

CORONERS AND JUSTICE ACT 2009

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 5 - Miscellaneous criminal justice provisions

Section 142: Commissioner for Victims and Witnesses

617. A Commissioner for Victims and Witnesses was legislated for in the Domestic Violence, Crime and Victims Act 2004 (sections 48 to 53 and Schedules 8 and 9), but a Commissioner was never appointed and the legislation has not yet been commenced. This section amends sections 48 to 55 of that Act so as to modify the status and functions of the Commissioner. *Subsections (2) and (6)* repeal the provisions in section 48 of, and Schedule 8 to, that Act that establish the Commissioner as a corporation sole, and make new provision in respect of funding.
618. The core functions of the Commissioner are set out in section 49(1) of the Domestic Violence, Crime and Victims Act 2004. These functions are that the Commissioner must promote the interests of victims and witnesses; take such steps as he or she considers appropriate with a view to encouraging good practice in the treatment of victims and witnesses; and keep under review the operation of the code of practice issued under section 32 of the Domestic Violence, Crime and Victims Act 2004. These core functions remain unchanged.
619. In addition, under section 49(2) of that Act, the Commissioner, for any purpose connected with the performance of his or her duties, may (a) make proposals to the Secretary of State for amending the code (at the request of the Secretary of State or on his or her own initiative); (b) make a report to the Secretary of State; (c) make recommendations to an authority within his or her remit; (d) undertake or arrange for or support (financially or otherwise) the carrying out of research; and (e) consult any person he thinks appropriate. *Subsection (3)(a)* repeals section 49(2)(d). In future, any such research would be arranged and funded by the Department.
620. In addition to reports made under section 49(2)(b), new subsections (4) to (7) of section 49 of the Domestic Violence, Crime and Victims Act 2004 require the Commissioner to prepare an annual report. Copies of all reports are to be sent to the Justice Secretary, the Attorney General and the Home Secretary. The Commissioner is responsible for publishing all reports.
621. *Subsection (4)* amends section 50 of the Domestic Violence, Crime and Victims Act 2004 which sets out when the Commissioner can be required to give advice and to whom. Section 50(2) is repealed so the Commissioner is not required to give advice on the request of “an authority within his or her remit”. The Government envisages that such requests can be made through a Minister of the Crown under section 50(1).
622. Section 55 of the Domestic Violence, Crime and Victims Act 2004 created a Victims Advisory Panel which was set up in October 2006. The terms of reference for the Panel

are to advise the Home Secretary, the Lord Chancellor and the Attorney General of the views of victims of crime with particular reference to their interaction with the Criminal Justice System and its agencies. The Panel's remit also includes offering views and advice on the prevention of crime from a victim's perspective and generally contributing to developing and safeguarding the rights of victims. *Subsection (5)* inserts new sections (1A) and (1B) into section 55 which provide for the Commissioner to be a member of the Victims Advisory Panel and to chair the Panel.

Section 143: Implementation of E-Commerce and Services directives: penalties

- 623. The section will allow the Government to implement fully Article 30(2) of the Services Directive and Article 3(1) of the E-Commerce Directive.
- 624. In both cases the UK is required to extend the powers of its regulatory agencies (competent authorities) so that they are able, if so required, to take action in relation to offences committed by UK-based service providers in other European Union member States.
- 625. Both Articles will be implemented by secondary legislation through the powers in section 2(2) of the European Communities Act 1972. However there are limitations in paragraph 1(1)(d) of Schedule 2 to that Act on the penalties that can be imposed by secondary legislation under section 2(2). This section disapplies these limitations for the purposes of the implementation of the Services and E-Commerce Directives. This is so that penalties can be imposed in relation to offences committed by UK-based service providers, whether in the UK or elsewhere in the European Union. Regulations made using this power will be subject to the affirmative resolution procedure.

Section 144 and Schedule 17: Treatment of convictions in other member States etc

- 626. *Section 144* introduces Schedule 17. Section 144 and Schedule 17 implement the Council of the European Union Framework Decision 2008/675/JHA to ensure that previous convictions in other European Union member States are taken into account in criminal proceedings in England, Wales and Northern Ireland, to the extent that previous United Kingdom convictions are taken into account in criminal proceedings. The Schedule also makes a number of associated changes.

Admission of evidence as to bad character of a defendant

- 627. Section 103 of the 2003 Act (which extends to England and Wales only) concerns evidence of a defendant's bad character that is admissible because it is relevant to an important matter in issue between the defendant and the prosecution. Evidence which demonstrates that a defendant has a propensity to commit offences of the kind with which he is charged can be admitted under section 103(1)(a). This includes evidence of previous convictions.
- 628. *Paragraph 1(2)* of Schedule 17 amends section 103 of the 2003 Act, by inserting new subsections (7), (8) and (9), so that previous convictions of an offence, under the law of any country outside England and Wales can be admitted as evidence to the same extent as previous convictions in England and Wales, provided that the offence would also be an offence in England and Wales if it were done there at the time of the trial for the offence with which the defendant is now charged. As well as giving effect to the Council Framework Decision (2008/675/JHA) to make it clear that offences committed anywhere in the European Union can be admitted in these circumstances, this amendment puts beyond doubt that previous convictions in any other country can be admitted to the same extent as previous convictions of offences committed in England and Wales.
- 629. Section 108 of the 2003 Act (which extends to England and Wales only) deals with the admissibility of certain juvenile convictions. It provides that certain of those convictions (those relating to offences committed under the age of 14 in any trial for an offence

committed over the age of 21) fall under the general scheme for admitting evidence in this Part of the Act, and can only be admitted if, firstly, the offence for which the defendant is being tried and the offence for which the defendant was previously convicted are triable only on indictment, and, secondly, the court is satisfied that the interests of justice require the admission of the evidence.

630. *Paragraph 1(3)* of Schedule 17 amends section 108 by inserting new subsections (2A) and (2B) which extend this section to convictions of offences under the law of a country outside England and Wales, provided that the offence would also have been an offence in England and Wales if it were done there at the time of the proceedings for the offence with which the defendant is now charged. Again, this amendment is to give effect to the Council Framework Decision (2008/675/JHA) to make it clear that offences committed anywhere in the European Union can be admitted, and also to put beyond doubt that previous convictions in other countries can be admitted to the same extent as previous convictions of offences committed in England and Wales.
631. *Paragraph 2* amends the Criminal Justice (Evidence) (Northern Ireland) Order 2004 (which makes equivalent provision to sections 103 and 108 of the 2003 Act in respect of Northern Ireland) to the same effect in respect of convictions of offences under the law of a country outside Northern Ireland.

Bail

632. *Paragraph 3* amends section 25 of the Criminal Justice and Public Order Act 1994 (which extends to England and Wales only), which provides that a person charged with homicide or rape who has a previous conviction obtained in the United Kingdom of any such offence or of culpable homicide shall only be granted bail if there are exceptional circumstances which justify it.
633. The application of section 25 is amended. New subsection (3A) amends the current wording of section 25 to make it clear that the section applies to a person convicted in any part of the UK of an offence specified in subsection (2) (which includes homicide, rape and other sexual offences) or of culpable homicide, and, if that previous conviction was one of manslaughter or culpable homicide, only if that person was then a child or young person and was sentenced to long-term detention under the enactments specified as relevant, or if the person was not then a child or young person, they were sentenced to imprisonment or detention. Under the relevant enactments, only those aged over 21 years of age can be sentenced to imprisonment. Those aged under 21 years can only be sentenced to detention. A child or young person is a person under the age of 18 years.
634. New subsection (3B) provides that a previous conviction of an offence in another European Union member State which corresponds to a UK offence which would trigger the application of section 25 will cause section 25 to apply. An offence corresponds to a UK offence if it would have constituted that offence if it had been done in the United Kingdom at the time when the offence was committed in the EU member State. As the relevant enactments cannot apply to European Union offences as they only concern domestic situations, the new subsection (3B) uses the term “detention” to cover both what is known in the United Kingdom as “imprisonment” (for offenders aged 21 years and over) and “detention” (for offenders aged under 21), and spells out what amounts to long-term detention under those enactments (detention in excess of two years).

Decision as to allocation

635. *Paragraphs 4 and 5* amend section 19 of the Magistrates’ Courts Act 1980 and paragraph 9 of Schedule 3 to the Crime and Disorder Act 1998 respectively, as substituted by Schedule 3 to the 2003 Act (not yet in force). The existing legislation sets out the criteria for determining whether an offence triable either way should be tried summarily or on indictment by, in the case of the Magistrates’ Courts Act 1980 a magistrates’ court, or, in the case of the Crime and Disorder Act 1998, a Crown Court. It permits the prosecution to inform the courts of any previous convictions of the

defendant, previous convictions being convictions by a court in the United Kingdom or convictions or findings of guilt under service law.

636. The amendments add to what is a previous conviction to include convictions by a court in another member State, provided that the offence of which the defendant was convicted would also have been an offence in the United Kingdom if it had been done there at the time the allocation decision is made.

Seriousness

637. *Paragraph 6* of Schedule 17 amends section 143 of the 2003 Act, which sets out the principles the court must follow when determining the seriousness of an offence, in the context of sentencing an offender. Any previous convictions, where they are recent and relevant, must be regarded as an aggravating factor which should increase the severity of the sentence.
638. *Paragraph 6* extends what is a previous conviction to include previous convictions by a court in another European Union member State, provided that the offence would have been an offence in the United Kingdom if it had been done there at the time of the trial of the defendant for the current offence. Paragraph 6 also makes clear that the court is not prevented from treating a previous conviction by a court outside the UK and a European Union member State, or a conviction by a court in a European Union member State of an offence which would not amount to an offence in the UK, as aggravating factors where the court considers it appropriate to do so.
639. *Paragraph 7* amends section 238 of the Armed Forces Act 2006, which makes equivalent provision to section 143 of the 2003 Act in respect of service offences. Section 238 has been amended in a similar fashion to section 143.
640. Section 151 of the 2003 Act provides the court with a discretionary power for dealing with persistent petty offenders. Where an offender is aged 16 or over when he is convicted and has been sentenced to a fine on at least three previous occasions, the court may impose a community sentence even if the current offence is one which would on its own warrant a fine only. Section 151 has been amended by the Criminal Justice and Immigration Act 2008 (the 2008 Act), and although these amendments have not yet come into force, the amendments made by paragraph 8 are to section 151 as amended.
641. *Paragraph 8* of Schedule 17 extends section 151 to require previous convictions by a court in another European Union member State to be taken into account to the same extent as previous convictions in the United Kingdom, provided that the offence to which the conviction relates would also have been an offence in the United Kingdom if it had been done there at the time of the defendant's conviction for the current offence. *Paragraph 9* amends section 270B of the Armed Forces Act 2006. Section 270B provides for the award of a community punishment where an offender, guilty of an offence, has on three or more previous occasions been convicted and sentenced to a fine only. The amendment provides for previous convictions by a court in another European Union member State to be taken into account to the same extent as previous convictions in the United Kingdom, provided that the offence to which the conviction relates would also have been an offence in the United Kingdom if it had been done there at the time of the defendant's conviction for the current offence.

Required custodial sentences for certain offences

642. Section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (the 2000 Act) provides for a minimum sentence of seven years' imprisonment where a person aged 18 or over at the time of the offence is convicted of a third class A drug trafficking offence in England and Wales, unless the court considers it would be unjust to do so in all the circumstances of the case. A class A drug trafficking offence may be committed anywhere in the UK. Section 111 of that Act similarly provides for a minimum sentence of three years' imprisonment where a person aged 18 or over at the time of the offence is

convicted of a third domestic burglary in England and Wales. Only previous domestic burglaries committed in England and Wales are counted. Section 113 of that Act provides that certificates of conviction which are in accordance with the requirements of that section are evidence of convictions in relation to a class A drug trafficking offence or a domestic burglary.

643. *Paragraph 10* extends section 110 of the 2000 Act to require a previous conviction by a court in another European Union member State to be taken into account to the same extent as a previous conviction in the UK, provided that the offence to which the conviction relates would have constituted a class A drug trafficking offence if it were done in the UK at the time of the conviction. Only offences committed after the time that the amendment comes into force will be relevant.
644. Section 111 of the 2000 Act is extended so that a previous conviction by a court in another European Union member State, or a conviction by a court in another part of the UK, must be taken into account to the same extent as a previous domestic burglary conviction in England and Wales, provided that the offence to which the conviction relates would have constituted domestic burglary if it were done in England and Wales at the time of the conviction. Only offences committed after the time that the amendment comes into force will be relevant.
645. Also amended is section 113 of the 2000 Act, to make provision for the treatment of certificates of convictions produced by courts in other parts of the UK outside England and Wales and in European Union member States.

Restriction on imposing custodial sentence or service detention

646. *Paragraph 11* amends section 263 of the Armed Forces Act 2006, which imposes a restriction on imposing a custodial sentence or service detention on an unrepresented offender. The restriction does not apply if the offender was aged 21 or over when convicted, and has previously been sentenced to imprisonment by a civilian court in the UK, or for a service offence. Section 263 is amended to include a previous sentence to detention by a court in any other European Union member State.

Young offenders: referral conditions

647. *Paragraph 12* of Schedule 15 makes changes to the conditions which must be satisfied for a young offender to be sentenced to a referral order by amending section 17 of the 2000 Act to take account of convictions obtained in another European Union member State.
648. When a child or young person is given a referral order, he or she is required to attend a youth offender panel, which is made up of two volunteers from the local community and a panel adviser from a youth offending team. The panel, with the young person, their parents/carers and the victim (where appropriate), agree a contract lasting between three and 12 months. The aim of the contract is the prevention of reoffending by the offender.
649. Section 17 of the 2000 Act has been amended by section 35 of the 2008 Act and, although these changes have not yet come into force, references below are to the 2000 Act as amended.
650. Section 17(1) of the 2000 Act sets out the conditions which, if met, require the court to make a referral order (“the compulsory referral conditions”). They apply where a young offender aged under 18 appears before a UK court, has no previous convictions and pleads guilty to the offence or offences with which they are charged. Paragraph 12(2) extends the provision in respect of what count as previous convictions, so that a previous conviction by a court in another European Union member State will count in the same way as a conviction by a UK court, so that a young offender with previous convictions in another European Union member State will fall within the compulsory referral conditions.

651. Section 17(2A) to (2C) of the 2000 Act set out the circumstances in which a court may, but is not obliged to, impose a referral order (“the discretionary referral conditions”). Where the compulsory referral conditions are not satisfied, a referral order may be made where the young offender pleads guilty to the offence or at least one of the other offences they are charged with and the young offender:
- a) has not been convicted previously in a UK court;
 - b) has been convicted only once before in a UK court and has not previously received a referral order, or
 - c) has been convicted more than once before a UK court and received a referral order on only one other occasion (subject to further conditions).
652. [Paragraph 12\(3\) to \(5\)](#) make amendments to these conditions so that convictions by or before a court in another European Union member State are treated in the same way as a conviction by or before a UK court (making allowance for the fact that of course an offender convicted in another European Union member State cannot have received a referral order in respect of that conviction).

Proving of foreign convictions before courts

653. Section 73 of the Police and Criminal Evidence Act 1984 enables convictions (or acquittals) for offences in the UK to be proved by means of a certificate of conviction (or acquittal) signed by the proper officer of the court. At present, overseas convictions are proved under section 7 of the Evidence Act 1851, which requires that the judgment either be sealed by the foreign court or signed by the judge of the foreign court. [Paragraph 13](#) of Schedule 15 amends section 73 of the Police and Criminal Evidence Act 1984 so as to extend the procedures for proving convictions or acquittals in other member States of the European Union by way of certificates signed by the proper officer of the court.
654. Section 74 of the Police and Criminal Evidence Act 1984 provides that the fact that a person other than the accused has been convicted of an offence by a UK court, or a service court, is admissible in evidence for the purpose of proving that that person committed the offence. It also provides that where a person other than the accused is proved to have been convicted of an offence by or before a UK court or a service court, he or she must be taken to have committed that offence unless the contrary is proved; and it establishes a presumption that any person convicted of an offence in the UK actually committed it. [Paragraph 14](#) amends section 74 so that convictions for offences in other European Union member States are treated in the same way as UK convictions.
655. Section 75 of the Police and Criminal Evidence Act 1984 makes certain documents, such as the charge-sheet, admissible as evidence of the facts on which a conviction was based for the purposes of section 74. It also provides that a copy of a document which is purported to be certified or authenticated by or on behalf of the court or authority having custody of that document, where the document is admissible under this section, is to be taken to be a true copy of that document unless the contrary is proved. [Paragraph 15](#) amends section 75 to extend these provisions to documents relating to convictions in other European Union member States.
656. Sections 73 to 75 of the Police and Criminal Evidence Act 1984 extend to England and Wales only. Equivalent provision to sections 73 to 75 is made for Northern Ireland in the Police and Criminal Evidence (Northern Ireland) Order 1989.
657. [Paragraphs 16 to 18](#) make similar amendments to the 1989 Order as are provided by [paragraphs 13 to 15](#) for the 1984 Act.

Section 145: Transfer to Parole Board of functions under the Criminal Justice Act 1991

658. **Section 145** applies the same early release arrangements to all long-term prisoners sentenced under the Criminal Justice Act 1991 whose release at the half-way point of sentence remains a matter for Parole Board discretion. It amends section 35(1) of the Criminal Justice Act 1991 (power to release long-term prisoners) so that after a long-term prisoner has served half his or her sentence a recommendation by the Parole Board to release him or her is binding on the Secretary of State.
659. The section also inserts a new section 37(5A) into the Criminal Justice Act 1991, which provides that, where a prisoner is released at the discretion of the Parole Board under section 35(1), the Secretary of State may only set, vary or cancel licence conditions in accordance with the Board's recommendations.

Section 146: Retention of knives surrendered or seized: England and Wales

660. Sections 54 to 56 of the Courts Act 2003 set out grounds for the surrender, seizure and retention of certain articles carried by persons entering court buildings. In particular, section 55 provides, with certain exceptions, that seized or surrendered items must be returned when the owner leaves the court building.
661. *Subsection (3)* of section 146 inserts a new section 55A, into the Courts Act 2003, to provide a different procedure for the retention of all knives that have been surrendered to, or seized by, a court security officer. New section 55A(2) provides that section 55 does not apply where a knife is seized by or surrendered to a court security officer. Under new section 55A, knives must be retained, unless returned or disposed of in accordance with regulations under section 55A(5) or 56.
662. New section 55A(4) provides that, if the court security officer reasonably believes that a retained knife may be evidence of, or in relation to, an offence, he or she can retain the knife for so long as necessary to enable the court security officer to draw it to the attention of a police constable.
663. Under new section 55A(5), the Lord Chancellor must make provision in regulations, subject to the negative resolution procedure, for the procedure to be followed when a knife is retained, the making of requests for the return of retained knives and the procedure for the return of knives. Under section 56, regulations can make provision about the disposal of unclaimed knives.
664. New section 55A(6) states that the definition of a knife includes "a knife-blade and any other article which (a) has a blade or is sharply pointed, and (b) is made or adapted for use for causing injury to the person".

Section 147: Retention of knives surrendered or seized: Northern Ireland

665. **Section 147** provides a similar scheme for Northern Ireland by amending paragraph 5 of, and adding a new paragraph 5A into, Schedule 3 to the Justice (Northern Ireland) Act 2004.

Section 148: Security in tribunal buildings

666. **Section 148** provides for Part 4 of the Courts Act 2003 to be applied in respect of tribunal buildings as it does for courts. Part 4 of the Courts Act 2003 details the powers of court security officers and the circumstances in which they may exercise them lawfully. It also sets out grounds for the surrender, seizure and retention of certain articles carried by persons entering court buildings.
667. *Subsection (1)* gives the Lord Chancellor power, by order subject to the affirmative resolution procedure, to provide for the designation of security officers in tribunal buildings. The order may apply the provisions in Part 4 of the Courts Act 2003 with

*These notes refer to the Coroners and Justice Act 2009
(c.25) which received Royal Assent on 12 November 2009*

any necessary modifications. Part 4 includes the powers in new section 55A of that Act (inserted by section 146) which provides different procedure for the retention of all knives that have been surrendered to or seized by a court security officer. Under the new section 55A of the Courts Act 2003 knives must be retained, unless returned or disposed of in accordance with regulations under sections 55A(5) or 56.

668. The definition of “tribunal buildings” and other definitions are set out in *subsection (3)*. “Tribunal buildings” includes buildings used by the following tribunals: the First-tier Tribunal, the Upper Tribunal, employment tribunals, the Employment Appeal Tribunal, and the Asylum and Immigration Tribunal. Subsection (3) also gives the Lord Chancellor power to designate by order further tribunals whose buildings are to be included in the definition of “tribunal buildings”. This section extends to England and Wales only; therefore the provision of security arrangements under section 148 can only apply to UK-wide tribunals listed in section 39(1) of the Tribunals, Courts and Enforcement Act 2007 (the 2007 Act) when they are sitting in England and Wales.