

*Draft Order laid before Parliament under section 4(2) of the Northern Ireland Act 1998, for approval
by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2010 No.

NORTHERN IRELAND
CONSTITUTIONAL LAW

The Northern Ireland Act 1998
(Amendment of Schedule 3) Order 2010

Made - - - - ***
Coming into force - - - - ***

At the Court at Buckingham Palace, the *** day of ***
Present,
The Queen's Most Excellent Majesty in Council

In accordance with section 4(2A) of the Northern Ireland Act 1998(1), a motion for a resolution praying that certain matters falling within paragraphs 9 to 12, 14A to 15A and 17 of Schedule 3 to that Act should cease to be reserved matters has been tabled by the First Minister and the deputy First Minister acting jointly, and has been passed by the Northern Ireland Assembly with the support of a majority of the members voting on the motion, a majority of the designated Nationalists voting and a majority of the designated Unionists voting;

A draft of this Order has been approved by resolution of each House of Parliament:

Her Majesty, in exercise of the powers conferred by section 4(4) of the Northern Ireland Act 1998, is pleased, by and with the advice of Her Privy Council, to order as follows:—

Title and commencement

1.—(1) This Order may be cited as the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010.

(2) This Order shall come into force on 12 April 2010.

(1) 1998 c. 47; Section 4(2A) was inserted by section 16 of the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33) and amended by section 18(5) of the Northern Ireland (St Andrews Agreement) Act 2006 (c. 53).

Amendment of Schedule 3: policing and justice matters

2. Schedule 3 to the Northern Ireland Act 1998 (reserved matters) is amended as follows.

Prevention and detection of crime, public order, prisons, policing etc

3. For paragraph 9(2) substitute—

“9.—(1) The following matters—

- (a) the subject-matter of the following provisions of the Regulation of Investigatory Powers Act 2000(3)—
 - (i) Chapter 1 of Part 1, so far as relating to the prevention or detection of serious crime (within the meaning of that Act), and
 - (ii) so far as relating to the prevention or detection of crime (within the meaning of that Act) or the prevention of disorder—
 - (aa) Chapter 2 of Part 1, and
 - (bb) Parts 2 and 3;
- (b) in relation to the prevention or detection of crime, the subject-matter of Part 3 of the Police Act 1997(4);
- (c) the operation of—
 - (i) sections 21 to 40 of, and Schedules 3 and 4 to, the Justice and Security (Northern Ireland) Act 2007(5), and
 - (ii) section 102 of, and Schedule 12 to, the Terrorism Act 2000(6);
- (d) in relation to terrorism, the exercise of the Royal prerogative of mercy;
- (e) the operation of sections 1 to 8 of, and Schedule 1 to, the Justice and Security (Northern Ireland) Act 2007 and the operation of Part 1 of the Criminal Procedure and Investigations Act 1996(7) where a certificate under section 1 of the 2007 Act has been issued;
- (f) in relation to the regulation of drugs or other substances through the criminal law (including offences, exceptions to offences, penalties, powers of arrest and detention, prosecutions and the treatment of offenders) or otherwise in relation to the prevention or detection of crime—
 - (i) the subject-matter of the Misuse of Drugs Act 1971(8);

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- (2) Paragraph 9 was amended by section 83(a) of, and paragraph 65 of Schedule 12 to, the Justice (Northern Ireland) Act 2002 (c. 26).
 - (3) 2000 c. 23.
 - (4) 1997 c. 50.
 - (5) 2007 c. 6.
 - (6) 2000 c. 11. Paragraph 27 of the Schedule to S.I. 2007/2259 provides that the expiry of section 102 of, and Schedule 12 to, the Terrorism Act 2000 by virtue of section 1(2)(b) of the Terrorism (Northern Ireland) Act 2006 (c. 4) does not affect the operation of those provisions in relation to real or personal property taken, occupied, destroyed or damaged, or any other act done which interferes with private rights of property, before the end of 31st July 2007.
 - (7) 1996 c. 25.
 - (8) Functions under the Act were transferred by S.R. & O (N.I.) 1973 No. 504. The Act was amended by the Northern Ireland Constitution Act 1973 (c. 36) Schedule 5, paragraph 1(1), Schedule 6, paragraph 1; the Customs and Excise Management Act 1979 (c. 2), Schedule 4, paragraph 8; the Criminal Law Act 1977 (c. 45), section 52; the Police and Criminal Evidence Act 1984 (c. 60)....; the Medical Act 1983 (c. 54), Schedule 5, paragraph 9; the Dentists Act 1984 (c. 24) Schedule 5, paragraph 3; the Drug Trafficking Offences Act 1986 (c. 32), section 34(1); the Extradition Act 1989 (c. 33) section 37, Schedule 2; the Criminal Justice (International Co-operation) Act 1990 (c. 5), sections 23, 31, Schedule 4, paragraph 1; the Drug Trafficking Act 1994 (c. 37) section 65(1), Schedule 1, paragraphs 3-5; the Statute Law (Repeals) Act 2004 (c. 14), Schedule 1 Part 17, Group 7; the Drugs Act 2005 (c. 17), sections 1, 2; the Serious Crime Act 2007 (c. 27) Schedule 6, paragraph 53; S.I. 1976/1213 (N.I. 22); S.I. 1981/1675 (N.I. 26); S.I. 1983/1120 (N.I. 13); S.I. 1994/2795 (N.I. 15); S.I. 1996/1299 (N.I. 9); S.I. 1996/1496; and S.I. 2007/3101. The Act was modified by S.I. 2007/912 (NI 6); the Serious Organised Crime and Police Act

- (ii) the subject-matter of sections 12 and 13 of the Criminal Justice (International Co-operation) Act 1990(9);
 - (g) the Serious Organised Crime Agency;
 - (h) in relation to prisons, the accommodation of persons in separated conditions on the grounds of security, safety or good order.
- (2) In sub-paragraph (1)(h) “prisons” includes any institution for the detention of persons because of their involvement, or suspected involvement, in crime.
- (3) This paragraph does not include any excepted matters or any matter within paragraph 10 of this Schedule.”
4. For paragraph 10 substitute—
- “**10.**—(1) The subject-matter of the Public Processions (Northern Ireland) Act 1998(10).
- (2) In relation to the maintenance of public order, the armed forces of the Crown (including the conferring of powers, authorities, privileges or immunities on members of the armed forces for the purposes of the maintenance of public order).
- (3) This paragraph does not include any matter within paragraph 17 of Schedule 2.”
5. For paragraph 11 substitute—
- “**11.** The operation of the temporary provisions, as defined in section 47 of the Police (Northern Ireland) Act 2000(11).”
6. Omit paragraph 11A(12) (co-operation between the Police Service of Northern Ireland and Garda Síochána with respect to certain matters).

Firearms and explosives

7. For paragraph 12 substitute—
- “**12.**—(1) Items for the time being specified in Article 45(1) or (2) of the Firearms (Northern Ireland) Order 2004(13); and the subject-matter of Article 45(10) of that Order.
- (2) The security of explosives, including—
- (a) the prevention of loss or theft of explosives,
 - (b) the prevention of the use of explosives for wrongful purposes, and
 - (c) the detection, identification and traceability of explosives.
- This sub-paragraph does not include the security of fireworks, or the licensing of shotfirers, or the subject-matter of section 2 of the Explosives Act (Northern Ireland) 1970(14).”

2005 (c. 15), Schedule 8, paragraph 14; and the Criminal Justice (International Co-operation) Act 1990 (c.5), section 19(5). The Act was extended by S.I. 1993/2166.

(9) 1990 c. 5.

(10) 1998 c. 2.

(11) 2000 c. 32. Under section 47(1) of the Act, the following provisions are the “temporary provisions”: sections 44(5) to (7), 45 and 46 of the Act; Article 40A of S.I. 1997/869 (N.I. 6); and Article 71A of S.I. 1998/3162 (N.I. 21). By virtue of S.R. (N.I.) 2007 No. 214, the temporary provisions continue in force until 28th March 2010. The draft Police (Northern Ireland) Act 2000 (Renewal of Temporary Provisions) Order 2010 provides for the temporary provisions to continue in force under 28th March 2011.

(12) Paragraph 11A was inserted by paragraph 13(1) and (3) of Schedule 4 to the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33).

(13) S.I. 2004/702 (N.I. 3). Relevant amendments were made to Article 45 of the Order by S.I. 2005/1966 (N.I. 16).

(14) 1970 c. 10 (N.I.).

Justice etc

- 8.—(1) Omit paragraph 9A**(15)** (the Chief Inspector of Criminal Justice in Northern Ireland).
- (2) Omit paragraph 14A**(16)** (rights of appeal to the Supreme Court, and legal aid for such appeals).
- (3) Omit paragraph 15**(17)** (matters relating to the courts).
- (4) Omit paragraph 15A**(18)** (the Northern Ireland Law Commission).
- (5) Omit paragraph 17 (the Social Security Commissioners and Child Support Commissioners for Northern Ireland).

Clerk of the Privy Council

(15) Paragraph 9A was inserted by section 83(b) of the Justice (Northern Ireland) Act 2002 (c. 26).
(16) Paragraph 14A was inserted by section 58(1) and (3) of the Constitutional Reform Act 2005 (c. 4).
(17) Paragraph 15 was amended by paragraph 33(1) and (2) of Schedule 11 to the Constitutional Reform Act 2005 (c. 4).
(18) Paragraph 15A was inserted by section 83(c) of the Justice (Northern Ireland) Act 2002 (c. 26).

EXPLANATORY NOTE

(This note is not part of the Order)

Schedule 3 to the Northern Ireland Act 1998 (c. 47) lists the matters which are “reserved matters” for the purposes of that Act.

On 9 March 2010, the Northern Ireland Assembly passed a resolution praying that certain policing and justice matters (as defined in section 4(6) of that Act) should cease to be reserved matters and should become transferred matters (as defined in section 4(1) of that Act).

Those matters include aspects of the criminal law, the prevention and detection of crime, the criminal justice system, the treatment of offenders, the maintenance of public order, the police, the courts and the law relating to firearms and explosives.

This Order amends Schedule 3 so that those matters cease to be reserved matters and become transferred matters.

In the amended version of Schedule 3 (see Articles 3 to 8 of this Order), some policing and justice matters will remain reserved under paragraphs 9, 10, 11 and 12.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.