



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 11

#### MISCELLANEOUS

##### *Industrial action by prison officers*

#### **138 Amendment of section 127 of Criminal Justice and Public Order Act 1994**

- (1) Section 127 of the Criminal Justice and Public Order Act 1994 (c. 33) (inducements to prison officers to withhold services or breach discipline) is amended as follows.
- (2) In subsection (1), for paragraph (a) substitute—
  - “(a) to take (or continue to take) any industrial action;”.
- (3) After subsection (1) insert—
  - “(1A) In subsection (1) “industrial action” means—
    - (a) the withholding of services as a prison officer; or
    - (b) any action that would be likely to put at risk the safety of any person (whether a prisoner, a person working at or visiting a prison, a person working with prisoners or a member of the public).”
- (4) In subsection (4), after paragraph (a) insert—
  - “(aa) holds any post, other than as a chaplain or assistant chaplain, to which he has been appointed for the purposes of section 7 of the Prison Act 1952 (appointment of prison staff).”.
- (5) In subsection (4), after paragraph (aa) (inserted by subsection (4) above) insert—
  - “(b) holds any post, otherwise than as a medical officer, to which he has been appointed for the purposes of section 3(1A) of the Prisons (Scotland) Act 1989;”.

**139 Power to suspend the operation of section 127 of Criminal Justice and Public Order Act 1994**

After section 127 of the Criminal Justice and Public Order Act 1994 (c. 33) insert—

**“127A Power to suspend the operation of section 127**

- (1) The Secretary of State may make orders suspending, or later reviving, the operation of section 127.
- (2) An order under this section may make different provision in relation to different descriptions of prison officer.
- (3) The power to make orders under this section is exercisable by statutory instrument.
- (4) A statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.”

*Sex offenders***140 Disclosure of information about convictions etc. of child sex offenders to members of the public**

(1) After section 327 of the Criminal Justice Act 2003 (c. 44) insert—

**“327A Disclosure of information about convictions etc. of child sex offenders to members of the public**

- (1) The responsible authority for each area must, in the course of discharging its functions under arrangements established by it under section 325, consider whether to disclose information in its possession about the relevant previous convictions of any child sex offender managed by it to any particular member of the public.
- (2) In the case mentioned in subsection (3) there is a presumption that the responsible authority should disclose information in its possession about the relevant previous convictions of the offender to the particular member of the public.
- (3) The case is where the responsible authority for the area has reasonable cause to believe that—
  - (a) a child sex offender managed by it poses a risk in that or any other area of causing serious harm to any particular child or children or to children of any particular description, and
  - (b) the disclosure of information about the relevant previous convictions of the offender to the particular member of the public is necessary for the purpose of protecting the particular child or children, or the children of that description, from serious harm caused by the offender.
- (4) The presumption under subsection (2) arises whether or not the person to whom the information is disclosed requests the disclosure.

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- (5) Where the responsible authority makes a disclosure under this section—
  - (a) it may disclose such information about the relevant previous convictions of the offender as it considers appropriate to disclose to the member of the public concerned, and
  - (b) it may impose conditions for preventing the member of the public concerned from disclosing the information to any other person.
- (6) Any disclosure under this section must be made as soon as is reasonably practicable having regard to all the circumstances.
- (7) The responsible authority for each area must compile and maintain a record about the decisions it makes in relation to the discharge of its functions under this section.
- (8) The record must include the following information—
  - (a) the reasons for making a decision to disclose information under this section,
  - (b) the reasons for making a decision not to disclose information under this section, and
  - (c) the information which is disclosed under this section, any conditions imposed in relation to its further disclosure and the name and address of the person to whom it is disclosed.
- (9) Nothing in this section requires or authorises the making of a disclosure which contravenes the Data Protection Act 1998.
- (10) This section is not to be taken as affecting any power of any person to disclose any information about a child sex offender.

### **327B Section 327A: interpretation**

- (1) This section applies for the purposes of section 327A.
- (2) “Child” means a person under 18.
- (3) “Child sex offence” means an offence listed in Schedule 34A, whenever committed.
- (4) “Child sex offender” means any person who—
  - (a) has been convicted of such an offence,
  - (b) has been found not guilty of such an offence by reason of insanity,
  - (c) has been found to be under a disability and to have done the act charged against the person in respect of such an offence, or
  - (d) has been cautioned in respect of such an offence.
- (5) In relation to a responsible authority, references to information about the relevant previous convictions of a child sex offender are references to information about—
  - (a) convictions, findings and cautions mentioned in subsection (4)(a) to (d) which relate to the offender, and
  - (b) anything under the law of any country or territory outside England and Wales which in the opinion of the responsible authority corresponds

to any conviction, finding or caution within paragraph (a) (however described).

- (6) References to serious harm caused by a child sex offender are references to serious physical or psychological harm caused by the offender committing any offence listed in any paragraph of Schedule 34A other than paragraphs 1 to 6 (offences under provisions repealed by Sexual Offences Act 2003).
  - (7) A responsible authority for any area manages a child sex offender if the offender is a person who poses risks in that area which fall to be managed by the authority under the arrangements established by it under section 325.
  - (8) For the purposes of this section the provisions of section 4 of, and paragraph 3 of Schedule 2 to, the Rehabilitation of Offenders Act 1974 (protection for spent convictions and cautions) are to be disregarded.
  - (9) In this section “cautioned”, in relation to any person and any offence, means—
    - (a) cautioned after the person has admitted the offence, or
    - (b) reprimanded or warned within the meaning given by section 65 of the Crime and Disorder Act 1998.
  - (10) Section 135(1), (2)(a) and (c) and (3) of the Sexual Offences Act 2003 (mentally disordered offenders) apply for the purposes of this section as they apply for the purposes of Part 2 of that Act.”
- (2) After Schedule 34 to that Act insert the Schedule 34A set out in Schedule 24 to this Act.

#### **141 Sexual offences prevention orders: relevant sexual offences**

- (1) In section 106 of the Sexual Offences Act 2003 (c. 42) (supplemental provisions about sexual offences prevention orders), at the end insert—
- “(13) Subsection (14) applies for the purposes of section 104 and this section in their application in relation to England and Wales or Northern Ireland.
- (14) In construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates—
- (a) to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding (as defined by section 132(9)), or
  - (b) to the age of any person,
- is to be disregarded.”
- (2) This section extends to England and Wales and Northern Ireland only.

#### **142 Notification requirements: prescribed information**

- (1) In section 83 of the Sexual Offences Act 2003 (c. 42) (notification requirements: initial notification)—
- (a) at the end of subsection (5) insert—
    - “(h) any prescribed information.”; and
  - (b) after that subsection insert—

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- “(5A) In subsection (5)(h) “prescribed” means prescribed by regulations made by the Secretary of State.”
- (2) Section 84 of that Act (notification requirements: changes) is amended as follows.
- (3) In subsection (1)—
- (a) after “1997,” in paragraph (c) insert—
    - “(ca) any prescribed change of circumstances;” and
  - (b) after “the address of those premises” insert “, the prescribed details”.
- (4) In subsection (2) after “home address” insert “or the prescribed change of circumstances”.
- (5) After subsection (5) insert—
- “(5A) In this section—
- (a) “prescribed change of circumstances” means any change—
    - (i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 83(5)(h), and
    - (ii) of a description prescribed by regulations made by the Secretary of State;
  - (b) “the prescribed details”, in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed.”
- (6) Section 85 of that Act (notification requirements: periodic notification) is amended as follows.
- (7) In subsection (1), for “the period of one year” substitute “the applicable period”.
- (8) In subsection (3), for “the period referred to in subsection (1)” substitute “the applicable period”.
- (9) After subsection (4) insert—
- “(5) In this section, “the applicable period” means—
- (a) in any case where subsection (6) applies to the relevant offender, such period as may be prescribed by regulations made by the Secretary of State, and
  - (b) in any other case, the period of one year.
- (6) This subsection applies to the relevant offender if the last home address notified by him under section 83(1) or 84(1) or subsection (1) was the address or location of such a place as is mentioned in section 83(7)(b).”
- (10) In section 138(2) of that Act (orders and regulations subject to the affirmative resolution procedure), for “86 or 130” substitute “any of sections 83 to 86 or section 130”.
- (11) This section extends to England and Wales and Northern Ireland only.

*Persistent sales of tobacco to persons under 18***143 Persistent sales of tobacco to persons under 18**

- (1) The Children and Young Persons Act 1933 (c. 12) is amended as follows.
- (2) After section 12 insert—

*“Persistent sales of tobacco to persons under 18***12A Restricted premises orders**

- (1) This section applies where a person (“the offender”) is convicted of a tobacco offence (“the relevant offence”).
- (2) The person who brought the proceedings for the relevant offence may by complaint to a magistrates' court apply for a restricted premises order to be made in respect of the premises in relation to which that offence was committed (“the relevant premises”).
- (3) A restricted premises order is an order prohibiting the sale on the premises to which it relates of any tobacco or cigarette papers to any person.
- (4) The prohibition applies to sales whether made—
  - (a) by the offender or any other person, or
  - (b) by means of any machine kept on the premises or any other means.
- (5) The order has effect for the period specified in the order, but that period may not exceed one year.
- (6) The applicant must, after making reasonable enquiries, give notice of the application to every person appearing to the applicant to be a person affected by it.
- (7) The court may make the order if (and only if) it is satisfied that—
  - (a) on at least 2 occasions within the period of 2 years ending with the date on which the relevant offence was committed, the offender has committed other tobacco offences in relation to the relevant premises, and
  - (b) the applicant has complied with subsection (6).
- (8) Persons affected by the application may make representations to the court as to why the order should not be made.
- (9) If—
  - (a) a person affected by an application for a restricted premises order was not given notice under subsection (6), and
  - (b) consequently the person had no opportunity to make representations to the court as to why the order should not be made,
 the person may by complaint apply to the court for an order varying or discharging it.
- (10) On an application under subsection (9) the court may, after hearing—
  - (a) that person, and

(b) the applicant for the restricted premises order,  
make such order varying or discharging the restricted premises order as it  
considers appropriate.

(11) For the purposes of this section the persons affected by an application for a  
restricted premises order in respect of any premises are—

- (a) the occupier of the premises, and
- (b) any other person who has an interest in the premises.

## **12B Restricted sale orders**

(1) This section applies where a person (“the offender”) is convicted of a tobacco  
offence (“the relevant offence”).

(2) The person who brought the proceedings for the relevant offence may by  
complaint to a magistrates' court apply for a restricted sale order to be made  
in respect of the offender.

(3) A restricted sale order is an order prohibiting the person to whom it relates—

- (a) from selling any tobacco or cigarette papers to any person,
- (b) from having any management functions in respect of any premises in  
so far as those functions relate to the sale on the premises of tobacco  
or cigarette papers to any person,
- (c) from keeping any cigarette machine on any premises for the purpose  
of selling tobacco or permitting any cigarette machine to be kept on  
any premises by any other person for that purpose, and
- (d) from having any management functions in respect of any premises in  
so far as those functions relate to any cigarette machine kept on the  
premises for the purpose of selling tobacco.

(4) The order has effect for the period specified in the order, but that period may  
not exceed one year.

(5) The court may make the order if (and only if) it is satisfied that, on at least  
2 occasions within the period of 2 years ending with the date on which the  
relevant offence was committed, the offender has committed other tobacco  
offences.

(6) In this section any reference to a cigarette machine is a reference to an  
automatic machine for the sale of tobacco.

## **12C Enforcement**

(1) If—

- (a) a person sells on any premises any tobacco or cigarette papers in  
contravention of a restricted premises order, and
- (b) the person knew, or ought reasonably to have known, that the sale was  
in contravention of the order,

the person commits an offence.

(2) If a person fails to comply with a restricted sale order, the person commits  
an offence.

- (3) It is a defence for a person charged with an offence under subsection (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (4) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding £20,000.
- (5) A restricted premises order is a local land charge and in respect of that charge the applicant for the order is the originating authority for the purposes of the Local Land Charges Act 1975.

## **12D Interpretation**

- (1) In sections 12A and 12B a “tobacco offence” means—
  - (a) an offence committed under section 7(1) on any premises (which are accordingly “the premises in relation to which the offence is committed”), or
  - (b) an offence committed under section 7(2) in respect of an order relating to any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”).
- (2) In sections 12A to 12C the expressions “tobacco” and “cigarette” have the same meaning as in section 7.
- (3) In sections 12A and 12B “notice” means notice in writing.”
- (3) In section 102(1) (appeals to the Crown Court), after paragraph (e) insert—
  - “(f) in the case of a restricted premises order under section 12A or a restricted sale order under section 12B, by any person aggrieved.”

### *Penalties for serious contraventions of data protection principles*

## **144 Power to require data controllers to pay monetary penalty**

- (1) After section 55 of the Data Protection Act 1998 (c. 29) insert—

### *“Monetary penalties*

## **55A Power of Commissioner to impose monetary penalty**

- (1) The Commissioner may serve a data controller with a monetary penalty notice if the Commissioner is satisfied that—
  - (a) there has been a serious contravention of section 4(4) by the data controller,
  - (b) the contravention was of a kind likely to cause substantial damage or substantial distress, and
  - (c) subsection (2) or (3) applies.
- (2) This subsection applies if the contravention was deliberate.
- (3) This subsection applies if the data controller—
  - (a) knew or ought to have known —



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- (i) that there was a risk that the contravention would occur, and
  - (ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but
- (b) failed to take reasonable steps to prevent the contravention.
- (4) A monetary penalty notice is a notice requiring the data controller to pay to the Commissioner a monetary penalty of an amount determined by the Commissioner and specified in the notice.
- (5) The amount determined by the Commissioner must not exceed the prescribed amount.
- (6) The monetary penalty must be paid to the Commissioner within the period specified in the notice.
- (7) The notice must contain such information as may be prescribed.
- (8) Any sum received by the Commissioner by virtue of this section must be paid into the Consolidated Fund.
- (9) In this section—
  - “data controller” does not include the Crown Estate Commissioners or a person who is a data controller by virtue of section 63(3);
  - “prescribed” means prescribed by regulations made by the Secretary of State.

#### **55B Monetary penalty notices: procedural rights**

- (1) Before serving a monetary penalty notice, the Commissioner must serve the data controller with a notice of intent.
- (2) A notice of intent is a notice that the Commissioner proposes to serve a monetary penalty notice.
- (3) A notice of intent must—
  - (a) inform the data controller that he may make written representations in relation to the Commissioner’s proposal within a period specified in the notice, and
  - (b) contain such other information as may be prescribed.
- (4) The Commissioner may not serve a monetary penalty notice until the time within which the data controller may make representations has expired.
- (5) A person on whom a monetary penalty notice is served may appeal to the Tribunal against—
  - (a) the issue of the monetary penalty notice;
  - (b) the amount of the penalty specified in the notice.
- (6) In this section, “prescribed” means prescribed by regulations made by the Secretary of State.

**55C Guidance about monetary penalty notices**

- (1) The Commissioner must prepare and issue guidance on how he proposes to exercise his functions under sections 55A and 55B.
- (2) The guidance must, in particular, deal with—
  - (a) the circumstances in which he would consider it appropriate to issue a monetary penalty notice, and
  - (b) how he will determine the amount of the penalty.
- (3) The Commissioner may alter or replace the guidance.
- (4) If the guidance is altered or replaced, the Commissioner must issue the altered or replacement guidance.
- (5) The Commissioner may not issue guidance under this section without the approval of the Secretary of State.
- (6) The Commissioner must lay any guidance issued under this section before each House of Parliament.
- (7) The Commissioner must arrange for the publication of any guidance issued under this section in such form and manner as he considers appropriate.
- (8) In subsections (5) to (7), “guidance” includes altered or replacement guidance.

**55D Monetary penalty notices: enforcement**

- (1) This section applies in relation to any penalty payable to the Commissioner by virtue of section 55A.
- (2) In England and Wales, the penalty is recoverable—
  - (a) if a county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.
- (3) In Scotland, the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) In Northern Ireland, the penalty is recoverable—
  - (a) if a county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.

**55E Notices under sections 55A and 55B: supplemental**

- (1) The Secretary of State may by order make further provision in connection with monetary penalty notices and notices of intent.
- (2) An order under this section may in particular—

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- (a) provide that a monetary penalty notice may not be served on a data controller with respect to the processing of personal data for the special purposes except in circumstances specified in the order;
  - (b) make provision for the cancellation or variation of monetary penalty notices;
  - (c) confer rights of appeal to the Tribunal against decisions of the Commissioner in relation to the cancellation or variation of such notices;
  - (d) make provision for the proceedings of the Tribunal in respect of appeals under section 55B(5) or appeals made by virtue of paragraph (c);
  - (e) make provision for the determination of such appeals;
  - (f) confer rights of appeal against any decision of the Tribunal in relation to monetary penalty notices or their cancellation or variation.
- (3) An order under this section may apply any provision of this Act with such modifications as may be specified in the order.
- (4) An order under this section may amend this Act.”
- (2) In section 67 of that Act (orders, regulations, rules)—
- (a) in subsection (4) insert at the appropriate place—  
“section 55E(1),”; and
  - (b) in subsection (5) after paragraph (c) insert—  
“(ca) regulations under section 55A(5) or (7) or 55B(3)(b),”.

#### *Armed forces legislation*

### **145 Amendments to armed forces legislation**

Schedule 25 contains—

- (a) amendments to armed forces legislation (which make provision for service courts etc. corresponding to other provisions of this Act); and
- (b) transitional provision relating to certain of those amendments.

#### *Automatic deportation of criminals*

### **146 Convention against human trafficking**

After section 33(6) of the UK Borders Act 2007 (automatic deportation: exceptions) insert—

- “(6A) Exception 6 is where the Secretary of State thinks that the application of section 32(4) and (5) would contravene the United Kingdom’s obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16th May 2005).”