northern Ireland or any other part of the United Kingdom of a person who is remanded in custody in, serving a sentence of imprisonment in, or otherwise detained in a prison in, Northern Ireland, any reference in sub-paragraph (1) to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland;
- (b) in relation to a person who is directed by the Department of Justice in Northern Ireland to be taken to any place under this paragraph, any reference in sub-paragraph (3) to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland.”

**19.** In paragraph 4 (transfer of supervision of released prisoners), after sub-paragraph (2) insert—

“(3) In relation to the transfer to another part of the United Kingdom of the supervision of a person undergoing or about to undergo supervision in Northern Ireland, any reference in sub-paragraph (1) to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland.”

**20.** In paragraph 5 (conditions of transfers), after sub-paragraph (3) insert—

“(4) In relation to a transfer under this Part which is the subject of an order or direction made by the Department of Justice in Northern Ireland, any reference in sub-paragraph (1) to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland.”

**21.—**(1) Amend paragraph 5A (conditions of transfer under paragraph 1(2A)) as follows.

(2) In sub-paragraph (1)(b) for “as the Secretary of State may think fit to impose” substitute

“—

- (i) as the Department of Justice in Northern Ireland may think fit to impose, in the case of an order made by the Department, or
  - (ii) as the Secretary of State may think fit to impose, in the case of an order made by the Secretary of State”.
- (3) At the end of sub-paragraph (3) insert “by the person who imposed it”.

**22.—**(1) Amend paragraph 7 (restricted transfers: general) as follows.

(2) After sub-paragraph (1) insert—

“(1A) An order for the transfer of a person or a person’s supervision back to the country from which he or it was transferred shall be made by the Department of Justice in Northern Ireland if the transfer of the person or, as the case may be, the transfer of his supervision was the subject of an order or direction made by the Department of Justice.”

(3) After sub-paragraph (2) insert—

“(2A) Where a transfer under paragraph 1 or 2 is the subject of an order made by the Department of Justice in Northern Ireland, any reference in sub-paragraph (2) to the Secretary of State must be read as a reference to the Department of Justice.”

**23.** In paragraph 12 (restricted transfers from Northern Ireland to England and Wales) after sub-paragraph (3) insert—

*Status: This is the original version (as it was originally made).*

“(3A) Where a transfer under paragraph 1, 2 or 3 is the subject of an order or direction made by the Department of Justice in Northern Ireland, any reference in sub-paragraph (3) to the Secretary of State must be read as a reference to the Department of Justice.”

**24.** In paragraph 13 (restricted transfers from Northern Ireland to Scotland), after sub-paragraph (3) insert—

“(3A) Where a transfer under paragraph 1, 2 or 3 is the subject of an order or direction made by the Department of Justice in Northern Ireland, any reference in sub-paragraph (3) to the Secretary of State must be read as a reference to the Department of Justice.”

**25.** In paragraph 15 (unrestricted transfers: general) after sub-paragraph (4) insert—

“(4A) This paragraph has effect subject to the following modifications—

- (a) in relation to a person transferred to Northern Ireland, any reference in sub-paragraph (3) above to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland;
- (b) in relation to a person whose supervision has been transferred to Northern Ireland, sub-paragraph (4)(b) above applies as if—
  - (i) after “Secretary of State” where it first occurs there were inserted “or the Department of Justice in Northern Ireland”, and
  - (ii) after “Secretary of State” where it occurs second there were inserted “or the Department of Justice (as the case may be)”.

**26.** In paragraph 17 (prisoners unlawfully at large) after sub-paragraph (6) insert—

“(7) In relation to a person who, having been sentenced to imprisonment, is unlawfully at large during any period during which he is liable to be detained in a prison in England and Wales or Scotland and is sentenced to imprisonment by a court in Northern Ireland, any reference in sub-paragraph (5) above to the Secretary of State must be read as a reference to the Department of Justice in Northern Ireland.”