

JUSTICE (NORTHERN IRELAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY

Section 13: Transfer of Prisoners

38. The Review of Safety at HMP Maghaberry that was submitted to the Secretary of State for Northern Ireland on 29th August 2003 concluded that separation of prisoners by paramilitary affiliation was necessary in the interests of safety. The Review recommended that to prevent slippage from the proposed separated regime for paramilitary prisoners to a segregated regime, such as that which operated in HMP Maze and gave prisoners control of wings, prisoners should be subject to punishment for misbehaviour, and that removal to another jurisdiction might be considered in serious cases (Appendix A, paragraph 7).
39. [Section 13](#) amends Schedule 1 to the [Crime \(Sentences\) Act 1997\(c.43\)](#), which provides for the transfer of prisoners from Northern Ireland to another part of the United Kingdom with their consent. Under Schedule 1 a prisoner may be transferred as a result of his own application or for the purposes of attending trial or for other judicial purposes. This section provides that if it appears to the Secretary of State that in the interests of maintaining security or good order in any prison in Northern Ireland a remand or sentenced prisoner should be transferred to another establishment in England, Wales or Scotland, he may make an order to that effect (i.e. without the prisoner's consent).
40. *Subsection (4)* provides that any such transfer will be made and remain on a restricted basis and may be subject to such other conditions, if any, as the Secretary of State may think fit to impose. A sentenced prisoner who is subject to a restricted transfer is treated for the purposes of his detention under and release from his sentence as if he were still subject to the law of the place from which he was transferred (paragraph 6(2)(b) of Schedule 1 to the Crime (Sentences) Act 1997). The amendments made by *subsections (3), (5),(6)and (7)* are consequential.