



Justice (Northern Ireland) Act 2004

2004 CHAPTER 4

The judiciary

1 Transfer to Lord Chancellor of functions relating to Judicial Appointments Commission

The Justice (Northern Ireland) Act 2002 (c. 26) (“the 2002 Act”) is amended as set out in Schedule 1 for the purpose of transferring to the Lord Chancellor functions exercisable by the First Minister and deputy First Minister, acting jointly, in relation to the Northern Ireland Judicial Appointments Commission.

2 Membership of the Commission

- (1) In section 3 of the 2002 Act for subsection (8) (lay members of the Commission to be representative of the community in Northern Ireland) substitute—

“(8) It is the duty of—

- (a) the Lord Chancellor, and
- (b) those responsible for making nominations under subsection (5)(a) and (b),

to make such arrangements in connection with the exercise of their functions under this section as will, so far as is practicable, secure that the membership of the Commission is reflective of the community in Northern Ireland.”

- (2) In Schedule 2 to the 2002 Act in paragraph 1 (tenure of judicial members) for sub-paragraph (1) substitute—

“(1) Subject as follows, a judicial member of the Commission holds office for the period specified in his appointment (or re-appointment).

- (1A) A person may not be appointed as a judicial member for more than five years at a time; and the aggregate period for which a person may be a judicial member by virtue of his holding any one of the judicial offices mentioned in section 3(6) must not exceed ten years.”

3 Duty of Commission to secure judiciary reflective of the community

In section 5 of the 2002 Act for subsections (8) and (9) (duty of Commission to secure range of persons reflective of community in Northern Ireland is available for consideration by the Commission, but appointment to be on basis of merit) substitute—

- “(8) The selection of a person to be appointed, or recommended for appointment, to a listed judicial office (whether initially or after reconsideration) must be made solely on the basis of merit.
- (9) Subject to that, the Commission must at all times engage in a programme of action which complies with subsection (10).
- (10) A programme of action complies with this subsection if—
- (a) it is designed to secure, so far as it is reasonably practicable to do so, that appointments to listed judicial offices are such that those holding such offices are reflective of the community in Northern Ireland;
 - (b) it requires the Commission, so far as it is reasonably practicable to do so, to secure that a range of persons reflective of the community in Northern Ireland is available for consideration by the Commission whenever it is required to select a person to be appointed, or recommended for appointment, to a listed judicial office; and
 - (c) it is for the time being approved by the Commission for the purposes of this section.”

4 Appointment of Lord Chief Justice and Lords Justices of Appeal

In section 12 of the Judicature (Northern Ireland) Act 1978 (c. 23) (as substituted by section 4 of the 2002 Act) for subsections (3) to (5) (consultations by Prime Minister before making recommendations to Her Majesty as to appointment of Lord Chief Justice or Lord Justice of Appeal) substitute—

- “(3) Before making any recommendation to Her Majesty concerning an appointment under subsection (1) or (2) the Prime Minister shall—
- (a) require the First Minister and deputy First Minister, acting jointly, to make a recommendation to him concerning the appointment in such form as the Prime Minister may specify, and
 - (b) consider any recommendation so made.
- (4) Before making any recommendation under subsection (3)(a) the First Minister and deputy First Minister shall consult the Lord Chief Justice or, if the office of Lord Chief Justice is vacant or he is not available, the most senior Lord Justice of Appeal who is available.
- (5) The Northern Ireland Judicial Appointments Commission shall give to the First Minister and deputy First Minister advice as to the procedure which, whenever they are required by the Prime Minister to make any recommendation under subsection (3)(a), they should adopt for formulating that recommendation.
- (6) After considering that advice, the First Minister and deputy First Minister acting jointly shall, with the approval of the Prime Minister, determine the procedure which, whenever they are required by the Prime Minister to make any recommendation under subsection (3)(a), they are to adopt for formulating

that recommendation and on each occasion on which they are so required, they shall adopt that procedure.”

5 Removal or suspension from listed judicial offices

In section 7 of the 2002 Act in subsection (5) (agreement of the Lord Chief Justice required to the removal or suspension of a person from a listed judicial office) for “without the agreement of” substitute “except after consultation with”.

Prosecutors

6 Duty of Director of Public Prosecutions to refer certain matters to Police Ombudsman

- (1) Section 55 of the Police (Northern Ireland) Act 1998 (c. 32) (referral of matters to Ombudsman) is amended as set out in subsections (2) to (5).
- (2) In subsection (1) (power of Policing Board, Director or Secretary of State to refer certain matters) omit the words “, the Director” (wherever they occur).
- (3) After subsection (4) insert—

“(4A) The Director shall refer to the Ombudsman any matter which—

 - (a) appears to the Director to indicate that a police officer—
 - (i) may have committed a criminal offence; or
 - (ii) may, in the course of a criminal investigation, have behaved in a manner which would justify disciplinary proceedings; and
 - (b) is not the subject of a complaint,

unless it appears to the Director that the Ombudsman is already aware of the matter.

(4B) In subsection (4A) “criminal investigation” has the same meaning as in Part 2 of the Criminal Procedure and Investigations Act 1996 (c. 25).”
- (4) In subsection (5) (power of Ombudsman to investigate matters referred under subsection (4)) after “(4)” insert “, or (4A)”.
- (5) In subsection (7) (duty on Ombudsman to notify outcome of criminal or disciplinary proceedings) omit “, the Director”.
- (6) In section 64(2A)(b) of the Police (Northern Ireland) Act 1998 (Ombudsman not to investigate matter referred under section 55(1), (2) or (4) if it took place more than the prescribed period before the date of referral) for “or (4)” substitute “, (4) or (4A)”.

7 Influencing a prosecutor

After section 32 of the 2002 Act insert—

“32A Influencing a prosecutor

- (1) A person commits an offence if, with the intention of perverting the course of justice, he seeks to influence the Director, the Deputy Director or a Public

Prosecutor in any decision as to whether to institute or continue criminal proceedings.

- (2) A person commits an offence if, with the intention of perverting the course of justice, he seeks to influence a barrister or solicitor to whom the Director has under section 36(2) assigned the institution or conduct of any criminal proceedings in any decision as to whether to institute or continue those proceedings.
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (4) Proceedings for an offence under this section shall not be instituted without the consent of the Director.”

Criminal justice organisations

8 Guidance for criminal justice organisations on human rights standards

- (1) The Attorney General for Northern Ireland shall issue, and as he thinks appropriate from time to time revise, guidance to organisations to which this section applies on the exercise of their functions in a manner consistent with international human rights standards relevant to the criminal justice system.
- (2) In the exercise of its functions, such an organisation shall have regard to any guidance for the time being in operation under this section; but this does not affect the operation, in relation to any such organisation, of section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act in a way incompatible with a Convention right).
- (3) Any guidance issued or revised under this section—
 - (a) shall be published in such manner as the Attorney General for Northern Ireland thinks appropriate;
 - (b) shall be laid before each House of Parliament; and
 - (c) shall not come into operation until the Attorney General for Northern Ireland by order so provides.
- (4) This section applies to the following organisations—
 - (a) the Public Prosecution Service for Northern Ireland,
 - (b) the Court Service,
 - (c) the Probation Board for Northern Ireland,
 - (d) the Police Ombudsman for Northern Ireland,
 - (e) the Northern Ireland Office, but only in respect of functions exercised by—
 - (i) the Northern Ireland Prison Service,
 - (ii) the Youth Justice Agency,
 - (iii) Forensic Science Northern Ireland,
 - (iv) the State Pathologist’s Department, or
 - (v) the Compensation Agency;

and accordingly references in this section to the functions of an organisation are, in the case of the Northern Ireland Office, references to the functions mentioned in paragraph (e).

- (5) The Attorney General for Northern Ireland may by order amend subsection (4) by—
- (a) adding any organisation having a role in the criminal justice system in Northern Ireland (apart from a court or tribunal);
 - (b) omitting an organisation; or
 - (c) altering the description of an organisation;

and an order under this subsection may make appropriate consequential amendments in this section or in any other enactment (whenever passed or made).

- (6) In section 52 of the Police (Northern Ireland) Act 2000 (c. 32) (code of ethics for police officers) after subsection (2) insert—

“(2A) In revising the code the Chief Constable and the Board shall also have regard to any guidance for the time being in operation under section 8 of the Justice (Northern Ireland) Act 2004.”

- (7) In section 37 of the 2002 Act (code of practice for prosecutors) after subsection (5) insert—

“(5A) In preparing or making alterations to a code the Director must also have regard to any guidance for the time being in operation under section 8 of the Justice (Northern Ireland) Act 2004.”

- (8) Nothing in this section requires the Public Prosecution Service for Northern Ireland to have regard to so much of any guidance for the time being in operation under this section as is inconsistent with a provision of a code of practice issued under section 37 of the 2002 Act.

- (9) In Schedule 7 to the 2002 Act (functions of Advocate General for Northern Ireland) after paragraph 7 insert—

“7A In section 8 of the Justice (Northern Ireland) Act 2004 (guidance for criminal justice organisations on human rights standards)—

- (a) after subsection (1) insert—

“(1A) Before issuing or revising any guidance under this section, the Attorney General for Northern Ireland shall consult the Advocate General for Northern Ireland.”;

- (b) after subsection (5) insert—

“(5A) Before making an order under subsection (3)(c) or (5), the Attorney General for Northern Ireland shall consult the Advocate General for Northern Ireland.””

9 The Juvenile Justice Board

- (1) Section 46 of the 2002 Act (organisations subject to inspection by the Chief Inspector) is amended as set out in subsections (2) to (4) in consequence of the dissolution of the Juvenile Justice Board and the establishment of the Youth Justice Agency.

- (2) In subsection (1) for paragraph (g) substitute—

“(g) the Youth Justice Agency;”.

- (3) In subsection (1)(h) omit “(other than the Juvenile Justice Board)”.
- (4) In subsection (4) for “Juvenile Justice Board” substitute “Youth Justice Agency”.
- (5) The following provisions (which are spent or of no practical utility in consequence of the dissolution of the Juvenile Justice Board) shall cease to have effect—
 - (a) the Malone and Whiteabbey Training Schools Act (Northern Ireland) 1956 (c. 4 (N. I.));
 - (b) in the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9))—
 - (i) Article 56; and
 - (ii) Article 57(2);
 - (c) in Schedule 1 to the Commissioner for Children and Young People (Northern Ireland) Order 2003 (S.I. 2003/439 (N.I. 11)) in paragraph 13 the words “The Juvenile Justice Board and” and the word “other”.

Bail

10 Prosecution right of appeal against grant of bail by magistrates' court

- (1) Where a magistrates' court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to the High Court against the granting of bail.
- (2) Subsection (1) applies only where the prosecution is conducted—
 - (a) by or on behalf of the Director of Public Prosecutions, or
 - (b) on behalf of the Police Service of Northern Ireland (whether by a member of that Service or any other person).
- (3) An appeal under subsection (1) may be made only if—
 - (a) the prosecution made representations that bail should not be granted, and
 - (b) the representations were made before it was granted.
- (4) Where the prosecution wishes to exercise the right of appeal under subsection (1), oral notice of appeal shall be given to the magistrates' court at the conclusion of the proceedings in which bail has been granted and before the release from custody of the person concerned.
- (5) Written notice of appeal shall thereafter be served on the magistrates' court and the person concerned within two hours of the conclusion of such proceedings.
- (6) On receipt from the prosecution of oral notice of appeal from its decision to grant bail, the magistrates' court shall remand in custody the person concerned, until the appeal is determined or otherwise disposed of.
- (7) Where the prosecution fails, within the period of two hours mentioned in subsection (5), to serve one or both of the notices required by that subsection, the appeal shall be deemed to have been disposed of.
- (8) The hearing of an appeal under subsection (1) against a decision of the magistrates' court to grant bail shall be commenced within 48 hours, excluding weekends, Christmas Day, Good Friday and a bank holiday, from the time when oral notice of appeal is given.

- (9) An appeal by the prosecution under this section shall be by way of re-hearing, and on such an appeal the High Court may—
- (a) remand the person concerned in custody, or
 - (b) grant bail subject to such conditions (if any) as it thinks fit.
- (10) No appeal lies against the decision of the High Court on an appeal under this section.
- (11) In relation to a person under the age of 21, the reference in subsection (1) to an offence punishable by imprisonment is to be read as a reference to an offence which would be so punishable in the case of a person over that age.

11 Bail under section 67 of the Terrorism Act 2000

- (1) A person admitted to bail under section 67 of the Terrorism Act 2000 (c. 11) shall be under a duty to surrender to custody.
- (2) Schedule 2 (which makes provision for the enforcement of the duty under subsection (1) and contains other provisions relating to persons admitted to bail under section 67 of the Terrorism Act 2000) shall have effect.
- (3) In this section and Schedule 2—
- “bail” means bail granted under section 67 of the Terrorism Act 2000;
 - “surrender to custody”, in relation to a person admitted to bail, means surrender himself (according to the requirements of the grant of bail)—
- (a) into the custody of a court at the time and place for the time being appointed for him to do so; or
 - (b) into the custody of the governor of a prison at the time and place for the time being appointed for him to do so.
- (4) This section and Schedule 2 shall, by virtue of this subsection, cease to have effect—
- (a) on 19th February 2006; or
 - (b) on such earlier date as the Secretary of State may by order appoint.

12 Bail to which Part II of the Criminal Justice (Northern Ireland) Order 2003 applies

- (1) Part II of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)) (bail grantable otherwise than under section 67 of the Terrorism Act 2000 (c. 11)) is amended as set out in subsections (2) to (4).
- (2) In Article 4(2) (definition of “surrender to custody”) at the end add “or
- (c) into the custody of the governor of a prison at the time and place for the time being appointed for him to do so.”
- (3) In Article 5 (offence of absconding by person released on bail) for paragraph (3) substitute—
- “(3) A person guilty of an offence paragraph (1) or (2) shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 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 3 years or to a fine or to both.”

- (4) In Article 6 of that Order (arrest for absconding or breaking conditions of bail)—
- (a) in paragraph (3) for “a duty to surrender to custody” substitute “a duty to surrender into the custody of a court”;
 - (b) after paragraph (3) insert—

“(3A) If, on an application made by a constable, a justice of the peace is satisfied that—

 - (a) there are reasonable grounds for believing that a person who is liable to arrest under paragraph (3) is to be found on the premises specified in the application; and
 - (b) any of the conditions specified in paragraph (3B) is satisfied, he may issue a warrant authorising a constable to enter those premises (if need be by force) and search them for the purpose of arresting that person.

(3B) The conditions mentioned in paragraph (3A) are—

 - (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (b) that entry to the premises will not be granted unless a warrant is produced;
 - (c) that the purpose of a search of the premises may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.”; and
 - (c) after paragraph (5) insert—

“(5A) Paragraphs (4) and (5) do not require a person to be brought before a magistrates' court at any time when he is in hospital and is not well enough.”
- (5) In Article 29(1) of the Magistrates' Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)) (right to claim trial by jury for summary offence if maximum term of imprisonment exceeds six months, subject to specified exceptions) after sub-paragraph (g) add—
- “(h) Article 5(1) or (2) of the Criminal Justice (Northern Ireland) Order 2003 (absconding by person admitted to bail)”.
- (6) Subsection (3) has no effect in relation to offences committed before it comes into force.

Transfer of prisoners

13 **Transfer of prisoners**

- (1) Schedule 1 to the Crime (Sentences) Act 1997 ([c. 43](#)) (transfer of prisoners within the British Islands) is amended as follows.
- (2) In paragraph 1 (transfer of prisoners: general) after sub-paragraph (2) insert—

“(2A) If it appears to the Secretary of State that—

 - (a) a person remanded in custody in Northern Ireland in connection with an offence, or
 - (b) a person serving a sentence of imprisonment in Northern Ireland;

should be transferred to another part of the United Kingdom in the interests of maintaining security or good order in any prison in Northern Ireland, the Secretary of State may make an order for his transfer to that other part, there to be remanded in custody pending his trial or, as the case may be, to serve the whole or any part of the remainder of his sentence, and for his removal to an appropriate institution there.”

- (3) In paragraph 5(1) (conditions of transfer) after “this Part” insert “(other than a transfer under paragraph 1(2A))”.
- (4) After paragraph 5 insert—

“Conditions of transfer under paragraph 1(2A)

- 5A (1) A transfer under paragraph 1(2A) shall have effect subject to—
- (a) such a condition as is mentioned in paragraph 6(1)(a); and
 - (b) such other conditions (if any) as the Secretary of State may think fit to impose.
- (2) Such a condition as is mentioned in paragraph 6(1)(a) shall not be varied or removed.
- (3) A condition imposed under sub-paragraph (1)(b) may be varied or removed at any time.”

- (5) In paragraph 6—
- (a) in sub-paragraph (2)(a) after “1(1)(a) or (2)(a)” insert “or (2A)(a)”; and
 - (b) in sub-paragraph (2)(b) after “1(1)(b) or (2)(b)” insert “or (2A)(b)”.
- (6) In paragraph 12—
- (a) in sub-paragraph (1) after “1(1)(a)” insert “or (2A)(a)”; and
 - (b) in sub-paragraph (2) after “1(1)(b)” insert “or (2A)(b)”.
- (7) In paragraph 13—
- (a) in sub-paragraph (1) after “1(1)(a)” insert “or (2A)(a)”; and
 - (b) in sub-paragraph (2) after “1(1)(b)” insert “or (2A)(b)”.

Amendment of section 103 of Terrorism Act 2000

14 Amendment of section 103 of Terrorism Act 2000

In section 103 of the Terrorism Act 2000 (c. 11) (collection of information about certain persons) in subsection (2)(e) (full-time employee of the prison service in Northern Ireland) for “a full-time employee of” substitute “employed in”.

Arrest without warrant

15 Arrest without warrant for offence of driving while disqualified

- (1) In Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (list of offences to which powers of summary arrest apply) after sub-paragraph (e) insert—

“(ee) offences under Article 167(1) of the Road Traffic (Northern Ireland) Order 1981 (driving while disqualified);”.

- (2) Subsection (1) has no effect in relation to offences committed before it comes into force.

Court security

16 Court security

Schedule 3 (which re-enacts with amendments sections 79 to 81 of the 2002 Act and makes further provision with respect to court security officers) shall have effect.

Right of barrister to enter into contract for the provision of his services

17 Right of barrister to enter into contract for the provision of his services

- (1) Any rule of law which prevents a barrister from entering into a contract for the provision of his services as a barrister is abolished.
- (2) Nothing in subsection (1) prevents the General Council of the Bar of Northern Ireland from making rules (however described) which prohibit barristers from entering into contracts or restrict their right to do so.

Supplementary

18 Repeals

Schedule 4 contains repeals.

19 Commencement

- (1) The preceding provisions of this Act (with the Schedules) shall not come into force until such day as the Secretary of State may by order appoint.
- (2) An order may appoint different days for different purposes.

20 Interpretation

In this Act—

- (a) “the 2002 Act” means the Justice (Northern Ireland) Act [2002 \(c. 26\)](#), and
- (b) any word or expression defined in section 88 of that Act has the same meaning in this Act as in that Act.

21 Statutory rules

- (1) Any power to make an order or regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 ([S.I. 1979/1573 \(N.I. 12\)](#)).

- (2) No order shall be made under section 8(5) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (3) An order under section 8(3)(c) or 11(4) and regulations under paragraph 1(4) or 6(1) of Schedule 3 shall be subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) applies accordingly.
- (4) An order or regulations made under this Act may include supplementary, incidental, transitional or consequential provisions.

22 Extent

- (1) Subject as follows, this Act extends only to Northern Ireland.
- (2) Any amendment made by this Act has the same extent as the provision to which it relates.

23 Short title

This Act may be cited as the Justice (Northern Ireland) Act 2004.