

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

TERRITORIAL EXTENT

100. In the main the Act's provisions extend to England and Wales only, but certain provisions also extend to Scotland or Northern Ireland, or both. In relation to Scotland, Wales and Northern Ireland, the Act addresses both devolved and non-devolved matters.
101. The provisions of the Act relating to the following reserved matters extend to Scotland:
- the new offences relating to nuclear material and nuclear facilities together with the other related amendments to the 1983 Act and the Customs and Excise Management Act 1979 (section 75 and Schedule 17);
 - the power of the Secretary of State to make an order altering the maximum penalty for unlawfully obtaining etc. personal data (section 77) and the new defence in respect of an offence under section 55 of the Data Protection Act 1998 (section 78);
 - the amendments to the Ministry of Defence Police Act 1987 and the Railways and Transport Safety Act 2003 in relation to the misconduct and performance procedures for Ministry of Defence Police and British Transport Police officers (Parts 2 and 3 of Schedule 22);
 - the new special immigration status for certain foreign nationals (Part 10);
 - industrial action by prison officers (sections 138 and 139);
 - power to require data controllers to pay monetary penalty (section 144); and
 - the amendments to the UK Borders Act 2007 in relation to trafficking (section 146).
102. The Scottish Parliament's consent was sought for the provisions in the Act that trigger the Sewel Convention. These provisions relate to sections 59 (SFO's pre-investigatory powers in relation to bribery and corruption), 93 to 96 (repatriation of prisoners) and 113 (offences in respect of VOOs). The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. The consent was given on 30 January 2008. (see Official Report at www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor0130-02.htm#Col5627).
103. The provisions of the Act relating to the following excepted or reserved matters also extend to Northern Ireland:
- YROs to the extent that the provisions allow for such Orders made in England and Wales to be enforced in Northern Ireland and for certain orders made in Northern Ireland to be enforced by means of arrangements for YROs in England and Wales (section 3 and Schedule 3);

These notes refer to the Criminal Justice and Immigration Act 2008 (c.4) which received Royal Assent on 8 May 2008

- youth default orders, to the extent that the provisions allows for such orders made in England and Wales to be enforced in Northern Ireland (section 39)
 - the provisions relating to appeals and unduly lenient sentences (sections 43, 45, 46 and Part 2 of Schedule 8);
 - the amendments to the compensation for miscarriages of justice regime in the Criminal Justice Act 1998 (section 61);
 - the repeal of the requirement to undertake an annual review of the operation of Criminal Justice (Terrorism and Conspiracy) Act 1998 (section 62);
 - the new offence of possession of extreme pornographic material and amendment to the definition of an indecent photograph in the Protection of Children (Northern Ireland) Order 1998 (sections 63 to 68 and 70);
 - the new offences relating to nuclear material and nuclear facilities together with the other related amendments to the 1983 Act and the Customs and Excise Management Act 1979 (section 75 and Schedule 17);
 - the clarification of the law on self defence (section 76);
 - the power of the Secretary of State to make an order altering the maximum penalty for unlawfully obtaining etc. personal data (section 77) and the new defence in respect of an offence under section 55 of the Data Protection Act 1998 (section 78);
 - the mutual recognition of financial penalties (sections 82, 83, 86 to 89, 90 and 92 and Schedules 18 and 19)
 - mutual legal assistance in respect of revenue matters (section 97);
 - the amendments to the Ministry of Defence Police Act 1987 in relation to the misconduct and performance procedures for Ministry of Defence Police officers (Part 2 of Schedule 22);
 - the new special immigration status for certain foreign nationals (Part 10);
 - industrial action by prison officers (sections 138 and 139); and
 - power to require data controllers to pay monetary penalty (section 144).
104. In addition, the Act contains provisions relating to one transferred matter, namely the new offence of causing nuisance or disturbance on HSS premises (section 122 and Schedule 21). These provisions extend to Northern Ireland only. The Northern Ireland Assembly agreed a Legislative Consent Motion in respect of these provisions on 3 December 2007 (see Official Report at <http://www.niassembly.gov.uk/record/reports2007/071203.htm#3>).
105. In relation to Wales, the subject matter of the Act has not been transferred except for:
- YROs – to the extent that they draw on local authority or NHS services;
 - Premises closure orders – to the extent that they confer powers or duties on local authorities;
 - Nuisance or disturbance on NHS premises - to the extent they confer powers on NHS staff and
 - Review of ASBOs – to the extent that they impose powers or duties on local authorities.
106. Certain provisions of the Act extend, or may be extended, to the Channel Islands, Isle of Man etc. (see section 152(6) to (9)).