

GENEVA CONVENTIONS AND UNITED NATIONS PERSONNEL (PROTOCOLS) ACT 2009

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Geneva Conventions and United Nations Personnel (Protocols) Act which received Royal Assent on Thursday 2 July 2009. They have been prepared by the Foreign and Commonwealth Office in order to assist the reader of the Act. 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.

SUMMARY

3. The Act will enable the United Kingdom to become a party to the Third Additional Protocol to the Geneva Conventions and to the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel.

TERRITORIAL EXTENT AND APPLICATION

4. The provisions of the Act extend to the whole of the United Kingdom. As far as Scotland is concerned, the Act relates only to reserved matters. Under section 3, there is power to extend the provisions to the Channel Islands, the Isle of Man and British overseas territories.

COMMENTARY ON SECTIONS

Section 1: Amendments of the Geneva Conventions Act 1957

5. This section amends the Geneva Conventions Act 1957 to give effect to the Third Additional Protocol to the Geneva Conventions, adopted on 8 December 2005, which introduced a new humanitarian emblem, the Red Crystal. That emblem will have the same status as the existing Red Cross and Red Crescent. The Act provides protection under the criminal law against misuse of the new emblem. As a result of the amendment to section 1A

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of the 1957 Act, a grave breach of the Protocol will be punishable by up to thirty years' imprisonment. And as a result of the amendment to section 6 of the 1957 Act, unauthorised use of the emblem will be punishable by a fine up to level 5 on the standard scale.

Section 2: Amendments of the United Nations Personnel Act 1997

6. This section amends the United Nations Personnel Act 1997 to give effect to the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, also adopted on 8 December 2005. This Optional Protocol extends the scope of legal protection to United Nations and associated personnel engaged in United Nations operations for delivering humanitarian, political or development assistance in peacebuilding, or for delivering emergency humanitarian assistance. The amendments made by the section will ensure that the offences under the 1997 Act (for example, an offence under section 1 relating to attacks on United Nations workers) will apply to United Nations workers engaged in such operations.

FINANCIAL IMPLICATIONS

7. The Act is not expected to have any significant financial implications.

8. No changes to the staff of Government departments or their agencies are expected to result from the Act.

9. A full impact assessment is available online at <http://www.fco.gov.uk/en/about-the-fco/publications/publications/>.

EUROPEAN CONVENTION OF HUMAN RIGHTS

10. The effect of section 1 is such that it might be considered a "control [on] the use of property" within the meaning of Article 1 of the First Protocol to the European Convention on the Human Rights ("ECHR"). However, this control would be "in accordance with the general interest" and therefore compatible with the ECHR, because the prevention of misuse is required by an international instrument and is necessary to protect the new humanitarian symbol which is aimed at preserving human life.

11. In addition, section 1 extends the application of existing offences in the Geneva Conventions Act 1957 and section 2 does the same for the United Nations Personnel Act 1997. However, any prosecutions for those offences would be compatible with the ECHR because the ordinary provisions of the criminal justice system already secure the right to a fair trial guaranteed by the ECHR.

12. Lord Malloch-Brown has made the following statement under section 19(1)(a) of the Human Rights Act 1998:-

"In my view the provisions of the Geneva Conventions and United Nations Personnel (Protocols) Act are compatible with the Convention rights".

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COMMENCEMENT DATE

13. The Act will come into force on a day appointed by the Secretary of State.

HANSARD REFERENCES

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

Stage	Date	Hansard reference
House of Lords		
Introduction	17th December 2008	Vol. 706 Col. 836
Second Reading	27th January 2009	Vol. 707 Cols. 188-198
Third Reading	2 March 2009	Vol. 708 Col. 507
House of Commons		
Introduction	2 March 2009	No debate.
Second Reading	1 April 2009	Vol. 490 Cols. 924-981
Committee	10th June 2009	Vol. 493 Cols. 828-851
Report and Third Reading	10th June 2009	Vol. 493 Col. 851
Royal Assent – 2nd July 2009	House of Lords Hansard Vol. 712 Col. 323	
	House of Commons Hansard Vol. 495 Col. 510	