

# CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

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## EXPLANATORY NOTES

### BACKGROUND

#### Part 1 – Youth rehabilitation orders

75. In September 2003, the Government published “Youth Justice – the next steps” (available at [www.homeoffice.gov.uk/documents/cons-youth-justice-next-steps/](http://www.homeoffice.gov.uk/documents/cons-youth-justice-next-steps/)) a companion document to the Green Paper “Every Child Matters”. This paper set out possible reforms to the Youth Justice System. A summary of the responses to this consultation together with the Government’s response was published in March 2004 (available at [www.homeoffice.gov.uk/documents/cons-youth-jus-next-steps-summ/](http://www.homeoffice.gov.uk/documents/cons-youth-jus-next-steps-summ/)). Part 1 of the Act gives effect to the proposals to create a YRO.

#### Part 2 - Sentencing

76. **Section 9** gives effect to the proposal to set out the purpose of juvenile sentencing which was set out in “Youth Justice – the next steps”.
77. In May 2007 the Government published “Penal Policy - a background paper” (available at <http://www.justice.gov.uk/penalpolicy.htm>). The paper set out the Government’s commitment to use prison and probation resources to best effect to protect the public, punish the offender and reduce re-offending. The paper set out new arrangements for the recall of non-dangerous offenders who breach the terms of their licence. Sections 29 and 30 give effect to these provisions.
78. In December 2007, Lord Carter published his Review of Prisons: Securing the Future (available at [www.justice.gov.uk/publications/securing\\_the\\_future.htm](http://www.justice.gov.uk/publications/securing_the_future.htm)) Sections 11, 13-18, 21-23, 25-26, 28, 51 and 52 give effect to certain recommendations to manage the use of custody.

#### Part 3 - Appeals

79. Concerns were expressed in recent judgments of the Court of Appeal, and in the response of the senior judiciary to the consultation paper “Quashing convictions” (available at [www.cjsonline.gov.uk/downloads/application/pdf/quashing\\_convictions\\_consult.pdf](http://www.cjsonline.gov.uk/downloads/application/pdf/quashing_convictions_consult.pdf)), about cases where the Court of Appeal had found itself obliged to quash convictions that were valid according to the law at the time of the trial. The problem had arisen where an appeal turned on a development in the law since the date of conviction and the case had been referred by the CCRC. The Court’s usual practice is to refuse an extension of time in which to appeal in “change of law” cases, but that solution is not available in cases referred by the CCRC since they are not subject to a leave requirement. Sections 42 and 43 respond to these concerns.

#### **Part 4 - Other criminal justice provisions**

80. The Home Office issued a consultation on extending the ambit of the Rehabilitation of Offenders Act 1974 to cautions in 1999 (available at [www.homeoffice.gov.uk/documents/cons-1999-rehab-offenders](http://www.homeoffice.gov.uk/documents/cons-1999-rehab-offenders)). Section 49 amends the 1974 Act to this end.
81. The Home Office consultation “Reform of the Prevention of Corruption Acts and SFO Powers in Cases of Bribery of Foreign Officials,” published in December 2005, included a proposal to extend investigatory powers (under section 2 of the Criminal Justice Act 1987) of the Serious Fraud Office (SFO) to the vetting stage in cases involving allegations of bribery or corruption of overseas officials. The consultation paper and the Government’s response are available at [www.homeoffice.gov.uk/documents/cons-2005-bribery/](http://www.homeoffice.gov.uk/documents/cons-2005-bribery/). Section 59 gives effect to this proposal.
82. In a Written Ministerial Statement in April 1996 the then Home Secretary announced a number of changes to the way in which applications for compensation following a miscarriage of justice were handled. Section 61 of this Act gives effect to the legislative proposals announced in April 2006 and the changes impact mainly on the way in which the amount of compensation is assessed by the independent Assessor.
83. Section 8 of the Criminal Justice (Terrorism and Conspiracy) Act 1998 requires the Secretary of State to lay before Parliament at least once every year a report on the working of the Act. The terrorism provisions (in sections 1-4) of that Act have been repealed and incorporated in the Terrorism Act 2000 leaving only the conspiracy provisions (in sections 5-7) under which agreements to commit acts that are criminal offences in a foreign jurisdiction can be tried as criminal conspiracies in the UK. The conspiracy provisions have been used in a small number of cases and deemed to fulfil their intended purpose satisfactorily but successive reviewers have concluded that annual review of these provisions adds nothing of real value to the scrutiny through the judicial process of the working of the Act. On 10 December 2002 the then Home Secretary (David Blunkett) announced in a written statement (Hansard, column 12WS-14WS) that, on the recommendation of the then reviewer (Lord Carlile of Berriew QC), the requirement to conduct an annual review would be abolished when a legislative opportunity occurred. Section 62 gives effect to this decision.

#### **Part 5 – Criminal law**

84. A joint Home Office/Scottish Executive consultation on extreme pornographic material was published in August 2005. A summary of the responses to this consultation together with the Government’s response was published in August 2006 (available at [www.homeoffice.gov.uk/documents/cons-extreme-porn-3008051/](http://www.homeoffice.gov.uk/documents/cons-extreme-porn-3008051/)). Sections 63 to 67 give effect to these proposals.
85. The offences introduced by section 75 and Schedule 17 are needed in order to facilitate UK ratification of amendments made in 2005 to the Convention on the Physical Protection of Nuclear Material (CPPNM). The original CPPNM was concluded under the auspices of the International Atomic Energy Agency in 1980. It entered into force in 1987, and there are currently 130 Parties. The UK is a Party, having signed the Convention in 1980 and ratified it in 1991.
86. A joint Crown Prosecution Service/Association of Chief Police Officers leaflet was published in February 2005 (available at [www.cps.gov.uk/Publications/docs/intruder\\_leaflet2005.pdf](http://www.cps.gov.uk/Publications/docs/intruder_leaflet2005.pdf)). This aimed to set out in plain language what householders’ rights are and the level of force they can use when confronted by an intruder. In September 2007 the Justice Secretary announced the Government’s intention to review the law on self-defence to address the issue of public understanding, which is still apparent. Section 76 clarifies the law on the use of force in self-defence or the prevention of crime.

87. The provisions (in section 77) to amend the Data Protection Act 1998 to allow for custodial sanctions for those convicted of offences under section 55 of that Act were set out in a consultation paper in July 2006 “Increasing penalties for deliberate and wilful misuse of personal data”. The Government’s response was published in February 2007. Both documents are available at [www.dca.gov.uk/consult/misuse\\_data/cp0906.htm](http://www.dca.gov.uk/consult/misuse_data/cp0906.htm).

## **Part 6 – International co-operation in relation to criminal justice matters**

88. Sections 80 to 92 implement the Council Framework Decision on the application of the principle of mutual recognition to financial penalties (2005/214/JHA), which was adopted in 2005. The Framework Decision allows a financial penalty imposed on an offender in one European Union Member State to be transferred to another Member State for enforcement. Responsibility for the enforcement of financial penalties received from another Member State will rest with the magistrates’ court where the offender is located and its designated Fines Officer, in line with their responsibilities for enforcement of fines imposed domestically.

## **Part 7 – Violent offender orders**

89. The Government announced its intention to introduce violent offender orders in “Rebalancing the criminal justice system in favour of the law-abiding majority” published in July 2006 (available at [www.homeoffice.gov.uk/documents/CJS-review.pdf/CJS-review-english.pdf](http://www.homeoffice.gov.uk/documents/CJS-review.pdf/CJS-review-english.pdf)). A consultation paper was subsequently issued by the Home Office in April 2007 and a summary of the response published in June 2007 (“Stakeholder consultation on Violent Offender Orders: Summary of responses and next steps” available at [www.homeoffice.gov.uk/documents/response-violent-offender.pdf](http://www.homeoffice.gov.uk/documents/response-violent-offender.pdf)).

## **Part 8 – Anti-social behaviour**

90. The Government published its consultation paper “Strengthening powers to tackle anti-social behaviour” in November 2006 (available at [www.homeoffice.gov.uk/documents/cons-asb-powers/](http://www.homeoffice.gov.uk/documents/cons-asb-powers/)). A summary of the responses to this consultation together with the Government’s response was published in May 2007 and is available at [www.homeoffice.gov.uk/documents/response-asb-powers?version=1](http://www.homeoffice.gov.uk/documents/response-asb-powers?version=1). Section 118 gives effect to the proposals to introduce premises closure orders.
91. The Department of Health published a consultation paper “Tackling nuisance or disturbance behaviour on NHS healthcare premises in June 2006 (available at [www.dh.gov.uk/Consultations/ClosedConsultations/ClosedConsultationsArticle/fs/en?CONTENT\\_ID=4138711&chk=mE2N5d](http://www.dh.gov.uk/Consultations/ClosedConsultations/ClosedConsultationsArticle/fs/en?CONTENT_ID=4138711&chk=mE2N5d)). The consultation document proposed new powers for NHS health bodies to deal with individuals causing a nuisance or disturbance on NHS premises. A summary of the responses to this consultation together with the Government’s response was published in November 2006 (available at [www.dh.gov.uk/Consultations/ResponsesToConsultations/ResponsesToConsultationsDocumentSummary/fs/en?CONTENT\\_ID=4140248&chk=Z%2B9but](http://www.dh.gov.uk/Consultations/ResponsesToConsultations/ResponsesToConsultationsDocumentSummary/fs/en?CONTENT_ID=4140248&chk=Z%2B9but)). Sections 119 to 121 give effect to these proposals.

## **Part 9 - Policing**

92. A fundamental review of the police officer disciplinary arrangements was published in January 2005. The report is available at [press.homeoffice.gov.uk/documents/police-disciplinary-arrangements/](http://press.homeoffice.gov.uk/documents/police-disciplinary-arrangements/). Sections 126 to 127 and Schedules 22 and 23 give effect to those recommendations which require primary legislation.

## **Part 10 - Special immigration status**

93. Part 10 gives effect to the Home Secretary’s commitment to legislate to deny leave to enter or remain to certain foreign nationals who can not be removed from the UK

compatibly with the United Kingdom's obligations under the European Convention on Human Rights (ECHR). The commitment was made following the judgment of the Court of Appeal in *S and others vs Secretary of State for the Home Department* in August 2006.

## **Part 11 - Miscellaneous**

94. Section 127 of the Criminal Justice and Public Order Act 1994 enabled the Secretary of State (or in Scotland, Scottish Ministers) to bring an action against any person who causes loss or damage by inducing a prison officer to withhold his services as such an officer or to commit a breach of discipline. It also enabled actions to be brought where there was an anticipated contravention of the section. The effect of the Regulatory Reform (Prison Officers) (Industrial Action) Order 2005 (the 2005 Order) was that section 127 no longer applied in relation to such an inducement in respect of a prison officer in England and Wales, or in Scotland, although it continued to apply in respect of prison officers in Northern Ireland as well as custody officers in private sector prisons.
95. The 2005 Order followed the signing of the Joint Industrial Relations Partnership Agreement (JIRPA) between the Prison Service and POA which included an express undertaking by the POA not to “induce, authorise or support any form of industrial action by any of its members employed in the Prison Service relating to a dispute concerning any matter, whether covered by this agreement or otherwise”. A similar Voluntary Agreement was signed by the Scottish Prison Service and POA. The POA subsequently gave notice of their withdrawal from the JIRPA which expired on 8 May 2008. The POA in Scotland has not withdrawn from their equivalent agreement.
96. [Section 138](#) reintroduces a statutory prohibition on inducing prison officers in England and Wales and Scotland to take industrial action or commit a breach of discipline.
97. The “Review of the Protection of Children from Sex Offenders” was commissioned by the Home Secretary in June 2006 and was published in June 2007 (available at [www.homeoffice.gov.uk/documents/CSOR/chid-sex-offender-review-130607?view=Binary](http://www.homeoffice.gov.uk/documents/CSOR/chid-sex-offender-review-130607?view=Binary)). Sections 140 to 142 give effect to some of the recommendations of the review.
98. In the 2004 *Choosing Health* White Paper, the Government signalled its intention to introduce preventative orders to deal more effectively with those who repeatedly sell tobacco products to under-age children. The implementation of the scheme was the subject of public consultation in July. A summary of the responses to this consultation together with the Government's response was published in February 2007 (available at [www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH\\_065350](http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_065350)). Section 143 gives effect to the scheme.
99. The Home Secretary announced in January 2008 the Government's intention to ratify the Council of Europe Convention against trafficking during 2008. A copy of the Convention is available at [http://www.coe.int/t/dg2/trafficking/campaign/Source/PDF\\_Conv\\_197\\_Trafficking\\_E.pdf](http://www.coe.int/t/dg2/trafficking/campaign/Source/PDF_Conv_197_Trafficking_E.pdf). Section 146 ensures that the UK can comply with the Convention once it has been ratified.