

JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Trials on indictment without a jury

Section 1: Issue of certificate

18. This section enables the Director of Public Prosecutions for Northern Ireland ('DPP(NI)') to issue a certificate in relation to any trial on indictment of a defendant (and anyone tried with that defendant). The effect of the certificate is that the trial is conducted in the Crown Court without a jury. The test that the DPP(NI) must apply in deciding whether or not to issue a certificate is set out in *subsection (2)*. He has the discretion to certify a case if it falls within one of the conditions set out in the section and the DPP(NI) assesses that there is a risk that trial by jury might impair the administration of justice (for example, that there might not be a fair trial).
19. Condition 1 is set out in *subsection (3)*. It covers circumstances where the defendant has a link to a proscribed organisation that is connected with the affairs of Northern Ireland. The defendant could be a present or former member of a proscribed organisation or be an associate of a member or former member. *Subsection (9)* defines who would be considered to be an associate of a member or former member of such an organisation and *subsection (10)* defines 'proscribed organisation'.
20. Condition 2 is set out in *subsection (4)*. This covers circumstances where an offence is committed on behalf of a proscribed organisation that is connected with the affairs of Northern Ireland, or such an organisation is otherwise involved with, or assists in, the carrying out of the offence.
21. Condition 3 is set out in *subsection (5)*. This covers circumstances where a proscribed organisation that is connected with the affairs of Northern Ireland interferes, or assists with interference, with the investigation or prosecution of an offence. This could include, for example, interference with a crime scene or the intimidation of witnesses not to give or to withdraw their evidence.
22. Condition 4 is set out in *subsection (6)*. This covers circumstances where the offence occurred as a result of, or in connection with, sectarianism (i.e. in connection with religious belief or political opinion). *Subsection (7)* clarifies that 'religious belief and political opinion' includes their absence and any assumptions made about religious beliefs or political opinions. *Subsection (8)* provides that the persons and groups of persons referred to in *subsection (6)* need not include the defendant or victim.
23. A case that falls within one of the conditions will not automatically be tried without a jury – non-jury trial will only happen if the DPP(NI) issues a certificate because he is satisfied that there is a risk that the administration of justice might be impaired.

Section 2: Certificates: supplementary

24. *Subsection (1)* requires any certificate issued under section 1 to be lodged with the court prior to arraignment. Arraignment is the stage in the case at which the defendant pleads guilty or not guilty to the charges. It is the last stage before a jury is selected to hear the case and the trial begins.
25. *Subsection (2)* enables the DPP(NI) to make changes to the certificate at any time before arraignment. He can amend the certificate (perhaps to reflect changes to the charges the defendant will face) and he can withdraw the certificate. If a certificate is withdrawn, the defendant will be tried before a jury.
26. *Subsection (3)* clarifies that the certificate can be lodged with either the magistrates' court or the Crown Court as appropriate, depending on the stage the legal proceedings have reached.

Section 3: Preliminary inquiry

27. This section enables the prosecution to request a preliminary inquiry rather than a preliminary investigation when a section 1 certificate case is being returned for trial to the Crown Court. The court must grant the request unless they consider a preliminary investigation to be in the interests of justice (*subsection (4)(b)*) or the offence is an extra-territorial offence under the Criminal Jurisdiction Act 1975 (*subsection (4)(c)*). Preliminary inquiry is a paper-based process whereas preliminary investigation requires the calling of witnesses. Preliminary inquiry should help to protect witnesses from intimidation.

Section 4: Court for trial

28. The default position under this section is that all non-jury trials will be held in Belfast. However, under *subsection (1)* of section 4 the Lord Chief Justice of Northern Ireland ('LCJ') can direct that one particular trial, a part of a trial or a class of trials, be held at the Crown Court sitting elsewhere. *Subsection (2)* enables the LCJ to delegate that power to another judge.
29. *Subsection (3)* requires a case where a DPP(NI)'s certificate has been issued under section 1 to be returned for trial to the Crown Court in Belfast (or the place specified in any direction under *subsection (1)*). *Subsection (4)* deals with cases where a DPP(NI)'s certificate is issued after the case has been returned for trial but before arraignment and *subsection (6)* deals with cases where the LCJ's direction under *subsection (1)* is made after the case has been returned for trial.

Section 5: Mode of trial on indictment

30. This section sets out the manner in which cases are to be tried when a certificate under section 1 has been issued. *Subsection (1)* provides that the case is tried without a jury. *Subsection (2)* grants the court hearing the case the same powers and jurisdiction as if the trial were conducted with a jury. *Subsection (3)* provides that references to juries in other legislation are interpreted as references to the court where a case is tried under these provisions.
31. *Subsection (4)* makes clear that the trial court may not draw any adverse inferences from the fact that the DPP(NI) has issued a certificate under section 1.
32. *Subsection (5)* enables the court to find a person guilty of an alternative lesser charge (for example, manslaughter as an alternative to murder), even if the defendant is not being tried for that charge. This is equivalent to the power of the jury in trials on indictment with a jury.
33. *Subsection (6)* requires the court to provide a reasoned verdict if the defendant is convicted of one or more offences. The verdict must be provided at the time of

conviction or as soon as is practicable afterwards. There is no requirement for the court to provide a reasoned verdict for an acquittal.

34. *Subsections (7) and (9)* remove restrictions on the right of appeal that would otherwise apply: a defendant can appeal sentence or conviction, and the prosecution can appeal sentence directly to the Court of Appeal, without seeking the leave of the court first. *Subsection (8)* provides that the period for giving notice of appeal runs from the date of the judgment in the case.

Section 6: Rules of court

35. This section grants a general power to make rules of court in connection with the non-jury trial provisions of sections 1 to 5.

Section 7: Limitation on challenge of issue of certificate

36. This section restricts the grounds on which the issue of a certificate by the DPP(NI) under section 1 may be challenged, whether by judicial review or otherwise. Challenge will be possible where it is alleged there has been dishonesty, bad faith or other exceptional circumstances (*subsection (1)*). It will be for the courts to decide what constitutes exceptional circumstances (though subsection (1)(c) makes clear that this may include exceptional circumstances relating to lack of jurisdiction or error of law).
37. This reflects the current case law in *In Re Shuker and Others* [2004 NI 367] which confirmed that the procedure for determining mode of trial of the accused, as applies in Diplock cases, is not a process suitable for the full panoply of judicial review. Judicial review of the Attorney General's decision not to deschedule a Diplock case is reviewable, however, on grounds such as bad faith or dishonesty.

Section 8: Supplementary

38. This section makes supplementary provision about non-jury trial under this Act. It gives effect to Schedule 1 (consequential amendments) and provides that juries must still decide issues of fitness to be tried, even where the substantive case is to be tried without a jury. *Subsection (3)* makes clear that the DPP(NI) may issue a certificate in relation to an offence committed before as well as after the coming into force of these provisions. *Subsection (4)* is intended to enable the consequential amendments in Schedule 1 to be disapplied in relation to cases being heard or to be heard by a court under section 75 of the Terrorism Act 2000 at the time of the coming into force of these provisions.

Section 9: Duration of non-jury trial provisions

39. This section provides that the provisions in sections 1 to 8 of the Act will expire at the end of the period of two years beginning with the day on which section 1 comes into force. The Secretary of State may extend the duration of the provisions for further consecutive periods of two years by means of an affirmative resolution order. This section also provides, in *subsections (4) and (5)*, that the expiry of the non-jury trial provisions is not to affect trials on indictment being held under these provisions where the indictment has already been presented before their expiry, or the committal of a person for trial under section 4 where the indictment was not presented before the expiry of the provisions. *Subsection (6)* enables the Secretary of State to make, by affirmative resolution order, amendments to other legislation consequential on the expiry of the non-jury trial provisions.

Juries

Section 10: Restrictions on disclosure of juror information

40. This section inserts new Articles 26A to 26C into the Juries (Northern Ireland) Order 1996 to place restrictions on the disclosure of information which identifies a person as being or having been a juror or potential juror.
41. New Article 26A makes it an offence, broadly speaking, for:
- an electoral officer;
 - a court official;
 - a person providing services to the Northern Ireland Court Service;
 - a member of the police;
 - a person provided with juror information in accordance with jury check guidelines;
 - a juror or person summoned as a juror; or
 - any other person who knows (or ought to know) that relevant juror information has previously been unlawfully disclosed,
- to unlawfully disclose juror information.
42. New Article 26A(8) provides that the offence may be tried:
- summarily with a maximum penalty of 6 months' imprisonment, or a fine not exceeding the statutory maximum (currently £5,000), or both; or
 - on indictment with a maximum penalty of 2 years' imprisonment or a fine or both.
43. It shall be a defence for a person to prove that he reasonably believed the disclosure was lawful (new Article 26A(9)).
44. New Article 26B sets out the circumstances in which juror information may be disclosed with lawful authority. These include disclosure:
- by an electoral officer to another electoral officer or for the purpose of preparing the annual list of potential jurors in accordance with Article 4 of the 1996 Order;
 - by a court official to another court official, to a judge, or to a juror or person summoned as a juror;
 - to a person or his employee in connection with the provision of services to the Northern Ireland Court Service;
 - by a person or his employee providing services to the Northern Ireland Court Service if required by an officer of the court in connection with the provision of those services;
 - for the purposes of carrying out additional jury checks as authorised by jury check guidelines;
 - for the purposes of criminal proceedings, other than those in relation to which the juror in question has been called to serve as a juror; and
 - made with leave of a court.
45. New Article 26C contains definitions of terms used in new Articles 26A and 26B.
46. *Subsection (2)* introduces Schedule 2. *Subsection (3)* provides that new Articles 26A to 26C will not apply in relation to any juror information that relates to service on a jury before the date when the provisions came into force. Nor will they apply in relation to

information made available in jurors lists prepared before that date under Article 4 or 7 of the Juries (Northern Ireland) Order 1996.

Section 11: Chief Electoral Officer to provide additional information to Juries Officer

47. Currently the Chief Electoral Officer provides the Juries Officer with the name and address of those persons listed in the jurors lists prepared in accordance with Article 4 of the Juries (Northern Ireland) Order 1996. Section 11 amends Article 4 of the 1996 Order so as to require the Chief Electoral Officer to also provide the date of birth and national insurance number of each person on the list. The purpose of this amendment is to enable the Northern Ireland Court Service to carry out routine criminal record checks to prevent disqualified persons from serving as jurors. Section 11 also amends Articles 4 and 6 of the 1996 Order to provide that this additional information shall be included in any divisional jurors list or jury panel.

Section 12: Jurors found to be disqualified before being summoned

48. **Section 12** amends Article 8 of the Juries (Northern Ireland) Order 1996 to provide that a Juries Officer is not to summon a person included in a jury panel where he is satisfied, as a result of a check carried out by a member of the Northern Ireland Court Service, that the person is disqualified or not qualified for jury service.

Section 13: Abolition of peremptory challenge in criminal cases

49. **Section 13** amends Article 15 of the Juries (Northern Ireland) Order 1996 to remove the right of a person arraigned on indictment to challenge up to twelve jurors without the need to show cause (known as ‘peremptory challenge’). It also provides that a judge may hear any challenge for cause in camera or in chambers.

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)*.

Powers

Section 21: Stop and Question

60. This section provides a member of the armed forces on duty or a constable with the power to stop and question a person for so long as is necessary to establish their identity and movements.
61. Additionally, members of the armed forces may stop a person to question him or her about a recent explosion or incident endangering life, or about their knowledge of a person killed or injured in a recent explosion or incident. These additional grounds are intended to assist the military to undertake explosive ordnance disposal work, where they may wish to question people about explosions to gain knowledge which will help them ensure the safety of an area. Anyone who fails to stop or answer to the best of their knowledge and ability commits an offence.

Section 22: Arrest

62. This section allows a member of the armed forces to arrest and detain a person for up to four hours if he or she reasonably suspects they are committing, about to commit or have committed an offence. Premises where that person is or is reasonably suspected to be may be entered and searched for the purposes of an arrest.
63. The power to detain a person for up to four hours is intended to allow sufficient time for a PSNI officer to attend in order to re-arrest the person and charge them with an offence, if appropriate.
64. It is envisaged that members of the armed forces will be deployed increasingly rarely, so will not have recourse to these powers on a regular basis. They are not expected to know the law as intimately as a police constable, hence in exercising their powers of arrest they will not be required to provide detailed legal grounds for arrest. *Subsection (2)* provides that members of the armed forces comply with any laws requiring them to state grounds for arrest by saying that they are making the arrest as a member of Her Majesty's Forces. There is an exception in *subsection (5)* for laws that only have effect by virtue of the Human Rights Act 1998. The effect of this is that the armed forces satisfy their legal obligations if they comply with *subsection (2)*, except any overarching requirement under the Human Rights Act 1998.
65. A member of the armed forces can seize and detain for up to four hours anything he or she reasonably suspects is being, has been or is intended to be used in the commission of an offence under section 31 or 32 (offences related to powers of road closure and land seizure). This measure enables the retention of the articles to be used in the commission of those offences until a constable attends who will then decide whether to arrest and charge.

Section 23: Entry

66. This section provides a power of entry to premises. Premises are defined at section 42 to include vehicles.
67. This section allows a member of the armed forces or a constable to enter premises if he or she considers it necessary in the course of operations for the preservation of peace or the maintenance of order. Since no warrant is required, this section enables officers on the ground to respond immediately to events as they arise.
68. A constable may not enter a building unless the conditions in *subsection (2)* are satisfied. First, there must be written authorisation from an officer of the rank of superintendent or above. If no such authorisation is in place and it is not reasonably practicable to

obtain written authorisation, then oral authorisation may be provided by an officer of the rank of Inspector or above. If it is not reasonably practicable to obtain either written or oral authorisation then a constable may enter a building without it.

69. An authorisation must relate to a specified area within Northern Ireland. All authorisations must be retained in written form and constables who enter premises must make a record of each entry as soon as reasonably practicable. *Subsection (6)* sets out the information that should be included in such records. Copies of records or authorisations must be given to the owners or occupiers of buildings which have been entered as soon as is reasonably practicable.

Section 24: Search for munitions and transmitters

70. This gives effect to Schedule 3, detail of which is provided below.

Section 25: Search for unlawfully detained persons

71. This section allows members of the armed forces to enter and search any premises in order to search for any person whom they reasonably believe has been unlawfully detained and whose life is endangered. No warrant is to be required because time will be critical in these situations.
72. The section requires the power to search a dwelling to be exercised only if authorised by a commissioned officer. This recognises the special status of people's homes: 'dwelling' is defined at section 42 of the Act.

Section 26: Premises: vehicles, &c.

73. This section provides that a power to search premises includes a power to stop a vehicle, and where necessary or expedient, cause it to be taken away for searching. References to premises (found in sections 22(3), 23, 25, 28 and 33 and Schedule 3) include vehicles by virtue of section 42. Where records must be made of a search, and that search is of a vehicle, references to the need to record an address will be taken as a reference to the location of the vehicle and its registration number. References to the occupier will be taken to refer to the owner or driver of the vehicle. An offence of failing to stop a vehicle is created.
74. *Subsection (5)* enables, when searching a vehicle for munitions and transmitters, the searcher to require a person to remain with the vehicle or to go to any place the vehicle is taken where the searcher reasonably believes it necessary for carrying out the search. Reasonable force may be used to secure compliance with these requirements.
75. *Subsection (6)* provides that a requirement to stay with the vehicle, or go to where it is taken, may only last as long as the search, or for four hours (extendable to eight hours in certain circumstances), whichever is shorter. A record must be made and a copy given to the owner or driver of the vehicle.

Section 27: Examination of documents

76. This section provides that a member of the armed forces may examine documents found in a search under sections 24 to 26 in order to ascertain whether the information contained in them is likely to be useful for terrorism, and if necessary or expedient remove them to another place, for up to 48 hours. A person may not examine a document which he or she has reasonable cause to believe is subject to legal privilege.
77. It is an offence to obstruct a member of the armed forces in exercising this power.

Section 28: Examination of documents: procedure

78. This section provides that documents examined using the power at section 27 of the Act may not be photographed or copied. Written records of examinations must be made as

soon as reasonably practicable and must include the information listed at *subsections (2) and (3)*. A copy of the records should be supplied to the person who had custody of the document or to the occupier of the building where the document was found.

Section 29: Taking possession of land, &c.

79. This section provides that the Secretary of State may authorise someone to take possession of land or property and carry out work on it. He may also authorise a person to place buildings and other structures in a state of defence, for instance through fortification. Property may be detained, destroyed or moved by authorised persons, and the Secretary of State may also authorise persons to take actions which interfere with public rights or private rights of property. These powers may only be exercised where it is necessary for the preservation of peace or the maintenance of order. It is intended that such powers will be used during the marching season in Northern Ireland and to allow the rapid creation of ‘peace walls’ at interfaces where there is community tension. These powers may be exercised at very short notice, hence they are exempt from normal planning processes.

Section 30: Road closure: immediate

80. A member of the armed forces, or someone authorised by the Secretary of State, may close roads, divert them and restrict and prohibit the use of rights of way or waterways where it is immediately necessary for the preservation of peace or the maintenance of order. These powers are also intended for the management of the marching season in Northern Ireland. For example, roads and public rights of way may be closed at short notice in reaction to events on the ground.

Section 31: Sections 29 and 30: supplementary

81. This section creates an offence of interfering with works and equipment used to take possession of land or close or divert roads, rights of way, etc, unless there is a reasonable excuse for doing so.
82. This section also provides that authorisations under sections 29 and 30 may authorise the exercise of all the powers, or only some of them, and that authorisations may relate to a person or to a group of people.

Section 32: Road closure: by order

83. This section provides the Secretary of State with a power to close, partially close, or divert roads if necessary for the preservation of the peace or the maintenance of order. An offence of interfering with road closure works or equipment is created. Offences of executing bypass works within 200 metres of road closure works, having materials and tools for executing such works within 200 metres and knowingly permitting either of these to take place on land are created. There is a defence of reasonable excuse.

Powers: supplementary

Section 33: Exercise of powers

84. This section provides that powers under sections 21 to 30 are additional to those already in common law, and should not be taken to affect the Royal prerogative. It also provides for the use of reasonable force by a constable or member of the armed forces in relation to those sections.
85. Anything seized may be retained for as long as is necessary and a power to search premises conferred by this Act includes the power to search a container. A member of HM Forces not in uniform must produce evidence that he is a member of HM Forces, if he is requested to do so when exercising the powers in sections 21 to 30.

Section 34: Code of practice

86. This section allows the Secretary of State to make codes of practice in relation to the seizure and retention of property by the police and in relation to the exercise of the powers conferred by the Act. The Secretary of State must publish a draft code of practice, consider any representations about the draft, and if he thinks is appropriate, modify the draft. The draft code must be laid before Parliament and may be brought into force by order. These procedures apply again where the whole or a part of the code is revised and it is re-issued.

Section 35: Code: effect

87. Failure by a police officer or a member of the armed forces to comply with any part of a code of practice does not make them liable to civil or criminal proceedings, with the exception for armed forces personnel of proceedings under the Army Act 1955, Air Forces Act 1955 and Naval Discipline Act 1957 (but not civil offences under those Acts). A code is admissible as evidence in criminal and civil proceedings, and must be taken into account by a court or tribunal where the code appears relevant.

Section 36: Code: procedure for order

88. This section sets out the procedure for bringing the code under section 34 into force. The order giving effect to the code must be laid in draft before Parliament and is subject to the affirmative resolution procedure before being made.
89. An order may be made without a draft having been approved if the Secretary of State believes there is an urgent reason for the code to be brought into force. Any order doing so must contain a declaration to that effect from the Secretary of State and will only last 40 days unless a resolution approving the order is passed by both Houses of Parliament within that time. The end of an order (and the code brought into force by it) will not prejudice any actions previously taken or the making of a new order.

Section 37: Records

90. This section places a duty on the Chief Constable of the Police Service of Northern Ireland to make arrangements for constables to make records of the exercise of the powers in sections 21 to 26. This is only necessary where it is reasonably practicable for a record to be made, and a record is not already required by legislation.
91. These records will be used to produce statistics which will inform the independent reviews of this legislation provided for in section 40.

Section 38: Compensation

92. This section gives effect to Schedule 4, which is described below.

Section 39: Prosecution

93. With the exclusion of Schedule 4 (which has an offence of obtaining compensation by deception at [paragraph 12](#)), the prosecution of any offence created in sections 21 to 32 requires the consent of the DPP(NI). If it appears to the DPP(NI) that the offence is connected with the affairs of another country then the permission of the Attorney General for Northern Ireland is required. This is intended to provide a safeguard against malicious prosecution.
94. The section contemplates the Advocate General for Northern Ireland taking over the role of the Attorney General on the devolution of policing and justice functions to the Northern Ireland Assembly. The Advocate General will be responsible for various excepted and reserved matters in Northern Ireland.

Section 40: Review

95. This section provides for the Secretary of State to appoint a reviewer to consider the operation of sections 21 to 32 in this Act and the procedures adopted by the head of the armed forces in Northern Ireland for receiving, investigating and responding to complaints. The Secretary of State may also direct the reviewer to conduct a review into other specified matters, not necessarily related to powers in the Act or military complaints procedures.
96. Reviews will cover the period of a year, with the first report to be published as soon as is practical after 31 July 2008. The report of each review shall be laid before Parliament by the Secretary of State once he has received it from the reviewer. Provision is made for paying expenses and allowances to the reviewer.

Section 41: Duration

97. This section allows the Secretary of State to repeal sections 21 to 40 of the Act so that powers may be taken out of force as they become unnecessary. It is envisaged that this would be due to alternative powers becoming available or changes in operational need. Such orders would be subject to the affirmative resolution procedure.

Section 42: Interpretation

98. The section defines some of the terms used in sections 21 to 38 (and Schedules 3 and 4).

Miscellaneous

Section 43: Accredited community-based restorative justice schemes

99. **Section 43** requires the Secretary of State to maintain a public register of schemes in Northern Ireland that appear to him to be community-based restorative justice schemes and to meet requirements determined and published by him. The requirements must include a requirement about cooperation with the Chief Inspector of Criminal Justice in Northern Ireland. The section also provides that the Chief Inspector may inspect the schemes and shall from time to time make a report to the Secretary of State on inspections carried out by him under the section. The Secretary of State must lay the report before Parliament and arrange for it to be published in accordance with section 49(2) to (4) of the Justice (Northern Ireland) Act 2002. The Secretary of State may remove a scheme from the register if (having considered any report made by the Chief Inspector) he considers that the scheme is not a community-based restorative justice scheme or that it does not meet the requirements.

Section 44: Northern Ireland department with policing and justice functions

100. **Subsections (1) to (4)** of section 44 amend section 21A of the Northern Ireland Act 1998 to provide a further model for a department with policing and justice functions, adding to the Assembly's choice. A department set up under this model would be in the charge of a Northern Ireland Minister elected by the Assembly who would be supported by a similarly elected deputy Minister.
101. **Subsection (5)** inserts new section 21A(7A) to (7D), which provide for a new Northern Ireland department with policing and justice functions to be established under this model by Order in Council. This power may only be exercised, however, if the Secretary of State believes that there is no reasonable prospect that the Assembly will pass an Act establishing a department with policing and justice functions. The power may only be used once.
102. **Subsection (6)** of section 44 inserts new section 21B into the Northern Ireland Act 1998. New section 21B is an enabling power relating to this new model for a policing and justice department. It is available whether the new department is established by Act

of the Assembly, or by Order in Council. It is designed to allow Ministers designate to be elected in advance of their taking up office on the devolution of policing and justice. If it was used, the Minister designate and deputy Minister designate would take up office after devolution of policing and justice, provided they took the pledge of office. If one or the other failed to do so, there would be a new election for one or both posts. The intention is to facilitate preparations for the new department, by enabling the new Ministerial team to begin operating in “shadow” form through these transitional arrangements.

103. *Subsection (7)* inserts new section 21C into the Northern Ireland Act 1998. It requires an Assembly committee to review the operation of the new Ministerial arrangements provided for by this model, and to report to the Assembly and Executive Committee no later than two years and ten months after devolved policing and justice functions are transferred to the department. The report must include a recommendation as to whether the deputy Ministerial office should be retained.
104. New section 21C also contains provision about the abolition of the deputy Ministerial office. If the Assembly resolve that the post should be abolished within the first three years of devolution, the Secretary of State must make an order to abolish the post on, or as soon as reasonably practicable after, the date specified by the Assembly. However if the Assembly resolve before the end of those three years that the deputy Ministerial office should be retained for a further period, the Secretary of State will not make an order to abolish the post unless and until that period, and any extension specified by the Assembly, have expired. If the Assembly does not resolve within the three years following devolution that the deputy Ministerial office should be abolished or retained, the Secretary of State must make an order abolishing the office as soon as reasonably practicable after the end of the three years. An order abolishing the deputy Ministerial office must be made by statutory instrument, but is not subject to any Parliamentary procedure.
105. An Assembly resolution to abolish or retain the deputy Ministerial office requires cross community support on a 50:50:50 basis (i.e. with the support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting).
106. *Subsection (8)* of section 44 gives effect to Schedule 5 to the Act.

Section 45: Chief Inspector of Criminal Justice

107. This section inserts the Northern Ireland Court Service, the Northern Ireland Legal Services Commission and the Life Sentence Review Commissioners into the list of organisations which the Chief Inspector of Criminal Justice in Northern Ireland shall inspect under his powers which are contained in Part 3 of the Justice (Northern Ireland) Act 2002. *Subsection (6)* inserts new subsection (6A) into section 47 of that Act and will exclude from inspection any judge or other person making judicial decisions or exercising judicial discretion, so that the Court Service is only subject to inspection in respect of court administration. The section also provides that the Lord Chancellor is included in the process of consultation on the Chief Inspector’s work programme (*subsection (4)*) and in receiving any completed reports in respect of the Court Service and the Legal Services Commission (*subsection (7)*).

Section 46: Free legal aid in magistrates’ courts

108. This section enables the magistrates’ court to make a restricted certificate for legal aid that covers only specified proceedings or aspects of proceedings. At the moment, the magistrates’ court can only make a certificate that covers the whole of proceedings, even if legal aid is only required for one stage (e.g. a bail hearing).

Section 47: Altering title of resident magistrate

109. The Report of the Northern Ireland Criminal Justice Review recommended restyling Northern Ireland resident magistrates as district judges (magistrates' courts) in order to demonstrate publicly that the magistracy is an integral part of the judiciary.
110. Section 102 of the Courts Act 2003 provides the Lord Chancellor with a general power to alter, by order, existing judicial titles in relation to the Supreme Court and the county courts in Northern Ireland following consultation with the Lord Chief Justice of Northern Ireland. Section 47 amends section 102 of the 2003 Act so as to enable the Lord Chancellor to use this power to alter the titles of resident magistrate, presiding resident magistrate and deputy resident magistrate.

Section 48: Private Security Industry

111. This section sets out the pattern of transitional arrangements between the repeal of Schedule 13 of the Terrorism Act 2000, the introduction of Schedule 6 (interim arrangements) and the eventual regulation by the SIA as established by the 2001 Act. This section also modifies the 2001 Act and gives it UK-wide effect by making it extend to Northern Ireland as well as England, Wales and Scotland.
112. Following the repeal of Schedule 13 on 31 July 2007, Schedule 6 of this Act will have effect on 1 August 2007. Because the SIA cannot commence licensing in Northern Ireland immediately, Schedule 6 establishes a form of regulation for the transitional period. Once the SIA are ready to commence licensing in Northern Ireland, the relevant provisions of the 2001 Act will be brought into effect in Northern Ireland by statutory instrument in accordance with *subsection (4)*. That order will repeal Schedule 6, thereby ending the interim scheme of regulation.
113. The 2001 Act sets up a scheme of statutory regulation of the private security industry. It establishes the SIA and defines its functions. These are:
 - to licence individuals and to approve companies;
 - to keep under general review the private security industry and the operation of the legislative framework;
 - to monitor the activities and effectiveness of those working in the industry;
 - to conduct inspections;
 - to set and approve standards of conduct, training and supervision within the industry; and
 - to make recommendations to improve standards.
114. The 2001 Act regime also specifies a range of activities which are licensable by the SIA, and details offences of providing unlicensed security services. It defines the various licensing functions of the SIA such as licensing criteria, licence conditions and appeals in licensing matters.
115. The current designated sectors or activities that must be covered by a licence are as follows:
 - Door supervisors – both in house and supplied under a contract for service;
 - Vehicle immobilisers on private land – both in house and supplied under a contract for service;
 - Security guards supplied under a contract for services;
 - Key holders supplied under a contract for services;
 - Close protection operatives supplied under a contract for services;

- Cash and valuables in transit operatives supplied under a contract for services; and
 - Public space surveillance CCTV operatives supplied under a contract for services.
116. This Act enables all of these sectors and activities to be regulated in Northern Ireland by the SIA.
117. The SIA take various criteria into account when deciding whether to grant a licence or not. They ensure that applicants are properly trained in relevant areas, as well as checking for criminal convictions. The suitability of the applicant to work in the private security industry is assessed and they are granted or refused a licence according to the defined criteria.
118. A full explanation of the operation of the SIA and the 2001 Act is available in the Explanatory Notes prepared by the Home Office to be read in conjunction with the 2001 Act.

Section 49: Amendments of the Private Security Industry Act 2001

119. This section makes technical changes to the 2001 Act to allow for differences between Great Britain and Northern Ireland, for example, *subsection (2)* amends section 11 of the 2001 Act (licensing appeals) so that in relation to Northern Ireland, a reference to the Crown Court means a reference to the county court.
120. *Subsection (6)* amends section 25 of the 2001 Act (interpretation) by clarifying that any reference to an Act that does not extend to Northern Ireland shall be taken as a reference to the equivalent (or nearest equivalent) legislation that applies to Northern Ireland.
121. Paragraph 4(1) of Schedule 2 to the 2001 Act defines the activities covered as surveillance, inquiries or investigations carried out for the purpose of obtaining information about a person or about a person's activities or whereabouts. *Subsection (7)* amends that Schedule by inserting new *paragraph 4B* which exempts the activities of a barrister-at-law or a solicitor in Northern Ireland which are carried out for the purposes of the provision of legal services. This is to ensure that the activities of solicitors and barristers in Northern Ireland are not caught as designated, licensable activities.

Supplemental

Sections 50 to 54: Repeals and revocations, Financial provisions, Extent, Commencement, Short title

122. **Section 50** brings Schedule 7 (repeals and revocations) into effect.
123. **Section 52** details the extent of the Act. Sections 14 to 20 (Human Rights Commission), section 44 and Schedule 5 (Northern Ireland department with policing and justice functions), section 47 (altering title of resident magistrate) and sections 48 and 49 and Schedule 6 (private security industry) extend to the whole of the UK. The amendments made by Schedule 1 (trials on indictment without a jury: consequential amendments) (and sections 8 and 9(1) to (4) so far as relating to those amendments) have the same extent as the enactments being amended. Subsections (6) and (7) of section 9 extend to England and Wales and Northern Ireland. The other provisions of the Act extend to Northern Ireland only.
124. **Section 53** provides for sections 21 to 40 (and Schedules 3 and 4) to come into force on 1 August 2007. Sections 9 and 51 to 54 will come into force on Royal Assent and other provisions of the Act will come into force by statutory instrument on a day appointed by the Secretary of State by order. An order under the section may make transitory or transitional provision or savings.

Schedule 1: Trials on indictment without a jury: consequential amendments

125. This Schedule makes amendments consequential on the creation of the new system of non-jury trial created by the Act (see sections 1 to 9). In particular, it amends section 14A(1) of the Criminal Procedure and Investigations Act 1996 in order to provide a procedure to apply for the consideration of disclosure issues in relation to trials without a jury. *Paragraph 3* of the Schedule provides that the non-jury trial provisions contained in Part 7 of the Criminal Justice Act 2003 are not to apply if the new procedures for non-jury trial in this Act are being used.

Schedule 2: Restrictions on disclosure of juror information: further amendments

126. *Schedule 2* makes a number of amendments to the Juries (Northern Ireland) Order 1996 to complement the restrictions on the disclosure of juror information. *Paragraph 2* removes the right to inspect and obtain copies of jurors lists and panels; *paragraph 3* restricts those persons who may be present at the call-over of the jury panel (i.e. the procedure for ascertaining the attendance of jurors); and *paragraph 4* provides that the balloting of jurors shall be conducted using assigned numbers rather than by name.

Schedule 3: Munitions and Transmitters: Search and Seizure

127. *Paragraph 2* provides officers (defined at *paragraph 1* as members of the armed forces on duty or constables) with a power to enter and search premises to ascertain if there are munitions unlawfully on the premises, or wireless apparatus on the premises. *Paragraph 1(3)* defines munitions and transmitters. *Paragraph 2(3)* enables a constable to be accompanied, if necessary, by other persons. This power allows civilian members of the police force, and those supporting the police (for example, Scenes of Crime Officers), to enter premises with constables.
128. In order to enter a dwelling an officer must have a reasonable suspicion that there are munitions unlawfully on the premises, or wireless apparatus on the premises. The officer must also be authorised to do so, if a member of the armed forces, by being on duty and being authorised by a commissioned officer, and if a constable, by being authorised by an officer of the Police Service of Northern Ireland of at least the rank of Inspector.
129. *Paragraph 3* gives an officer the power, when carrying out a search of a building, to require someone who is in the building or comes into the building to remain there. The officer may also require a person to remain in a certain part of the building or to go from one part of the building to another. An officer may also stop someone who does not live in the building from entering it. An officer may only impose these requirements if he reasonably believes it is necessary in order for the search to be carried out or to stop the search from being interfered with and frustrated. Any requirements the officer makes must cease when the search finishes. No requirement can last for more than four hours from when the first requirement was imposed, unless it is extended for up to a further four hours by a superintendent (in the case of the police) or a major (in the case of the army). The extension may only be granted if the authorising officer reasonably believes it to be necessary to carry out the search or in order to prevent the search being frustrated. The power to extend a requirement for up to a further four hours can only be exercised once in relation to a particular search.
130. *Paragraph 4* provides that officers may stop and search a person in a public place to establish whether he has munitions unlawfully with him or wireless apparatus with him. In order to search an individual when not in a public place the officer must have reasonable suspicion that the individual has munitions unlawfully with him or wireless apparatus with him. *Paragraph 4* also provides that, having entered a dwelling under *paragraph 2*, members of the armed forces may search a person entering or found inside. Dwelling is defined at section 42 of this Act.

131. *Paragraph 5* allows that, when using powers of search under Schedule 3 or section 25 or 26, an officer may seize, retain and destroy any munitions (unless it appears to him that they have been, are, and will be used lawfully). An officer may also seize and retain any wireless apparatus found in the course of the search (unless it appears to him that it has been, is, and will be used lawfully).
132. *Paragraph 6* requires, unless it is not reasonably practical, that records are made for any search carried out using the powers in this Schedule. *Paragraph 7* states that a copy of the record should be supplied as soon as possible to whoever appears to be the occupier of the building that has been searched.
133. *Paragraph 8* creates an offence where a person knowingly fails to comply with requirements under *paragraph 3* or wilfully obstructs or seeks to frustrate searches of premises carried out under powers in the Schedule.
134. *Paragraph 9* creates an offence of not stopping when required to do so in accordance with *Paragraph 4*.

Schedule 4: Compensation

135. This Schedule provides for a scheme of compensation where, in exercising powers under sections 21 to 32, property is taken, occupied, destroyed or damaged, or where any other act interferes with private rights of property. Compensation must be paid to those who have an interest in the property or who suffer loss or damage.
136. *Paragraph 3* provides that an application must be made within 28 days of the event for which compensation is being claimed. *Sub-paragraph (2)* gives the Secretary of State discretion to allow applications after this time, within a defined timeframe of no more than six months after the incident, if he receives a written request. *Sub-paragraph (3)* provides that if the Secretary of State decides not to use this discretion a notice of refusal must be served on whoever made the request, and they may appeal that decision to the county court. The county court may then exercise the power under *sub-paragraph (2)* to extend the period in which an application can be made.
137. Decisions either to award or deny compensation must be communicated to the applicant as noted in *paragraph 4*. *Paragraph 5* provides that appeals against decisions can then be made to the county court. *Paragraph 6* allows that the award may be reduced, withheld or refused if the Secretary of State considers that the applicant made a false or misleading statement, made a statement he did not believe to be true, or knowingly failed to disclose a relevant fact.
138. *Paragraph 7* provides that the Secretary of State may make a payment to cover the costs of the application for compensation, where that application was successful.
139. *Paragraph 8* allows for a situation where the right of compensation passes on to another individual after an application has been made. In that case the Secretary of State may treat that person as the applicant.
140. In *paragraph 9*, where an act, which is the subject of the claim for compensation, was done in connection with or revealed evidence of an offence for which proceedings are brought the right to compensation is not enforceable until those proceedings have concluded and is lost if a person is convicted. For example, if an individual made a claim for damage done to his or her property during a search carried out using the powers in Schedule 3 of this Act, but that search revealed illegal ammunition for which the claimant was charged, their claim would effectively be suspended. If they were convicted as a result of those proceedings they would lose any right to compensation.
141. *Paragraphs 10* and *11* provide details of how notices related to compensation must be served.

142. *Paragraph 12* creates an offence of obtaining compensation by deception or by making false or misleading statements, making statements which a person does not believe to be true, or knowingly failing to disclose a relevant fact.

Schedule 5: Northern Ireland department with policing and justice functions

143. Schedule 5 to the Act inserts an additional Part 3A into Schedule 4A to the Northern Ireland Act 1998, and sets out the detail of the new model provided for in section 44. The provisions will only have effect if a Northern Ireland department with policing and justice functions using this model is set up either by an Assembly Act or by an Order in Council.
144. *Paragraph 11B* of new Part 3A modifies the normal arrangements set out in section 16A of the Northern Ireland Act 1998 for appointing the First and deputy First Ministers and Northern Ireland Ministers following an Assembly election. This ensures that the Minister and deputy Minister of the new department for policing and justice are appointed after the First and deputy First Minister, but before the other Northern Ireland Ministers. This is needed to ensure that the relevant Ministerial office is counted for the purposes of the d'Hondt formula for allocating ministerial posts. (Section 16A of the Northern Ireland Act 1998 was inserted by section 8 of the Northern Ireland (St Andrews Agreement) Act 2006.)
145. *Paragraph 11C* provides for a modification of the d'Hondt process which is set out in section 18 of the Northern Ireland Act 1998 so that, where a party is entitled to two or more Ministerial offices under d'Hondt, the new Ministerial office will count as the party's second, rather than its first, choice of office.
146. *Paragraph 11D* ensures that the deputy Minister (who will not be a member of the Executive) is not counted as holding a Ministerial office for d'Hondt purposes. It also specifies that the functions of the deputy Minister will be determined by the Minister and deputy Minister acting jointly, after consultation with the First Minister and deputy First Minister.
147. *Paragraph 11E* sets out the arrangements for electing the Minister and deputy Minister. Any member of the Assembly may stand for election, provided they belong to one of the two largest political designations, they are nominated by another member, and their party's nominating officer agrees. The Minister and deputy Minister must come from different designations; and both must be elected with cross community support on a 50:50:50 basis. Once elected they must affirm the pledge of office before taking up post. The two Ministers stand for election individually, so if one ceases to hold office, the other may remain in post. The exception to this is in circumstances where a new Minister comes from the different designation from his predecessor, necessitating a change in the designation of the deputy Minister as well.
148. *Paragraph 11F* provides that, as with other models and other Ministries, the First Minister and deputy First Minister are not precluded from holding the office of Minister or deputy Minister of the new department by virtue of their being First or deputy First Minister. It also provides that candidates for Minister or deputy Minister may not come from parties excluded by the Assembly or by the Secretary of State.
149. *Paragraph 11G* provides that where a new Minister comes from a different political party from his predecessor and thus unbalances the Executive, the d'Hondt process will be run anew. The exception, again as with other models, is where the original party refused to agree the nomination of a new candidate or a successful candidate refused to affirm the pledge of office.

Schedule 6: Private Security Industry: Interim Arrangements

150. This Schedule (which is given effect by section 48(2)) sets out the interim arrangements prior to the commencement of the provisions in the 2001 Act in Northern Ireland.

151. *Paragraphs 4 to 7* detail the offences of providing or using unlicensed private security services. Security services are defined in *paragraph 1* as the services of one or more individuals as security guards, which may or may not be provided together with services relating to the protection of property or persons. It is an offence if a person provides or offers to provide security services for reward unless he holds a licence or acts on behalf of someone who holds a licence. A person also commits an offence if he pays money in respect of the provision of security services to a person who does not hold a licence or is not acting on behalf of someone who holds a licence.
152. *Paragraph 8* sets out the application process. A firm wishing to provide a security service must make an application to the Secretary of State for a licence, who may require information about the applicant, a security services business he intends to carry on, a person whom he proposes to employ as a security guard, or his partners, members or officers (including directors, managers or secretaries). It is an offence if a person makes a false or misleading statement in connection with the application for a licence.
153. *Paragraph 9* states that a licence will be granted unless the Secretary of State is satisfied that any one of four conditions applies. Condition 1 is that a proscribed organisation (as defined by the Terrorism Act 2000), or an organisation which appears to be closely associated with a proscribed organisation would benefit from the granting of that licence. Condition 2 is that there are reasonable grounds to suspect that the applicant's security services business, employees, partner, members or officers are engaged in criminal activity. Conditions 3 and 4 respectively are the applicant's persistent failure to comply with the Schedule, and the applicant's failure to comply with conditions imposed on a licence.
154. *Paragraph 10* states that the Secretary of State may impose a condition on a licence if satisfied that it is necessary to prevent a proscribed organisation, an organisation which appears to be closely associated with a proscribed organisation, or a person who engages in criminal activity from benefiting from the licence (whether direct or indirect, financial or not).
155. *Paragraph 11* states that the Secretary of State shall notify the applicant if his application for a licence is refused.
156. *Paragraph 12* details the duration of a licence. The licence shall come into force on the day it is issued and will be valid for 12 months beginning with that day. If a new licence is issued to a person who already holds a licence, it will be valid for 12 months from the day after the current licence expires.
157. *Paragraph 13* provides for the Secretary of State to revoke a licence if satisfied that a proscribed organisation, or an organisation which appears to be closely associated with a proscribed organisation would benefit from that licence, or if the licence holder's security services business (or associates) are engaged in criminal activity. A licence may also be revoked if the licence holder has persistently failed to comply with the requirements of this Schedule, or has failed to comply with a condition imposed on the licence.
158. The Secretary of State shall not revoke a licence unless the holder has been notified of his intention to revoke the licence. Neither shall the licence be revoked by the Secretary of State unless the holder has been given a reasonable opportunity to make representations to the Secretary of State.
159. *Paragraph 14* states that upon the refusal or revocation of a licence, or in the event of having conditions imposed on it, the applicant may appeal to the High Court. Where an appeal is brought to the High Court, the Secretary of State may issue a certificate to show that his decision was made in order to prevent a proscribed organisation, an organisation closely associated with a proscribed organisation or a person engaged in criminal activity, from benefiting from that licence; and can be justified by these reasons. The appellant shall be notified of the Secretary of State's decision to issue

a certificate, and may appeal against the certificate to the Tribunal established by the Northern Ireland Act 1998.

160. Where a licence-holder or an applicant proposes to employ a security guard about whom information was not given under paragraph 8, *paragraphs 16 to 19* state that he shall give the Secretary of State specified information about the security guard, no less than 14 days before his employment is to commence. Where there is a relevant change in personnel (changes to the members of a partnership or officers of a body corporate), the Secretary of State must be given any information as he may specify at least 14 days before the change in personnel, or as soon as is reasonably practical. It is an offence if a person fails to give the Secretary of State information he has requested about a proposed security guard or a change in personnel.
161. *Paragraph 20* provides that a constable may enter premises where security services are being provided and require records about employed security guards to be produced for his inspection. He may use reasonable force to enter the premises, and he must identify himself as a constable. It is an offence if the provider of security services does not produce the records that the constable requires. *Paragraph 21* provides that it is also an offence if he keeps records about any employees which he knows are false or misleading.
162. *Paragraph 22* states that where an offence is committed by a body corporate with the consent of an officer, or due to the neglect of an officer, the officer as well as the body corporate shall be guilty of the offence.
163. *Paragraph 23* states that any information required by the Secretary of State must be in writing and may be sent by post. It also sets out how the Secretary of State may serve a notice on an individual, a partnership or a body corporate.