

# JUSTICE (NORTHERN IRELAND) ACT 2004

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## EXPLANATORY NOTES

### INTRODUCTION

1. These explanatory notes relate to the Justice (Northern Ireland) Act 2004 which received Royal Assent on 13 May 2004. They have been prepared by the Northern Ireland Office in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### BACKGROUND

3. The purpose of the Act is to continue the process of change and improvement in the criminal justice system in Northern Ireland. This process of change stems from the Criminal Justice Review, a wide-ranging survey of the Northern Ireland criminal justice system published in March 2000. Other milestones in the change process include the Justice (Northern Ireland) Act 2002 (c.26), the Joint Declaration (published by the British and Irish Governments on 1 May 2003) and the updated Implementation Plan for the Criminal Justice Review, published on 18 June 2003 (ISBN 0-337-08614-1):

- The Justice (Northern Ireland) Act 2002 (“the 2002 Act”) made provision, among other things, for the creation of a new Public Prosecution Service for Northern Ireland, for judicial appointments processes after the devolution of criminal justice matters, for a new system of youth conferencing and for the establishment of a Chief Inspector of Criminal Justice.
- The Government made a commitment in the Joint Declaration, published in May 2003, that there would be a second Justice Act for Northern Ireland. The Government committed to making provision on the following nine matters:
  - i. To establish a **Judicial Appointments Commission** (“the Commission”) prior to the devolution of responsibility for criminal justice matters to the Northern Ireland Assembly (the 2002 Act provided for the Commission to be established post-devolution);
  - ii. To provide that the **composition of the Commission** taken as a whole (i.e. including the judicial members) **is as far as possible reflective of the community** in Northern Ireland;
  - iii. To provide that a **key objective of the Commission** is to engage in a programme of action to secure a judiciary in Northern Ireland that is as reflective of Northern Ireland society as can be achieved consistently with the requirement of appointment on merit;
  - iv. To place the same **time limits on membership of the Commission by members of the judiciary**, as currently apply to the non-judicial members. That is, a judicial member may not be appointed for more than 5 years at a time; and the

aggregate period for which a judicial member may serve as a member must not exceed 10 years;

- v. To provide that (post-devolution) in respect of the **appointments of the Lord Chief Justice and Lords Justices of Appeal**, the First Minister and Deputy First Minister acting jointly will make recommendations to the Prime Minister, who in turn will recommend appointments to Her Majesty on that basis;
  - vi. To amend section 7(5) of the 2002 Act, which requires the **agreement of the Lord Chief Justice to removal or suspension** of a judge as a result of a recommendation of a Tribunal established under section 8 of the 2002 Act;
  - vii. To amend section 55 of the Police Act 1998 (c.32) to remove the current discretion, and place a **requirement on the Director of Public Prosecutions for Northern Ireland**, if considering a matter which indicates that a police officer may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings, **to refer the case to the Police Ombudsman for Northern Ireland**;
  - viii. To require the criminal justice agencies in Northern Ireland to have due regard to relevant **international human rights conventions and standards** in carrying out their functions; and
  - ix. To create an **offence of seeking to influence a prosecutor's prosecution decisions** without legitimate cause.
- The updated Implementation Plan, published in June 2003, sets out how the recommendations in the Criminal Justice Review are being implemented, with the aim of promoting “confidence among all parts of the community while delivering a fair and impartial system of justice”.
  - The Act makes provision for the 9 commitments above.

## **OVERVIEW**

4. The Act has 23 sections and 4 Schedules:

- The sections relating to the judiciary (sections 1-5) provide for the Judicial Appointments Commission (“the Commission”) for Northern Ireland to be established prior to devolution of responsibility for criminal justice matters. The sections make provision to apply the time limits on membership which currently apply to lay members of the Commission to judicial members of the Commission. Provision is also made for the Commission to engage in a programme of action aimed at securing a judiciary in Northern Ireland that is reflective of the community. Judicial appointments will continue to be made on the basis of merit.
- These sections also provide that the composition of the Commission itself taken as a whole will, as far as possible, be reflective of the community in Northern Ireland. In addition, the sections provide that in respect of appointments of the Lord Chief Justice and Lords Justices of Appeal, the First Minister and Deputy First Minister acting jointly will make recommendations to the Prime Minister prior to him making recommendations to Her Majesty The Queen. Finally, the requirement for the Lord Chief Justice's agreement to removal or suspension as a result of a Tribunal recommendation is removed, and provision is made for him to be consulted instead.

- The sections relating to prosecutors (sections 6 and 7) place a duty on the Director of Public Prosecutions for Northern Ireland to refer any matter to the Police Ombudsman for Northern Ireland in which it is suspected that a police officer may have committed a criminal offence or in the course of an investigation behaved in a manner that would justify disciplinary proceedings. They also create an offence of seeking to influence a prosecutor with the intention of perverting the course of justice.
- The sections on criminal justice organisations (sections 8 and 9) provide that specified organisations in Northern Ireland should, in carrying out their functions, have regard to human rights guidance published by the Attorney General for Northern Ireland. Changes are made to existing legislation which are consequential to the establishment of the Youth Justice Agency.
- The sections on bail (10-11) create a right of appeal for the prosecution against the grant of bail by a magistrates' court, create new provisions in relation to those granted bail under the Terrorism Act 2000 (c. 11) (scheduled cases) and adjust current bail provisions on bail under the Criminal Justice (Northern Ireland) Order 2003 (S.I.2003/1247 (N.I.13)) (non-scheduled cases) to bring both into alignment.
- Section 13 provides for the transfer of prisoners from Northern Ireland to another part of the United Kingdom in the interests of maintaining security or good order in prisons in Northern Ireland.
- Section 14 amends section 103 of the Terrorism Act 2000 (c.11) to afford a greater level of protection to those working in the Northern Ireland Prison Service.
- Section 15 makes driving whilst disqualified an arrestable offence.
- Section 16 re-enacts with amendments sections 79 to 81 of the 2002 Act, setting out in more detail the powers of court security officers.
- Section 17 abolishes any rule of law which prevents a barrister from entering into a contract for the provision of his services.
- Sections 18-23 make supplementary provisions, including the commencement arrangements, provisions for the exercise of order-making powers under the Act and the extent of the Act.

## **COMMENTARY**

### **Section 1: Transfer to Lord Chancellor of functions relating to Judicial Appointments Commission**

5. The Criminal Justice Review recommended the establishment of a Judicial Appointments Commission once responsibility for criminal justice matters had been devolved (recommendation 77, paragraph 6.102). Part I of the 2002 Act confers on the First and Deputy First Ministers, acting jointly, a number of functions in relation to the Northern Ireland Judicial Appointments Commission ("the Commission"). The Joint Declaration published in May 2003 gave a commitment to establish the Commission prior to devolution in order further to enhance public confidence in the criminal justice system (paragraph 24).

6. This section transfers functions of the First and Deputy First Ministers in relation to the Commission to the Lord Chancellor. This transfer is so that the Commission can be brought into operation before the devolution of responsibility for criminal justice. Schedule 1 amends Part I of the 2002 Act to effect this transfer of functions. On devolution of criminal justice, these functions will be transferred back to the First and Deputy First Ministers, acting jointly,

as provided for in the 2002 Act. There are also a number of consequential amendments on, for example, superannuation and the presentation of accounts.

## **Section 2: Membership of the Commission**

7. The Criminal Justice Review recommended that the Commission should be representative of the community in Northern Ireland (recommendation 79, paragraph 6.104). Section 3(8) of the 2002 Act provides that the First and Deputy First Ministers must ensure, so far as possible, that the lay members of the Commission are representative of the community in Northern Ireland.

8. *Subsection (1)* of this section replaces this duty with a duty for the Lord Chancellor and those others responsible for making nominations to the Commission (the Lord Chief Justice, the General Council of the Bar in Northern Ireland and the Law Society of Northern Ireland) to make such arrangements as will, so far as is practicable, ensure that the membership of the Commission as a whole is reflective of the community in Northern Ireland.

9. Under paragraph 2(2) of Schedule 2 to the 2002 Act, a person may only be appointed as a non-judicial member of the Commission for up to five years at a time, for a maximum of ten years. *Subsection (2)* inserts new paragraphs (1) and (1A) into Schedule 2 to the 2002 Act to place the same time limits on the Commission's judicial members.

## **Section 3: Duty of Commission to secure judiciary reflective of the community**

10. The Criminal Justice Review recommended that the judiciary in Northern Ireland should be as reflective of Northern Ireland society as can be achieved consistent with the requirement of appointment on merit (recommendation 69, paragraph 6.85). Section 5(8) of the 2002 Act provides that, so far as is practicable, the Commission must secure that a range of persons reflective of the community in Northern Ireland is available for consideration each time the Commission selects or recommends a person for appointment to a listed judicial office. Section 5(9) of the 2002 Act states that the selection of a person to a listed judicial office must be based solely on merit.

11. Section 3 amends section 5 of the 2002 Act by replacing subsections (8) and (9):

- New section 5(8) repeats the provision that the selection or recommendation of a person to a listed judicial office must be made solely on the basis of merit.
- New section 5(9) provides that the Commission must at all times engage in a programme of action as defined in section 5(10). The section is worded in this way to ensure that the Commission engages in an ongoing programme of action. This "rolling" programme of action will be modified and adapted by the Commission to cover changing circumstances. It will not be a one-off exercise but an ongoing exercise.
- New section 5(10) provides that the programme of action must be designed to secure, as far as reasonably practicable, that appointments to listed judicial offices are such that those holding listed judicial office will be reflective of the community in Northern Ireland. This requires the Commission to take active steps to ensure that the judiciary is reflective of society, subject to the principle of appointment on merit. The Commission must also secure, as far as practicable, that a range of persons reflective of the community is available for consideration by the Commission each time the Commission makes a selection or recommendation for appointment to a listed judicial office.

#### **Section 4: Appointment of Lord Chief Justice and Lords Justices of Appeal**

12. Section 4 of the 2002 Act amends section 12 the Judicature (Northern Ireland) Act 1978 (c.23) by requiring the Prime Minister to consult the First and Deputy First Ministers and the Lord Chief Justice before making recommendations to Her Majesty The Queen as to who should fill the posts of Lord Chief Justice and Lords Justices of Appeal. The 2002 Act also requires the Commission to advise the First and Deputy First Ministers over the procedure they should adopt for formulating their reply to the Prime Minister.

13. This section makes provision for a change to the process for appointing the Lord Chief Justice and Lords Justices of Appeal. The First and Deputy First Minister, after consultation with the Lord Chief Justice (or the most senior Lord Justice of Appeal if the office of the Lord Chief Justice is vacant or the Lord Chief Justice is unavailable), will make a recommendation to the Prime Minister (new section 12(4)). The Prime Minister must consider that recommendation before making his recommendation to Her Majesty The Queen. The Commission will still provide advice to the First and Deputy First Ministers on the procedure to adopt for formulating a recommendation to the Prime Minister. This amendment brings the procedure for appointing the Lord Chief Justice and Lord Justices of Appeal more closely in line with the Criminal Justice Review's recommendation (recommendation 75, paragraph 6.96).

#### **Clause 5: Removal or suspension from listed judicial offices**

14. This clause removes the requirement found in section 7(5) of the 2002 Act for the Lord Chief Justice's agreement to removal or suspension of a person from a listed judicial office. The Lord Chief Justice must be consulted on the removal instead.

#### **Section 6: Duty of Director of Public Prosecutions to refer certain matters to Police Ombudsman**

15. Section 34 of the 2002 Act amends section 55 of the Police (Northern Ireland) Act 1998 (c. 32) to place the Director of Public Prosecutions for Northern Ireland ("the Director") under a duty to refer matters to the Police Ombudsman for Northern Ireland ("the Ombudsman"). Recommendation 21 of the Criminal Justice Review stated that there should be a duty on the Director to refer matters to the Ombudsman and section 6 makes the necessary amendments to ensure that the recommendation is fully implemented in line with the undertaking of the Government in the Joint Declaration published in May 2003 and referred to at page 33 of the Updated Implementation Plan.

16. Section 6 amends section 55 as follows. Firstly, it removes the references to the Director in those sections which deal with the discretion (*subsection (2)*). Secondly, it inserts a new subsection into section 55 which places a duty on the Director to refer any matter to the Ombudsman in which it appears to the Director that a police officer may have committed a criminal offence or, in the course of a criminal investigation, have behaved in a manner which would justify disciplinary proceedings (*subsection (3)*).

17. Under the new subsection it is made clear that the new duty does not apply if the Director knows that the Ombudsman is already aware of a matter - this is to ensure that matters are not repeatedly referred to the Ombudsman and to avoid overlap with matters that have already been referred. *Subsection (4)* amends section 55(5) to ensure that the Ombudsman has the power to investigate any matter referred under new subsection (4A). *Subsection (5)* amends subsection 55(7) so that the Ombudsman is no longer obliged to inform the Director of the outcome of criminal or disciplinary proceedings. Informing the Director is unnecessary because he made the referral to the Ombudsman in the first place. Finally *subsection (6)*

ensures that referrals under this section are treated consistently with any referrals under section 55 to which the RUC (Complaints etc.) Regulations 2001 (S.R. 2001/184) currently apply. Subject to certain exceptions, Regulations 7 to 9 of these Regulations limit the Ombudsman to investigating complaints about matters that are no more than 12 months old.

### **Section 7: Influencing a Prosecutor**

18. This section creates an offence of seeking to influence a prosecutor with the intention of perverting the course of justice as recommended by the Criminal Justice Review at recommendation 46. The offence is created by way of a new section 32A inserted into the 2002 Act. For this purpose, a prosecutor may be the Director, the Deputy Director of Public Prosecutions for Northern Ireland, a Public Prosecutor (as provided for in subsection (1) of the inserted section) or a barrister or solicitor to whom the Director has assigned the power to institute or conduct any criminal proceedings under section 36(2) of the 2002 Act (as provided for in subsection (2) of the inserted section). A person who, with the intention of perverting the course of justice, acts with the intention of influencing a prosecutor as defined above in any decision as to whether to institute or continue criminal proceedings commits this offence.

19. Case law concerning the common law offence of perverting the course of public justice is likely to be of use in the interpretation of this new offence. The intention in relation to the common law offence is one to pervert the course of public justice or the intention to do some act which, if achieved, would pervert the course of public justice. The act done must tend or intend to interfere with the course of public justice. Such acts include but are not limited to making false allegations, perjury, concealing the commission of an offence, obstructing the police, assisting others to evade arrest, failing to prosecute, procuring and indemnifying sureties, interfering with witnesses, evidence and jurors and publishing material calculated to prejudice a fair trial. Public justice has been interpreted to mean that either a course of justice has been commenced by way of an investigation or court proceedings, or an offence has been committed which requires prosecution.

20. A person charged with this offence may be tried either summarily or on indictment. Subsection (3) of the inserted section provides that the offence is punishable on summary conviction by a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or both. On conviction on indictment, the offence is punishable by imprisonment for a term not exceeding five years or to a fine or both. Subsection (4) of the inserted section requires the Director's consent for proceedings to be instituted to ensure that a prosecution for this offence is only instituted where there is sufficient evidence and where the prosecution will be in the public interest.

### **Section 8: Guidance for criminal justice agencies on human rights standards**

21. The Criminal Justice Review took account of basic human rights principles set out in international law (paragraph 3.11) and stressed their application to the criminal justice system (paragraph 3.6). The Joint Declaration of May 2003 stated the Government's intention to make future provision to promote a human rights culture in the criminal justice system in Northern Ireland (paragraph 24).

22. This section makes provision for the Attorney General for Northern Ireland to issue guidance to certain criminal justice organisations in Northern Ireland on how to carry out their functions in accordance with relevant international human rights standards. The organisations to which this section applies must have regard to any such guidance (*subsection (2)*). This section does not affect the operation of section 6 of the Human Rights Act 1998,

which provides that it is unlawful for public authorities to act in a way which is incompatible with a Convention right (*subsection (2)*).

23. *Subsection (3)* requires the guidance to be published, to be laid before each House of Parliament and to be brought into operation by an order made by the Attorney General, subject to the negative resolution procedure, when it is issued, and each time it is revised. The organisations to which the guidance will apply are listed at *subsection (4)*. *Subsection (5)* gives the Attorney General for Northern Ireland the power to amend this list by order subject to the draft affirmative procedure.

24. Section 52 of the Police (Northern Ireland) Act 2000 (c.32) makes provision for a code of ethics for police officers. *Subsection (6)* amends section 52 to provide that the Chief Constable and Policing Board must have regard to the human rights guidance for the time being in operation when revising the code of ethics for police officers. This is to ensure that the police are guided by one document which is consistent with the human rights guidance and avoids the need for the police to refer to a variety of documents.

25. *Subsection (7)* states that the Director of Public Prosecutions must have regard to the human rights guidance currently in operation when drawing up or revising his code of practice for prosecutors under section 37 of the 2002 Act. This is to ensure that there is no conflict between the code of practice and the human rights guidance.

26. *Subsection (9)* requires the Attorney General for Northern Ireland to consult the Advocate General for Northern Ireland before issuing or revising the guidance, bringing the guidance into operation or amending the list of organisations to which it will apply. This provision will only take effect after the devolution of criminal justice matters, at which time the post of Advocate General for Northern Ireland will be created as provided for in section 27 of the 2002 Act.

### **Section 9: The Juvenile Justice Board**

27. The Criminal Justice Review recommended the creation of a next steps agency which would take on responsibility for the range of responsibilities which fell to the Juvenile Justice Board (recommendation 185). The functions of the Board have been transferred to the Secretary of State for Northern Ireland and are now being exercised by the Youth Justice Agency, which was established on 1 April 2003. In addition, the new Agency incorporates youth conferencing services. The purpose of this section is to substitute references in the 2002 Act to the Juvenile Justice Board for reference to the Youth Justice Agency (*subsections (1), (2) and (4)*) and to remove references to the Board in the 2002 Act and other legislation where they are no longer appropriate (*subsections (3) and (5)*).

### **Section 10: Prosecution right of appeal against grant of bail by magistrates' court**

28. This section creates a prosecution right of appeal to the High Court against the granting of bail by the magistrates' court. At the moment there is no mechanism available for the prosecution to appeal against the grant of bail. It is important that there are adequate safeguards against the possibility of mistakes being made. The granting of bail may only be appealed if a person is charged with, or convicted of, an offence punishable by imprisonment to ensure that only in the most serious cases can a person be denied their liberty by virtue of an appeal.

29. *Subsection (2)* provides that the grant of bail may only be appealed where the prosecution is conducted by or on behalf of the Director of Public Prosecutions, or on behalf of the Police Service of Northern Ireland: as a consequence appeals will only be possible where a professional prosecutor is involved in the matter. *Subsection (3)* states that an appeal may

only be made if the prosecution made representations against the granting of bail before bail was granted.

30. *Subsection (4)* provides that oral notice of an intention to appeal must be given to the magistrates' court at the conclusion of the proceedings at which bail is granted and before the person concerned is released from custody. *Subsection (5)* provides that written notice must be given to the magistrates' court and the person concerned within two hours of the conclusion of the proceedings. *Subsection (6)* requires the magistrates' court to remand the person concerned in custody from when it receives the oral notice of the appeal until a decision on the appeal is taken. Where the prosecution fails to comply with *subsection (5)*, the appeal shall be deemed to have been disposed of (*subsection (7)*). The hearing of the appeal must be commenced within 48 hours (subject to limited exceptions) of the giving of oral notice (*subsection (8)*). The purpose of these strict time limits is to ensure that if an appeal is unsuccessful a person is only further detained for as short a time as possible.

31. *Subsection (9)* permits an appeal by the prosecution by way of re-hearing, and on such an appeal the High Court may (a) remand the person concerned in custody, or (b) grant bail subject to such conditions (if any) as it thinks fit. In relation to a person under the age of 21, the reference in *subsection (1)* to an offence punishable by imprisonment is to be read as a reference to an offence which would be so punishable in the case of a person over that age (*subsection (11)* refers). Without such a provision the section would only cover those aged over 21, because those under 21 cannot be sentenced to imprisonment by virtue of the Treatment of Offenders Act (Northern Ireland) 1968 (c.29).

### **Section 11: Bail under section 67 of the Terrorism Act 2000**

32. This section and Schedule 2 (as introduced by *subsection (2)*) deal with the enforcement of bail granted under section 67 of the Terrorism Act 2000 (c. 11) ("the 2000 Act") (section 67 forms part of the temporary provisions in part VII of that Act). The intention is that those granted bail under section 67 should, as regards enforcement, be put in the same or a similar position to those who are granted bail for non-scheduled offences. *Subsection (1)* creates a duty to surrender to custody for those granted bail in scheduled cases under section 67 of the 2000 Act. The duty is either a duty to surrender to the custody of a court, or to surrender to the custody of the governor of a prison (the latter duty is to cover those released on compassionate bail) (*subsection (3)* refers).

33. *Subsection (4)* provides that section 11 and Schedule 2 will cease to have effect on the same day as part VII of the 2000 Act – 19 February 2006 – or such earlier date as the Secretary of State may by order appoint. The power to make an order with the effect that the provisions will cease to have effect is included to cover the situation in which section 67 ceases to have effect before 19 February 2006 either by virtue of an order under section 112(2) of the 2000 Act or because it is allowed to lapse under section 112(1) of the 2000 Act.

### **Section 12: Bail to which Part II of the Criminal Justice (Northern Ireland) Order 2003 applies**

34. *Subsection (1)* of this section amends the provisions on bail in respect of non-scheduled cases contained in the Criminal Justice (Northern Ireland) Order 2003 (SI 2003/1247 (N.I. 13)) ("the 2003 Order"). *Subsection (2)* extends the definition of surrender to custody to include surrender to the custody of a prison governor in order to cover those released on compassionate bail.

35. *Subsection (3)* amends Article 5 of the 2003 Order (offence of absconding by person released on bail) so that the offences can be tried both summarily and on indictment (at the



moment the offences are summary only). This will bring the treatment of these offences in line with the new offences being created in relation to scheduled offences by paragraph 1 of Schedule 2. The penalty for conviction on indictment will be up to 3 years imprisonment or a fine or both. The penalty on summary conviction will be up to 12 months imprisonment or a fine not exceeding the statutory maximum or both. *Subsection (4)(a)* amends article 6(3) of the 2003 Order so that the power of arrest without warrant in Article 6(3) will only apply in relation to those released on bail who are under a duty to surrender to the custody of a court.

36. *Subsection (4)(b)* creates a new power of entry, subject to a warrant being granted by a Justice of the Peace, to enable police officers to enter any premises in order to carry out an arrest under Article 6(3) of the 2003 Order. The Justice of Peace may only issue the warrant if he is satisfied that any of the conditions set out in new Article 6(3B) exist, and he is satisfied that the person to whom the application relates is, liable to be arrested under Article 6(3) and is to be found on the premises specified in the application. *Subsection (4)(c)* inserts a new sub-paragraph into Article 6 to make exceptions to the timing for bringing a person before a court following his arrest under Article 6(3) if he is in hospital and not well enough to attend court. Such an exception already exists in the similar provisions of Article 47(5) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (N.I.12)).

37. Under Article 29(1) of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1981/1675 (N.I. 26)) if a summary offence is punishable with more than six months imprisonment a person is normally entitled to elect for trial by jury. However, this right is subject to specific exceptions as set out in that Article. *Subsection (5)* adds Article 5(1) and (2) of the 2003 Order to the list of exceptions because the summary penalty for those offences has been increased to 12 months. *Subsection (6)* provides that the penalties available under *subsection (3)* will only apply to offences committed after the commencement of *subsection (3)*. This is to avoid any retrospective application of the legislation.

### **Section 13: Transfer of Prisoners**

38. The Review of Safety at HMP Maghaberry that was submitted to the Secretary of State for Northern Ireland on 29th August 2003 concluded that separation of prisoners by paramilitary affiliation was necessary in the interests of safety. The Review recommended that to prevent slippage from the proposed separated regime for paramilitary prisoners to a segregated regime, such as that which operated in HMP Maze and gave prisoners control of wings, prisoners should be subject to punishment for misbehaviour, and that removal to another jurisdiction might be considered in serious cases (Appendix A, paragraph 7).

39. Section 13 amends Schedule 1 to the Crime (Sentences) Act 1997(c.43), which provides for the transfer of prisoners from Northern Ireland to another part of the United Kingdom with their consent. Under Schedule 1 a prisoner may be transferred as a result of his own application or for the purposes of attending trial or for other judicial purposes. This section provides that if it appears to the Secretary of State that in the interests of maintaining security or good order in any prison in Northern Ireland a remand or sentenced prisoner should be transferred to another establishment in England, Wales or Scotland, he may make an order to that effect (i.e. without the prisoner's consent).

40. *Subsection (4)* provides that any such transfer will be made and remain on a restricted basis and may be subject to such other conditions, if any, as the Secretary of State may think fit to impose. A sentenced prisoner who is subject to a restricted transfer is treated for the purposes of his detention under and release from his sentence as if he were still subject to the law of the place from which he was transferred (paragraph 6(2)(b) of Schedule 1 to the Crime

(Sentences) Act 1997). The amendments made by *subsections (3), (5),(6)and (7)* are consequential.

#### **Section 14: Amendment of section 103 of the Terrorism Act 2000**

41. Section 103 of the Terrorism Act 2000 makes it an offence to collect, record or possess information about certain categories of people, which is likely to be useful for terrorism. One of these categories is "full-time employees of the prison service".

42. Lord Carlile, who was appointed in 2001 as the independent reviewer of the Terrorism Act 2000, in his second annual report on Part VII of the Act recommended that Section 103 be extended to include part-time employees of the Prison Service. This section amends section 103(2)(e) to remove the distinction between full and part-time workers and to ensure that those who work in the prison service but are employed by other government departments are also protected by the offence.

#### **Section 17: Right of barrister to enter into contract for the provision of his services**

43. Barristers in England and Wales are not prevented by law from entering into a contract for the provision of services. This section brings the situation in Northern Ireland into line with the situation in England and Wales by abolishing any rule of law which prevents a barrister in Northern Ireland from entering into a contract for the provision of his services. The General Council of the Bar of Northern Ireland may still make rules which prohibit or restrict barristers from entering into contracts.

#### **Section 21: Statutory Rules**

44. This section provides for orders or regulations to be made by statutory rule. *Subsection (2)* provides that any order made under section 8(5) (amending the list of organisations to which guidance will apply on human rights standards) will be subject to the affirmative resolution procedure. Under *subsection (3)*, any order made under section 8(3)(c) or 11(4) and any regulations made under paragraph 1(4) or 6(1) of Schedule 3 (Court Security Officers) will be subject to the negative resolution procedure.

#### **SCHEDULE 1: TRANSFER TO LORD CHANCELLOR OF FUNCTIONS RELATING TO NORTHERN IRELAND JUDICIAL APPOINTMENTS COMMISSION**

45. This Schedule provides for the transfer of responsibility for the Judicial Appointments Commission from the First and Deputy First Ministers to the Lord Chancellor by amending the 2002 Act. There are also a number of consequential amendments on, for example, superannuation and the presentation of accounts.

#### **SCHEDULE 2: BAIL UNDER TERRORISM ACT 2000**

46. Schedule 2 is concerned with those charged with a scheduled offence and granted bail under section 67 of the 2000 Act. It creates two new scheduled offences in relation to absconding by persons on bail; provides for powers of arrest in relation to those who abscond or break their conditions of bail, and a power of entry subject to a warrant granted by a Justice of the Peace to effect such arrests; provides the procedures to be followed in relation to those arrested without warrant; and makes provisions for the circumstances in which scheduled offences are certified as suitable for summary trial. The provisions have been created because the enforcement of bail granted under section 67 of the 2000 Act is currently out of kilter with the enforcement of bail granted in respect of non-scheduled offences as set

out in the Criminal Justice (Northern Ireland) Order 2003, (“the 2003 Order”). As a result those charged with scheduled offences were being treated more leniently.

47. Paragraphs 1(1) creates an offence of failure to surrender to custody without reasonable cause (“surrender to custody” is defined in section 12(3)). Paragraph 1(2) creates a further offence of failure to surrender to custody as soon as reasonably practicable, where a person has previously failed to surrender to custody with reasonable cause. Both offences are triable either summarily or on indictment. Summary conviction can attract a penalty of up to imprisonment of 12 months, a fine not exceeding the statutory maximum, or both. Conviction on indictment can attract a penalty of up to three years imprisonment, a fine, or both. *Sub-paragraph (4)* adds these offences to the list of exceptions set out in Article 29(1) of the Magistrates’ Court (Northern Ireland) Order 1981 (SI 1981/1675 (N.I. 26)). As a result a person cannot elect for trial by jury in relation to the summary offence. *Sub-paragraph (5)* makes these offences scheduled by adding them to the list of offences set out in Schedule 9 to the Terrorism Act 2000.

48. Paragraphs 2(2) and (3) provide the court with a power to issue a warrant for the arrest of a person admitted to bail who fails to surrender to its custody at the appointed time; or who, having surrendered to its custody then absents himself without the permission of the court. *Sub-paragraph (4)* provides a constable with a power of arrest without warrant in respect of any person under a duty to surrender to the custody of a court if he is satisfied that one of the circumstances in paragraph 2(4) exists. *Sub-paragraphs (5) and (6)* create a new power of entry to assist the police in carrying out such an arrest. This power will be exercisable upon the granting of a warrant by a Justice of the Peace which is subject to the conditions set out in *Sub-paragraphs (5) and (6)*. This power of entry is in very similar terms to that inserted by section 12 into the 2003 Order.

49. Paragraph 3(1) provides that a person arrested under paragraph 2(4) must be brought before a judge of the High court or the Court of Appeal as soon as is practicable, and no later than the day following arrest excluding Sundays, Good Friday and Christmas Day. This time limit has been designed to ensure that the person arrested has his arrest reviewed promptly and if appropriate he can be readmitted to bail as quickly as possible. Under paragraph 3(2) the time limit will not apply if a person is in hospital and unable to attend court. This is in line with similar provisions in the Police and Criminal Evidence (Northern Ireland) Order 1989 and with those to be included in the 2003 Order by clause 12.

50. The person arrested under paragraph 2(4) must be brought before a judge of the High Court or the Court of Appeal because these are the only judges competent to grant bail under section 67(2) of the 2000 Act. As the original bail will have been granted under section 67 of the 2000 Act any bail granted under paragraph 3 must also be bail granted under and in accordance with section 67. Under paragraph 3(3) the judge must conduct a two stage process. Firstly, he must assess the grounds for the arrest by deciding whether the person is not likely to surrender to custody, or has broken or is likely to break any condition of his bail. If he is not satisfied of any of these, then he must automatically re-release the person on bail subject to the same conditions (if any) as were originally imposed. As there will be no application for bail as such and no exercise of discretion by the judge in relation to bail the bail is deemed to be bail granted under section 67 (this is provided for in paragraph 3(4)). If the judge believes that any of the considerations stipulated in sub-paragraph 3(a) is met, then he must turn to the second stage of the process and re-consider the question of bail under and in accordance with section 67. The procedure has been developed to be very similar to that in Article 6 of the 2003 Order.

51. Paragraph 4 provides that any person in respect of whom a certificate of suitability for summary trial has been issued for all scheduled charges faced is treated as if he had been granted bail under the 2003 Order. This is because if the question of bail in relation to such a person were to be reconsidered they could no longer be granted bail under section 67(1)(b) of the Terrorism Act 2000. It needs to be clear that in such circumstances the person is to be treated as if they had been granted bail in relation to a non-scheduled offence.

52. Paragraph 5 provides that the offence of absconding from bail, the powers of arrest with and without warrant and the power of entry with a warrant from a Justice of the Peace will apply to those on bail before and after the legislation is commenced. For those already on bail at that time, the powers only apply in respect of any act, or failure, or issue of a certificate for summary trial, which occurs after the law is commenced. This is to avoid the provisions having any retrospective effect.

### **SCHEDULE 3: COURT SECURITY**

53. This Schedule (as inserted by section 16) builds on provisions made in the 2002 Act in relation to court security. Sections 79 to 81 of the 2002 Act have been re-enacted with amendments and supplemented with a number of new provisions.

54. Paragraph 1(1) replicates the duty in the 2002 Act on the Northern Ireland Court Service to take all reasonable steps to provide security at relevant buildings. “Relevant buildings” is extended to include not only court houses but also buildings in which certain tribunals and Masters sit (*sub-paragraph (6)*). Paragraph 1(3) replicates the existing provision that court security officers may be either members of the Court Service’s own staff, designated as such, or employees of other organisations with which the Court Service has entered into arrangements for the provision of court security officers under section 69 of the Judicature (Northern Ireland) Act 1978 (c. 23).

55. Paragraph 1(4) is a new provision that enables the Lord Chancellor to make regulations as to the training to be completed and conditions to be met before a person may be designated or employed as a court security officer.

56. *Sub-paragraphs (7) and (8)* make new provision for court security officers to be employed in relevant parts of buildings that are not solely devoted to court business (for example the building in which the Social Security Commissioners sit). Paragraph 2 replicates the existing provision that court security officers are to have the following powers to search and remove people from relevant buildings:

- power to search any person who is in, or seeking to enter, a relevant building (paragraph 2(1)(a));
- power to search any article in possession of a person who is in, or seeking to enter, a relevant building (paragraph 2(1)(b));
- power to exclude or remove from a relevant building any person who refuses to permit a search (paragraph 3 (1)(a))
- power to exclude or remove from a relevant building a person who will not surrender an article when asked to do so (paragraph 3(1)(b));
- power to restrain, exclude or remove any person from a relevant building if it is reasonably necessary to do so for the purposes of enabling the business of any court or office-holder to be carried out without interference or delay, maintaining order, securing the safety of the person in the building (paragraph 3(3)).

The court security officers' powers to exclude, remove and restrain include the power to use reasonable force where necessary (paragraph 3(4)).

57. Paragraph 4 provides court security officers with the following new powers in relation to the seizure of goods:

- power to ask a person to surrender an article (paragraph 4 (1));
- power to seize an article if the person asked to surrender that article refuses to do so (paragraph 4 (2)).
- Under paragraph 4(3) the grounds on which a court security officer may seize or require surrender of articles are that the article may:
  - (a) jeopardise the maintenance of order in the building;
  - (b) put the safety of any person in the building at risk; or
  - (c) be evidence of, or in relation to, an offence.

58. Paragraph 5 is a new provision allowing an article surrendered or seized to be retained by the court security officer, only until such time as the owner is leaving the court building, unless the court security officer reasonably believes the article to be evidence of, or in relation to, an offence. In such a case the article may be retained for a maximum of 24 hours to enable the security officer to draw the article to the attention of a police officer.

59. Paragraph 6 provides the Lord Chancellor with a new power to make regulations about the retention of articles which are surrendered to, or seized by, a court security officer.

60. Paragraph 7 replicates two existing offences: first, an offence of assaulting a court security officer in the execution of his duty; and secondly, an offence of resisting or intentionally obstructing a court security officer in the execution of his duty.

## **COMMENCEMENT**

61. Section 19 provides that sections 1 to 18, together with their schedules, shall come into force on a day to be specified by the Secretary of State (who may specify different commencement dates for different provisions).

## **HANSARD REFERENCES**

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

*These notes refer to the Justice (Northern Ireland) Act(c.4)  
which received Royal Assent on 13 May 2004*

<b>STAGE</b>	<b>DATE</b>	<b>HANSARD REFERENCE</b>
<b>House of Lords</b>		
Introduction	4 December 2003	Vol 655 Col 488
Second Reading	16 December 2003	Vol 655 Col 1091 - 1120
Committee	15 January 2004	Vol 656 Col 682 – 706 and Col 725 - 740
	19 January 2004	Vol 656 Col 844-858 and Col 871 – 887
Report	3 February 2004	Vol 657 Col 574 – 616
Third Reading	10 February 2004	Vol 657 Col 1046 – 1060
Lords Consideration of Commons Amendments	29 April 2004	Vol 660 Col 891-901
<b>House of Commons</b>		
Second Reading	10 March 2004	Vol 418 Col 1531 - 1630
Committee	25 March 2004	House of Commons Standing Committee D
	1 April 2004	
Report and Third Reading	26 April 2004	Vol 420 Col 637 - 719

**Royal Assent – 13 May 2004**

House of Lords Hansard Vol 661 Col 506

House of Commons Hansard Vol 421 Col 536

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