

JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Human Rights Commission

Section 14: Legal proceedings

50. This section amends section 71(1), and inserts new section 71(2A), (2B), and (2C) into the Northern Ireland Act 1998. It allows the Commission to institute human rights legal proceedings in its own right, and when doing so to rely upon the European Convention on Human Rights, provided that there is, or would be, a victim (as far as that Convention is concerned) of the unlawful act.

Section 15: Investigations: evidence

51. This section inserts new sections 69A and 69B into the Northern Ireland Act 1998.
52. New section 69A allows the Commission by notice to require a person to produce documents or information in their possession, or to give oral evidence for the purpose of an investigation. *Subsection (4)* of new section 69A provides that, before issuing a notice requiring the provision of evidence, the Commission must have concluded that the matter which it is proposing to investigate has not already been sufficiently investigated by another person. *Subsection (5)* provides the grounds on which a person served with a notice to provide information may apply to the county court to have the notice cancelled. *Subsection (7)* enables the Commission to apply to a county court for an order requiring a person to provide the information required. *Subsection (8)* creates four summary criminal offences relating to the failure to comply with a requirement to provide information or give evidence to the Commission and to the falsification of evidence provided. *Subsection (10)* provides that the Public Prosecution Service may not be required to supply documents or evidence about a decision whether or not to institute or continue criminal proceedings.
53. New section 69B creates an exemption for national security material from the Commission's power to require the provision of information or evidence under new section 69A. *Subsection (1)* sets out the circumstances relating to national security, in which a person shall disregard a notice issued under 69A(1). *Subsection (4)* allows the recipient of a notice under 69A(1) to apply to the High Court for the requirement to provide information to be cancelled on the grounds that it is undesirable for reasons of national security, other than those reasons set out within section 69B(1). *Subsection (5)* provides that an investigation may not consider whether an intelligence service is acting in a way that is incompatible with human rights; or other matters concerning human rights in relation to an intelligence service.

Section 16: Investigation: access to prisons, &c.

54. This section inserts new section 69C into the Northern Ireland Act 1998. It grants the Commission the power to enter places of detention.
55. *Subsection (1)* of new section 69C provides that, for the purpose of an investigation under section 69(8) of the Northern Ireland Act 1998, the Commission may authorise a person to access a place of detention in Northern Ireland. *Subsection (3)* lists the places of detention in Northern Ireland that are covered by this power and *subsection (12)* grants the Secretary of State the power to amend, by order, this list. *Subsection (4)* requires the Commission, before exercising the power conferred on it by *subsection (1)*, to conclude that the matter it wishes to investigate, with regard to a specified place of detention, has not already been sufficiently investigated by another person. *Subsection (6)* allows for a place of detention to apply to the county court to order that the power conferred by *subsection (1)* may not be used to enter a place of detention; to impose restrictions on the use of this power; and to require the Commission to amend its terms of reference. *Subsection (9)* allows for the Commission to apply to a county court to apply for an order requiring a person to stop obstructing access to a place of detention. *Subsection (10)* creates a new criminal offence where a person fails, without reasonable excuse, to comply with an order made under *subsection (9)*.

Section 17: Investigations: terms of reference

56. This section inserts new section 69D into the Northern Ireland Act 1998 which requires the Commission to write and distribute terms of reference for any investigation during which it wishes to exercise a power conferred on it by new sections 69A(1) or 69C(1).

Section 18: Investigations: duty to report

57. This section requires the Commission to publish a report which indicates the findings of any investigations conducted under 69(8) of the Northern Ireland Act 1998 (regardless of whether it is exercising the new powers to require the provision of information or evidence or to access places of detention).

Section 19: Recommendations

58. This section requires the Commission, before the end of a period of two years following commencement of the new powers conferred by this Act, to make recommendations regarding the effectiveness of these powers.

Section 20: Timing

59. *Subsection (1)* provides that the Commission may only use the new statutory power to require the provision of information or evidence, or to access places of detention, from 1 August 2007, and as part of investigations into matters arising or situations that exist on or after this date. *Subsection (2)* provides that the Commission may not require the provision of information recorded before, a document created before, or evidence relating to a time before 1 August 2007. *Subsection (4)* allows a county court to make an order preventing the Commission from using these new powers to compel evidence, or access places of detention, in contravention of *subsection (1)* or *(2)*.