

SCHEDULES

SCHEDULE 5

Release of prisoners on licence

Criminal Justice (Northern Ireland) Order 2008

- 10.** Amend the Criminal Justice (Northern Ireland) Order 2008(1) as follows.
- 11.** In Article 16 (interpretation of Chapter 4 of Part 2) after paragraph (3) insert—

“(4) In this Chapter “protected information” means evidence or information the disclosure of which may, in the opinion of the Secretary of State, be against the interests of national security.”
- 12.** In the italic cross-headings before Articles 17 and 19 omit “of Secretary of State”.
- 13.** In Article 17(1) (duty to release certain fixed-term prisoners) for “Secretary of State” substitute “Department of Justice”.
- 14.** In Article 18 (duty to release prisoners serving indeterminate or extended custodial sentences) for “Secretary of State” (wherever occurring) substitute “Department of Justice”.
- 15.** In Article 19(1) and (4) (power to release prisoners on licence before required to do so) for “Secretary of State” substitute “Department of Justice”.
- 16.—**(1) Amend Article 20 (power to release certain prisoners on compassionate grounds) as follows.
 - (2) In paragraphs (1) and (3) for “Secretary of State” substitute “Department of Justice”.
 - (3) After paragraph (4) insert—

“(5) The Secretary of State may notify the Department of Justice that a prisoner is not to be released under this Article without the Secretary of State’s agreement; and, if the Secretary of State gives such a notification in relation to a prisoner, the Department of Justice may not release the prisoner under this Article without the Secretary of State’s agreement.
 - (6) But the Secretary of State may—
 - (a) give a notification, or
 - (b) refuse his agreement to a release,only if his decision to do so is arrived at (wholly or partly) on the basis of protected information.”
- 17.** In Article 22(4) and (6) (duration of licences: prisoners serving indeterminate custodial sentences) for “Secretary of State” (wherever occurring) substitute “Department of Justice”.
- 18.** In Article 23(1) and (2) (power of court to recommend licence conditions for sentences of 12 months or more) for “Secretary of State” substitute “Department of Justice”.
- 19.** In Article 24 (licence conditions)—

(1) [S.I. 2008/1216 \(N.I. 1\)](#).

Status: This is the original version (as it was originally made).

- (a) for “Secretary of State” (wherever occurring) substitute “Department of Justice”;
- (b) in paragraph (6) after “been consulted” insert “by the Department of Justice”.

20. In Article 25(2)(b) and (3) (licence conditions on re-release of prisoners serving sentence of less than 12 months) for “Secretary of State” substitute “Department of Justice”.

21. In Article 26(7) (curfew condition to be included in licence under Article 19) for “Secretary of State” substitute “Department of Justice”.

22. After Article 27 insert—

“Licence conditions: national security

27A.—(1) The Secretary of State may exercise any power of the Department of Justice to include, insert, vary or cancel conditions in a licence but only if his decision to exercise the power is arrived at (wholly or partly) on the basis of protected information; and, in relation to the exercise of any such power by the Secretary of State, in this Chapter references to the Department of Justice are to be read as references to the Secretary of State.

(2) The Department of Justice must exercise its powers subject to anything done by the Secretary of State by virtue of paragraph (1).”

23. In Article 28 (recall of prisoners while on licence)—

- (a) in paragraph (2) for “The Secretary of State” substitute “The Department of Justice or the Secretary of State”;
- (b) in paragraphs (2)(b) and (4) before “Secretary of State” insert “Department of Justice or (as the case may be) the”;
- (c) in paragraph (5) for “Secretary of State” substitute “Department of Justice”;
- (d) after paragraph (7) insert—

“(8) The Secretary of State may revoke P’s licence and recall P to prison under paragraph (2) only if his decision to revoke P’s licence and recall P to prison is arrived at (wholly or partly) on the basis of protected information.”

24. In Article 29 (further release after recall for certain fixed-term prisoners)—

- (a) in paragraph (5)—
 - (i) for “Secretary of State”, where it occurs first, substitute “Department of Justice”;
 - (ii) before “Secretary of State”, where it occurs second, insert “Department of Justice or the”;
- (b) after paragraph (5) insert—

“(5A) The Secretary of State may refer P’s case to the Parole Commissioners under paragraph (5) only if his decision to refer P’s case is arrived at (wholly or partly) on the basis of protected information.”;
- (c) in paragraph (8) for “Secretary of State” substitute “Department of Justice”.

25. In Article 30(1) and (3) (recall of prisoners released early under Article 19) for “Secretary of State” (in each place) substitute “Department of Justice”.

26. In Article 31 (conviction while licence remains in force) for “Secretary of State” substitute “Department of Justice”.

27. In Article 32 (concurrent terms) for “Secretary of State” (wherever occurring) substitute “Department of Justice”.

28. In Article 33(2) (consecutive terms) for “Secretary of State” substitute “Department of Justice”.

29.—(1) Amend Article 46 (Parole Commissioners) as follows.

(2) In paragraph (3) before “Secretary of State” insert “Department of Justice or (as appropriate) the”.

(3) After paragraph (4) insert—

“(5) Arrangements under section 1A(7) of the Prison Act (Northern Ireland) 1953⁽²⁾ may include arrangements for purposes connected with any of the Secretary of State’s functions by virtue of—

(a) the Life Sentences (Northern Ireland) Order 2001⁽³⁾,

(b) Chapter 4 of this Part, or

(c) this Chapter (including rules made under paragraph 4 or 4A of Schedule 4);

and, accordingly, in section 1A(8) of the 1953 Act the reference to functions of the Secretary of State includes functions of the Secretary of State by virtue of any of the provisions mentioned in sub-paragraphs (a) to (c) above.”

30. For Article 100 substitute—

“Regulations, orders and rules

100.—(1) Regulations, orders and rules made by the Department of Justice under this Order shall be subject to negative resolution.

(2) Paragraph (1) does not apply to an order under Article 1 or 22(4).

(3) An order under Article 22(4) is not a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979⁽⁴⁾.

(4) Rules made by the Secretary of State under this Order shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946⁽⁵⁾ shall apply accordingly.

(5) Regulations, orders or rules made by the Department of Justice or the Secretary of State under this Order may contain—

(a) any incidental, supplementary or consequential provision, and

(b) any transitory, transitional or saving provisions,

which the Department of Justice or the Secretary of State (as the case may be) considers necessary or expedient.”

31.—(1) Amend Schedule 4 (the Parole Commissioners) as follows.

(2) In paragraphs 1 to 4 for “Secretary of State” (in each place) substitute “Department of Justice”.

(3) After paragraph 4 insert—

“4A.—(1) The Secretary of State may make rules with respect to the proceedings of the Commissioners for purposes connected with the holding, disclosure or use of protected information (as defined in Article 16(4)).

(2) 1953 c. 18 (N.I.).

(3) S.I. 2001/2564 (N.I. 2), as amended by the Criminal Justice and Immigration Act 2008 (c. 4), Schedule 26, paragraph 51, and S.I. 2008/1216 (N.I. 1).

(4) S.I. 1979/1573 (N.I. 12).

(5) 1946 c. 36.

Status: This is the original version (as it was originally made).

- (2) In particular, rules under this paragraph may include—
 - (a) provision for the purpose of ensuring that the Secretary of State is informed of cases where protected information may be relevant;
 - (b) provision for dealing with cases pending a decision of the Secretary of State as to whether protected information is relevant;
 - (c) provision for dealing with cases where protected information is relevant, including (in particular) provision modifying any rules made by the Department of Justice so as to require the Commissioners (or any of them), so far as required by the Secretary of State for purposes connected with any protected information—
 - (i) to conduct such cases, and otherwise carry out their functions, under the rules as if the Secretary of State were a party to the proceedings instead of, or in addition to, the Department of Justice, and
 - (ii) to permit the Secretary of State to carry out functions of the Department of Justice under the rules accordingly;
 - (d) any provision mentioned in paragraph 4(2)(a) to (g).
- (3) For the purposes of sub-paragraph (2)(d) above—
 - (a) in paragraph 4(2) references to the Department of Justice are to be read as including references to the Secretary of State;
 - (b) paragraph 4(3) and (4) applies in relation to any provision made by virtue of paragraph 4(2)(g).
- (4) Rules made by the Department of Justice under paragraph 4 have effect subject to rules made by the Secretary of State under this paragraph.”
- (4) In paragraphs 5 and 6 for “Secretary of State” (in each place) substitute “Department of Justice” and for “Secretary of State’s” substitute “Department of Justice’s”.
- (5) In paragraph 7—
 - (a) in sub-paragraph (1) for “Secretary of State” substitute “Department of Justice”; and
 - (b) for sub-paragraph (2) substitute—
 - “(2) The Department of Justice shall lay a copy of the report before the Assembly.”