JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007*

(2007 c.6)

CONTENTS

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An Act to make provision about justice and security in Northern Ireland. [24th May 2007]

PARLIAMENTARY DEBATES

Hansard, HC Vol.453, col.833 (1R); Vol.454, col.893 (2R), col.974 (PM), col.975 (money resolution); Public Bill Committee, cols 1, 41, 85 and 109; Vol.456, col.714 (consideration), col.803 (3R), col.814 (passed); Vol.460, col.322 (Lords' amendments); Vol.460, col.1427 (RA); HL Vol.689, col.726 (1R), col.1024 (2R), cols GC99 and GC199 (Grand Committee); Vol.691, col.505 (report); Vol.691, col.1066 (3R), col.1074 (passed); Vol.692, col.451 (Commons' amendments).

INTRODUCTION AND GENERAL NOTE

Summary

The Justice and Security (Northern Ireland) Act 2007 (c.6) ("the Act") - yet another statutory consequence of the Belfast Agreement - updates emergency (counter terrorist) legislation for Northern Ireland, supposedly giving it a human rights face. The Act purports to be about security normalisation.

Relevant Documents and Reports

The Act may be traced from 1968 (the start of the Northern Ireland ["NI"] troubles), but mainly from the 1998 Belfast Agreement. There are three distinct subjects: (1) emergency legislation, including replacing the so-called Diplock courts (and making police and army powers permanent); (2) human rights and (3) the private security industry.

(1) Emergency Legislation

(i) Lord Diplock

In March 1972, NI came under direct rule from London. The United Kingdom ("UK") Government assumed responsibility for security, including the internment of terrorist suspects. In October 1972, Lord Diplock, a Law Lord, was asked to advise on the administration of justice.

In his report of December (1972. Cmnd.5185), he recommended, given the intimidation of witnesses [sic], that judges sitting without juries (which might be intimidated or simply partisan) should try scheduled (terrorist) offences. The emphasis was upon sectarian bias - as it had been in the early 1920s - on the part of jurors.

(ii) Emergency Legislation, 1970s - 1990s

Non jury - or Diplock - courts were provided for in the Northern Ireland (Emergency Provisions) Act 1973 (c.53).

This parent Act was amended, or the legislation consolidated, in 1975, 1977, 1978, 1987, 1991, 1996 and 1998. The NI emergency legislation at the time of the Belfast Agreement was: the Northern Ireland (Emergency Provisions) Act 1996 (c.22) and the Northern Ireland (Emergency Provisions) Act 1998 (c.9) ("EPA"). It was due to expire (eventually) on August 24, 2000.

There was also UK legislation, following the Birmingham pub bombs: the Prevention of Terrorism (Temporary Provisions) Act 1974 (c.56).

This parent Act was amended, or re-enacted, in 1976, 1984, 1989, 1994 and 1996. The UK emergency legislation at the time of the Belfast Agreement was, the Prevention of Terrorism (Temporary Provisions) Act 1989 (c.4) and the Prevention of Terrorism (Additional Powers) Act 1996 (c.7) ("PTA").

Emergency legislation had three main aspects: proscription by the Secretary of State of terrorist organisations, with related crimes; specific offences connected with terrorism and police powers.

There was reporting on the operation of the EPA and PTA each year, and annual renewals of the legislation by Parliament.

(iii) The Belfast Agreement of April 10, 1998

This is an international agreement between the UK and Irish States. So much is evident from its third publication as Cm.4705, after entry into force, in May 2000. The legal face of the Belfast Agreement is the British-Irish Agreement ("BIA"), to which is annexed a Multi-party Agreement ("MPA") - not all of which has legal effect. The political face of the Belfast Agreement is the MPA with the BIA annexed for, as it were, information (see further, A. Morgan, *The Belfast Agreement: a practical legal analysis* (London, 2000)).

The Belfast Agreement, in a section on security, envisages "a normalisation of security arrangements and practices" in NI. The most important paragraph reads:

> "2. The British Government will make progress towards the objective of as early a return as possible to normal security arrangements in Northern Ireland consistent with the level of threat and with a published overall strategy, dealing with:
>
> (i) the reduction of the numbers and role of the Armed Forces deployed in Northern Ireland to levels compatible with a normal peaceful society;
>
> (ii) the removal of security installations;
>
> (iii) the removal of the emergency powers in Northern Ireland; and
>
> (iv) other measures appropriate to and compatible with a normal peaceful society."

The commitment regarding emergency legislation is clear, but it is contained in a clear context of that section and the agreement as a whole.

(iv) Permanent Counter-terrorist Legislation

The intention, in the late 1990s, was permanent anti-terrorist legislation for the UK. Lord Lloyd, another Law Lord, had recommended this in 1996 (Cm.3420). The Blair Government published a consultation paper in December 1998 (Cm.4178), which adopted the strange distinction: Irish, international and domestic terrorism (MI5 continuing to use the term NI-related terrorism).

On July 20, 2000, the Terrorism Act ("TA") 2000 (c.11) received the royal assent. The TA 2000 repealed the PTA (in Great Britain), and, from August 24, 2000 (later, February 19, 2001), the EPA in NI.

The new permanent measures applied to the whole of the UK, providing principally for proscribed organisations, terrorist property, terrorist investigations and counter-terrorist powers. But NI was not yet free of its emergency. Part VII of the TA 2000 re-enacted NI's emergency powers, for a maximum of five years (to February 19, 2006). This part provided especially for scheduled offences, powers of arrest etc. and, following the Northern Ireland (Sentences) Act 1998 (c.35), specified organisations (involving effectively the partial decriminalising of proscribed organisations).

Part VII was subject to reporting by Lord Carlile of Berriew Q.C., the independent reviewer of all terrorist legislation, and singularly to annual renewal by parliament.

(The Omagh bombing of August 15, 1998 had led to the Criminal Justice (Terrorism and Conspiracy) Act 1998 (c.40), and, following 9/11 in 2001 in the United States, Parliament enacted the Anti-terrorism, Crime and Security Act 2001 (c.24) - which did not expire, as intended, on November 10, 2006.)

The parent TA 2000 was amended by the Terrorism Act ("TA") 2006 (c.4) on March 30, 2006, providing for additional offences. And, on February 16, 2006, Parliament had had to further extend Pt VII ("NI") of the parent Act to July 31, 2007 (with a long stop of July 31, 2008): Terrorism (Northern Ireland) Act 2006 (c.4).

The expiry under the 2006 Act - July 31, 2007 - is the principal reason why this Act, providing for permanent terrorist legislation in NI, became necessary in the 2006-07 parliamentary session (the Belfast Agreement having not lead to NI being treated similarly with the rest of the UK in 2000, and the five-year additional period under the Terrorism Act 2000 having to be further extended).

It only became possible to think about repealing the emergency legislation seven years after the Belfast Agreement: on July 28, 2005, the IRA, in a statement, had ordered an end to its military campaign (but not the disbandment of the proscribed organisation); on September 26, 2005, the Independent International Commission on Decommissioning reported that the IRA had finally decommissioned (but not necessarily - as the independent monitoring commission confirmed - completely disarmed).

(v) Normalisation

Security normalisation had been addressed in the Weston Park Agreement of August 1, 2001; a series of measures, concerning the army, was promised "in the event of a significant reduction in the level of threat."

The Hillsborough joint declaration of May 1, 2003 promised normalisation over two years (to April 2005). Annex 1 contained the details in ten paragraphs.

On August 1, 2005 the new Secretary of State, the Rt. Hon. Peter Hain MP, following the IRA statement of four days earlier, published a normalisation programme, which, he stated, had been agreed with the police and army. The timescale was again two years, with targets for eight months, 12 months and 20 to 24 months. In the final 20 to 24 months' phase, and in an enabling environment, there would be the "repeal of counter terrorist legislation particular to Northern Ireland".

The extent of the repeal is: Pt VII of the Terrorism Act 2000 on July 31, 2007 (the remainder of that parent Act, of course, applies to NI as to the rest of the UK). That is exactly within the deadline promised on August 1, 2005. But that undertaking did not address the question: what, if anything, replaces the emergency legislation? That is the second reason why this Act became necessary in time for July 31, 2007.

(vi) The Northern Ireland Affairs Committee Report

On July 5, 2006, the Northern Ireland Affairs Committee ("NIAC") reported on a relevant topic: Organised Crime in Northern Ireland ("the NIAC Report"). The Stationery Office, 2006.

HC Paper No.886-I and II (with a Government response of October 23, 2006: The Stationery Office, 2006. HC Paper No.1642).

Its first two conclusions were:

> "1. Paramilitary organised crime continues to threaten the stability of communities in Northern Ireland and poses a real threat to future political progress. We are deeply concerned by the control which paramilitary groups from both communities continue to exercise over those communities, the fear that this creates and the attendant negative consequences that this has for the reporting of organised crime" (para. 21).
>
> "2. We share the Independent Monitoring Commission's...concern about the potential for the process of paramilitary transition to create an instability which is open to exploitation by organised criminals with paramilitary backgrounds [in its Third Report, November 2004, paragraph 5.5]. It is vital that the Police Service of Northern Ireland...and other law enforcement agencies in Northern Ireland take every possible step to combat paramilitary organised crime. If this requires extra financial and logistical support, then we call upon the Government to provide it. Ministers should be in no doubt that their political efforts could be completely undermined by another Northern Bank robbery" (para.22).

(vii) The Diplock Court Consultation

On August 1l, 2006, the Northern Ireland Office ("NIO") commenced consultation on non-jury trials: Replacement Arrangements for the Diplock Court System ("the Diplock Court Report"). The Government came out in favour of a presumption of jury trial, with non-jury trials in exceptional cases. The director of public prosecutions ("DPP") would have a power to certify a case as requiring trial without a jury. There were also proposals on the protection of juries.

Annexed to the consultation document, was a report of April 2006 from Lord Carlile of Berrilew Q.C., which had been commissioned by a former NIO minister (following Lord Carlile's endorsement of Diplock courts in his 2005 review).

The NIO indicated that it was acting on Lord Carlile's advice; the latter's report, however, was not scrupulously followed.

Lord Carlile praised the Diplock system, and stated: "I have yet to discover any high level of interest in the Diplock courts issue outside the community of politicians, lawyers, academics, interest groups and lobbyists." (para.5)

(viii) The Joint Committee on Human Rights

This parliamentary committee, comprising peers and MPs, reported on February 5, 2007 (unhelpfully as the Bill was about to leave the Commons for the Lords): Legislative Scrutiny: Third Progress Report, The Stationary Office, 2007. HL Paper No.46; HC Paper No.303 ("JCHR Report").

On juries and non-jury trials, the Committee: came out in favour of the presumption of jury trial, reluctantly accepting NI restrictions; sought further safeguards on DPP certification, and queried the breadth - "associates" - of the first condition; claimed that the Government's argument for the ouster clause had been rejected in *Shuker's Application for Judicial Review, Re* [2004] N.I. 367 (no judicial review on the ground of procedural unfairness) and affirmed equality of arms in prosecution standby of jurors and defence challenges.

(ix) House of Commons Library

The House of Commons library published Research Paper 06/63 on December 7, 2006: The Justice and Security (Northern Ireland) Bill.

(2) Human Rights

(i) The Northern Ireland Human Rights Commission

Another consequence of the Belfast Agreement was the emphasis upon human rights (though the Human Rights Act 1998 (c.42) was being enacted for the entire UK at the time the agreement was being negotiated - a fact little appreciated by NI political parties). Section 68 of the Northern

Ireland Act ("NIA") 1998 (c.47) provided for a Northern Ireland Human Rights Commission ("NIHRC").

The NIHRC under Professor Brice Dickson, from 1999 to 2005, imploded eventually in a row over the Holy Cross school in north Belfast, where protestant residents, thanks to the interventions of the police, failed to prevent catholic schoolgirls attending school. The second Commission (2005-present), under Professor Monica McWilliams, a failed radical political representative, remains, judging by the parliamentary debates, just as controversial a public body.

Section 69(2) of the NIA 1998 had empowered the NIHRC to make recommendations within two years to the Secretary of State about its powers. The Commission responded with indecent haste on February 28, 2001, with a 79 page report, demanding immediately 25 extensive amendments to the NIA 1998 (four more followed in a supplementary report of April 2004).

The Government sat on this report, with nationalists clamouring for more powers, and unionists enraged at their complete exclusion from the Commission. The NIO was expected to succumb, as it invariably did, to the demand for more.

In May 2002, the NIO issued a consultation paper. In December 2004, the Secretary of State announced two of the three concessions in this Act. Bizarrely, the NIO issued another consultation document in November 2005.

The NIO placed too much reliance on a case, In *Re Northern Ireland Human Rights Commission* [2002] UKHL 25, arising out of the commission's exclusion from the Omagh bomb inquest, where the House of Lords (by four to one) considered that the NIHRC had the capacity to apply to intervene in court cases (surely a function of its legal personality as a body corporate rather than its statutory powers).

In Annex B of the St Andrews Agreement of October 13, 2006, the Government promised three additional powers for the NIHRC; it would also publish its response to the previous year's consultation (which it did on November 24, 2006): The Powers of the Northern Ireland Human Rights Commission ("NIHRC Report")).

The NIHRC was not amused. On December 12, 2006, it demanded the removal of the safeguards - designed to protect others - in the Bill. Professor McWilliams, with sovereign airs, equated her powers with the protection of human rights. On January 16, 2007, the Secretary of State visited the NIHRC in Belfast. He - according to the Commission - agreed to consider amending the Bill.

Near the end of the passage of the Bill, on May 2, 2007, the NIHRC objected to a new police power to examine documents or records: Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 (SI 2007/912), art.13: "The Commission stated that confidential data is deserving of protection including medical records and information held by non-legal professionals (for example, social workers; welfare rights advisors; trade union representatives and journalists)." (press release.)

The NIHRC saw no contradiction in its defence of welfare rights workers vis a vis the police, while it was seeking similar powers to use against bodies such as the police.

(ii) The Joint Committee on Human Rights

The Committee, which had tried, and failed, to help the NIHRC in the past, nevertheless remained supportive. The appendices of the JCHR Report include correspondence showing that the Committee sought to encourage the NIHRC to complain about restrictions on its powers: letter of December 18, 2006.

As for the three new powers, the Committee welcomed the power to intervene in human rights cases and, regarding the obtaining of evidence and accessing places of detention, considered the NIHRC's three objections: one, on restrictions, it favoured the same position as applied to the Equality and Human Rights Commission in Great Britain; two, on fettering access, it wanted unrestricted access and, on time limiting, it wanted full retrospectivity.

(iii) Public Bill Committee Papers

The new Public Bill Committee had the power to report written evidence to the House of Commons for publication. The written evidence comprised: a paper from the Northern Ireland Human Rights Commission on its proposed powers (JS(NI)1).

(3) The Private Security Industry

The Private Security Industry Act 2001 (c.12) established the Security Industry Authority ("SIA") (on April 1, 2003) - but only in England and Wales (s.26(3)-(4)). However, it is to be extended to Scotland from November 2007, under another statute.

NI had only s. 106 and Sch.13 of the TA 2000 ("private security services"), based on earlier legislation from 1987. Under ss.112 and 113 (as amended), Sch.13 was due to expire on July 31, 2007.

It was two bodies (one international and the other parliamentary) - the Independent Monitoring Commission and the Northern Ireland Affairs Committee - that warned, respectively in 2005 and 2006, of republican and loyalist paramilitary permeation of the private security industry.

The TA 2000 provisions involve licensing of companies in the private security industry. The English (and Scottish) - and from a future date, Northern Ireland - provisions shift the focus to the individual worker: criminal checks; education and training.

On August 29, 2006, the NIO issued a consultation paper: Regulating the Private Security Industry ("Private Security Industry Report"). The Minister, Paul Goggins MP, referred to the "infiltrat[ion] by some unscrupulous operators who have exploited the potential for profit either for their own personal gain, or for the gain of paramilitary organisations."

The Government proposed the extension of the SIA to NI, with interim arrangements from August 1, 2007. Unusually, it reached this conclusion after discussing, and rejecting, three other options. It is not normal to weigh the pros and cons of alternatives when making policy for NI. Nor is it normal to publish all the options.

The Bill

The Bill began in the Commons on November 27, 2006 with 51 clauses and six schedules. It ended on May 24, 2007 with 54 sections and seven schedules.

The Government introduced the following amendments (by way of concession): s.9 (the renewal of the non-jury trial provisions) and s.20 (NIHRC investigations from August 1, 2007). The Government surprisingly accepted an opposition clause on restorative justice (s.43). The principal Government amendment during the passage of the Bill was s.44: NI department with policing and justice functions.

The Structure of the Act

The Act has no numbered Parts. However, there are seven de facto Parts (as I shall describe them). Emergency legislation is dealt with in Pts 1, 2, 4 and 5 (the numbers being mine). The NIHRC is provided for in Pt 3. The private security industry is dealt with in Pt 6 (miscellaneous). Much of Pts 4 and 5 - ss.21 to 40 - is Pt VII of the TA 2000 being re-enacted as permanent legislation.

COMMENCEMENT

Section 53 provides for commencement. There are four circumstances. First, s.53(3) provides for coming into force on royal assent: ss.9 and 51 to 54. Secondly, s.53(1) provides for August 1, 2007: ss.21 to 40 and Schs 3 and 4 (new police and army powers), but not interestingly ss.41 and especially 42. Thirdly, s.53(2): ss.48 and 49 and Sch.6, in accord with s.48(6). And fourthly, s.53(4) to (7): by Secretary of State order.

ABBREVIATIONS

"the Act":	Justice and Security (Northern Ireland) Act 2007 (c.6)
"BIA":	British-Irish Agreement (Belfast Agreement)
"the Bill":	Bills 10 and 100 and HL Bills 42, 64 and 69
"CJA":	Criminal Justice Act 2003 (c.44)
"CRA":	Constitutional Reform Act 2005 (c.4)
"Diplock Court Report":	NIO, Replacement Arrangements for the Diplock Court System, August 11, 2006
"DPP":	Director of Public Prosecutions (Northern Ireland)
"DUP":	Democratic Unionist Party
"EN":	Explanatory Notes (for the Bill and the Act)

"EPA":	Literally, emergency provisions acts
"HRA":	Human Rights Act 1998 (c.42)
"JCHR Report":	Joint Committee on Human Rights, Legislative Scrutiny: Third Progress Report, The Stationary Office, 2007. HL Paper No.46; HC: Paper No.303
"JNIA":	Justice (Northern Ireland) Act 2002 (c.26)
"MPA":	Multi-party Agreement (Belfast Agreement)
"NI":	Northern Ireland
"NIA":	Northern Ireland Act 1998 (c.47)
"NIAC":	Northern Ireland Affairs Committee
"NIAC Report":	Organised Crime in Northern Ireland, The Stationery Office, 2006. HC Paper No.886-I and II.
"NIHRC":	Northern Ireland Human Rights Commission
"NIHRC Report":	NIO, The Powers of the Northern Ireland Human Rights Commission, November 24, 2006
"NIMPA":	Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33)
"NIO":	Northern Ireland Office
"PACE":	Police and Criminal Evidence (Northern Ireland) Order 1989, (SI 1989/1341)
"PMPNIO":	Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 (SI 2007/912)
"Private Security Industry Report":	NIO, Regulating the Private Security Industry in Northern Ireland, August 29, 2006
"PSIA":	Private Security Industry Act 2001 (c.12)
"PTA":	literally prevention of terrorism acts
"SDLP":	Social Democratic and Labour Party
"TA":	Terrorism Act 2000 (c.11)
"TA":	Terrorism Act 2006 (c.4)
"UK":	United Kingdom
"1996 Order":	Juries (Northern Ireland) Order 1996 (SI 1996/1141)

Trials on indictment without a jury

1. Issue of certificate

(1) This section applies in relation to a person charged with one or more indictable offences ("the defendant").

(2) The Director of Public Prosecutions for Northern Ireland may issue a certificate that any trial on indictment of the defendant (and of any person committed for trial with the defendant) is to be conducted without a jury if-

(a) he suspects that any of the following conditions is met, and

(b) he is satisfied that in view of this there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.

(3) Condition 1 is that the defendant is, or is an associate (see subsection (9)) of, a person who-

(a) is a member of a proscribed organisation (see subsection (10)), or

(b) has at any time been a member of an organisation that was, at that time, a proscribed organisation.

(4) Condition 2 is that-

(a) the offence or any of the offences was committed on behalf of a proscribed organisation, or

(b) a proscribed organisation was otherwise involved with, or assisted in, the carrying out of the offence or any of the offences.

(5) Condition 3 is that an attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and-

(a) the attempt was made on behalf of a proscribed organisation, or

(b) a proscribed organisation was otherwise involved with, or assisted in, the attempt.

(6) Condition 4 is that the offence or any of the offences was committed to any extent (whether directly or indirectly) as a result of, in connection with or in response to religious or political hostility of one person or group of persons towards another person or group of persons.

(7) In subsection (6) "religious or political hostility" means hostility based to any extent on-

(a) religious belief or political opinion,

(b) supposed religious belief or political opinion, or

(c) the absence or supposed absence of any, or any particular, religious belief or political opinion.

(8) In subsection (6) the references to persons and groups of persons need not include a reference to the defendant or to any victim of the offence or offences.

(9) For the purposes of this section a person (A) is the associate of another person (B) if-

(a) A is the spouse or a former spouse of B,

(b) A is the civil partner or a former civil partner of B,

(c) A and B (whether of different sexes or the same sex) live as partners, or have lived as partners, in an enduring family relationship,

(d) A is a friend of B, or

(e) A is a relative of B.

(l0) For the purposes of this section an organisation is a proscribed organisation, in relation to any time, if at that time-

(a) it is (or was) proscribed (within the meaning given by section 11(4) of the Terrorism Act 2000 (c. 11)), and

(b) its activities are (or were) connected with the affairs of Northern Ireland.

GENERAL NOTE

Part 1 (trials on indictment without a jury)

This is the first of nine sections. Parts 1 and 2 deal with juries, and, with Pts 4 and 5, NI's emergency legislation is updated and made permanent (subject to repeal). This section goes straight to DPP certification, the presumption against non-jury trials not being express

The Diplock Courts

As is increasingly the case, the NIO was concerned more with propaganda than policy. There was a small political lobby (as described by Lord Carlile Q.C.) favouring jury trials. Thus, the NIO put forward the presumption, and then sought to maintain administrative discretion with DPP certification.

The Diplock courts had, and have, two advantages. One, the single judge has to give reasons for conviction. Two, there is an automatic right of appeal on points of law and fact.

Non-jury courts are provided for in Pt VII of the TA 2000, ss.65 to 80. Part VII operates through the concept of scheduled (terrorist) offences (listed in Sch.9). The Attorney General may also de-schedule (as it is described) a particular indictment, permitting trial by jury (Sch.9); the

non-statutory test being: satisfied that the offences are not connected with the emergency in NI.

In seemingly 1986, there were 329 Diplock trials. More recently, there have been about 60 per year (the Attorney General de-scheduling 85 to 90 per cent of cases put before him) - something the NIHRC did not appreciate, and did not seek to ascertain.

The NIO announced its policy thus: "Ministers have decided that there is a continuing risk of perverse verdicts in some cases because of paramilitary and community-based pressures on a jury. They have considered a number of reforms to the jury system which will help to reduce the risks of jury intimidation and partisan juries. These are not, however, likely to completely eliminate the identifiable risks. Ministers have concluded, therefore, that some form of non-jury trial will be necessary for Northern Ireland for exceptional cases." (Diplock Court Report, para.2.10.)

The Criminal Justice Act 2003

Part 7 of the Criminal Justice Act ("CJA") 2003 (c.44) (trials on indictment without a jury) applies to NI. The relevant provision is in s.44 (jury tampering). The NIO dismissed the jury tampering legislation as a solution, stating it would only complement DPP certification. It was envisaged that, after it came into force in NI (on January 8, 2007), it would be reactive to actual jury tampering after the arraignment of defendants.

The Joint Committee on Human Rights

Replacing Diplock was one of the three human rights issues identified in the JCHR Report. The Committee: accepted in principle the need for safeguards against juror intimidation, jury tampering or perverse verdicts; sought only narrow exceptions to the new presumption; sought the removal of "associates" from condition 1 and a case by case development of jurisdiction, rather than a wide-ranging ouster of judicial review.

The JCHR Report conceded that there was no violation of Art.6 (right to a fair trial), because there is no (international) right to trial by jury.

This Section

The Government at consideration in the House of Commons on February 6, 2007 amended this section. None of the amendments involved an issue of principle.

Subs. (2)

This is the key subsection, providing for the DPP issuing a certificate following the charging of a suspect. There is a two-stage test: suspicion of any of conditions 1 to 4 being met and a risk to the administration of justice (the Government declining to adopt the phrase "interests of justice"). Query why the certificate could not be issued by the Attorney General (reversing his role in de-scheduling in Diplock courts)? The Secretary of State, the Rt. Hon. Peter Hain MP, told the House of Commons, at second reading on December 13, 2006, that it was not possible for a prosecutor to make an application to a judge: "because of the need to handle intelligence and highly sensitive national security information, the DPP was prescribed the role of going before a judge in private to make the case that is necessary in the circumstances." (Hansard, HC Vol.454, col.898) The Secretary of State was badly briefed (or had forgotten): there is no application, not even ex parte in chambers and the trial court has no discretion - it must accept the certificate.

Subss. (3) to (6)

These specify the four conditions. Condition 1 relates to the defendant: is or was a member of a proscribed organisation or is an associate of such a member. This was amended by the Government, but not substantively. Sinn Féin was once a proscribed organisation. Conditions 2 to 4 deal with offences. Condition 3 involves perverting the course of justice. Condition 4 goes beyond proscribed organisations to sectarian conduct.

Subss. (7) to (10)

These are definitional, subs.(3) referring to subss.(9) and (10). The Government looked again at the categories in subs.(9), but did not come up with any amendments. Subsections (9) and (10) were reversed, to end with the definition of proscribed organisation.

2. Certificates: supplementary

(1) If a certificate under section 1 is issued in relation to any trial on indictment of a person charged with one or more indictable offences ("the defendant"), it must be lodged with the court before the arraignment of-
  (a) the defendant, or
  (b) any person committed for trial on indictment with the defendant.

(2) A certificate lodged under subsection (1) may be modified or withdrawn by giving notice to the court at any time before the arraignment of-
  (a) the defendant, or
  (b) any person committed for trial on indictment with the defendant.

(3) In this section "the court" means-
  (a) in relation to a time before the committal for trial on indictment of the defendant, the magistrates' court before which any proceedings for the offence or any of the offences mentioned in subsection (1) are being, or have been, conducted;
  (b) otherwise, the Crown Court.

GENERAL NOTE

This section specifies the timing of a DPP certificate: before the arraignment of the defendant or a co-defendant. It must therefore be issued in usually the magistrates' court (though subs.(3)(b) provides for also the crown court). The certificate may also be modified or withdrawn (again usually in the magistrates' court). The Government admitted that the DPP would not have to give written reasons under s.1. Mark Durkan MP of the Social Democratic and Labour Party ("SDLP") asked repeatedly (and unsuccessfully): how then could a certificate be judicially reviewed (see s.7)?

3. Preliminary inquiry

(1) This section applies where a certificate under section 1 has been issued in relation to any trial on indictment of a person charged with one or more indictable offences.

(2) In proceedings before a magistrates' court for the offence or any of the offences, if the prosecution requests the court to conduct a preliminary inquiry into the offence the court must grant the request.

(3) In subsection (2) "preliminary inquiry" means a preliminary inquiry under the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).

(4) Subsection (2)-
  (a) applies notwithstanding anything in Article 31 of that Order,
  (b) does not apply in respect of an offence where the court considers that in the interests of justice a preliminary investigation should be conducted into the offence under that Order, and
  (c) does not apply in respect of an extra-territorial offence (as defined in section 1(3) of the Criminal Jurisdiction Act 1975 (c. 59)).

GENERAL NOTE

This section follows from s.66 of the TA 2000 (though clearly drafted by a different hand). Under the Diplock courts system, the prosecution could require the magistrates' court to conduct a preliminary inquiry into a scheduled offence. (A preliminary inquiry is a paper-based process, and therefore protective of witnesses. It is to be distinguished from a preliminary investigation,

which involves the calling of witnesses.) The preliminary inquiry is brought over by this section, if there is a certificate, into the new regime ("shall" being altered to "must"). Article 31 of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1981/1675) is: power to conduct preliminary inquiry. The court may alternatively hold a preliminary investigation under art.30.

4. Court for trial

(1) A trial on indictment in relation to which a certificate under section 1 has been issued is to be held only at the Crown Court sitting in Belfast, unless the Lord Chief Justice of Northern Ireland directs that-
  (a) the trial,
  (b) a part of the trial, or
  (c) a class of trials within which the trial falls,

is to be held at the Crown Court sitting elsewhere.

(2) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under subsection (1)-
  (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
  (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

(3) If a person is committed for trial on indictment and a certificate under section 1 has been issued in relation to the trial, the person must be committed-
  (a) to the Crown Court sitting in Belfast, or
  (b) where a direction has been given under subsection (1) which concerns the trial, to the Crown Court sitting at the place specified in the direction;

and section 48 of the Judicature (Northern Ireland) Act 1978 (c. 23) (committal for trial on indictment) has effect accordingly.

(4) Where-
  (a) a person is committed for trial on indictment otherwise than to the Crown Court sitting at the relevant venue, and
  (b) a certificate under section 1 is subsequently issued in relation to the trial,

the person is to be treated as having been committed for trial to the Crown Court sitting at the relevant venue.

(5) In subsection (4) "the relevant venue", in relation to a trial, means-
  (a) if the trial falls within a class specified in a direction under subsection (1)(c) (or would fall within such a class had a certificate under section 1 been issued in relation to the trial), the place specified in the direction;
  (b) otherwise, Belfast.

(6) Where-
  (a) a person is committed for trial to the Crown Court sitting in Belfast in accordance with subsection (3) or by virtue of subsection (4), and
  (b) a direction is subsequently given under subsection (1), before the commencement of the trial, altering the place of trial,

the person is to be treated as having been committed for trial to the Crown Court sitting at the place specified in the direction.

GENERAL NOTE

This section follows from s.74 of the TA 2000. Under the Diplock courts system, non-jury trials were held in the crown court in Belfast (unless the Lord Chancellor or Lord Chief Justice directed

another crown court). This section is in similar terms. The role of the Lord Chancellor (following the Constitutional Reform Act ("CRA") 2005 (c.4)) has been superseded. Subsection (2) permits the Lord Chief Justice to delegate this function to another judge. A Lord Justice of Appeal is likely, but any of the judges in Sch.1 of the Justice (Northern Ireland) Act 2002 (c.26)? - surely not. Lady Hermon MP failed to amend subs.(2), even though parliamentary counsel, in giving the Lord Chief Justice discretion ("the holder of one of the offices"), was providing for any of the offices.

5. Mode of trial on indictment

(1) The effect of a certificate issued under section 1 is that the trial on indictment of-

(a) the person to whom the certificate relates, and

(b) any person committed for trial with that person,

is to be conducted without a jury.

(2) Where a trial is conducted without a jury under this section, the court is to have all the powers, authorities and jurisdiction which the court would have had if the trial had been conducted with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).

(3) Except where the context otherwise requires, any reference in an enactment (including a provision of Northern Ireland legislation) to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial conducted without a jury under this section, as a reference to the court, the verdict of the court or the finding of the court.

(4) No inference may be drawn by the court from the fact that the certificate has been issued in relation to the trial.

(5) Without prejudice to subsection (2), where the court conducting a trial under this section-

(a) is not satisfied that a defendant is guilty of an offence for which he is being tried ("the offence charged"), but

(b) is satisfied that he is guilty of another offence of which a jury could have found him guilty on a trial for the offence charged, the court may convict him of the other offence.

(6) Where a trial is conducted without a jury under this section and the court convicts a defendant (whether or not by virtue of subsection (5)), the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction.

(7) A person convicted of an offence on a trial under this section may, notwithstanding anything in sections 1 and 10(1) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47), appeal to the Court of Appeal under Part 1 of that Act-

(a) against his conviction, on any ground, without the leave of the Court of Appeal or a certificate of the judge of the court of trial;

(b) against sentence passed on conviction, without that leave, unless the sentence is fixed by law.

(8) Where a person is convicted of an offence on a trial under this section, the time for giving notice of appeal under section 16(1) of that Act is to run from the date of judgment (if later than the date from which it would run under that subsection).

(9) Article 16(4) of the Criminal Justice (Northern Ireland) Order 2004 (S.I. 2004/1500 (N.I. 9)) (leave of judge or Court of Appeal required

for prosecution appeal under Part IV of that Order) does not apply in relation to a trial conducted under this section.

GENERAL NOTE

This section follows from s.75 of the TA 2000, and is the key section here and there. Under the Diplock courts system, there was provision for: a court without a jury; the court's powers to be those of a court with a jury; judgment upon conviction stating reasons (committed to writing then or later); the right of appeal, without leave, against conviction and/or sentence (except where the latter is fixed by law). The mode of trial on indictment (meaning no jury) is brought over by this section. Subsection (4) (no inference from certificate) is a new provision. Presumably, the court being unable to go behind a certificate, cannot know the reasons. Subsection (9) is also new, indicating that prosecution appeals from non-jury trials against rulings are possible.

6. Rules of court

(1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of sections 1 to 5.

(2) Without limiting subsection (1), rules of court may in particular make provision for time limits which are to apply in connection with any provision of sections 1 to 5.

(3) Nothing in this section is to be taken as affecting the generality of any enactment (including a provision of Northern Ireland legislation) conferring powers to make rules of court.

GENERAL NOTE

This section is new. The original rules are: Crown Court Rules (Northern Ireland) 1979 (SR 1979/90). These rules have been amended from time to time. No draft rules were available at the time of enactment.

7. Limitation on challenge of issue of certificate

(1) No court may entertain proceedings for questioning (whether by way of judicial review or otherwise) any decision or purported decision of the Director of Public Prosecutions for Northern Ireland in relation to the issue of a certificate under section 1, except on the grounds of-

(a) dishonesty,

(b) bad faith, or

(c) other exceptional circumstances (including in particular exceptional circumstances relating to lack of jurisdiction or error of law).

(2) Subsection (1) is subject to section 7(1) of the Human Rights Act 1998 (c. 42) (claim that public authority has infringed Convention right).

GENERAL NOTE

Ouster Clauses

Ouster clauses in statutes - excluding the jurisdiction of the courts - are invariably resisted strongly in the name of the rule of law.

There was no ouster clause in Pt 7 of the TA 2000 (and earlier legislation), because the concept of scheduled offences determined trial in a Diplock court. Parliament effectively made the decision. The Attorney General, however, using a non-statutory test (see above), could, and did, de-schedule offences. Was the Attorney General subject to judicial review for not de-scheduling offences?

In *Shuker's Application for Judicial Review, Re* [2004] N.I. 367, the divisional court in Belfast, comprising the Lord Chief Justice and a Lord Justice, considered four applications where the Attorney General had not de-scheduled. The Attorney argued that his decision was immune from review, given his unique constitutional position (though his counsel conceded a ground of bad faith). The divisional court concluded (on March 31, 2004) that the decision was akin to prosecution, and not reviewable, but continued: "It must be made clear that while we have concluded that judicial review is not available to challenge the decision in the present cases, we do not consider that this will be excluded in every circumstance. Depending on the circumstances of other cases that may arise, further grounds of judicial review challenge may be deemed appropriate but we do not consider that it would be helpful, on even possible, to predict what those grounds might be." (para.27)

In the Diplock Court Report, the NIO suggested: "As is the case with all administrative decisions, the DPP's decision will be challengeable by means of judicial review. This will enable defendants to be sure that the decision has been taken properly. The decision is merely one of mode of trial (with non-jury trial capable of providing the same quality of justice as a jury trial) so there does not seem to be a need for a separate appeal mechanism. Some of the information that the decision may be based on could be sensitive intelligence material and national security interests must be taken into account." (para.4.13.)

Bill 10

The original cl.7 purported to oust the jurisdiction of the courts regarding a DPP certificate. However, subcl.(2) suggested the grounds of dishonesty and bad faith. Nevertheless, it was made clear that lack of jurisdiction and error of law were not grounds (subcl.(3) even purported to oust s.7(1) the Human Rights Act ("HRA") 1998 (c.42) [human rights proceedings]). The Minister, Paul Goggins MP, told the Public Bill Committee on January 16, 2007: "I set my face clearly against a judicial review process of challenge given that we have chosen an administrative route to protect justice [Any challenge] will relate to the conduct of the DPP in the decision he has made, not to the facts on which he has made the judgment. I acknowledge that the grounds on which the challenge can be made are very limited." (cols 81 and 84.)

This Section

Clause 7 was amended twice by the Government: first in the House of Commons, on consideration on February 6, 2007 and second in the House of Lords, at third reading on May 2, 2007. The first amendment had been anticipated in the Minister (Paul Goggins MP's) letter of January 22, 2007 to the Joint Committee on Human Rights: JCHR Report, appendix 1d. The second amendment was inspired by a conservative amendment during grand committee on March 19, 2007 (and seemingly by the ministerial involvement of the Attorney General, Lord Goldsmith, including behind the scenes).

Subs. (1)

This subsection defines the limited grounds for judicial review. Dishonesty and bad faith were in Bill 10. Other exceptional circumstances was added in the House of Commons. Lack of jurisdiction and error of law were added in the House of Lords. Query the effect of repeating "exceptional circumstances" in para.(c)?

Subs. (2)

Section 7(1) of the HRA 1998 permits a victim to bring human rights proceedings. This applies to DPP certification. The Government at consideration in the House of Commons on February 6, 2007 amended this subsection.

8. Supplementary

(1) Nothing in sections 1 to 6 affects-

(a) the requirement under Article 49 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) that a question of fitness to be tried be determined by a jury, or

(b) the requirement under Article 49A of that Order that any question, finding or verdict mentioned in that Article be determined, made or returned by a jury.

(2) Schedule 1 (minor and consequential amendments relating to trials on indictment without a jury) shall have effect.

(3) The provisions of sections 1 to 7 and this section (and Schedule 1) apply in relation to offences committed before, as well as after, the coming into force of those provisions, but subject to any provision made by virtue of-

(a) section 4 of the Terrorism (Northern Ireland) Act 2006 (c. 4) (transitional provision in connection with expiry etc of Part 7 of the Terrorism Act 2000 (c. 11)), or

(b) section 53(7) of this Act.

(4) An order under section 4 of the Terrorism (Northern Ireland) Act 2006 may make provision disregarding any of the amendments made by Schedule 1 to this Act for any purpose specified in the order.

GENERAL NOTE

This section is supplemental to Pt 1 (trials on indictment without a jury).

Subs. (1)

This preserves the power of a jury, under mental health legislation, to determine fitness to be tried.

Subs. (2)

This introduces Sch.l.

Subs. (3)

There is no limit as regard the date of an offence. Section 53(7) is transitory or transitional provisions regarding coming into force.

Subs. (4)

Section 4 of the TA 2006 is: transitional provisions in connection with expiry etc. of Pt 7 of TA 2000.

9. Duration of non-jury trial provisions

(l) Sections 1 to 8 (and Schedule 1) ("the non-jury trial provisions") shall expire at the end of the period of two years beginning with the day on which section 1 comes into force ("the effective period").

(2) But the Secretary of State may by order extend, or (on one or more occasions) further extend, the effective period.

(3) An order under subsection (2)-

(a) must be made before the time when the effective period would end but for the making of the order, and

(b) shall have the effect of extending, or further extending, that period for the period of two years beginning with that time.

(4) The expiry of the non-jury trial provisions shall not affect their application to a trial on indictment in relation to which-

(a) a certificate under section 1 has been issued, and

(b) the indictment has been presented,

before their expiry.

(5) The expiry of section 4 shall not affect the committal of a person for trial in accordance with subsection (3) of that section, or by virtue of

subsection (4) or (6) of that section, to the Crown Court sitting in Belfast or elsewhere in a case where the indictment has not been presented before its expiry.

(6) The Secretary of State may by order make any amendments of enactments (including provisions of Northern Ireland legislation) that appear to him to be necessary or expedient in consequence of the expiry of the non-jury trial provisions.

(7) An order under this section-

(a) shall be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

GENERAL NOTE

The Government, at report in the House of Lords on April 23, 2007, introduced this section late. It appears to be a concession to the anti-non-jury trial lobby: a sunset clause. It is no such thing. The Secretary of State simply has to renew the powers every two years. The emergency legislation was subject to annual review; this permanent legislation is subject to indefinite biannual renewal. The Minister, Lord Rooker, said: "I hesitate to use the shorthand term for what we are doing here but it is more rolling renewal than sunset because each two years is a separate period-the system will lapse after two years unless an affirmative order is made. In order to do that a Minister must stand at the Dispatch Box and at least give some semblance of a review and assessment of what has happened in the previous two years." (Hansard, HL, Vol.691 col.512)

Subs. (1)

This is a simple sunset clause of two years. This section came into force at royal assent: s.53(3). Sections 1 to 8 and Sch.1 are governed by Secretary of State Order. The two years runs from when s.1 comes into force.

Subss. (2), (3), and (7)

Subsection (2) gives the Secretary of State the power to renew the provisions every two years indefinitely. Subsection (7) provides for the positive resolution procedure. There is little likelihood of the Secretary of State not using the power.

Subss. (4), (5) and (6)

These provide for the consequences of expiry under subs.(1) (assuming there is no order under subs.(2)). Subsection (4) permits a non-jury trial to continue. Section 4, referred to in subs.(5), is court for trial (Belfast crown court unless otherwise specified). Subsection (6) empowers the Secretary of State to legislate consequentially.

Juries

10. Restrictions on disclosure of juror information

(1) After Article 26 of the Juries (Northern Ireland) Order 1996 (S.I. 1996/1141 (N.I. 6)) insert-

Restriction on disclosure of juror information

"**26A**—(1) A person to whom any of paragraphs (2) to (7) applies must not disclose juror information (see Article 26C) except with lawful authority (see Article 26B).

(2) This paragraph applies to a person-

(a) who is or has been an electoral officer or a court official (see Article 26C); and

(b) who obtained the juror information in the course of his functions as an electoral officer or court official.

(3) This paragraph applies to a person-

(a) who is or has been a person providing services to the Northern Ireland Court Service or the employee of such a person; and

(b) who obtained the juror information for or in connection with the provision of services to the Court Service.

(4) This paragraph applies to a person-

(a) who is or has been a member of the police service (see Article 26C); and

(b) who obtained the juror information for or in connection with the making of checks, in accordance with jury check guidelines (see Article 26C), on the person to whom the information relates.

(5) This paragraph applies to any person, other than a court official or a member of the police service, to whom the juror information was disclosed in accordance with jury check guidelines.

(6) This paragraph applies to a person-

(a) who is or has been a juror or summoned as a juror; and

(b) who obtained the juror information as a result of having been a juror or summoned as a juror;

but this paragraph does not apply to a person in so far as the juror information is information about himself.

(7) This paragraph applies to a person who knows, or ought reasonably to have known, that the juror information had previously been disclosed in contravention of paragraph (1).

(8) A person who contravenes paragraph (1) shall be guilty of an offence and shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(9) It shall be a defence for a person charged with an offence under this Article to prove that he reasonably believed that the disclosure by him was lawful.

Disclosure of juror information: lawful authority

26B—(1) For the purposes of Article 26A, juror information is disclosed with lawful authority if any of paragraphs (2) to (9) applies to the disclosure.

(2) This paragraph applies to a disclosure by an electoral officer-

(a) to another electoral officer; or

(b) in accordance with Article 4.

(3) This paragraph applies to a disclosure by a court official-

(a) to another court official;

(b) to the judge of any court; or

(c) to a juror or a person summoned as a juror.

(4) This paragraph applies to a disclosure-

(a) to a person providing services to the Northern Ireland Court Service; or

(b) to the employee of such a person,

for or in connection with the provision of services to the Court Service.

(5) This paragraph applies to a disclosure-

(a) by a person providing services to the Northern Ireland Court Service; or

(b) by the employee of such a person,

if the disclosure is required or authorised to be made by an officer of the court (see Article 2(2)) for or in connection with the provision of services to the Court Service.

(6) This paragraph applies to a disclosure-

(a) by an officer of the court to a member of the police service;

(b) by a member of the police service to another member of the police service; or

(c) by a member of the police service to an officer of the court,

for or in connection with the making of checks, in accordance with jury check guidelines, on the person to whom the juror information relates.

(7) This paragraph applies to a disclosure to a person other than a member of the police service or an officer of the court if the juror information is disclosed in accordance with jury check guidelines.

(8) This paragraph applies to a disclosure for the purposes of criminal proceedings (but not for the purposes of any proceedings in relation to which the person to whom the juror information relates may be, is, or has been, a juror).

(9) This paragraph applies to a disclosure made with leave of a court.

Interpretation of Articles 26A and 26B

26C—(1) This Article applies for the purposes of Articles 26A and 26B.

(2) "Court official" means-

(a) an officer of the court (see Article 2(2)); or

(b) a court security officer.

(3) "Electoral officer" means-

(a) the Chief Electoral Officer for Northern Ireland; or

(b) a person to whom any of his functions are delegated under section 14A(2) of the Electoral Law Act (Northern Ireland) 1962 or Article 9(2) of the Electoral Law (Northern Ireland) Order 1972.

(4) "Juror information" means information which identifies (or from which it is possible to identify) a particular person as being or as having been-

(a) a juror;

(b) listed on any Divisional Jurors List or on any panel prepared under Article 5; or

(c) selected for inclusion on any such List under Article 4(1) and (2).

(5) "Jury check guidelines" means guidelines issued by the Attorney General relating to the making of additional checks on jurors and the exercise by the Crown of its right under Article 15(4).

(6) "Member of the police service" means-

(a) a member of the Police Service of Northern Ireland;

(b) a member of the Police Service of Northern Ireland Reserve;
(c) a member of the police support staff (within the meaning of the Police (Northern Ireland) Act 2000)."

(2) Schedule 2 (restrictions on disclosure of juror information: further amendments) shall have effect.

(3) Subsection (1) does not have effect in relation to-

(a) any information which identifies (or from which it is possible to identify) a particular person as having been a juror before the date on which that subsection comes into force, or

(b) any information made available for inspection under Article 4 or 7 of the Juries (Northern Ireland) Order 1996 (S.I. 1996/1141 (N.I. 6)) before that date.

GENERAL NOTE

Part 2 (juries)

This is the first of four sections, which amend the existing law on juries: the Juries (Northern Ireland) Order 1996 (SI 1996/1141) ("the 1996 Order"). (Legislative counsel in Belfast appears to have abandoned the use of the apostrophe.) This part follows from Pt 1. Logically for the Government, the inadequacy of the Pt 2 reforms, given the problems of intimidation and perversity, justified the effective retention of non-jury courts (even if scheduled offences was replaced with presumption of jury trial).

The Existing Law

The existing law is contained in the 1996 Order. This replaced an earlier order of 1974. The then NI law on juries - repealed in 1996 - dated from the 1870s (when Ireland was the jurisdiction).

The pool of jurors in NI remains limited, in comparison with England and Wales. Article 3 of the 1996 Order (qualification for jury services) provides as follows: all those between 18 and 70 years, who are on the electoral register (which is not compulsory); less those who are disqualified, namely with more serious criminal convictions; less those who are ineligible, mainly persons concerned with the administration of justice and members of the security forces.

Additionally, art.10(2) and Sch.3 provide for persons excusable as of right, by a judge for good reason, a long list including public representatives, senior civil servants, clergy, teachers, medical professionals and those between 65 and 70 years.

Jury Selection

This remained unreformed in NI for non-Diplock courts. Both sides in criminal litigation could influence who sat on a jury. The prosecution retained the right of stand by, based upon knowledge of a juror's background. No reasons had to be given. The defence retained the right of peremptory challenge (up to 12 in number for each defendant), in addition to challenge for cause, having secured the names, addresses and occupations of those on jury panel lists.

In England and Wales, the prosecution's power has been subject to the Attorney General's restrictive guidelines of 1988. As for the defence, defence lawyers have generally not sought to investigate potential jurors (the right to peremptory challenge having been abolished by the Criminal Justice Act 1988 [c.33]).

In April 2006, Lord Carlile Q.C. advised that juries in NI needed protecting. He suggested the principle of anonymisation. Each juror would be given a number. The public could also be prevented in some courtrooms from viewing the jury, in more serious cases. The NI court service could run criminal record checks on all those called to serve on juries. The pool would be widened, by ending excuses for failing to serve.

The NIO put forward five proposed reforms in the Diplock Court Report: one, routine criminal checks to identify disqualified jurors; two, restrictions on access to personal jury information, with attorney-general guidelines on additional police checks (for national security and terrorism cases); three, abolition of the peremptory challenge (but not the challenge for cause); four, restricting with enhanced guidelines the right to stand by and five, other measures (but not a widened jury pool because, it was claimed, the arguments were finely balanced).

The NIO, very sensitive to interest groups with "perception issues", including those ineligible for, or excusable from, jury service, was clearly reluctant to deprive criminal defence lawyers of the right to peremptory challenge, despite this not being permitted in England and Wales.

The Joint Committee on Human Rights

The committee, invoking the principle of equality of arms between prosecution and defence, under which there was no justification for limitation, and criticising the post-1988 position in England and Wales, argued that the right of stand by was circumscribed less than the right to peremptory challenge (which would, of course, be abolished).

This Section

This section inserts new arts 26A, 26B and 26C in the 1996 Order. The Government did not adopt Lord Carlile Q.C.'s idea of numbers in the body of the statute (para.4 of Sch.2 providing for balloting of jurors by number). Instead, it tried to control greater information on identity by the imposition of restrictions, with lawfully authorised disclosures.

Subs. (1)

Articles 25 and 26 of the 1996 Order comprise a part (offences). Article 25 is: failure to fill up and return form or return. And art.26 is: defaulting jurors. This subsection, by inserting three new articles under offences, establishes the principle of juror anonymity, as suggested by Lord Carlile Q.C.

New art.26A contains the restrictions, with the rule in para.(1). Paragraphs (2) to (7) list five, plus one, categories of persons. Paragraphs (8) and (9) contain the new offence and the new defence of reasonable belief.

New art.26B, against the background of restrictions in art.26A, defines lawful authority for disclosure, with the rule in para.(1). "Lawful authority" is specified in new art.26A(1). New paras (2) to (9) list eight circumstances. Article 4 of the 1996 Order is: preparation of jurors lists (by the chief electoral officer in the second half of February each year). New paras (6) and (7) contain the powers for additional police (and security service) checks in national security and terrorism cases. New para.(8) refers to criminal proceedings under arts 25, 26 or 26A(8)-(9).

New artc.26C is definitional. New art.26C(2) includes officer of the court, defined in art.2(2) as a member of the NI court service. The definition of "juror information" will, no doubt, cause factual difficulty in any relevant criminal prosecutions. Article 5 is: selection of names by a juries officer for the preparation of a panel before a criminal trial. Article 4 is: preparation of jurors lists. The jury check guidelines defined in new art.26C(5) (in arts 26B(6) and (7)) were not available during the passage of the Bill. The NIO stated, however, that they would be those in existence in England and Wales (JCHR Report, paras 1.39 to 1.40). Article 15(4) reads: "The judge may at the request of the Crown, but not of a private prosecutor, order any juror to stand by until the panel has been gone through."

Subs. (2)

This subsection introduces Sch.2.

Subs. (3)

This subsection limits retrospectivity (juror information, by definition, dating from the birth of potential jurors). This subsection excludes two categories of information: past jurors, including presumably those appointed before coming into force and all information made available before that date.

11. Chief Electoral Officer to provide additional information to Juries Officer

(1) The Juries (Northern Ireland) Order 1996 is amended as follows.

(2) In Article 4 (preparation of Jurors Lists), in paragraph (3), omit "whose name is".

(3) In Article 4, after paragraph (3) insert-

"(3A) The list referred to in paragraph (3) shall include the following information in respect of each person included in it-

(a) the person's full name;

(b) the person's address;

(c) the person's date of birth; and

(d) the person's national insurance number or a statement that he does not have one."

(4) In Article 4, in paragraph (7)-

(a) for the words from "full name" to "the occupation" substitute "following information in respect";

(b) at the end insert-

"(a) the person's full name;

(b) the person's address;

(c) the person's date of birth;

(d) the person's national insurance number or a statement that he does not have one; and

(e) subject to paragraph (10)(b), the person's occupation."

(5) In Article 6 (form of panel), in paragraph (1), omit "with their addresses, and (subject to Article 4(10)(b)) occupations".

(6) In Article 6, after paragraph (1) insert-

"(1A) The panel shall include the following information in respect of each of the persons selected-

(a) the person's address;

(b) the person's date of birth;

(c) the person's national insurance number or a statement that he does not have one; and

(d) (subject to Article 4(10)(b)) the person's occupation."

GENERAL NOTE

This is the second section on jury reform. It again amends the 1996 Order. While new art.26A restricts juror information, new art.26B provides for lawful authority for disclosure. The latter creates new duties for the chief electoral officer: further information has to be disclosed from the electoral register. The purpose of the further information is to permit the NI court service to carry out criminal checks, in order to eliminate disqualified persons.

Subss. (2) - (4)

Article 4 of the 1996 Order is: preparation of jurors lists in the second half of February each year by the chief electoral officer. These lists are sent to the juries officers in the relevant county courts. Article 4(7), before amendment, required the full name and address plus occupation of each qualified juror.

These subsections increase the amount of information on the jurors lists. This is because the electoral register provides all this material: Electoral Fraud (Northern Ireland) Act 2002 (c.13).

Subss. (5) and (6)

These subsections are in similar terms

12. Jurors found to be disqualified before being summoned

In Article 8 of the Juries (Northern Ireland) Order 1996 (S.I. 1996/1141 (N.I. 6)) (summoning of jurors), after paragraph (1) insert-

"(1A) But if the Juries Officer is satisfied, as a result of a check undertaken by an officer of the court for the purpose, that a juror whose name is included in a panel is-

(a) disqualified for jury service; or

(b) not qualified for jury service in the court to be specified in the jury summons,

the Officer shall not summon the juror under paragraph (1)."

GENERAL NOTE

Article 3 of the 1996 Order is: qualification for jury service. Article 3(2) contains the concept of disqualified and Sch.1 lists those with serious criminal convictions. Article 8 is: summoning of jurors. This section inserts a new para.1(A) in art.8 of the 1996 Order. This new paragraph indicates that court officers (defined in art.2(2)) will be privy to the criminal records of those on the jurors lists.

13. Abolition of peremptory challenge in criminal cases

(1) Article 15 of the Juries (Northern Ireland) Order 1996 (challenges in criminal cases) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (a) (including the word "and" at the end).

(3) In paragraph (2), for "shall challenge only" substitute "may challenge any juror or jurors".

(4) After paragraph (4) insert-

"(5) In addition and without prejudice to any powers which the court may possess to order the exclusion of the public from any proceedings, the judge may order that the hearing of a challenge for cause shall be in camera or in chambers."

GENERAL NOTE

Peremptory challenge was abolished in England and Wales by s.118(1) of the Criminal Justice Act 1988: "The right to challenge jurors without cause in proceedings for the trial of a person on indictment is abolished."

This section again amends the 1996 Order. Article 15 is: challenges in criminal cases. Subsection (2) has the same effect as the law in England and Wales: peremptory challenge is abolished. Subsection (3) amends challenge for cause, but only to make it equivalent for the prosecution: "The prosecution shall challenge only for cause." is amended to "The prosecution may challenge any juror or jurors only for cause."

Human Rights Commission

14. Legal proceedings

(1) In section 71(1) of the Northern Ireland Act 1998 (c. 47) (Human Rights Commission: Convention rights proceedings: restrictions) for "section 6(2)(c), 24(1)(a) or 69(5)(b)" substitute "section 6(2)(c) or 24(1)(a)".

(2) After section 71(2) of that Act insert-

"(2A) Subsection (1) does not apply to the Commission.

(2B) In relation to the Commission's instituting, or intervening in, human rights proceedings-

(a) the Commission need not be a victim or potential victim of the unlawful act to which the proceedings relate,

(b) section 7(3) and (4) of the Human Rights Act 1998 (c. 42) (breach of Convention rights: sufficient interest, &c.) shall not apply,

(c) the Commission may act only if there is or would be one or more victims of the unlawful act, and

(d) no award of damages may be made to the Commission (whether or not the exception in section 8(3) of that Act applies).

(2C) For the purposes of subsection (2B)-

(a) "human rights proceedings" means proceedings which rely (wholly or partly) on-

(i) section 7(1)(b) of the Human Rights Act 1998, or

(ii) section 69(5)(b) of this Act, and

(b) an expression used in subsection (2B) and in section 7 of the Human Rights Act 1998 has the same meaning in subsection (2B) as in section 7."

GENERAL NOTE

Part 3 (Human Rights Commission)

This is the first of seven sections, and the most controversial part of the Act. The second subject being legislated, after emergency legislation, is increased powers for the NIHRC.

The Debate about the NIHRC's Powers

The NIHRC (as noted above) had demanded 29 new powers to be added to the NIA 1998, from as early as February 2001. These included:

> ''17. In section 71(1) of the Northern Ireland Act 1998, the reference to section 69(5)(b) of the same Act should be deleted - so that the Commission will then have the power to bring proceedings in its own name and when doing so rely upon Convention rights.
>
> 22& 23. a new section 69(8A), giving the NIHRC access 'to all places of detentionand to all places where persons are in the care of a public authority or of a person or body exercising functions of a public nature', plus a new section 69(8B) permitting the NIHRC, on ex parte application to a magistrate, to enter and search any premises and remove any articles discovered.
>
> 24.a new section 69(8C), permitting the NIHRC, when conducting investigations, to require any person to furnish information, documents or things on request, and 'where appropriate', to attend before the commission 'to answer fully and truthfully any question put to him or her (other than a question the answer to which might incriminate the person)'.''

The NIO, keeping a straight face, stated, in the NIHRC Report, that "enhanced effectiveness for the Commission is not necessarily achieved through amendments to legislation." (parag.2) It dealt with the new powers under three headings.

Under relying on convention rights in judicial review proceedings, the NIO now favoured the NIHRC taking "certain cases" where "there is already a victim, or potential victim" (paras 8 and 9).

Under investigations, new powers and safeguards, the NIO admitted that, while some consultees wanted no new powers for the NIHRC, "others felt that it should be able to compel evidence and access places of detention without any restrictions" (paragraph 11). Safeguards for the NIHRC and public authorities were mooted: "The purpose of these is not to frustrate or impede investigations, but to ensure that other considerations are also taken into account, and to ensure that those who are faced with requests for access or evidence are not able to simply ignore them."(!) The NIO wanted the NIHRC to be "forward looking": "The powers to compel evidence will only be used in the investigation of contemporary and future issues. Other bodies are better placed, and specifically mandated, to investigate historic issues." (para.14)

The NIO also - as a third concession - promised the NIHRC the statutory power to advise on the effectiveness of its new powers within two years.

Throughout its torturous reasoning, the NIO betrayed a total lack of faith in the NIHRC. The reasons for the new powers (plus safeguards) must, therefore, be sought in the UK Govern-

ment's handling of the so-called NI peace process - a necessary concession to republicans to get them to observe the rule of law (indicating that human rights are understood as a nationalist gain and a unionist loss).

The Northern Ireland Human Rights Commission

The NIHRC's committee stage briefing of January 2007 was turned into JS(NI)1, the public bill committee evidence appended to the Hansard report.

The NIHRC asserted: "the Bill has serious defects in terms of the protection of human rights. In some respects the Bill actually diminishes the Commission's current level of independence, and imposes new and onerous obligations. The Bill offers access and evidential powers in a very limited form, hedging them with exclusions, limitations and procedural obligations, and adding little value in terms of the protection of human rights." (paras 2 and 5)

The Joint Committee on Human Rights

The NIHRC was the second human rights issue identified in the JCHR Report. The committee: welcomed the power of the Commission to institute or intervene in human rights proceedings and, regarding obtaining evidence and accessing places of detention: it one, criticised restrictions on evidence gathering; and two, called for an unrestricted right of access subject to the redress of judicial review. As for timing, the committee welcomed the intention to replace January 1, 2008 with August 1, 2007.

Amendments

The Government resisted all pro-NIHRC amendments to the seven sections, except for the date of timing in s.20.

At grand committee in the House of Lords on March 19, 2007, Lords Trimble and Maginnis pointed to the police ombudsman as an example of where the NIHRC might go wrong in investigating and reporting (and Lord Trimble subsequently tried unsuccessfully to have the NIHRC safeguards applied to the police ombudsman).

This Section

The Government was faced with the provisions of the HRA 1998 and the NIA 1998 on victims of human rights violations.

Under s.7(1) of the HRA 1998, a person may bring proceedings against a public authority or rely upon convention rights in any proceedings, "but only if he is (or would be) a victim of the unlawful act". Victim under the HRA 1998 is equated, in s.7(7), with victim under art.34 of the human rights convention.

Under s.69(5)(b) of the NIA 1998, the NIHRC could "bring proceedings involving law or practice relating to the protection of human rights." However, under s.71(1), the NIHRC had to meet the victim test (unlike the law officers of the UK, under subs.(2)). Query what powers the NIHRC had under s.69(5)(b), which it did not have by virtue of being a body corporate?

Subs. (1)

This subsection simply deletes the reference to s.69(5)(b) of the NIA 1998 from s.71(1).

Subs. (2)

This subsection inserts new subss.(2A), (2B) and (2C) in s.71 of the NIA 1998. Section 71(2) (as noted) excludes the law officers of the crown. New subs.(2A) disapplies "person" in s.71(1) from being the NIHRC. New subs.(2B) refers to the NIHRC instituting or intervening in human rights proceedings. The only limitation is: "if there is or would be one or more victims of the unlawful act". New subs.(2C) is definitional. It widens the definition of human rights proceedings in the HRA 1998 to include any proceedings brought by the NIHRC. However, new subs.(2C)(b) equates expressions in new subs.(2B) with those in s7 of the HRA 1998.

15. Investigations: evidence

After section 69 of the Northern Ireland Act 1998 (Human Rights Commission functions) insert-

69A "Investigations: evidence

(1) For the purpose of an investigation under section 69(8) the Commission may by notice in writing require a person-
  (a) to provide information in his possession,
  (b) to produce documents in his possession, or
  (c) to give oral evidence.

(2) A notice may include provision about-
  (a) the form of information, documents or evidence;
  (b) timing.

(3) A notice-
  (a) may not require a person to provide information that he is prohibited from disclosing by virtue of an enactment,
  (b) may not require a person to do anything that he could not be compelled to do in proceedings before the High Court, and
  (c) may not require a person to attend at a place unless the Commission undertakes to pay the expenses of his journey.

(4) The Commission may issue a notice under subsection (1) only if it has-
  (a) considered whether the matter to which the notice relates has already been sufficiently investigated by another person, and
  (b) concluded that it has not.

(5) The recipient of a notice may apply to a county court to have the notice cancelled on the grounds that the requirement imposed by the notice-
  (a) is unnecessary having regard to the purpose of the investigation to which the notice relates,
  (b) contravenes subsection (4) or section 69D, or
  (c) is otherwise unreasonable.

(6) Subsection (7) applies where the Commission thinks that a person-
  (a) has failed without reasonable excuse to comply with a notice, or
  (b) is likely to fail without reasonable excuse to comply with a notice.

(7) The Commission may apply to a county court for an order requiring a person to take such steps as may be specified in the order to comply with the notice.

(8) A person commits an offence if without reasonable excuse he-
  (a) fails to comply with a notice,
  (b) fails to comply with an order under subsection (7),
  (c) falsifies anything provided or produced in accordance with a notice or order, or
  (d) makes a false statement in giving oral evidence in accordance with a notice.

(9) A person who is guilty of an offence under subsection (8) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) A notice under this section may not require the Public Prosecution Service for Northern Ireland to supply documents or evidence about a decision whether or not to institute or continue criminal proceedings.

69B Investigations: national security

(1) Where a person is given a notice under section 69A(1) he shall disregard it, and notify the Commission that he is disregarding it, in so far as he thinks it would require him-

(a) to disclose sensitive information within the meaning of paragraph 4 of Schedule 3 to the Intelligence Services Act 1994 (c.13) (Intelligence and Security Committee),

(b) to disclose information which might lead to the identification of an employee or agent of an intelligence service (other than one whose identity is already known to the Commission),

(c) to disclose information which might provide details of processes used in recruiting, selecting or training employees or agents of an intelligence service,

(d) to disclose information which might provide details of, or cannot practicably be separated from, information falling within any of paragraphs (a) to (c),

(e) to make a disclosure of information relating to an intelligence service which would prejudice the interests of national security, or

(f) to make a disclosure of information relating to the Police Service of Northern Ireland which would prejudice the interests of national security.

(2) Where in response to a notice under section 69A(1) a person gives a notice to the Commission under subsection (1) above-

(a) section 69A(7) and (8) shall not apply in relation to that part of the notice under section 69A(1) to which the notice under subsection (1) above relates,

(b) the Commission may apply to the tribunal established by section 65 of the Regulation of Investigatory Powers Act 2000 (c. 23) for an order requiring the person to take such steps as may be specified in the order to comply with the notice,

(c) the following provisions of that Act shall apply in relation to proceedings under this subsection as they apply in relation to proceedings under that Act (with any necessary modifications)-

(i) section 67(7), (8) and (10) to (12) (determination),

(ii) section 68 (procedure), and

(iii) section 69 (rules), and

(d) the tribunal shall determine proceedings under this subsection by considering the opinion of the person who gave the notice under subsection (1) above in accordance with the principles that would be applied by a court on an application for judicial review of the giving of the notice.

(3) Where the Commission receives information or documents from or relating to an intelligence service in response to a notice under section 69A(1), the Commission shall store and use the information or documents in accordance with any arrangements specified by the Secretary of State.

(4) The recipient of a notice under section 69A(1) may apply to the High Court to have the notice cancelled on the grounds that the requirement imposed by the notice is undesirable for reasons of national security, other than for the reason that it would require a disclosure of a kind to which subsection (1) above applies.

(5) An investigation under section 69(8) may not consider-
  (a) whether an intelligence service has acted (or is acting) in a way which is incompatible with a person's human rights, or
  (b) other matters concerning human rights in relation to an intelligence service.

(6) In this section "intelligence service" means-
  (a) the Security Service,
  (b) the Secret Intelligence Service, and
  (c) the Government Communications Headquarters."

GENERAL NOTE

This section and the following section may be read together (though the NIHRC made two demands). The NIO simply referred to investigations in the NIHRC Report. This is because: the relevant provision of the NIA 1998 reads: "For the purpose of exercising its functions under this section the Commission may conduct such investigations as it considers necessary or expedient." (s.69(8)) However, this section (investigation: evidence) and the following section (investigation: access to prisons, etc.) may have been separated to stress two new powers.

This section inserts new ss.69A and 69B in the NIA 1998, while the next section inserts a new s.69(C). No doubt this was to stop the swamping of the rest of the NIHRC functions in s.69.

New s.69A is somewhat different from the draft s.69(8C) suggested by the NIHRC in February 2001. New subss.(1) to (4) provide for NIHRC notices to persons subject to investigation. New subs.(4) is a condition precedent, and will no doubt be litigated. The NIHRC takes the view that many other investigations could be rerun from a human rights point of view. The NIHRC will be judicially reviewable under this subsection on the ground of irrationality. New subss.(1) to (3) provide for procedure, and again the NIHRC may fall into procedural impropriety. The range of powers in new subs.(1) is as demanded by the NIHRC, but new subs.(3) was nowhere envisaged (though the principle against self-incrimination was acknowledged). New subss.(5) to (7) provide for county courts (the high court in Belfast being reserved - see new s.69B - for national security issues). New subs.(5) permits a county court to cancel a notice. New s.69D - see s.17 below - is: investigations: terms of reference. No doubt the terms in new subs.(5) will be litigated. New subss.(6) and (7) introduce a degree of balance, giving the NIHRC powers to revert to a county court for enforcement. New subss.(8) and (9) create a new offence, but with the penalty being only a fine on summary conviction. New subs.(10) gives effective immunity to the DPP, and deprives the NIHRC of opportunities regarding mainly decisions not to prosecute.

New s.69B was not articulated by the NIHRC. This is because it empowers those - especially the security service (MI5) - who are likely to be on the receiving end of a s.69A(1) notice. The generic term intelligence service is used here to encompass security and intelligence (even though it means only the secret intelligence service [MI6] under s.1 of the Intelligence Services Act 1994 [c.13]). New subs.(1) gives a decision maker six distinct reasons for disregarding a NIHRC notice on the ground of national security. The test - in so far as he thinks - is subjective, and the consequences mandatory: "he shall disregard it". The statutory definition of sensitive information, in the context of the Intelligence and Security Committee (of invariably privy councillors reporting to the Prime Minister), is cited. This Committee may be denied sensitive information. New subs.(2) replaces the county court (in new s.69A(7) to (8)) with the tribunal established under s.65 of the Regulation of Investigatory Powers Act 2000 (c.23). New subs.(3) creates a role for the Secretary of State for NI. New subs.(4) also replaces the county court (in new s.69A(5)) with the high court. "other than for the reason that it would require a disclosure of a kind to which subs.(1) above applies" means that the tribunal and high court have exclusive jurisdictions. New subs.(5) places national security before human rights, something the NIHRC is completely averse to doing.

16. Investigations: access to prisons, &c

(1) After section 69B of the Northern Ireland Act 1998 (c. 47) (inserted by section 15 above) insert-

69C "Investigations: places of detention

(1) For the purpose of an investigation under section 69(8) a person authorised in writing by the Commission may enter a specified place of detention in Northern Ireland on one or more occasions during a specified period.

(2) In subsection (1) "specified" means specified in the terms of reference of the investigation.

(3) In subsection (1) "place of detention" means-

(a) a prison specified in the Schedule to the Prisons and Young Offenders Centres Rules (Northern Ireland) 1995,

(b) a place used for the purpose of detaining arrested persons in a police station designated under Article 36 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),

(c) a place designated under paragraph 1 of Schedule 8 to the Terrorism Act 2000 (c. 11) (detention),

(d) in a building where a court sits, a place used for the purpose of detaining arrested persons,

(e) a juvenile justice centre provided under Article 51 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),

(f) the secure accommodation in Bangor provided and used in accordance with Article 44 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),

(g) a removal centre or short-term holding facility within the meaning of section 147 of the Immigration and Asylum Act 1999 (c.33), and

(h) any accommodation (including accommodation in a hospital) provided for the purpose of detention under the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).

(4) The Commission may specify a place of detention in the terms of reference of an investigation only if it has-

(a) considered whether the matter in respect of which the place is specified has already been sufficiently investigated by another person, and

(b) concluded that it has not.

(5) The power under subsection (1) may not be exercised-

(a) during the period of 15 days beginning with that on which copies of the terms of reference of the investigation are provided in accordance with section 69D(1)(b), or

(b) while an application under subsection (6), made during that period, has not yet been determined.

(6) A county court may, on the application of a person who appears to the court to be responsible for a place of detention specified in terms of reference-

(a) order that the power under subsection (1) may not be used to enter the place of detention;

(b) impose restrictions on the exercise of the power in relation to the place of detention;

(c) require the Commission to amend the terms of reference.

(7) An order may be made under subsection (6) only if the court thinks that-

(a) access to the place of detention is unnecessary having regard to the purpose of the investigation,

(b) it would be unreasonable to allow the Commission access to the place of detention, or

(c) the Commission has failed to comply with subsection (4) or section 69D.

(8) In considering whether to make an order under subsection (6), and in considering the terms of an order under subsection (6)(b), the court shall have regard, in particular, to the likely impact of the use of the power under subsection (1) on the operation of the place of detention.

(9) If a person obstructs the Commission in the exercise of the power under subsection (1) the Commission may apply to a county court for an order requiring the person not to obstruct the Commission.

(10) A person commits an offence if without reasonable excuse he fails to comply with an order under subsection (9).

(11) A person who is guilty of an offence under subsection (10) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) The Secretary of State may by order amend subsection (3)."

(2) In section 96(2) of the Northern Ireland Act 1998 (c. 47) (orders) after "55," insert "69C(12),".

GENERAL NOTE

New s.69C is also somewhat different from the draft s.69(8A) suggested by the NIHRC in February 2001.

Subs. (1)

This inserts the new s.69C in the NIA 1998. New subs.(1) contains the rule. New subss.(2) and (4) refer to terms of reference, provided for in the new s.69D in s.17 below. New subs.(3), read with new subs.(12), contains an exhaustive definition of "place of detention" (which is less than the NIHRC's "all places where persons[etc.]"). New subs.(4) is in similar terms to new s.69A(4). New subs.(5) builds in a 15 day notice period, starting with the day "on which copies of the terms of reference are provided": query whether this is the date of sending or the date of receiving (or is there a period of deemed receipt)? New subss.(6), (7) and (8) are in similar terms to new s.69A(5), though the drafting is different. New subs.(9) is in similar terms to s.69A(7). New subss.(10) and (11) are in similar terms to new s.69A(8) and (9).

17. Investigations: terms of reference

(1) After section 69C of the Northern Ireland Act 1998 (inserted by section 16 above) insert-

69D "Investigations: terms of reference

(1) A power under section 69A(1) or 69C(1) may be used in relation to an investigation only if the Commission has-

(a) prepared terms of reference for the investigation in advance, and

(b) sent a copy of the terms of reference to-

(i) any person identified in them,

(ii) a person responsible for any place of detention specified in them, and

(iii) any other person whom the Commission thinks may be affected by the investigation.

(2) Terms of reference must specify a period within which the investigation must be concluded.

(3) Subsection (2) does not prevent the Commission from commencing (in accordance with this Part) a new investigation of matters arising out of, or incompletely considered in, an earlier investigation."

GENERAL NOTE

The NIHRC had no concept of terms of reference in its 29 demands of February 2001.

Subs. (1)

This inserts a new s.69D in the NIA 1998. Terms of reference are mentioned in s.69C(2) and (4). New subs.(1) requires (obviously, written) terms of reference and the sending of a copy (not receiving?) to particular persons.

Subss. (2) and (3)

These take up the idea of a specified period in s.69C(1), but subs.(3) permits the NIHRC to commence a second investigation if it is running out of specified time.

18. Investigations: duty to report

(1) After section 69(8) of the Northern Ireland Act 1998 (c. 47) (Commission: investigations) insert-

"(8A) The Commission shall publish a report of its findings on an investigation."

(2) In section 69(9) omit "and investigations".

GENERAL NOTE

The NIHRC had no concept of duty to report in its 29 demands of February 2001. Section 69(9) of the NIA 1998 states: "The Commission may decide to publish its advice and the outcome of its research and investigations." This is discretionary. It means that the NIHRC could investigate without reporting. This section gets round that problem. Subsection (2) removes investigations from the realm of discretion. And subs.(1) requires the NIHRC to report.

19. Recommendations

Section 69(2) of the Northern Ireland Act 1998 (Commission to make recommendations about its functions) shall have effect in relation to the Commission's functions as amended by each of sections 14 to 18 of this Act as if the reference to the commencement of section 69 included a reference to the commencement of each of those sections.

GENERAL NOTE

This section is in similar terms to s.69(2) of the NIA 1998. Then, the NIHRC took full advantage of the power. It was able to properly construe the term "before the end of the period of two years beginning with the commencement of this section". This section simply deems s.69(2) to have been amended to refer to the ss.14 to 18 powers, the timescale being before the end of the period of two years beginning with the commencement of those sections (which is provided for in s.53(4) to (7)).

20. Timing

(1) The Commission may exercise a power conferred by section 15 or 16 only for the purpose of investigating matters arising, and situations that exist, on or after 1st August 2007.
(2) The Commission may not exercise a power conferred by section 15 to require a person-
  (a) to provide information recorded before that date,
  (b) to provide information relating to a time before that date,
  (c) to produce a document created before that date,
  (d) to produce a document relating to a time before that date, or
  (e) to give oral evidence relating to a time before that date.
(3) Where a document relates partly to a time before 1st August 2007 and partly to a time on or after that date, subsection (2)(d) applies to the document only in so far as it relates to a time before that date.
(4) For the purposes of sections 69A(5) and 69C(7) of the Northern Ireland Act 1998 (as inserted by sections 15 and 16 above), a county court may make an order if it thinks that the Commission has failed to comply, or is not complying, with subsection (1) or (2) above.

GENERAL NOTE

This section deals again with retrospectivity. The NIO learned the hard way (having been warned) that new powers for new bodies or officers in NI became the occasion for repetitive historical inquiries (grievances about the past being the stuff of present political conflicts).

The police ombudsman - between 2000 and 2007, Nuala O'Loan - had been established under Pt VII of the Police (Northern Ireland) Act 1998 (c.32). Section 64 provided for Secretary of State regulations. The Police (Northern Ireland) Act 2000 (c.32) added a new s.64(2A) to the earlier statute (through s.65). This empowered the Secretary of State to produce further regulations, subject to such exceptions as may be prescribed, dealing with complaints about police conduct before the commencement of the legislation. Section 64(2A) referred only to "more than the prescribed period" regarding investigation of complaints under ss.52(1), 55(1), (2) or (4) and 55(6) of the earlier statute. Under the RUC (Complaints etc) Regulations 2001, SR 2001/184, the Secretary of State permitted the ombudsman - who was appointed on 6 November 2000 - to investigate actions going back 12 months (this being increased to two years for the first year of her office): however, there were exceptions where no time scale was specified. The police ombudsman took full advantage of these exceptions, especially the latter one.

The Government originally proposed the date of January 1, 2008. However, it was forced to amend this to August 1, 2007 at consideration in the House of Commons on February 6, 2007. The later date presumably was the intended date of commencement of this section. The earlier date, however, is the date from which Pt VII of the Terrorism Act 2000 is replaced by Pts 1, 2, 4 and 5 of this Act.

Powers

21. Stop and question

(1) A member of Her Majesty's forces on duty or a constable may stop a person for so long as is necessary to question him to ascertain his identity and movements.
(2) A member of Her Majesty's forces on duty may stop a person for so long as is necessary to question him to ascertain-
  (a) what he knows about a recent explosion or another recent incident endangering life;
  (b) what he knows about a person killed or injured in a recent explosion or incident.

(3) A person commits an offence if he-
  (a) fails to stop when required to do so under this section,
  (b) refuses to answer a question addressed to him under this section, or
  (c) fails to answer to the best of his knowledge and ability a question addressed to him under this section.

(4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A power to stop a person under this section includes a power to stop a vehicle (other than an aircraft which is airborne).

22. Arrest

(1) If a member of Her Majesty's forces on duty reasonably suspects that a person is committing, has committed or is about to commit any offence he may-
  (a) arrest the person without warrant, and
  (b) detain him for a period not exceeding four hours.

(2) A person making an arrest under this section complies with any rule of law requiring him to state the ground of arrest if he states that he is making the arrest as a member of Her Majesty's forces.

(3) For the purpose of arresting a person under this section a member of Her Majesty's forces may enter and search any premises in which he knows, or reasonably suspects, the person to be.

(4) A member of Her Majesty's forces may seize, and detain for a period not exceeding four hours, anything which he reasonably suspects is being, has been or is intended to be used in the commission of an offence under section 31 and 32.

(5) The reference to a rule of law in subsection (2) does not include a rule of law which has effect only by virtue of the Human Rights Act 1998 (c. 42).

GENERAL NOTE

This section re-enacts with slight amendment s.83 of the TA 2000 (arrest and seizure: armed forces) (ss.81 and 82 - police powers - not being re-enacted). Section 83(3) has been altered: from a soldier may enter and search premises where a person is; to premises where he knows or reasonably suspects a person is. Section 83(4) (suspected terrorists) has not been carried over. Four hours is notionally the time for a police officer to attend to rearrest a suspect. The Government explained that soldiers were not expected to know the law like police officers: thus, they simply had to identify their status.

23. Entry

(1) A member of Her Majesty's forces on duty or a constable may enter any premises if he considers it necessary in the course of operations for the preservation of the peace or the maintenance of order.

(2) A constable may not rely on subsection (1) to enter a building unless-
  (a) he has authorisation, or
  (b) it is not reasonably practicable to obtain authorisation.

(3) Authorisation must be-
  (a) written authorisation from an officer of the Police Service of Northern Ireland of at least the rank of superintendent, or

(b) if it is not reasonably practicable to obtain written authorisation, oral authorisation from an officer of the Police Service of Northern Ireland of at least the rank of inspector.

(4) Written authorisation must relate to a specified area of Northern Ireland.

(5) An officer giving oral authorisation shall make a written record as soon as is reasonably practicable.

(6) Where a constable enters a building in reliance on subsection (1) he must ensure that as soon as is reasonably practicable a record is made of-

(a) the address of the building (if known),
(b) the location of the building,
(c) the date of entry,
(d) the time of entry,
(e) the purpose of entry,
(f) the police number of each constable entering, and
(g) the police number and rank of the authorising officer (if any).

(7) A written authorisation, or a record under subsection (5) or (6), must be kept by the person who gave or made it-

(a) while any legal or complaint proceedings to which it might be relevant are pending, and
(b) in any event, for at least 12 months.

(8) A copy of a written authorisation or of a record under subsection (5) or (6) must be given as soon as is reasonably practicable to the owner or occupier of the premises to which it relates.

(9) A copy of a written authorisation or of a record under subsection (5) or (6) must be given as soon as is reasonably practicable to any person who requests a copy and who has, in the opinion of the person who has the authorisation or record, sufficient reason for the request.

(10) In subsection (7)(a) "complaint proceedings" means proceedings on a complaint made or referred to the Police Ombudsman for Northern Ireland in accordance with the Police (Northern Ireland) Act 1998 (c. 32).

GENERAL NOTE

This section re-enacts and extends s.90 (power of entry) (s.85 [explosives inspectors] not being re-enacted).

Subs. (1)

This contains the power of entry for police and soldiers. It follows s.90(1) of the TA 2000.

Subss. (2) to (4)

These provisions are new, as is the concept of authorisation, oral and written. Written and oral authorisation are provided for in subss.(3) and (4). Subsection (2)(b) permits entry without police authorisation (oral or written).

Subss. (5) to (7)

These provide for written records.

Subss. (8) to (9)

These provide for written authorisations being given to owners, occupiers and others

Subs (10).

The innovation of authorisation is related clearly to the role of the police ombudsman in investigating complaints.

24. Search for munitions and transmitters

Schedule 3 (which confers power to search for munitions and transmitters) shall have effect.

GENERAL NOTE

This section re-enacts s.84 of the TA 2000, and Sch.3 re-enacts Sch.10 of the TA 2000.

25. Search for unlawfully detained persons

(1) A member of Her Majesty's forces on duty who reasonably believes that a person is unlawfully detained in such circumstances that his life is in danger may enter and search any premises for the purpose of ascertaining whether the person is detained there.

(2) A person may enter a dwelling in reliance on subsection (1) only if he is authorised for the purpose by a commissioned officer of Her Majesty's forces.

GENERAL NOTE

This section re-enacts s.86 (unlawfully detained persons) of the TA 2000. However, it now only applies to soldiers.

26. Premises: vehicles, &c

(1) A power under section 24 or 25 to search premises shall, in its application to vehicles (by virtue of section 42), be taken to include-

(a) power to stop a vehicle (other than an aircraft which is airborne), and

(b) power to take a vehicle or cause it to be taken, where necessary or expedient, to any place for the purpose of carrying out the search.

(2) A person commits an offence if he fails to stop a vehicle when required to do so by virtue of this section.

(3) A person guilty of an offence under subsection (2) shall be liable on summary conviction to-

(a) imprisonment for a term not exceeding six months,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.

(4) In the application to a place or vehicle of a power to search premises under section 24 or 25-

(a) a reference to the address of the premises shall be construed as a reference to the location of the place or vehicle together with its registration number (if any), and

(b) a reference to the occupier of the premises shall be construed as a reference to the occupier of the place or the person in charge of the vehicle.

(5) Where a search under Schedule 3 is carried out in relation to a vehicle, the person carrying out the search may, if he reasonably believes that it is necessary in order to carry out the search or to prevent it from being frustrated-

(a) require a person in or on the vehicle to remain with it;

(b) require a person in or on the vehicle to go to and remain at any place to which the vehicle is taken by virtue of subsection (1)(b);

(c) use reasonable force to secure compliance with a requirement under paragraph (a) or (b) above.

(6) Paragraphs 3(2) and (3), 6 and 7 of Schedule 3 shall apply to a requirement imposed under subsection (5) as they apply to a requirement imposed under that Schedule.

(7) Paragraph 6 of Schedule 3 shall apply in relation to the search of a vehicle which is not habitually stationary only if it is moved for the purpose of the search by virtue of subsection (1)(b); and where that paragraph does apply, the reference to the address of the premises shall be construed as a reference to the location where the vehicle is searched together with its registration number (if any).

GENERAL NOTE

This section is supplementary to ss.24 and 25. It re-enacts s.95 (ss.81 to 94 are supplementary) of the TA 2000, less the provision in s.95(10) regarding members of her majesty's forces not in uniform.

Subss. (1) and (4)

These follow s.95(3) and (6) of the TA 2000.

Subss. (2) and (3)

These follow s.95(4) and (5) of the TA 2000.

Subss. (5) to (7))

These follow s.95(7) to (9) of the TA 2000.

27. Examination of documents

(1) A member of Her Majesty's forces who performs a search under sections 24 to 26-

(a) may examine any document or record found in order to ascertain whether it contains information of the kind mentioned in section 58(1)(a) of the Terrorism Act 2000 (c. 11) (information likely to be useful for terrorism), and

(b) if necessary or expedient for the purpose of paragraph (a), may remove the document or record to another place and retain it there until the examination is completed.

(2) Subsection (1) does not permit a person to examine a document or record if he has reasonable cause to believe that it is an item subject to legal privilege (within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))).

(3) A document or record may not be retained by virtue of subsection (1)(b) for more than 48 hours.

(4) A person who wilfully obstructs a member of Her Majesty's forces in the exercise of a power conferred by this section commits an offence.

(5) A person guilty of an offence under subsection (4) shall be liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

GENERAL NOTE

This re-enacts s.87 (examination of documents) of the TA 2000. Section 87(4) to (5) (permitting retention up to 96 hours) has not been re-enacted. This examination is only to assess if the document has evidential value. If it does, it may be retained as evidence under PACE. The equivalent police power is in PMPNIO 2007 art.13.

28. Examination of documents: procedure

(1) Where a document or record is examined under section 27-
  (a) it shall not be photographed or copied, and
  (b) the person who examines it shall make a written record of the examination as soon as is reasonably practicable.

(2) The record shall-
  (a) describe the document or record,
  (b) specify the object of the examination,
  (c) state the address of the premises where the document or record was found,
  (d) where the document or record was found in the course of a search of a person, state the person's name,
  (e) where the document or record was found in the course of a search of any premises, state the name of a person appearing to the person making the record to be the occupier of the premises or to have had custody or control of the document or record when it was found,
  (f) where the document or record is removed for examination from the place where it was found, state the date and time when it was removed, and
  (g) where the document or record was examined at the place where it was found, state the date and time of examination.

(3) The record shall identify the person by whom the examination was carried out by reference to his service number, rank and regiment.

(4) Where a person makes a record of a search in accordance with this section, he shall as soon as is reasonably practicable supply a copy-
  (a) in a case where the document or record was found in the course of a search of a person, to that person, and
  (b) in a case where the document or record was found in the course of a search of any premises, to a person appearing to the person making the record to be the occupier of the premises or to have had custody or control of the document or record when it was found.

GENERAL NOTE

This re-enacts s.88 (examination of documents: procedure) of the TA 2000. The equivalent police power is in PMPNIO 2007 art.13.

29. Taking possession of land, &c

If the Secretary of State considers it necessary for the preservation of the peace or the maintenance of order, he may authorise a person-
  (a) to take possession of land or other property;
  (b) to take steps to place buildings or other structures in a state of defence;
  (c) to detain property or cause it to be destroyed or moved;

(d) to carry out works on land of which possession has been taken by virtue of this section;
(e) to take any other action which interferes with a public right or with a private right of property.

GENERAL NOTE

This section re-enacts s.91 (taking possession of land, etc.) of the TA 2000. The Government claimed this power was to be used to create peace walls to separate (invariably) loyal orders marchers and nationalist objectors.

30. Road closure: immediate

(1) If he considers it immediately necessary for the preservation of the peace or the maintenance of order, an officer may-
(a) wholly or partly close a road;
(b) divert or otherwise interfere with a road or the use of a road;
(c) prohibit or restrict the exercise of a right of way;
(d) prohibit or restrict the use of a waterway.
(2) In this section "officer" means-
(a) a member of Her Majesty's forces on duty, or
(b) a person authorised for the purposes of this section by the Secretary of State.

GENERAL NOTE

This section re-enacts s.91 (taking possession of land, etc.) of the TA 2000. The Government claimed this power was to be used to create peace walls to separate (invariably) loyal orders marchers and nationalist objectors.

31. Sections 29 and 30: supplementary

(1) A person commits an offence if he interferes with-
(a) works executed in connection with the exercise of powers conferred by virtue of section 29 or 30, or
(b) any apparatus, equipment or other thing used in connection with the exercise of those powers.
(2) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his interference.
(3) A person guilty of an offence under this section shall be liable on summary conviction to-
(a) imprisonment for a term not exceeding six months,
(b) a fine not exceeding level 5 on the standard scale, or
(c) both.
(4) An authorisation to exercise powers under section 29 or 30 may authorise-
(a) the exercise of all those powers, or
(b) the exercise of a specified power or class of powers.
(5) An authorisation to exercise powers under section 29 or 30 may be addressed-
(a) to specified persons, or
(b) to persons of a specified class.

GENERAL NOTE
This section re-enacts s.93 (ss.91 and 92: supplementary) of the TA 2000.

32. Road closure: by order

(1) If the Secretary of State considers it necessary for the preservation of the peace or the maintenance of order he may by order direct that a specified road-
  (a) shall be wholly closed,
  (b) shall be closed to a specified extent, or
  (c) shall be diverted in a specified manner.
(2) A person commits an offence if he interferes with-
  (a) road closure works, or
  (b) road closure equipment.
(3) A person commits an offence if-
  (a) he executes any bypass works within 200 metres of road closure works,
  (b) he has in his possession or under his control, within 200 metres of road closure works, materials or equipment suitable for executing bypass works, or
  (c) he knowingly permits on land occupied by him the doing or occurrence of anything which is an offence under paragraph (a) or (b).
(4) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his action, possession, control or permission.
(5) A person guilty of an offence under this section shall be liable on summary conviction to-
  (a) imprisonment for a term not exceeding six months,
  (b) a fine not exceeding level 5 on the standard scale, or
  (c) both.
(6) In this section-
  "bypass works" means works which facilitate the bypassing by vehicles of road closure works,
  "road closure equipment" means any apparatus, equipment or other thing used in pursuance of an order under this section in connection with the closure or diversion of a road, and
  "road closure works" means works executed in connection with the closure or diversion of a road specified in an order under this section (whether executed in pursuance of the order or in pursuance of power under an enactment to close or divert the road).
(7) An order-
  (a) may contain savings and transitional provisions,
  (b) may make provision generally or for specified purposes only, and
  (c) may make different provision for different purposes.

GENERAL NOTE
This section re-enacts s.94 (road closure: direction) of the TA 2000. Subsection (7) is new.

33. Exercise of powers

(1) This section applies for the purposes of sections 21 to 30.
(2) A power conferred on a person-
  (a) is additional to powers which he has at common law or by virtue of any other enactment, and
  (b) shall not be taken to affect those powers or Her Majesty's prerogative.
(3) A constable or member of Her Majesty's forces may if necessary use reasonable force for the purpose of exercising a power conferred on him.
(4) Where anything is seized it may (unless the contrary intention appears) be retained for so long as is necessary in all the circumstances.
(5) A power to search premises conferred by virtue of this Act shall be taken to include power to search a container.
(6) A member of Her Majesty's forces exercising a power when he is not in uniform shall, if requested to do so by a person at or about the time of exercising the power, produce to that person documentary evidence that he is a member of Her Majesty's forces.

GENERAL NOTE

Part 5 (powers: supplementary)

This is the first of ten sections in the fifth sub-part. Again, these sections re-enact much of the miscellaneous sub-part of Pt VII of the TA 2000 (ss.96 to 106).

This Section

This section re-enacts various subsections. It refers back to the previous sub-part, and in particular to ss.21 to 30. Subsection (2) re-enacts s.105 of the TA 2000. Subsection (3) extends s.95(2) of the TA 2000. Subsection (4) does not apply to ss.27 and 28 above. Subsection (5) presumably refers to an item within premises (there being no reference to containers in s.42 below). Subsection (6) re-enacts s.95(10) of the TA 2000.

34. Code of practice

(1) The Secretary of State may make codes of practice in connection with-
  (a) the exercise by police officers of a power conferred by this Act, and
  (b) the seizure and retention of property found by police officers when exercising powers of search conferred by this Act.
(2) The Secretary of State may make codes of practice in connection with the exercise by members of Her Majesty's forces of a power conferred by this Act.
(3) Where the Secretary of State proposes to issue a code of practice he shall-
  (a) publish a draft,
  (b) consider any representations made to him about the draft, and

(c) if he thinks it appropriate, modify the draft in the light of any representations made to him.

(4) The Secretary of State shall lay a draft of the code before Parliament.

(5) When the Secretary of State has laid a draft code before Parliament he may bring it into operation by order made by statutory instrument.

(6) The Secretary of State may revise the whole or any part of a code of practice issued by him and issue the code as revised; and subsections (3) to (5) shall apply to such a revised code as they apply to an original code.

(7) In this section "police officer" means a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve.

GENERAL NOTE

This section re-enacts: s.99 (police and army powers: code of practice) and part of s.101 (codes of practice: supplementary) of the TA 2000.

35. Code: effect

(1) A failure by a police officer to comply with a provision of a code shall not of itself make him liable to criminal or civil proceedings.

(2) A failure by a member of Her Majesty's forces to comply with a provision of a code shall not of itself make him liable to any criminal or civil proceedings other than-

(a) proceedings under any provision of the Army Act 1955 (c. 18) or the Air Force Act 1955 (c. 19) other than section 70 (civil offences), and

(b) proceedings under any provision of the Naval Discipline Act 1957 (c. 53) other than section 42 (civil offences).

(3) A code-

(a) shall be admissible in evidence in criminal or civil proceedings, and

(b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

(4) In this section-

"criminal proceedings" includes proceedings in Northern Ireland before a court-martial constituted under the Army Act 1955 (c. 18), the Air Force Act 1955 (c. 19) or the Naval Discipline Act 1957 (c. 53) and proceedings in Northern Ireland before the Courts-Martial Appeal Court, and

"police officer" means a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve.

GENERAL NOTE

This section re-enacts the other part of s.101 (codes of practice: supplementary) - subss.(6) to (9) - of the TA 2000.

36. Code: procedure for order

(1) An order under section 34(5) shall not be made, subject to subsection (2), unless a draft has been laid before and approved by resolution of each House of Parliament.

(2) An order may be made without a draft having been approved if the Secretary of State is of the opinion that it is necessary by reason of urgency; and the order-

(a) shall contain a declaration of the Secretary of State's opinion, and

(b) shall cease to have effect at the end of the period of 40 days beginning with the day on which the Secretary of State makes the order, unless a resolution approving the order is passed by each House during that period.

(3) For the purposes of subsection (2)-

(a) a code of practice or revised code to which an order relates shall cease to have effect together with the order,

(b) an order's ceasing to have effect shall be without prejudice to anything previously done or to the making of a new order (or the issue of a new code), and

(c) the period of 40 days shall be computed in accordance with section 7(1) of the Statutory Instruments Act 1946 (c. 36).

GENERAL NOTE

This section is new. It refers to s.34(5) above (laying of draft code before parliament). This section provides for the positive resolution procedure. However, subs.(2)provides for an urgent order. Subsection (3) provides for the consequences of an urgent order.

37. Records

The Chief Constable of the Police Service of Northern Ireland shall make arrangements for securing that a record is made of each exercise by a constable of a power under sections 21 to 26 in so far as-

(a) it is reasonably practicable to do so, and

(b) a record is not required to be made under another enactment.

GENERAL NOTE

This section re-enacts s.104 (police powers: records) of the TA 2000.

38. Compensation

Schedule 4 (which provides for compensation to be paid for certain action taken under sections 21 to 32) shall have effect.

GENERAL NOTE

This section re-enacts s.102 (compensation) of the TA 2000. Schedule 4 re-enacts Sch.12 of the TA 2000.

39. Prosecution

(1) This section applies to an offence under sections 21 to 32, except for an offence under paragraph 12 of Schedule 4.

(2) Proceedings for an offence to which this section applies shall not be instituted without the consent of the Director of Public Prosecutions for Northern Ireland.

(3) But if it appears to the Director of Public Prosecutions for Northern Ireland that an offence to which this section applies has been committed for a purpose wholly or partly connected with the affairs of a country other than the United Kingdom, his consent for the

purposes of this section may be given only with the permission of the Advocate General for Northern Ireland.

(4) In relation to any time before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the reference in subsection (3) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.

GENERAL NOTE

This section is new. The Government claimed that the roles for the DPP and the Attorney General were to provide safeguards against malicious prosecution.

Subs. (1)

The offences are under ss.21 to 32 above. Paragraph 12 of Sch.4 is: obtaining compensation by deception.

Subss. (2) to (4)

These subsections indicate that, though ss.21 to 32 are now part of permanent legislation, they had their origin in emergency legislation.

40. Review

(1) The Secretary of State shall appoint a person ("the reviewer") to review-

(a) the operation of sections 21 to 32, and

(b) the procedures adopted by the General Officer Commanding Northern Ireland ("GOC") for receiving, investigating and responding to complaints.

(2) The reviewer shall conduct a review as soon as is reasonably practicable after-

(a) 31st July 2008, and

(b) each subsequent 31st July.

(3) The reviewer shall comply with any request of the Secretary of State to include in a review specified matters (which need not relate to the matters specified in subsection (1)(a) and (b)).

(4) The reviewer shall send the Secretary of State a report of each review.

(5) The Secretary of State shall lay a copy of each report before Parliament.

(6) The reviewer-

(a) shall receive and investigate any representations about the procedures mentioned in subsection (1)(b),

(b) may investigate the operation of those procedures in relation to a particular complaint or class of complaints,

(c) may require GOC to review a particular case or class of cases in which the reviewer considers that any of those procedures have operated inadequately, and

(d) may make recommendations to GOC about inadequacies in those procedures, including inadequacies in the way in which they operate in relation to a particular complaint or class of complaints.

(7) GOC shall-

(a) provide such information,

(b) disclose such documents, and

(c) provide such assistance,

as the Independent Assessor may reasonably require for the purpose of the performance of his functions.

(8) The Secretary of State may pay expenses and allowances to the reviewer, out of money provided by Parliament.

GENERAL NOTE

This section is also partly new. It too reflects the fact that emergency provisions are being made permanent. But it also re-enacts in part: s.98 (independent assessor of military complaints procedures) of the TA 2000. The current occupant of the post, who was appointed in April 1997, is J.O. McDonald; his current term ends in November 2007.

Subs. (1)

The office of independent assessor of military complaints procedures, it would seem, is being discontinued. However, a reviewer is replacing him. His job will be twofold: to review the operation of ss.21 to 32 above (indicating an uneasiness about emergency provisions becoming permanent) and to do the job done previously by the independent assessor (as defined in s.98(3)(a) of the TA 2000).

Subss. (2) to (5)

These provide for annual reviews and reporting to parliament.

Subss. (6) to (7)

These re-enact s.98(3)(b) to (e) and (5) of the TA 2000. The use of the term independent assessor, if not a mistake, suggests that he is also becoming the reviewer.

41. Duration

(1) The Secretary of State may by order repeal sections 21 to 40.

(2) An order-

(a) may make provision generally or only for specified purposes,

(b) may make different provision for different purposes,

(c) may include incidental, consequential or transitional provision or savings,

(d) shall be made by statutory instrument, and

(e) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

GENERAL NOTE

This section is new. Again, this is a consequence of emergency legislation being made permanent. The Secretary of State is given the power to repeal ss.21 to 40 by order under the positive resolution procedure.

42. Interpretation

In sections 21 to 38 (and Schedules 3 and 4)-

"act" or "action" includes omission,

"dwelling" means-

(a) a building or part of a building used as a dwelling, and

(b) a vehicle which is habitually stationary and which is used as a dwelling,

"premises" includes any place and in particular includes-

(a) a vehicle,

(b) an offshore installation within the meaning given in section 44 of the Petroleum Act 1998 (c. 17), and
(c) a tent or moveable structure,

"property" includes property wherever situated and whether real or personal, and things in action and other intangible or incorporeal property,
"public place" means a place to which members of the public have or are permitted to have access, whether or not for payment,
"road" has the same meaning as in the Road Traffic Regulation (Northern Ireland) Order 1997 (S.I. 1997/ 276 (N.I. 2)), and includes part of a road, and
"vehicle" includes an aircraft, hovercraft, train or vessel.

GENERAL NOTE

This section is definitional. There was no similar section in Pt VII of the TA 2000. There was, however, s.121 (interpretation) and s.122 (index of defined expressions). All these terms are defined in s.121 of the TA 2000.

Miscellaneous

43. Accredited community-based restorative justice schemes

(1) The Secretary of State shall maintain a register of schemes that appear to him-
  (a) to be community-based restorative justice schemes, and
  (b) to meet requirements determined and published by him.
(2) The requirements shall include a requirement about cooperation with the Chief Inspector of Criminal Justice in Northern Ireland.
(3) The Secretary of State shall add a scheme to the register if-
  (a) a person applies for the scheme to be added, and
  (b) the Secretary of State thinks that the scheme is a community-based restorative justice scheme which meets the requirements.
(4) The Secretary of State may remove a scheme from the register if, having considered any report about the scheme made by the Chief Inspector, he thinks that-
  (a) it is not a community-based restorative justice scheme, or
  (b) it does not meet the requirements.
(5) The Chief Inspector may inspect a scheme which is registered or which is the subject of an application for registration; and-
  (a) he shall from time to time make a report to the Secretary of State on inspections carried out by him by virtue of this section, and
  (b) section 49(2) to (4) of the Justice (Northern Ireland) Act 2002 (c. 26) (laying of Chief Inspector's reports before Parliament etc) shall apply in relation to the report.
(6) The Secretary of State shall make arrangements for inspection of the register by the public.

GENERAL NOTE

Part 6 (Miscellaneous)

This is the first of seven sections in this part. While these are miscellaneous provisions, some are extremely important. Section 43 was a new clause forced on the Government. Sections 48 and 49 deal with the third distinct subject of the Act: the private security industry.

This Section

This section deals with a difficult subject, restorative justice - an alternative to criminal litigation, which, in NI, has led to effectively paramilitary policing by republicans and loyalists.

The Government, which has been subjecting restorative justice organisations to only the lightest of regulation (through a protocol for community-based restorative justice schemes published on February 5, 2007), did not wish to provide for them in statute.

It was Lord Trimble (who joined the conservative opposition during the passage of the Bill) who first moved an amendment in grand committee on March 21, 2007. He wanted regulation of restorative justice organisations. The amendment was redrafted for report on April 23, 2007, and, at third reading on May 2, 2007, and with the support of the conservatives and liberal democrats, it was accepted reluctantly by the Government (Lord Rooker, the minister, only getting instructions from the NIO at the last moment).

The Government, however, formally rejected the Trimble amendment in favour of its own draft during consideration of Lords' amendments in the House of Commons on May 10, 2007. Lord Trimble failed to amend the Government's text in the House of Lords on May 21, 2007, by 122 votes to 109.

Subss. (1) and (6)

These provide for a public register. However, in subs.(1), the Government introduced its own protocol. The Secretary of State is given considerable discretion. This is contrary to the spirit of the Trimble amendment, which sought to give a role to the chief inspector of criminal justice.

Subs. (2)

This is the key subsection, containing a requirement to cooperate with the chief inspector.

Subss. (3) to (4)

These subsections again give the Secretary of State considerable discretion. Note, it is easier to be added to the register than to be removed.

Subs. (5)

This is the second most important subsection. However, no duties are imposed on the chief inspector; the Government arguing that these were implied in his statutory powers. Lord Trimble's failed amendments on May 21, 2007 related to this subsection.

44. Northern Ireland department with policing and justice functions

(1) In section 17 of the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), the inserted section 21A of the Northern Ireland Act 1998 (c. 47) (Northern Ireland department with policing and justice functions) is amended as follows.

(2) For subsections (1) and (2) substitute-

"(1) An Act of the Assembly that-

(a) establishes a new Northern Ireland department; and

(b) provides that the purpose of the department is to exercise functions consisting wholly or mainly of devolved policing and justice functions,

may (but need not) make provision of the kind mentioned in subsection (3), (4), (5) or (5A)."

(3) After subsection (5) insert-

"(5A) The Act may provide-

(a) for the department to be in the charge of a Northern Ireland Minister elected by the Assembly; and

(b) for that Minister to be supported by a deputy Minister elected by the Assembly."

(4) In subsection (6)-

(a) for "and (5)" substitute ", (5) and (5A)";

(b) at the end insert ", or by Order in Council under subsection (7C)".

(5) After subsection (7) insert-

"(7A) If it appears to the Secretary of State that there is no reasonable prospect that the Assembly will pass an Act of the kind described in subsection (1)(a) and (b), he may lay before Parliament the draft of an Order in Council which-

(a) establishes a new Northern Ireland department;

(b) provides that the purpose of the department is to exercise functions consisting wholly or mainly of devolved policing and justice functions;

(c) provides for the department to be in the charge of a Northern Ireland Minister elected by the Assembly and for that Minister to be supported by a deputy Minister elected by the Assembly; and

(d) provides for Part 3A of Schedule 4A to apply in relation to the department (with any necessary modifications).

(7B) The draft of an Order laid before Parliament under subsection (7A) may contain supplementary, incidental, consequential, transitional or saving provision.

(7C) If the draft of an Order laid before Parliament under subsection (7A) is approved by resolution of each House of Parliament, the Secretary of State shall submit it to Her Majesty in Council and Her Majesty in Council may make the Order.

(7D) No more than one department may be established by virtue of an Order under subsection (7C)."

(6) After section 21A of the Northern Ireland Act 1998 (c. 47) insert-

21B "Section 21A(5A) and (7C): transitional provision

(1) This section has effect in relation to-

(a) the first Act of the Assembly to establish a new Northern Ireland department and to make provision of the kind mentioned in section 21A(5A); or

(b) an Order in Council under section 21A(7C) establishing a new Northern Ireland department.

(2) The Act or the Order may include provision for or in connection with securing that the department is to be treated, for the purposes of section 17, as not having been established until the time at which devolved policing and justice functions are first transferred to, or conferred on, the department ("the time of devolution").

(3) The Act or the Order may include provision for or in connection with applying paragraph 11E(3) to (6) of Schedule 4A (with any necessary modifications) to enable elections to be held, before the time of devolution, to select-

(a) a member of the Assembly ("the relevant Minister designate") to be the person who is to hold the relevant Ministerial office as from the time of devolution; and

(b) a member of the Assembly ("the deputy Minister designate") to be the person who is to hold the deputy Ministerial office as from that time.

(4) Where the Act or the Order includes provision by virtue of subsection (3), it shall secure that (notwithstanding paragraph 11E(1) of Schedule 4A)-

(a) if the relevant Minister designate affirms the terms of the pledge of office within a specified period after the time of devolution, he shall become the relevant Minister;

(b) if the deputy Minister designate affirms the terms of the pledge of office within that period, he shall (subject to paragraph (c)) become the deputy Minister;

(c) if the relevant Minister designate does not affirm the terms of the pledge of office within that period-

(i) he shall not become the relevant Minister; and

(ii) paragraph 11E(10) and (11) of Schedule 4A shall apply as if the relevant Minister had ceased to hold office at the end of that period otherwise than by virtue of section 16A(2);

(d) if the deputy Minister designate does not affirm the terms of the pledge of office within that period-

(i) he shall not become the deputy Minister; and

(ii) paragraph 11E(10) of Schedule 4A shall apply as if the deputy Minister had ceased to hold office at the end of that period otherwise than by virtue of section 16A(2).

(5) In this section "devolved policing and justice function" has the same meaning as in section 21A (see subsection (8) of that section).

(6) In this section "relevant Minister", "relevant Ministerial office", "deputy Minister" and "deputy Ministerial office" have the same meaning as in Part 3A of Schedule 4A."

(7) After section 21B of the Northern Ireland Act 1998 (c. 47) insert-

21C "Section 21A(5A) and (7C): power of Assembly to secure retention or abolition of deputy Ministerial office

(1) This section applies if a new Northern Ireland department is established-

(a) by an Act of the Assembly which makes provision of the kind mentioned in section 21A(5A); or

(b) by an Order in Council under section 21A(7C).

(2) Standing orders shall require the committee established by virtue of section 29A to consider the operation of the Ministerial arrangements provided for by Part 3A of Schedule 4A.

(3) The committee shall, by no later than two years and ten months after the time at which devolved policing and justice functions are first transferred to, or conferred on, the department ("the time of devolution"), make a report on the operation of the Ministerial arrangements provided for by Part 3A of Schedule 4A-

(a) to the Assembly; and

(b) to the Executive Committee,

and the report must include a recommendation as to whether or not the deputy Ministerial office (see subsection (8)) should be retained.

(4) If before the end of the period of three years beginning with the time of devolution ("the initial period") the Assembly resolves that the deputy Ministerial office should be abolished at a time specified in the resolution (before the end of the initial period), the Secretary of State shall make an order abolishing the deputy

Ministerial office (see subsection (9)) at, or as soon as reasonably practicable after, the time specified.

(5) If-

(a) subsection (4) does not apply; and

(b) the Assembly does not resolve, before the end of the initial period, that the deputy Ministerial office should be retained for an additional period ending after the initial period,

the Secretary of State shall make an order abolishing the deputy Ministerial office as soon as reasonably practicable after the end of the initial period.

(6) If-

(a) subsection (4) does not apply;

(b) the Assembly resolves that the deputy Ministerial office should be retained for an additional period ending after the initial period or for one or more further additional periods; and

(c) one of those additional periods ends without a further additional period having begun,

the Secretary of State shall make an order abolishing the deputy Ministerial office as soon as reasonably practicable after the end of that period.

(7) A resolution of the Assembly under this section shall not be passed without the support of-

(a) a majority of the members voting on the motion for the resolution;

(b) a majority of the designated Nationalists voting; and

(c) a majority of the designated Unionists voting.

(8) In this section "deputy Ministerial office" has the same meaning as in Part 3A of Schedule 4A.

(9) In this section references to an order abolishing the deputy Ministerial office are to an order amending this Act and any other enactment so far as may be necessary to secure that the Northern Ireland Minister in charge of the department for the time being-

(a) is not to be supported by a deputy Minister (within the meaning of Part 3A of Schedule 4A); and

(b) need not belong to the largest or the second largest political designation (within that meaning).

(10) An order under this section-

(a) shall be made by statutory instrument; and

(b) may contain supplementary, incidental, consequential, transitional or saving provision."

(8) Schedule 5 (Northern Ireland department with policing and justice functions) shall have effect.

GENERAL NOTE

The Government introduced this clause at consideration in the House of Commons on February 6, 2007. It deals with the thorny subject of the devolution of policing and justice. It follows from a paper presented by the Secretary of State to the programme for Government committee in Belfast in December 2006 (which was not agreed).

Devolution of Policing and Justice

The subject formed no part of the post-Belfast Agreement legislation on policing: Police (Northern Ireland) Act 2000 (c.32); Police (Northern Ireland) act 2003 (c.6). It was dealt with eventually in: Pt 4 (ss.l6 and l7) and Schs 2, 4 and 5 of the Northern Ireland (Miscellaneous Provi-

sions) Act 2006 (c.33) and ss.9 and 18 and Sch.6 of the Northern Ireland (St Andrews Agreement) Act 2006 (c.53).

The Current Law Statutes Annotated introductions to these two 2006 statutes contain the background on the devolution of policing and justice. Essentially, the Democratic Unionist Party ("DUP") wanted the powers to remain in London, with a series of locks on their transfer. Sinn Féin, on the other hand, wanted devolution (and even party control of policing and/or justice), before it would even affirm support for the rule of law, including the police and the courts.

This section amends the NIMPA 2006 (passed on July 25, 2006), and adds two new sections to the NIA 1998. The consequence is: an amended s.21A and new ss.21B and 21C in the NIA 1998.

Section 17 of the NIMPA 2006 inserted a new s.21A in the NIA 1998. This was only enabling legislation (designed to persuade Sinn Féin that the devolution of policing and justice was being pursued to the point of imposition). In s.21A of the NIA 1998, the Government came out in favour of one department (even though that was a matter for the assembly), with the options of one minister, two ministers or a senior and junior minister rotating. Section 17 of the NIMPA 2006 was not brought into force following enactment on July 25, 2006.

Subs. (1)

This contains the provision about amending s.21A(1) to (8) of the NIA 1998 through s.17(1) of the NIMPA 2006.

Subss. (2) to (5)

Subsection (2) removes old subss.(1) and (2) of s.21A and replaces them with a new subs.(1) (there being no new subs.(2)). This indicates that the Government is again dealing in enabling legislation. The initiative is with the assembly. And the assembly has discretion regarding old subss.(3) to (5A). Old subss. (3) to (5) remain. Subsection (3) inserts a new subs.(5A). New subs.(5A) adds a fourth option: an elected (justice) minister and an elected deputy (justice) minister (on analogy with the first minister and the deputy first minister but with only the former in the executive). Subsection (4) is consequential. However, the reference to an order in council under subs.(7C) is significant. Subsection (5) inserts new subss.(7A) to (7D). These contain an extraordinary new principle: while the devolution of policing and justice is initially a matter for the assembly, the Secretary of State may provide, by order in council, for a department in Belfast. Moreover, the Secretary of State opts for an elected minister and an elected deputy minister. This is enforced devolution. But the Secretary of State, while he may be able to create a department, cannot give it ministers. The Government envisages orders in council, much used during direct rule, as a legislature route to a political solution under devolution.

The minister, David Hanson MP, told the House of Commons during consideration on February 6, 2007: "although the Department can be set up by the Secretary of State, the triple lock is in place to ensure that no devolution can occur until previous legislative commitments of the House are satisfied. Subsection (5) does not create a real, functioning Department; rather, it creates the legal premise for there to be a future Department, allowing the Assembly the opportunity to elect shadow Ministers if the Assembly wishes." (Hansard, HC Vol.456, cols 748 and 753)

Mark Durkan MP, the leader of the SDLP, gave his interpretation by rhetorical question: "Are the Government not proposing this new model so that at the same time as they are giving assurances to the DUP and its supporters that the triple lock still stands, they are giving Sinn Fein and its supporters the impression that they are acting on the Secretary of State's paper issued over the Christmas break, which suggested that the Government will take all necessary steps to ensure devolution of justice and policing by May 2008?" (Hansard, HC Vol.456, col.753)

The reason given by the Government, in its memorandum to the Delegated Powers Committee in the House of Lords, annexed to the sixth report of 2006-07 published on February 29, 2007, is unconvincing. The NIO claimed: "The power is intended to be used to avoid the situation where there is a desire on the part of the Assembly for devolution of policing and justice, but an absence of agreement as to the departmental model to be adopted." (p.13) If there was agreement on devolution, why would this not envelope the departmental model? And, if the assembly was agreeing to devolution, what effect might London interference have on that emerging consensus? Clearly, the Government sought to give the impression of determination in having policing and justice devolution.

Subs. (6)

This inserts the new s.21B in the NIA 1998. New s.21A(5A) is the Government's new fourth option: an elected minister and an elected deputy minister. New s.21B provides for transitional provisions, whether the initiative is with the assembly or the Secretary of State. New s.21B(2) suggests that there would be a department, even if it did not exist legally - seemingly a shadow department (with presumably shadow ministers), presumably operating under the royal prerogative. Section 17 of the NIA 1998 is: ministerial offices. Query why the concept of conferred is used? New s.21B(3) clearly envisages elections of ministers before devolution. New s.21B(4) provides for an elected minister not affirming the pledge of office. New s.21B(5) is perplexing: devolved policing and justice function is defined in s.21A(8); however, this had to be amended, to drop the word devolved, by s.18(7) of the Northern Ireland (St Andrews Agreement) Act 2006. Query whether the Government intends not to bring s.18(7), plus s.18(5) to (6), of the latter act into force?

Subs. (7)

This inserts the new s.21C in the NIA 1998. New s. 21A(5A) is the Government's new fourth option: an elected minister and an elected deputy minister. New s.21C purports to empower the assembly to retain or abolish the office of deputy minister. New s.21C(3) again includes the concept of conferred functions. It gives the assembly committee two years and ten months to recommend whether the deputy minister should be retained. It is clear that the Government favoured abolition. New s.21C(4) indicates that only the Secretary of State may abolish the office. New s.21C(10) was amended to provide for an order by statutory instrument. However, the Delegated Powers Committee in the House of Lords, holding that the Secretary of State would not be exercising any discretion, could exercise this Henry VIII power without any parliamentary procedure.

Subs. (8)

This brings Sch.5 (NI department with policing and justice functions) into operation. Schedule 5 contains the new Pt 3A of Sch.4A of the NIA 1998, inserted through Sch.2 of the NIMPA 2006, mentioned in new s.21A(7A)(d), new s.21B(6) and subss.(2), (3), (8) and (9) above.

45. Chief Inspector of Criminal Justice

(1) The Justice (Northern Ireland) Act 2002 (c. 26) shall be amended as follows.

(2) In section 46(1) (Chief Inspector of Criminal Justice in Northern Ireland: organisations to be inspected)-

(a) after paragraph (e) insert-

"(ea) the Life Sentence Review Commissioners,"

and

(b) after paragraph (h) insert-

"(ha) the Northern Ireland Court Service,

(hb) the Northern Ireland Legal Services Commission,".

(3) In section 47(1) (Chief Inspector: programme of inspections) after "Secretary of State" insert ", the Lord Chancellor".

(4) In section 47(2)-

(a) after paragraph (a) insert-

"(aa) the Lord Chancellor,"

and

(b) renumber the paragraph (aa) inserted by Schedule 7 to the 2002 Act as paragraph (ab).

(5) After section 47(5) insert-

"(5A) The Secretary of State may not require the Chief Inspector to carry out an inspection or review under subsection (3) or (4) relating (wholly or partly) to the Northern Ireland Court

Service or the Northern Ireland Legal Services Commission without the consent of the Lord Chancellor.

(5B) Before carrying out an inspection or review under subsection (3) or (4) relating (wholly or partly) to the Northern Ireland Court Service or the Northern Ireland Legal Services Commission the Chief Inspector must consult the Lord Chancellor."

(6) After section 47(6) insert-

"(6A) The Chief Inspector may not inspect persons-

(a) making judicial decisions, or

(b) exercising judicial discretion."

(7) At the end of section 49 (reports) add-

"(6) If a report relates (wholly or partly) to the Northern Ireland Court Service or the Northern Ireland Legal Services Commission, the Chief Inspector must send a copy of it to the Lord Chancellor."

(8) The amendments in subsection (2) above are without prejudice to the power in section 46(6) of the Justice (Northern Ireland) Act 2002 (c. 26).

GENERAL NOTE

This section amends the Justice (Northern Ireland) Act ("JNIA") 2002 (c.26). The chief inspector of criminal justice was provided for initially in ss.45 to 49 of the JNIA 2002. Kit Chivers was appointed from April 2003 for three years, with the option of two years' extension.

Subs. (2)

Section 46 of the JNIA 2002 is: functions of chief inspector. Subsection (l) of that section lists the bodies to be inspected.. Under subss.(6) and (7), the Secretary of State was empowered to add or remove bodies by order. Query why the Government has used primary legislation? Is it because of the lord chancellor? This subsection simply adds three organisations.

Subss. (3) to (6)

Section 47 of the JNIA 2002 is: further provision about functions. These three subsections add the Lord Chancellor, consequent upon the Northern Ireland court service and the Northern Ireland Legal Services Commission being added by subs.(l), to s.47 of the JNIA 2002. Query why subs.(6) adds the new subs.(6A)? Does this weaken the prohibition in s.46(6)? The Government admitted that the intention was to subject court administration to inspection.

Subs. (7)

This is also consequent upon the addition of the lord chancellor.

Subs. (8)

The addition of the Northern Ireland court service and the Northern Ireland Legal Services Commission might be thought to threaten the prohibition in s.46(6) of the JNIA 2002. This subsection makes sure that cannot happen. But what about new subs.(6A)?

46. Free legal aid in magistrates' courts

In Article 28 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)) (free legal aid in the magistrates' court), after paragraph (2) insert-

"(2A) The power conferred by paragraph (l) to grant a criminal aid certificate includes power to grant a certificate for a limited period, for the purposes of specified proceedings only or for the purposes of limited aspects of proceedings, and to

vary or remove any limitation imposed by a criminal aid certificate."

GENERAL NOTE

This section amends art.28 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (SI 1981/228). Magistrates' court can only make a certificate that covers the whole of proceedings, even if legal aid is only required for an initial stage. The amendment effectively widens the discretion of the Northern Ireland legal services commission. The minister, Paul Goggins MP, in the Public Bill Committee on January 18, 2007, explained the section as consequential upon those charged with scheduled offences being able to apply for bail in magistrates' courts: "the clause is not to do with restricting legal aid for any financial reason. The intention is to make matters simpler and clearer for both the defendant and the magistrate concerning the application for legal aid." (col.149)

47. Altering title of resident magistrate

(1) Section 102 of the Courts Act 2003 (c. 39) (power to alter judicial titles: Northern Ireland) is amended as follows.
(2) In subsection (1)(a), after "county courts" insert "or magistrates' courts".
(3) In subsection (2)-
  (a) after the entry for "Deputy judge of the county court" insert-
    "Deputy resident magistrate";
  (b) after the entry for "Presiding judge for the county courts" insert-
    "Presiding resident magistrate";
  (c) at the end of the list insert-
    "Resident magistrate".

GENERAL NOTE

This section corrects an oversight in s.102 of the Courts Act 2003 (c.39), a UK statute. Sections 102 to 106 are: provisions relating to Northern Ireland. Parliamentary counsel left out magistrates' courts and resident magistrates. Schedule 1 of the JNIA 2002 (listed judicial offices) included resident magistrates and their deputies.

The intention is to rename resident magistrates district judges (magistrates' courts).

48. Private Security Industry

(1) This section-
  (a) establishes interim arrangements for regulating private security services in Northern Ireland following the expiry of section 106 of, and Schedule 13 to, the Terrorism Act 2000 (c. 11) (subsection (2) and Schedule 6), and
  (b) provides for the eventual regulation of those services under the Private Security Industry Act 2001 (c. 12) (subsections (3) to (5)).
(2) Schedule 6 (which regulates the private security industry in Northern Ireland until repeal in accordance with subsection (4)(a) below) shall have effect.
(3) For section 26(3) and (4) of the Private Security Industry Act 2001 (extent) substitute-
  "(3) This Act extends to-
    (a) England and Wales,
    (b) Scotland, and
    (c) Northern Ireland."

(4) An order under section 3(3) of the Private Security Industry Act 2001 (conduct prohibited without a licence) designating an activity in respect of Northern Ireland-

(a) shall include provision repealing Schedule 6 to this Act in so far as it applies to that activity, and

(b) may include transitional provision or savings.

(5) The amendments of that Act in section 49 below shall have effect.

(6) This section and section 49 shall come into force in accordance with provision made by the Secretary of State by order; and an order-

(a) shall be made by statutory instrument,

(b) may make provision generally or only for specified purposes,

(c) may make different provision for different purposes, and

(d) may include incidental, consequential or transitional provision.

(7) Transitional provision under or by virtue of this section may, in particular-

(a) provide for a licence issued under one provision to have effect, subject to any specified modifications, as if issued under another;

(b) provide for applications under or by virtue of a provision to be made in advance of its coming into force.

GENERAL NOTE

This section, and the following, deal with the third distinct subject: the private security industry. The legal background is presented above under relevant documents and reports. Both sections amend the Private Security Industry Act ("PSIA") 2001. Section 106 and Sch.13 of the TA 2000 is to be repealed on July 31, 2007. However, because the Government cannot be ready for this date, it will be extending the TA 2000 provisions for an interim period.

This section effectively incorporates s.49 through subs.(5). Thus the interim and permanent arrangements are provided for in this section.

Subs. (1)

This subsection states legislative intention.

Subs. (2)

This subsection introduces Sch.6. However, reference is made to repeal - that is, repeal of Sch.6 - in accordance with subs.(4)(a).

Subss. (3) to (5)

These subsections amend the PSIA 2001. Subsection (3) includes NI in extent. Subsection (4) deals with the repeal of Sch.6, through a s.3(3) of the PSIA 2001 order. Query why subs.(5) did not simply place the amendments in s.49 below in a schedule instead? Is it to have the permanent provisions in a section and not a schedule?

Subss. (6) and (7)

These provide for coming into force. There is also reference in s.52(1)(d).

49. Amendments of the Private Security Industry Act 2001

(1) This section sets out the amendments of the Private Security Industry Act 2001 referred to in section 48(5) above.

(2) At the end of section 11 (licensing appeals) add-

"(7) In the application of this section to Northern Ireland a reference to the Crown Court shall be taken as a reference to a county court."

(3) In section 13(8) (local authority licensing) after "to Scotland" insert "or Northern Ireland".
(4) In section 15(1)(a) (approvals) for "in England and Wales or in Scotland" substitute "in the United Kingdom".
(5) At the end of section 18 (approval appeals) add-
"(6) In the application of this section to Northern Ireland a reference to the Crown Court shall be taken as a reference to a county court."
(6) At the end of section 25 (interpretation) add-
"(3) In the application of this section to Northern Ireland, a reference to an Act that does not extend there shall be taken as a reference to the equivalent (or nearest equivalent) legislation that does."
(7) In Schedule 2 (controlled activities) after paragraph 4(4A) insert-
"(4B) This paragraph does not apply to any activities, of a person who is a barrister-at-law or solicitor in Northern Ireland, which are carried out for the purposes of the provision of legal services-
(a) by him;
(b) by any firm of which he is a partner or by which he is employed;
(c) by any body corporate of which he is a director or member or by which he is employed."

GENERAL NOTE
This section is introduced by s.48(5) above. Subsections (2) and (5) provide for the different jurisdiction in NI: the county court and not the crown court. Subsection (6) does not make for legal certainty: the Government gave as an example, the Companies Act 1985, in England and Wales and Scotland, and the Company Directors Disqualification (Northern Ireland) Order 2002 (SI 2002/3150).

Supplemental

50. Repeals and revocations

Schedule 7 (repeals and revocations) shall have effect.

GENERAL NOTE
This section introduces Sch.7.

51. Financial provisions

There shall be paid out of money provided by Parliament-
(a) expenditure of the Secretary of State in connection with this Act, and
(b) any increase attributable to this Act in sums payable out of money provided by Parliament under another enactment.

52. Extent

(1) The following provisions extend to England and Wales, Scotland and Northern Ireland-
(a) sections 14 to 20;
(b) section 44 (and Schedule 5);
(c) section 47;

(d) sections 48 and 49 (and Schedule 6).

(2) Section 9(6) and (7) extends to England and Wales and Northern Ireland only.

(3) The amendments in Schedule 1 (and sections 8 and 9(1) to (4) so far as relating to those amendments) have the same extent as the enactments to which they relate.

(4) Subject to that, the preceding provisions of this Act extend to Northern Ireland only.

GENERAL NOTE

This is an NI act. However, a significant number of sections extend further.

53. Commencement

(1) Sections 21 to 40 (and Schedules 3 and 4) shall come into force on 1st August 2007.

(2) Sections 48 and 49 (and Schedule 6) come into force in accordance with section 48(6).

(3) The following come into force on the day on which this Act is passed-

(a) section 9;

(b) sections 51 and 52;

(c) this section;

(d) section 54.

(4) Subject to subsection , the other provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument.

(5) Any repeal or revocation in Schedule 7 (and section 50 so far as relating to the repeal or revocation) comes into force in the same way as the provisions of this Act to which the repeal or revocation relates.

(6) Different days may be appointed under subsection (4) for different purposes.

(7) The Secretary of State may by order made by statutory instrument make transitory or transitional provision or savings in connection with the coming into force of any provision of this Act.

54. Short title

This Act may be cited as the Justice and Security (Northern Ireland) Act 2007.

SCHEDULES

SCHEDULE 1 Section 8

Trials on Indictment Without a Jury: Consequential Amendments

1.

(1) The Criminal Procedure and Investigations Act 1996 is, in its application to Northern Ireland (as set out in Schedule 4 to that Act), amended as follows.

(2) In section 14A(1) (public interest: review for scheduled offences), for the words from "the offence" to the end substitute "section 5 of the Justice and Security (Northern

Ireland) Act 2007 (trials on indictment without a jury) applies in relation to the trial of the accused for the offence charged".

(3) The heading of section 14A accordingly becomes "Public interest: review for offences tried under section 5 of the Justice and Security (Northern Ireland) Act 2007".

(4) In section 39(3)(a) (start of trial on indictment without a jury), for "section 75 of the Terrorism Act 2000" substitute "section 5 of the Justice and Security (Northern Ireland) Act 2007".

2. The Criminal Justice Act 2003 is amended as follows.

3. In section 50 (application of Part 7 to Northern Ireland), for subsection (2) substitute-

"(2) This Part does not apply in relation to a trial to which section 5 of the Justice and Security (Northern Ireland) Act 2007 (trials on indictment without a jury) applies."

4. In Schedule 36, in paragraph 45(3), in the inserted section 48(6B)(b) of the Judicature (Northern Ireland) Act 1978 (c. 23) (committal for trial on indictment), for "section 75 of the Terrorism Act 2000" substitute "section 5 of the Justice and Security (Northern Ireland) Act 2007".

5. In section 21 of the Domestic Violence, Crime and Victims Act 2004 (application of sections 17 to 20 to Northern Ireland), for subsection (2) substitute-

"(2) Sections 17 to 20 do not apply in relation to a trial to which section 5 of the Justice and Security (Northern Ireland) Act 2007 (trials on indictment without a jury) applies."

GENERAL NOTE

This schedule is introduced by s.9(2). It contains consequential amendments. Paragraphs 2 to 4 provide that the CJA 2003 is not to be used if the DPP has certified the case.

SCHEDULE 2 Section 10

Restrictions on Disclosure of Juror Information: Further Amendments

Introduction

1. The Juries (Northern Ireland) Order 1996 (S.I. 1996/1141 (N.I. 6)) is amended as follows.

No inspection of Jurors Lists and panels

2. (1) In Article 4 (preparation of Jurors Lists)-

(a) in paragraph (6), omit the words from "and in each year" to the end;

(b) in paragraph (10), for sub-paragraph (a) substitute-

"(a) the day and period mentioned in paragraph (1), and".

(2) Omit Article 7 (inspection of panel).

(3) Omit Article 16(1) to (3) (challenge for name not being on Jurors List).

(4) In Article 17 (restrictions on right of challenge), in paragraph (1), omit "Subject to Article 16,".

(5) This paragraph does not have effect in relation to any Divisional Jurors List or any panel under Article 5 of the Order made available for inspection before the day on which this paragraph comes into force.

Procedure for ascertaining attendance of jurors to be conducted in private

3. In Article 9 (procedure for ascertaining attendance of jurors), after paragraph (1) insert-

"(1A) No person may be present in the court while the call over of the panel is conducted under paragraph (1) apart from-

(a) the judge of any court;

(b) the persons summoned to attend as jurors;

(c) the officer calling over the panel or any other officer of the court;

(d) a court security officer;

(e) any other person authorised for the purpose by the judge of any court."

Balloting of jurors by number rather than by name

4. (1) In Article 6 (form of panel), in paragraph (1), after "arranged" insert "(and assigned numbers)".

(2) In Article 12 (balloting of jurors), after paragraph (1) insert-

"(1A) The ballot shall be conducted using the numbers assigned to the persons on the panel, or the section of the panel, in accordance with Article 6(1) (and not by using their names)."

(3) In Article 12, in paragraph (2), for "names" substitute "numbers".

(4) In Article 18 (selection of additional jurors), after paragraph (2) insert-

"(2A) A ballot under paragraph (2) shall be conducted using numbers assigned to the nominated persons (and not by using their names)."

GENERAL NOTE

This schedule is introduced by s.10(2). It contains further amendments. Paragraph 2 ends the current defence practice. Paragraph 4 provides for jurors having numbers, as suggested by Lord Carlile Q.C.

SCHEDULE 3 Section 24

MUNITIONS AND TRANSMITTERS: SEARCH AND SEIZURE

1.

(1) In this Schedule "officer" means-

(a) a member of Her Majesty's forces on duty, and

(b) a constable.

(2) In this Schedule "authorised officer" means-

(a) a member of Her Majesty's forces who is on duty and is authorised by a commissioned officer of those forces, and

(b) a constable who is authorised by an officer of the Police Service of Northern Ireland of at least the rank of inspector.

(3) In this Schedule-

(a) "munitions" means-

(i) explosives, firearms and ammunition, and

(ii) anything used or capable of being used in the manufacture of an explosive, a firearm or ammunition,

(b) "explosive" means-

(i) an article or substance manufactured for the purpose of producing a practical effect by explosion,

(ii) materials for making an article or substance within sub-paragraph (i),

(iii) anything used or intended to be used for causing or assisting in causing an explosion, and

(iv) a part of anything within sub-paragraph (i) or (ii),

(c) "firearm" includes an air gun or air pistol,

(d) "scanning receiver" means apparatus (or a part of apparatus) for wireless telegraphy designed or adapted for the purpose of automatically monitoring selected frequencies, or automatically scanning a selected range of frequencies, so as to enable transmissions on any of those frequencies to be detected or intercepted,

(e) "transmitter" means apparatus (or a part of apparatus) for wireless telegraphy designed or adapted for emission, as opposed to reception,

(f) "wireless apparatus" means a scanning receiver or a transmitter, and

(g) "wireless telegraphy" has the same meaning as in section 116 of the Wireless Telegraphy Act 2006 (c. 36).

2.

(1) An officer may enter and search any premises for the purpose of ascertaining-

(a) whether there are any munitions unlawfully on the premises, or

(b) whether there is any wireless apparatus on the premises.

(2) An officer may not enter a dwelling under this paragraph unless he is an authorised officer and he reasonably suspects that the dwelling-

(a) unlawfully contains munitions, or

(b) contains wireless apparatus.

(3) A constable exercising the power under sub-paragraph (1) may, if necessary, be accompanied by other persons.

3.

(1) If the officer carrying out a search of premises under paragraph 2 reasonably believes that it is necessary in order to carry out the search or to prevent it from being frustrated, he may-

(a) require a person who is on the premises when the search begins, or who enters during the search, to remain on the premises;

(b) require a person mentioned in paragraph (a) to remain in a specified part of the premises;

(c) require a person mentioned in paragraph (a) to refrain from entering a specified part of the premises;

(d) require a person mentioned in paragraph (a) to go from one specified part of the premises to another;

(e) require a person who is not a resident of the premises to refrain from entering them.

(2) A requirement imposed under this paragraph shall cease to have effect after the conclusion of the search in relation to which it was imposed.

(3) Subject to sub-paragraphs (4) and (5), no requirement under this paragraph for the purposes of a search shall be imposed or have effect after the end of the period of four hours beginning with the time when the first (or only) requirement is imposed in relation to the search.

(4) In the case of a search by a constable, an officer of the Police Service of Northern Ireland of at least the rank of superintendent may extend the period mentioned in sub-paragraph (3) in relation to a search by a further period of four hours if he reasonably believes that it is necessary to do so in order to carry out the search or to prevent it from being frustrated.

(5) In the case of a search by a member of Her Majesty's forces, an officer of at least the rank of Major may extend the period mentioned in sub-paragraph (3) in relation to a search by a further period of four hours if he reasonably believes that it is necessary to do so in order to carry out the search or to prevent it from being frustrated.

(6) The power to extend a period conferred by sub-paragraph (4) or (5) may be exercised only once in relation to a particular search.

4.

(1) An officer may-

(a) stop a person in a public place, and

(b) search him for the purpose of ascertaining whether he has munitions unlawfully with him or wireless apparatus with him.

(2) An officer may search a person-

(a) who is not in a public place, and

(b) whom the officer reasonably suspects to have munitions unlawfully with him or to have wireless apparatus with him.

(3) A member of Her Majesty's forces may search a person entering or found in a dwelling entered under paragraph 2.

5.

(1) This paragraph applies where an officer is empowered by virtue of this Schedule or section 25 or 26 to search premises or a person.

(2) The officer may-

(a) seize any munitions found in the course of the search (unless it appears to him that the munitions are being, have been and will be used only lawfully), and

(b) retain and, if necessary, destroy them.

(3) The officer may-

(a) seize any wireless apparatus found in the course of the search (unless it appears to him that the apparatus is being, has been and will be used only lawfully), and

(b) retain it.

6.

(1) Where an officer carries out a search of premises under this Schedule he shall, unless it is not reasonably practicable, make a written record of the search.

(2) The record shall specify-

(a) the address of the premises searched,

(b) the date and time of the search,

(c) any damage caused in the course of the search, and

(d) anything seized in the course of the search.

(3) The record shall also include the name (if known) of any person appearing to the officer to be the occupier of the premises searched; but-
  (a) a person may not be detained in order to discover his name, and
  (b) if the officer does not know the name of a person appearing to him to be the occupier of the premises searched, he shall include in the record a note describing him.
(4) The record shall identify the officer-
  (a) in the case of a constable, by reference to his police number, and
  (b) in the case of a member of Her Majesty's forces, by reference to his service number, rank and regiment.

7.
(1) Where an officer makes a record of a search in accordance with paragraph 6, he shall supply a copy to any person appearing to him to be the occupier of the premises searched.
(2) The copy shall be supplied immediately or as soon as is reasonably practicable.

8.
(1) A person commits an offence if he-
  (a) knowingly fails to comply with a requirement imposed under paragraph 3, or
  (b) wilfully obstructs, or seeks to frustrate, a search of premises under this Schedule.
(2) A person guilty of an offence under this paragraph shall be liable-
  (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

9.
(1) A person commits an offence if he fails to stop when required to do so under paragraph 4.
(2) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

GENERAL NOTE

This schedule is introduced by s.24. It contains search and seizure powers. Query why these powers have been put in a schedule?

SCHEDULE 4 Section 38

COMPENSATION

1.
(1) This paragraph applies where under sections 21 to 32-
  (a) real or personal property is taken, occupied, destroyed or damaged, or
  (b) any other act is done which interferes with private rights of property.
(2) Where this paragraph applies in respect of an act taken in relation to any property or rights the Secretary of State shall pay compensation to any person who-
  (a) has an estate or interest in the property or is entitled to the rights, and
  (b) suffers loss or damage as a result of the act.

2. No compensation shall be payable unless an application is made to the Secretary of State in such manner as he may specify.

3.
(1) Subject to sub-paragraphs (2) and (3), an application for compensation in respect of an act must be made within the period of 28 days beginning with the date of the act.
(2) The Secretary of State may, in response to a request made to him in writing, permit an application to be made-
  (a) after the expiry of the period mentioned in sub-paragraph (1), and
  (b) within such longer period, starting from the date of the act and not exceeding six months, as he may specify.
(3) Where the Secretary of State refuses a request under sub-paragraph (2)-
  (a) he shall serve a notice of refusal on the person who made the request,

(b) that person may, within the period of six weeks beginning with the date of service of the notice, appeal to the county court against the refusal, and

(c) the county court may exercise the power of the Secretary of State under sub-paragraph (2).

4. Where the Secretary of State determines an application for compensation he shall serve on the applicant a notice-

(a) stating that he has decided to award compensation and specifying the amount of the award, or

(b) stating that he has decided to refuse the application.

5.

(1) An applicant may appeal to the county court against-

(a) the amount of compensation awarded, or

(b) the refusal of compensation.

(2) An appeal must be brought within the period of six weeks beginning with the date of service of the notice under paragraph 4.

6.

(1) This paragraph applies where the Secretary of State considers that in the course of an application for compensation the applicant-

(a) knowingly made a false or misleading statement,

(b) made a statement which he did not believe to be true, or

(c) knowingly failed to disclose a material fact.

(2) The Secretary of State may-

(a) refuse to award compensation,

(b) reduce the amount of compensation which he would otherwise have awarded, or

(c) withhold all or part of compensation which he has awarded.

7. Where the Secretary of State makes an award of compensation he may make a payment to the applicant in respect of all or part of the costs of the application.

8.

(1) This paragraph applies where-

(a) a person has made an application for compensation, and

(b) his right to compensation has passed to another person by virtue of an assignment or the operation of law.

(2) The Secretary of State shall treat the person mentioned in sub-paragraph (1)(b) as the applicant.

9.

(1) This paragraph applies where a person has a right to compensation in respect of an act and-

(a) the act was done in connection with, or revealed evidence of the commission of an offence, and

(b) proceedings for the offence are brought against the person.

(2) The person's right to compensation shall not be enforceable while the proceedings have not been concluded.

(3) If the person stands convicted of the offence he shall have no right to compensation.

10. A notice served under paragraph 3(3)(a) or 4 shall contain particulars of the right of appeal under paragraph 3(3)(b) or 5.

11.

(1) The Secretary of State may serve a notice under this Schedule on an individual-

(a) by delivering it to him,

(b) by sending it by post addressed to him at his usual or last-known place of residence or business, or

(c) by leaving it for him there.

(2) The Secretary of State may serve a notice under this Schedule on a partnership-

(a) by sending it by post to a partner, or to a person having the control or management of the partnership business, at the principal office of the partnership, or

(b) by addressing it to a partner or to a person mentioned in paragraph (a) and leaving it at that office.

(3) The Secretary of State may serve a notice under this Schedule on a body corporate-

(a) by sending it by post to the secretary or clerk of the body at its registered or principal office, or

(b) by addressing it to the secretary or clerk of the body and leaving it at that office.

(4) The Secretary of State may serve a notice under this Schedule on any person-

(a) by delivering it to his solicitor,
(b) by sending it by post to his solicitor at his solicitor's office, or
(c) by leaving it for his solicitor there.

12.
(1) A person commits an offence if he obtains compensation or increased compensation for himself or another person by deception.
(2) In sub-paragraph (1) "deception" means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.
(3) A person commits an offence if for the purposes of obtaining compensation he-
(a) knowingly makes a false or misleading statement,
(b) makes a statement which he does not believe to be true, or
(c) knowingly fails to disclose a material fact.
(4) A person guilty of an offence under this paragraph shall be liable-
(a) on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both, or
(b) on summary conviction, to imprisonment for a term not exceeding one year, to a fine not exceeding the statutory maximum or to both.

GENERAL NOTE
This schedule is introduced by s.38.

SCHEDULE 5 Section 44

Northern Ireland Department with Policing and Justice Functions

1. In Schedule 2 to the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), the inserted Schedule 4A to the Northern Ireland Act 1998 (c. 47) (department with policing and justice functions) is amended as follows.

2. After Part 3 insert-

""PART 3A Department in the Charge of Minister and Deputy Minister

Introduction

11A (1) This Part of this Schedule has effect in relation to a Northern Ireland department-
(a) the functions of which consist wholly or mainly of devolved policing and justice functions; and
(b) in relation to which an Act of the Assembly provides, by virtue of section 21A(5A)-
(i) for it to be in the charge of a Northern Ireland Minister (the "relevant Minister") elected by the Assembly; and
(ii) for that Minister to be supported by a deputy Minister (the "deputy Minister") elected by the Assembly.
(2) In this paragraph "devolved policing and justice function" has the same meaning as in section 21A (see subsection (8) of that section).

Modification of section 16A

11B (1) Section 16A shall have effect subject to the following modifications.
(2) Subsection (2) shall have effect as if, at the end there were inserted "; and the deputy Minister (within the meaning of Part 3A of Schedule 4A) shall cease to hold office."
(3) Subsection (3) shall have effect as if, for paragraph (b) (and the word "and" before it) there were substituted-
"(aa) once those offices have been filled, the relevant Ministerial office (within the meaning of Part 3A of Schedule 4A) and the deputy Min-

isterial office (within that meaning) shall be filled by applying paragraph 11E(2)(b) and (3) to (8) of that Schedule; and

(b) once those offices have been filled, the other Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6)."

Section 18 not to apply to relevant Minister

"**11C** (1) Subject to sub-paragraphs (2) to (5), section 18 (Northern Ireland Ministers) shall not apply in relation to-

(a) the relevant Minister; or

(b) the Ministerial office held by the relevant Minister (the "relevant Ministerial office"),

and paragraphs 11E to 11G shall apply instead.

(2) The references to Ministerial offices in subsection (1)(c) and (d) of section 18 shall be taken to include the relevant Ministerial office.

(3) In the application of section 18(5) to a political party which is entitled to two or more Ministerial offices, the reference to Ministerial offices (in the definition of M)-

(a) at any time when the number of Ministerial offices held by members of the party (apart from the relevant Ministerial office) is nil, shall be taken not to include the relevant Ministerial office; but

(b) at any time when the number of Ministerial offices held by members of the party (apart from the relevant Ministerial office) is one or more, shall be taken to include the relevant Ministerial office.

(4) In the application of section 18(5) to any other political party, that reference to Ministerial offices shall be taken to include the relevant Ministerial office.

(5) For the purposes of this paragraph, a political party is entitled to two or more Ministerial offices if the nominating officer of the party would be entitled to nominate persons to hold two or more Ministerial offices under section 18, assuming that-

(a) on each occasion on which a nominating officer of a political party is entitled to exercise the power conferred by section 18(2), he does so within the period mentioned in section 18(3)(a);

(b) the nominated person, in each case, takes up the selected Ministerial office within that period; and

(c) the reference in section 18(5) to Ministerial offices (in the definition of M) is taken to include the relevant Ministerial office.

Section 19 not to apply to deputy Minister

11D (1) The deputy Minister is to be treated for the purposes of this Act as if he were a junior Minister, but the provisions of section 19 (junior Ministers) shall not apply in relation to-

(a) him; or

(b) the office held by him (the "deputy Ministerial office"),

(so that, in particular, the deputy Ministerial office shall not count for the purposes of any formulae or other rules mentioned in section 19(2)); and the following provisions of this Part of this Schedule shall apply instead.

(2) The functions exercisable by virtue of the deputy Ministerial office shall be those determined in relation to that office by the relevant Minister and the deputy Minister acting jointly.

(3) The relevant Minister and the deputy Minister shall consult the First Minister and the deputy First Minister before making any determination under sub-paragraph (2).

Provisions relating to relevant Minister and deputy Minister

11E (1) When devolved policing and justice functions are first transferred to, or conferred on, the department mentioned in paragraph 11A, the relevant Ministerial office and the deputy Ministerial office shall be filled by applying sub-paragraphs (3) to (8) within a period specified in standing orders.

(2) The relevant Ministerial office and the deputy Ministerial office shall be filled by applying sub-paragraphs (3) to (8)-

(a) before section 18(2) to (6) is applied in relation to the other Ministerial offices; and

(b) before the procedures specified in any determination under section 19 are applied in relation to the junior Ministerial offices.

(3) Any member of the Assembly may stand as a candidate for election as-
(a) the relevant Minister; or
(b) the deputy Minister.
(4) But a member of the Assembly may not stand for election to either of those offices unless-
(a) he belongs to the largest or the second largest political designation (see paragraph 11H);
(b) he is nominated by another member of the Assembly; and
(c) if he is a member of a political party, the nominating officer of the party consents to his nomination within a period specified in standing orders.
(5) A candidate shall not be elected to either of those offices by the Assembly without the support of-
(a) a majority of the members voting in the election;
(b) a majority of the designated Nationalists voting; and
(c) a majority of the designated Unionists voting.
(6) A candidate shall not be elected to hold office as deputy Minister unless-
(a) the relevant Ministerial office is filled; and
(b) the candidate and the relevant Minister belong to different political designations.
(7) A person elected to the office of relevant Minister or deputy Minister shall not take up office until he has affirmed the terms of the pledge of office.
(8) If a person elected to either office does not take up the office within a period specified in standing orders, his election shall be deemed to be ineffective.
(9) The relevant Minister or the deputy Minister shall cease to hold office if-
(a) he resigns by notice in writing to the First Minister and the deputy First Minister;
(b) he ceases to be a member of the Assembly otherwise than by virtue of a dissolution;
(c) where consent to his nomination was required under sub-paragraph (4)(c), he is dismissed by the nominating officer who consented (or that officer's successor) and the Presiding Officer is notified of his dismissal.
(10) If the relevant Minister or the deputy Minister ceases to hold office at any time, otherwise than by virtue of section 16A(2), the office shall be filled by applying sub-paragraphs (3) to (8) within a period specified in standing orders.
(11) But if-
(a) the relevant Ministerial office is filled by virtue of sub-paragraph (10); and
(b) the person appointed as the relevant Minister belongs to the same political designation as the deputy Minister,

the deputy Minister shall cease to hold office and the deputy Ministerial office shall be filled by applying sub-paragraphs (3) to (8) within a period specified in standing orders.

(12) Standing orders may make provision with respect to the holding of elections under this paragraph.

Eligibility to become relevant Minister or deputy Minister

11F (1) The holding of office as First Minister or deputy First Minister shall not prevent a person being elected to hold-
(a) the relevant Ministerial office; or
(b) the deputy Ministerial office.
(2) Where-
(a) the Assembly has resolved under section 30(2) that a political party does not enjoy its confidence; and
(b) the party's period of exclusion under that provision has not come to an end,

no member of that party may be nominated under paragraph 11E(4)(b).

(3) Where-
(a) the Secretary of State has given a direction under section 30A(5) in respect of a political party; and
(b) the party's period of exclusion under that provision has not come to an end,

no member of that party may be nominated under paragraph 11E(4)(b).

(4) In this paragraph, a reference to a period of exclusion under any provision is, in the case of a period of exclusion under that provision which has been extended, a reference to that period as extended.

Change in number of Ministerial offices held by members of a political party

11G (1) If, as a result of the relevant Minister ("the former Minister") ceasing to hold office and the relevant Ministerial office being filled by virtue of paragraph 11E(10)-

(a) the total number of Ministerial offices held by members of a political party increases; or

(b) the total number of Ministerial offices held by members of a political party decreases,

all other Northern Ireland Ministers shall cease to hold office and those Ministerial offices shall be filled by applying section 18(2) to (6) within a period specified in standing orders.

(2) But sub-paragraph (1) shall not apply if-

(a) the former Minister ceased to hold office by virtue of being dismissed by a nominating officer under paragraph 11E(9)(c); and

(b) before the relevant Ministerial office was filled, either of the conditions in sub-paragraph (3) was satisfied in relation to each member of the Assembly who was a member of the political party of the nominating officer.

(3) The conditions are that-

(a) another member of the Assembly sought to nominate the member under paragraph 11E(4)(b) for the relevant Ministerial office but consent to his nomination was not given in accordance with paragraph 11E(4)(c); or

(b) the member was elected to the relevant Ministerial office, but the member did not take up the office within the period specified in standing orders by virtue of paragraph 11E(8).

Interpretation

11H (1) In this Part of this Schedule "nominating officer" has the same meaning as in section 18.

(2) For the purposes of this Part of this Schedule, a member of the Assembly is to be taken-

(a) to belong to the political designation "Nationalist" if he is a designated Nationalist;

(b) to belong to the political designation "Unionist" if he is a designated Unionist;

(c) otherwise, to belong to the political designation "Other";

and the size of each of the political designations "Nationalist", "Unionist" and "Other" is to be determined in accordance with section 16C(4) and (5)."

3. In paragraph 12(1), for "or (5)" substitute ", (5) or (5A) or an Order in Council under section 21A(7C)".

SCHEDULE 6 Section 48

PRIVATE SECURITY INDUSTRY: INTERIM ARRANGEMENTS

1. In this Schedule "security services" means the services of one or more individuals as security guards (whether or not provided together with other services relating to the protection of property or persons).

2. In this Schedule "licence" means a licence under this Schedule.

3. In this Schedule "proscribed organisation" has the meaning given by section 3 of the Terrorism Act 2000 (c. 11).

4. A person commits an offence if he provides or offers to provide security services for reward unless he-

(a) holds a licence, or

(b) acts on behalf of someone who holds a licence.

5.

(1) A person commits an offence if he publishes or causes to be published an advertisement for the provision for reward of security services by a person who does not hold a licence.

(2) It is a defence for a person charged with an offence under this paragraph to prove-

(a) that his business is (or includes) publishing advertisements or arranging for their publication,
(b) that he received the advertisement for publication in the ordinary course of business, and
(c) that he reasonably believed that the person mentioned in the advertisement as the provider of security services held a licence.

6.

(1) A person commits an offence if he pays money, in respect of the provision of security services, to a person who-
(a) does not hold a licence, and
(b) is not acting on behalf of someone who holds a licence.
(2) It is a defence for a person charged with an offence under this paragraph to prove that he reasonably believed that the person to whom he paid the money-
(a) held a licence, or
(b) was acting on behalf of someone who held a licence.

7.

(1) A person guilty of an offence under paragraph 4 or 5 shall be liable-
(a) on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both, or
(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
(2) A person guilty of an offence under paragraph 6 is liable on summary conviction to-
(a) imprisonment for a term not exceeding six months,
(b) a fine not exceeding level 5 on the standard scale, or
(c) both.

8.

(1) An application for a licence shall be made to the Secretary of State-
(a) in such manner and form as he may specify, and
(b) accompanied by such information as he may specify.
(2) The Secretary of State may specify information only if it concerns-
(a) the applicant,
(b) a business involving the provision of security services for reward which is, was or is proposed to be carried on by the applicant,
(c) a person whom the applicant employs or proposes to employ as a security guard,
(d) a partner or proposed partner of the applicant (where the applicant is an individual),
(e) a member or proposed member of the applicant (where the applicant is a partnership),
(f) an officer or proposed officer of the applicant (where the applicant is a body corporate).
(3) A person commits an offence if in connection with an application for a licence he-
(a) makes a statement which he knows to be false or misleading in a material particular, or
(b) recklessly makes a statement which is false or misleading in a material particular.
(4) A person guilty of an offence under sub-paragraph (3) shall be liable-
(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
(5) For the purposes of this paragraph-
(a) a reference to employment or proposed employment by an applicant for a licence shall, where the applicant is a partnership or a member of a partnership, be construed as a reference to employment or proposed employment by the partnership or by any of its partners,
(b) "officer" includes a director, manager or secretary,
(c) a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act shall be treated as an officer of that body, and
(d) the reference to directions or instructions in paragraph (c) does not include a reference to advice given in a professional capacity.

9.

(1) The Secretary of State shall grant an application for a licence unless satisfied that any of Conditions 1 to 4 applies.
(2) Condition 1 for the refusal of a licence is that a proscribed organisation, or an organisation which appears to the Secretary of State to be closely associated with a proscribed

organisation, would be likely to benefit from the licence (whether or not a condition were imposed under paragraph 10).

(3) Condition 2 for the refusal of a licence is that there are reasonable grounds to suspect that any of the following is engaged in criminal activity-

(a) a business involving the provision for reward of security services which is, was or is proposed to be carried on by the applicant,

(b) a person whom the applicant employs or proposes to employ as a security guard,

(c) a partner or proposed partner of the applicant (where the applicant is an individual),

(d) a member or proposed member of the applicant (where the applicant is a partnership), and

(e) an officer or proposed officer of the applicant (where the applicant is a body corporate).

(4) Condition 3 for the refusal of a licence is that the applicant has persistently failed to comply with the requirements of this Schedule.

(5) Condition 4 for the refusal of a licence is that the applicant has failed to comply with a condition imposed under paragraph 10.

(6) In Condition 1 a reference to a benefit is a reference to any benefit-

(a) whether direct or indirect, and

(b) whether financial or not.

(7) Paragraph 8(5) shall have effect for the purposes of Condition 2.

(8) In Condition 3 the reference to this Schedule includes a reference to-

(a) Part V of the Northern Ireland (Emergency Provisions) Act 1991 (c. 24) (private security services),

(b) Part V of the Northern Ireland (Emergency Provisions) Act 1996 (c. 22) (private security services), and

(c) Schedule 13 to the Terrorism Act 2000 (c. 11) (Northern Ireland: private security services).

10.

(1) The Secretary of State may on granting a licence impose a condition if satisfied that it is necessary in order to prevent any of the persons listed in sub-paragraph (2) from benefiting from the licence (within the meaning of paragraph 9(6)).

(2) Those persons are-

(a) a proscribed organisation,

(b) an organisation which appears to the Secretary of State to be closely associated with a proscribed organisation, from benefiting from the licence, and

(c) a person who engages in criminal activity.

11. If the Secretary of State refuses an application for a licence he shall notify the applicant.

12.

(1) A licence-

(a) shall come into force at the beginning of the day on which it is issued, and

(b) subject to sub-paragraph (2), shall expire at the end of the period of 12 months beginning with that day.

(2) Where a licence is issued to a person who already holds a licence, the new licence shall expire at the end of the period of 12 months beginning with the day after the day on which the current licence expires.

(3) The Secretary of State may by order substitute a period exceeding 12 months for the period for the time being specified in sub-paragraphs (1)(b) and (2).

(4) An order under sub-paragraph (3)-

(a) may include incidental or transitional provision,

(b) shall be made by statutory instrument, and

(c) shall be laid before Parliament.

13.

(1) The Secretary of State may revoke a licence if satisfied that-

(a) a proscribed organisation, or an organisation which appears to the Secretary of State to be closely associated with a proscribed organisation, would be likely to benefit from the licence remaining in force,

(b) there are reasonable grounds to suspect that any of the persons listed in paragraph 9(3) (taking a reference to the applicant as a reference to the holder of the licence) is engaged in criminal activity,

(c) the holder of the licence has persistently failed to comply with the requirements of this Schedule, or

(d) the holder of the licence has failed to comply with a condition imposed under paragraph 10.

(2) The Secretary of State shall not revoke a licence unless the holder-
(a) has been notified of the Secretary of State's intention to revoke the licence, and
(b) has been given a reasonable opportunity to make representations to the Secretary of State.

(3) If the Secretary of State revokes a licence he shall notify the holder immediately.

(4) Paragraph 9(6) and (8) shall apply for the purposes of this paragraph.

14. The applicant for a licence may appeal to the High Court if-
(a) the application is refused,
(b) a condition is imposed on the grant of a licence, or
(c) the licence is revoked.

15.

(1) Where an appeal is brought under paragraph 14, the Secretary of State may issue a certificate that the decision to which the appeal relates-
(a) was taken for a purpose specified in sub-paragraph (2), and
(b) was justified by that purpose.

(2) Those purposes are-
(a) preventing benefit from accruing to an organisation which was proscribed,
(b) preventing benefit from accruing to an organisation which appeared to the Secretary of State to be closely associated with an organisation which was proscribed, and
(c) preventing benefit from accruing to a person who was engaged in criminal activity.

(3) If he intends to rely on a certificate under this paragraph the Secretary of State shall notify the appellant.

(4) Where the appellant is notified of the Secretary of State's intention to rely on a certificate under this paragraph-
(a) he may appeal against the certificate to the Tribunal established under section 91 of the Northern Ireland Act 1998 (c. 47), and
(b) sections 90(3) and (4), 91(2) to (9) and 92 of that Act (effect of appeal, procedure, and further appeal) shall apply.

(5) Rules made under section 91 or 92 of that Act which are in force immediately before this paragraph comes into force shall have effect in relation to a certificate under this paragraph-
(a) with any necessary modifications, and
(b) subject to any later rules made by virtue of sub-paragraph (4)(b).

16. Paragraphs 17 and 18 apply to a person who-
(a) holds a licence, or
(b) has made an application for a licence which has not yet been determined.

17.

(1) If a person to whom this paragraph applies proposes to employ a security guard about whom information was not given under paragraph 8, he shall give the Secretary of State such information about the security guard as the Secretary of State may specify.

(2) The information shall be given not less than 14 days before the employment is to begin.

(3) For the purposes of this paragraph the provisions of paragraph 8(5) shall have effect in relation to a holder of or an applicant for a licence as they have effect for the purposes of paragraph 8 in relation to an applicant.

18.

(1) A person to whom this paragraph applies shall give the Secretary of State such information about a relevant change of personnel as the Secretary of State may specify.

(2) The information shall be given-
(a) not less than 14 days before the change, or
(b) if that is not reasonably practicable, as soon as is reasonably practicable.

(3) A relevant change of personnel is-
(a) where the application for the licence was made by a partnership or a member of a partnership, a change in the members of the partnership, or
(b) where the application for the licence was made by a body corporate, a change in the officers of the body (within the meaning of paragraph 8).

(4) But a change of personnel is not relevant if it was mentioned in the information given under paragraph 8.

19.

(1) A person commits an offence if he fails to comply with paragraph 17 or 18.

(2) A person guilty of an offence under this paragraph shall be liable on summary conviction to-
(a) imprisonment for a term not exceeding six months,
(b) a fine not exceeding level 5 on the standard scale, or
(c) both.

20.
(1) A constable may-
(a) enter premises where a business involving the provision of security services is being carried on, and
(b) require records kept there of a person employed as a security guard to be produced for the constable's inspection.
(2) A constable exercising the power under this paragraph-
(a) shall identify himself to a person appearing to be in charge of the premises,
(b) if the constable is not in uniform, shall produce to that person documentary evidence that he is a constable, and
(c) may use reasonable force.
(3) A person commits an offence if he fails to comply with a requirement imposed under sub-paragraph (1)(b).
(4) But it is a defence for a person charged with an offence under sub-paragraph (3) to show that he had a reasonable excuse for his failure.
(5) A person guilty of an offence under sub-paragraph (3) shall be liable on summary conviction to-
(a) imprisonment for a term not exceeding six months,
(b) a fine not exceeding level 5 on the standard scale, or
(c) both.

21.
(1) A person who provides for reward security services commits an offence if he makes or keeps a record of a person employed by him as a security guard which he knows to be false or misleading in a material particular.
(2) A person guilty of an offence under this paragraph shall be liable-
(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

22.
(1) This paragraph applies where an offence under this Schedule committed by a body corporate is proved-
(a) to have been committed with the consent or connivance of an officer of the body corporate, or
(b) to be attributable to neglect on the part of an officer of the body corporate.
(2) The officer, as well as the body corporate, shall be guilty of the offence.
(3) In this paragraph "officer" includes-
(a) a director, manager or secretary,
(b) a person purporting to act as a director, manager or secretary, and
(c) a member of a body corporate the affairs of which are managed by its members.

23.
(1) A notice under this Schedule must be in writing.
(2) Information required to be given to the Secretary of State under this Schedule-
(a) must be in writing, and
(b) may be sent to him by post.
(3) The Secretary of State may serve a notice under this Schedule on an individual-
(a) by delivering it to him,
(b) by sending it by post addressed to him at his usual or last-known place of residence or business, or
(c) by leaving it for him there.
(4) The Secretary of State may serve a notice under this Schedule on a partnership-
(a) by sending it by post to a partner, or to a person having the control or management of the partnership business, at the principal office of the partnership, or
(b) by addressing it to a partner or to a person mentioned in paragraph (a) and leaving it at that office.
(5) The Secretary of State may serve a notice under this Schedule on a body corporate-
(a) by sending it by post to the secretary or clerk of the body at its registered or principal office, or

(b) by addressing it to the secretary or clerk of the body and leaving it at that office.

(6) The Secretary of State may serve a notice under this Schedule on any person-

(a) by delivering it to his solicitor,

(b) by sending it by post to his solicitor at his solicitor's office, or

(c) by leaving it for his solicitor there.

(7) Sub-paragraphs (3) to (6) do not apply in relation to a notice under paragraph 15.

SCHEDULE 7

Section 50

"REPEALS AND REVOCATIONS

Trials on indictment without a jury

Short title and chapter	*Extent of repeal*
Terrorism Act 2000 (c. 11)	In Schedule 15, paragraph 13.

Juries

Title and number	*Extent of revocation*
Juries (Northern Ireland) Order 1996 (S.I. 1996/1141 (N.I. 6))	In Article 4- (a) in paragraph (3), "whose name is"; (b) in paragraph (6), the words from "and in each year" to the end. In Article 6(1), "with their addresses, and (subject to Article 4(10)(b)) occupations". Article 7. In Article 15(1), sub-paragraph (a) (including the word "and" at the end). Article 16(1) to (3). In Article 17(1), "Subject to Article 16,".

Human Rights Commission

Short title and chapter	*Extent of repeal*
Northern Ireland Act 1998 (c. 47)	In section 69(9), "and investigations".

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References are to sections and Schedules