Criminal Justice Act 1988

1988 CHAPTER 33

PART XI

MISCELLANEOUS

Miscarriages of justice

133 Compensation for miscarriages of justice. E+W+N.I.

(1) Subject to subsection (2) below, when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.

[[F1](1ZA) For the purposes of subsection (1), there has been a miscarriage of justice in relation to a person convicted of a criminal offence in England and Wales or, in a case where subsection (6H) applies, Northern Ireland, if and only if the new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence (and references in the rest of this Part to a miscarriage of justice are to be construed accordingly).**]**

(2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State

[[F2]before the end of the period of 2 years beginning with the date on which the conviction of the person concerned is reversed or he is pardoned.

(2A) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.**]**

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.

(4) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation shall be assessed by an assessor appointed by the Secretary of State.

[[F3](4A) Section 133A applies in relation to the assessment of the amount of the compensation.**]**

(5) In this section "reversed" shall be construed as referring to a conviction having been quashed—

(a) on an appeal out of time; or

(b) on a reference—

[F4]**[**(i) under the Criminal Appeal Act 1995; or**]**

[[F5](ii) under section 194B of the Criminal Procedure (Scotland) Act 1995 (c. 46);**]**

[F6](iii) . . . . . **[**[F7]or

(c) on an appeal under section 7 of the Terrorism Act 2000**][**[F8] or

[F9](d)**]** . . . . . .

[[F10]; or

(f) on an appeal under Schedule 3 to the Terrorism Prevention and Investigation Measures Act 2011.**]**

[[F11](5A) But in a case where—

(a) a person's conviction for an offence is quashed on an appeal out of time, and

(b) the person is to be subject to a retrial,

the conviction is not to be treated for the purposes of this section as " reversed " unless and until the person is acquitted of all offences at the retrial or the prosecution indicates that it has decided not to proceed with the retrial.

(5B) In subsection (5A) above any reference to a retrial includes a reference to proceedings held following the remission of a matter to a magistrates' court by the Crown Court under section 48(2)(b) of the **[**[F12]Senior Courts Act 1981**].]**

(6) For the purposes of this section **[**[F13]and section 133A**]** a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.

[[F14](6A) Subject to what follows, in the application of this section in relation to a person ("P") convicted in Northern Ireland of a criminal offence, in subsections (1) to (4) any reference to the Secretary of State is to be read as a reference to the Department of Justice in Northern Ireland.

(6B) If P is pardoned, subsection (6A) applies only if the pardon is a devolved pardon.

(6C) Subsections (6D) to (6H) apply if—

(a) P's conviction is reversed or P is given a devolved pardon,

(b) an application for compensation is made in relation to P's conviction,

(c) the application is made before the end of the period mentioned in subsection (2) or, if it is made after the end of that period, the Department of Justice gives a direction under subsection (2A), and

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(d) the Department of Justice has reason to believe that protected information may be relevant to the application (for example, because the court which quashed P's conviction did not make public (in whole or in part) its reasons for quashing P's conviction).

(6D) The Department of Justice must refer the application to the Secretary of State who must then take a view as to whether or not any protected information is relevant to the application.

(6E) If the Secretary of State takes the view that no protected information is relevant to the application, the Secretary of State must refer the application back to the Department of Justice to be dealt with by the Department accordingly.

(6F) If the Secretary of State takes the view that protected information is relevant to the application, the Secretary of State must refer the application back to the Department of Justice to be dealt with by the Department accordingly unless the Secretary of State is also of the view that, on the grounds of national security, it is not feasible for the Department (including any assessor appointed by the Department) to be provided with either—

(a) the protected information, or

(b) a summary of the protected information that is sufficiently detailed to enable the Department (including any assessor) to deal properly with the application.

(6G) If the Secretary of State refers the application back to the Department of Justice under subsection (6F), the Secretary of State must provide the Department with either—

(a) the protected information, or

(b) a summary of the protected information that appears to the Secretary of State to be sufficiently detailed to enable the Department (including any assessor) to deal properly with the application.

(6H) If the Secretary of State is not required to refer the application back to the Department of Justice—

(a) subsections (3) and (4) apply to the application ignoring subsection (6A), and

(b) any compensation payable on the application is payable by the Secretary of State.

(6I) In this section "protected information" means information the disclosure of which may be against the interests of national security.

(6J) In this section "devolved pardon" means—

(a) a pardon given after the coming into force of the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010 in the exercise of powers under section 23(2) of the Northern Ireland Act 1998;

(b) a pardon given before the coming into force of that Order which, had it been given after the coming into force of that Order, would have had to have been given in the exercise of powers under section 23(2) of the 1998 Act (ignoring article 25(2) of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010).

(6K) The pardons covered by subsection (6J)(a) include pardons given in reliance on article 25(2) of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.**]**

(7) Schedule 12 shall have effect.

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Extent Information

E1 This version of this provision extends to England, Wales and Northern Ireland only; a separate version has been created for Scotland

Textual Amendments

F1 S. 133(1ZA) inserted (13.3.2014) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), **ss. 175(1)**, 185(1), (2)(a) (with ss. 21, 33, 42, 58, 75, 93, 175(2))

F2 S. 133: s. 133(2A) and preceding words in 133(2) inserted (E.W.N.I) (1.12.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 61(3)** , 153 (with Sch. 27 para. 22); S.I. 2008/2993, **art. 2(1)(a)**

F3 S. 133(4A) substituted (E.W.N.I) (1.12.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 61(4)** , 153 (with Sch. 27 para. 22); S.I. 2008/2993, **art. 2(1)(a)**

F4 S. 133(5)(b)(i) substituted (31.3.1997) by 1995 c. 35, s. 29(1), **Sch. 2 para. 16(4)**; S.I. 1997/402, **art. 3(e)**

F5 S. 133(5)(b)(ii) substituted (S.) (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007, (asp 6), ss. 80, 84, {Sch. 5 para. 6(1)}; S.S.I. 2007/250, **art. 3(h)(i)**

F6 S. 133(5)(b)(iii) and the word immediately preceeding it repealed (1.1.1996) by 1995 c. 35, s. 29(2), **Sch. 3**; S.I. 1995/3061, **art. 3(i)(vii)** (and s. 133(5)(b)(iii) expressed to be repealed (31.3.1997) by 1995 c. 35, s. 29(1), **Sch. 2 para. 16(4)**; S.I. 1997/402, **art. 3(e)**)

F7 S. 133(5)(c) and word or immediately preceding it inserted (19.2.2001) by 2000 c. 11, **s. 7(8)**; S.I. 2001/421, **art. 2**

F8 S. 133(5)(d) and word inserted (11.3.2005) by Prevention of Terrorism Act 2005 (c. 2), **ss. 12(8)**, 16

F9 S. 133(5)(d) omitted (15.12.2011) by virtue of Terrorism Prevention and Investigation Measures Act 2011 (c. 23), s. 31(2), **Sch. 7 para. 3(a)** (with Sch. 8)

F10 S. 133(5)(f) and word inserted (15.12.2011) by Terrorism Prevention and Investigation Measures Act 2011 (c. 23), s. 31(2), **Sch. 7 para. 3(b)** (with Sch. 8)

F11 S. 133(5A)(5B) inserted (E.W.N.I) (1.12.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 61(5)** , 153 (with Sch. 27 para. 22); S.I. 2008/2993, **art. 2(1)(a)**

F12 Words in s. 133(5B) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 59, 148, **Sch. 11 para. 1**; S.I. 2009/1604, **art. 2(d)**

F13 Words in s. 133(6) inserted (E.W.N.I) (1.12.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 61(6)** , 153 (with Sch. 27 para. 22); S.I. 2008/2993, **art. 2(1)(a)**

F14 S. 133(6A)-(6K) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 6 para. 2(1)** (with arts. 28-31, Sch. 6 para. 2(2))

133 Compensation for miscarriages of justice. S

(1) Subject to subsection (2) below, when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.

[F82(1A) The Scottish Ministers may by order provide for—

(a) further circumstances in respect of which a person (or, if dead, the person's representatives) may be paid compensation for a miscarriage of justice,

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(b) circumstances in respect of which a person (or, if dead, the person's representatives) may be paid compensation for wrongful detention prior to acquittal or a decision by the prosecutor to take no proceedings (or to discontinue proceedings).**]**

(2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State.

[[F83](2AA) Such an application requires to be made within the period of 3 years starting with—

(a) in the case of compensation under subsection (1), the date on which the conviction is reversed or (as the case may be) the person is pardoned,

(b) in the case of compensation under subsection (1A), whichever is relevant of—

(i) that date, or

(ii) the date on which the person is acquitted or the relevant decision is made known to the person.

(2AB) The Scottish Ministers may accept such an application outwith that time limit if they think it is appropriate in exceptional circumstances to do so.**]**

(3) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.

(4) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation shall be assessed by an assessor appointed by the Secretary of State.

[F84]**[**(4A) In assessing so much of any compensation payable under this section to or in respect of a person as is attributable to suffering, harm to reputation or similar damage, the assessor shall have regard in particular to—

(a) the seriousness of the offence of which the person was convicted and the severity of the punishment resulting from the conviction;

[[F85](aa) the seriousness of the offence with which the person was charged or detained (but in respect of which offence the person was not convicted);**]**

(b) the conduct of the investigation and prosecution of the offence; and

(c) any other convictions of the person and any punishment resulting from them.**]**

[[F86](4B) The assessor must also have particular regard to any guidance issued by the Scottish Ministers for the purposes of this section.**]**

(5) In this section "reversed" shall be construed as referring to a conviction having been quashed **[**[F87](or set aside)**]**—

(a) on an appeal out of time; [F88]...

(b) on a reference—

[F4]**[**(i) under the Criminal Appeal Act 1995; [F88] ... **]**

[[F5](ii) under section 194B of the Criminal Procedure (Scotland) Act 1995 (c. 46);**]**

[F6](iii) . . . . . **[**[F7]or

(c) on an appeal under section 7 of the Terrorism Act 2000 **]**[F88]**[**[F8] ...

[F9](d)**]** . . . . . .

[[F89]; or

(e) under section 188(1)(b) of the Criminal Procedure (Scotland) Act 1995.**]**

[[F10]; or

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(f) on an appeal under Schedule 3 to the Terrorism Prevention and Investigation Measures Act 2011.**]**

(6) For the purposes of this section a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.

[[F90](6A) For the purposes of this section, a person suffers punishment as a result of conviction also where (in relation to the conviction) the court imposes some other disposal including by way of—

(a) making a probation order, or

(b) discharging the person absolutely.**]**

(7) Schedule 12 shall have effect.

[[F91](8) The power to make an order under subsection (1A) is exercisable by statutory instrument.

(9) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.**]**

Extent Information

E6 This version of this provision extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

Textual Amendments

F4 S. 133(5)(b)(i) substituted (31.3.1997) by 1995 c. 35, s. 29(1), **Sch. 2 para. 16(4)**; S.I. 1997/402, **art. 3(e)**

F5 S. 133(5)(b)(ii) substituted (S.) (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007, (asp 6), ss. 80, 84, {Sch. 5 para. 6(1)}; S.S.I. 2007/250, **art. 3(h)(i)**

F6 S. 133(5)(b)(iii) and the word immediately preceeding it repealed (1.1.1996) by 1995 c. 35, s. 29(2), **Sch. 3**; S.I. 1995/3061, **art. 3(i)(vii)** (and s. 133(5)(b)(iii) expressed to be repealed (31.3.1997) by 1995 c. 35, s. 29(1), **Sch. 2 para. 16(4)**; S.I. 1997/402, **art. 3(e)**)

F7 S. 133(5)(c) and word or immediately preceding it inserted (19.2.2001) by 2000 c. 11, **s. 7(8)**; S.I. 2001/421, **art. 2**

F8 S. 133(5)(d) and word inserted (11.3.2005) by Prevention of Terrorism Act 2005 (c. 2), **ss. 12(8)**, 16

F9 S. 133(5)(d) omitted (15.12.2011) by virtue of Terrorism Prevention and Investigation Measures Act 2011 (c. 23), s. 31(2), **Sch. 7 para. 3(a)** (with Sch. 8)

F10 S. 133(5)(f) and word inserted (15.12.2011) by Terrorism Prevention and Investigation Measures Act 2011 (c. 23), s. 31(2), **Sch. 7 para. 3(b)** (with Sch. 8)

F82 S. 133(1A) inserted (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(a)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)

F83 S. 133(2AA)(2AB) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(b)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)

F84 S. 133(4A) inserted (1.1.1996) by 1995 c. 35, **s. 28**; S.I. 1995/3061, **art. 3(c)**

F85 S. 133(4A)(aa) inserted (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(c)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)

F86 S. 133(4B) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(d)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)

F87 Words in s. 133(5) inserted (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(e)(i)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)

F88 Word in s. 133(5)(a)(b)(c) repealed (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(e)(ii)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)

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F89 S. 133(5)(e) and word added (S.) (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(e)(iii)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)

F90 S. 133(6A) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(f)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)

F91 S. 133(8)(9) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 113(1)(g)**, 206(1); S.S.I. 2010/413, art. 2, Sch. (with art. 7)

[F15 133A Miscarriages of justice: amount of compensation

(1) This section applies where an assessor is required to assess the amount of compensation payable to or in respect of a person under section 133 for a miscarriage of justice.

(2) In assessing so much of any compensation payable under section 133 as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—

(a) the seriousness of the offence of which the person was convicted and the severity of the punishment suffered as a result of the conviction, and

(b) the conduct of the investigation and prosecution of the offence.

(3) The assessor may make from the total amount of compensation that the assessor would otherwise have assessed as payable under section 133 any deduction or deductions that the assessor considers appropriate by reason of either or both of the following—

(a) any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and

(b) any other convictions of the person and any punishment suffered as a result of them.

(4) If, having had regard to any matters falling within subsection (3)(a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, the assessor may determine that the amount of compensation payable under section 133 is to be a nominal amount only.

(5) The total amount of compensation payable to or in respect of a person under section 133 for a particular miscarriage of justice must not exceed the overall compensation limit. That limit is—

(a) £1 million in a case to which section 133B applies, and

(b) £500,000 in any other case.

(6) The total amount of compensation payable under section 133 for a person's loss of earnings or earnings capacity in respect of any one year must not exceed the earnings compensation limit.

That limit is an amount equal to 1.5 times the median annual gross earnings according to the latest figures published by the Office of National Statistics at the time of the assessment.

(7) The Secretary of State may by order made by statutory instrument amend subsection (5) or (6) so as to alter any amount for the time being specified as the overall compensation limit or the earnings compensation limit.

(8) No order may be made under subsection (7) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

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[In relation to compensation payable by the Department of Justice in Northern Ireland,
[F16](9) the power in subsection (7) is exercisable by the Department (and not by the Secretary of State).

(10) The power of the Department of Justice to make an order under subsection (7) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (and not by statutory instrument).

(11) No order may be made by the Department of Justice under subsection (7) unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly (and subsection (8) does not apply).

(12) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (11) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.**]**

Textual Amendments

F15 Ss. 133A, 133B inserted (E.W.N.I) (1.12.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 61(7)** , 153 (with Sch. 27 para. 22); S.I. 2008/2993, **art. 2(1)(a)**

F16 S. 133A(9)-(12) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 6 para. 3** (with arts. 28-31)

133B Cases where person has been detained for at least 10 years

(1) For the purposes of section 133A(5) this section applies to any case where the person concerned ("P") has been in qualifying detention for a period (or total period) of at least 10 years by the time when—
  (a) the conviction is reversed, or
  (b) the pardon is given,
  as mentioned in section 133(1).

(2) P was "in qualifying detention" at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
  (a) by virtue of a sentence passed in respect of the relevant offence,
  (b) under mental health legislation by reason of P's conviction of that offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  (c) as a result of P's having been remanded in custody in connection with the relevant offence or with any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.

(3) In calculating the period (or total period) during which P has been in qualifying detention as mentioned in subsection (1), no account is to be taken of any period of time during which P was both—
  (a) in qualifying detention, and
  (b) in excluded concurrent detention.

(4) P was "in excluded concurrent detention" at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
  (a) during the term of a sentence passed in respect of an offence other than the relevant offence,

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(b) under mental health legislation by reason of P's conviction of any such other offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or

(c) as a result of P's having been remanded in custody in connection with an offence for which P was subsequently convicted other than—

(i) the relevant offence, or

(ii) any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.

(5) But P was not "in excluded concurrent detention" at any time by virtue of subsection (4)(a), (b) or (c) if P's conviction of the other offence mentioned in that provision was quashed on appeal, or a pardon was given in respect of it.

(6) In this section—

" mental health legislation " means—

(a) Part 3 of the Mental Health Act 1983,

(b) Part 3 of the Mental Health (Northern Ireland) Order 1986, or

(c) the provisions of any earlier enactment corresponding to Part 3 of that Act or Part 3 of that Order;

" the relevant offence " means the offence in respect of which the conviction is quashed or the pardon is given (but see subsection (7));

" remanded in custody " is to be read in accordance with subsections (8) and (9);

" reversed " has the same meaning as in section 133 of this Act.

(7) If, as a result of the miscarriage of justice—

(a) two or more convictions are reversed, or

(b) a pardon is given in respect of two or more offences,

" the relevant offence " means any of the offences concerned.

(8) In relation to England and Wales, " remanded in custody " has the meaning given by section 242(2) of the Criminal Justice Act 2003, but that subsection applies for the purposes of this section as if any reference there to a provision of the Mental Health Act 1983 included a reference to any corresponding provision of any earlier enactment.

(9) In relation to Northern Ireland, " remanded in custody " means—

(a) remanded in or committed to custody by an order of a court, or

(b) remanded, admitted or removed to hospital under Article 42, 43, 45 or 54 of the Mental Health (Northern Ireland) Order 1986 or under any corresponding provision of any earlier enactment.**]**

Textual Amendments

F15 Ss. 133A, 133B inserted (E.W.N.I) (1.12.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 61(7)** , 153 (with Sch. 27 para. 22); S.I. 2008/2993, **art. 2(1)(a)**

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Torture

134 Torture.

(1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in theUnited Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

(2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if—
- (a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence—
  - (i) of a public official; or
  - (ii) of a person acting in an official capacity; and
- (b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.

(4) It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.

(5) For the purposes of this section "lawful authority, justification or excuse" means—
- (a) in relation to pain or suffering inflicted in the United Kingdom, lawful authority, justification or excuse under the law of the part of the United Kingdom where it was inflicted;
- (b) in relation to pain or suffering inflicted outside the United Kingdom—
  - (i) if it was inflicted by a United Kingdom official acting under the law of the United Kingdom or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;
  - (ii) if it was inflicted by a United Kingdom official acting under the law of any part of the United Kingdom or by a person acting in an official capacity under such law, lawful authority, justification or excuse under the law of the part of the United Kingdom under whose law he was acting; and
  - (iii) in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.

(6) A person who commits the offence of torture shall be liable on conviction on indictment to imprisonment for life.

135 Requirement of Attorney General's consent for prosecutions.

Proceedings for an offence under section 134 above shall not be begun—
- (a) in England and Wales, except by, or with the consent of, the Attorney General; or
- (b) in Northern Ireland, except by, or with the consent of, the **[**[F17]Advocate General for Northern Ireland**]**.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F17 Words in s. 135 substituted (12.4.2010) by Justice (Northern Ireland) Act 2002 (c. 26), s. 87(1), **Sch. 7 para. 31**; S.R. 2010/113, art. 2, Sch. para. 19(e)

136, 137. . . . . . F18

Textual Amendments

F18 Ss. 136, 137, 138(2)(3) repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

138 Application to Channel Islands, Isle of Man and colonies.

(1) Her Majesty may by Order in Council make provision for extending sections 134 and 135 above, with such modifications and exceptions as may be specified in the Order, to any of the Channel Islands, the Isle of Man or any colony.

(2) F19

Textual Amendments

F19 Ss. 136, 137, 138(2)(3) repealed by Extradition Act 1989 (c. 33, SIF 48), s. 37, **Sch. 2**

Articles with blades or points and offensive weapons

139 Offence of having article with blade or point in public place. E+W

(1) Subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence.

(2) Subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed except a folding pocketknife.

(3) This section applies to a folding pocketknife if the cutting edge of its blade exceeds 3 inches.

(4) It shall be a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.

(5) Without prejudice to the generality of subsection (4) above, it shall be a defence for a person charged with an offence under this section to prove that he had the article with him—

(a) for use at work;

(b) for religious reasons; or

(c) as part of any national costume.

(6) A person guilty of an offence under subsection (1) above shall be liable-

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[F20][(a) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding [F21four] years, or a fine, or both.]

(7) In this section "public place" includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.

(8) This section shall not have effect in relation to anything done before it comes into force.

Extent Information

E2 This version of this provision extends to England and Wales only; a separate version has been created for Northern Ireland only

Textual Amendments

F20 S. 139(6)(a)(b) substituted (4.7.1996) for words by 1996 c. 26, **s.3(1)** (with s. 3(2))

F21 Word in s.139(6)(b) substituted (E.W.) (12.2.2007) by Violent Crime Reduction Act 2006 (c.38), **ss. 42(1)(a)**, 66(2); S.I. 2007/74, **art. 2(a)**

139 Offence of having article with blade or point in public place. N.I.

(1) Subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence.

(2) Subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed except a folding pocketknife.

(3) This section applies to a folding pocketknife if the cutting edge of its blade exceeds 3 inches.

(4) It shall be a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.

(5) Without prejudice to the generality of subsection (4) above, it shall be a defence for a person charged with an offence under this section to prove that he had the article with him—

(a) for use at work;

(b) for religious reasons; or

(c) as part of any national costume.

[F92(6) A person guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.]

(7) In this section "public place" includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.

(8) This section shall not have effect in relation to anything done before it comes into force.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Extent Information

E7 This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales only

Textual Amendments

F92 S. 139(6) substituted (N.I.) (16.7.2008) by The Criminal Justice (Northern Ireland) Order S.I. 2008/1216 (N.I. 1), arts. 1, **90(3)**; S.R. 2008/293, **art. 2**, Sch. para. 14.

[139A [F22] Offence of having article with blade or point (or offensive weapon) on school premises. E+W

(1) Any person who has an article to which section 139 of this Act applies with him on school premises shall be guilty of an offence.

(2) Any person who has an offensive weapon within the meaning of section 1 of the [M1] Prevention of Crime Act 1953 with him on school premises shall be guilty of an offence.

(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.

(4) Without prejudice to the generality of subsection (3) above, it shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had the article or weapon in question with him—

(a) for use at work,

(b) for educational purposes,

(c) for religious reasons, or

(d) as part of any national costume.

(5) A person guilty of an offence—

(a) under subsection (1) above shall be liable—

(i) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding **[**[F23]four**]** years, or a fine, or both;

(b) under subsection (2) above shall be liable—

(i) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both.

(6) In this section and section 139B, "school premises" means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and "school" has the meaning given by **[**[F24]section 4 of the Education Act 1996**]]**.

(7) In the application of this section to Northern Ireland—

(a) the reference in subsection (2) above to section 1 of the [M2]Prevention of Crime Act 1953 is to be construed as a reference to Article 22 of the [M3]Public Order (Northern Ireland) Order 1987; and

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(b) the reference in subsection (6) above to **[**[F24]section 4 of the Education Act 1996**]** is to be construed as a reference to Article 2(2) of the [M4]Education and Libraries (Northern Ireland) Order 1986.

Extent Information

E3 This version of this provision extends to England and Wales only; a separate version has been created for Northern Ireland only

Textual Amendments

F22 S. 139A inserted (1.9.1996) by 1996 c. 26, **s. 4(1)(4)**; S.I. 1996/2071, **art. 2**

F23 Word in s. 139A(5)(a)(ii) substituted (E.W.) (12.2.2007) by Violent Crime Reduction Act 2006 (c. 38), ss. {42(1)(b)}, 66(2); S.I. 2007/74, **art. 2(a)**

F24 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

Marginal Citations

M1 1953 c. 14.

M2 1953 c. 14.

M3 S.I. 1987/463 (N.I. 7).

M4 S.I. 1986/594 (N.I. 3).

[139A [F22] Offence of having article with blade or point (or offensive weapon) on school premises. N.I.

(1) Any person who has an article to which section 139 of this Act applies with him on school premises shall be guilty of an offence.

(2) Any person who has an offensive weapon within the meaning of section 1 of the [M1] Prevention of Crime Act 1953 with him on school premises shall be guilty of an offence.

(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.

(4) Without prejudice to the generality of subsection (3) above, it shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had the article or weapon in question with him—

(a) for use at work,

(b) for educational purposes,

(c) for religious reasons, or

(d) as part of any national costume.

[[F26](5) A person guilty of an offence under subsection (1) or (2) shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.**]**

[[F26](6) In this section and section 139B " school premises " means land used for the purposes of a school, excluding any land occupied solely as a dwelling by a person employed

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at the school; and " school " has the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986. **]**

(7) In the application of this section to Northern Ireland—

(a) the reference in subsection (2) above to section 1 of the [M2] Prevention of Crime Act 1953 is to be construed as a reference to Article 22 of the [M3] Public Order (Northern Ireland) Order 1987; and

(b) **[**[F27]the reference in subsection (6) above to **[**[F28]section 4 of the Education Act 1996**]]** is to be construed as a reference to Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986.**]**

Extent Information

E4 This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales only

Textual Amendments

F22 S. 139A inserted (1.9.1996) by 1996 c. 26, **s. 4(1)(4)**; S.I. 1996/2071, **art. 2**

F26 S. 139A(5)(6) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 52**, 111(1) (with Sch. 6 para. 4(2))

F27 S. 139A(7)(b) repealed (N.I.) (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(1), **Sch. 8 Pt. 5**

F28 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

Marginal Citations

M1 1953 c. 14.

M2 1953 c. 14.

M3 S.I. 1987/463 (N.I. 7).

[[F25]**139A Offence of threatening with article with blade or point or offensive weapon**

(1) A person is guilty of an offence if that person—

(a) has an article to which this section applies with him or her in a public place or on school premises,

(b) unlawfully and intentionally threatens another person with the article, and

(c) does so in such a way that there is an immediate risk of serious physical harm to that other person.

(2) In relation to a public place this section applies to an article to which section 139 applies.

(3) In relation to school premises this section applies to each of these—

(a) an article to which section 139 applies;

(b) an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953.

(4) For the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.

(5) In this section—

"public place" has the same meaning as in section 139;

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"school premises" has the same meaning as in section 139A.

(6) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.

(7) Where a person aged 16 or over is convicted of an offence under this section, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—

(a) relate to the offence or to the offender, and

(b) would make it unjust to do so in all the circumstances.

(8) In this section "appropriate custodial sentence" means—

(a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;

(b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.

(9) In considering whether it is of the opinion mentioned in subsection (7) in the case of a person aged under 18, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.

(10) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (6)(a) to 12 months is to be read as a reference to 6 months.

(11) In relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (8)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.

(12) If on a person's trial for an offence under this section (whether on indictment or not) the person is found not guilty of that offence but it is proved that the person committed an offence under section 139 or 139A, the person may be convicted of the offence under that section.**]**

Textual Amendments

F25 S. 139AA inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), **ss. 142(2)**, 151(1); S.I. 2012/2770, art. 2(a)

[139A [F22] Offence of having article with blade or point (or offensive weapon) on school premises. N.I.

(1) Any person who has an article to which section 139 of this Act applies with him on school premises shall be guilty of an offence.

(2) Any person who has an offensive weapon within the meaning of section 1 of the [M1] Prevention of Crime Act 1953 with him on school premises shall be guilty of an offence.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
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(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.

(4) Without prejudice to the generality of subsection (3) above, it shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had the article or weapon in question with him—

(a) for use at work,

(b) for educational purposes,

(c) for religious reasons, or

(d) as part of any national costume.

[[F26](5) A person guilty of an offence under subsection (1) or (2) shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.

[[F26](6) In this section and section 139B " school premises " means land used for the purposes of a school, excluding any land occupied solely as a dwelling by a person employed at the school; and " school " has the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986.

(7) In the application of this section to Northern Ireland—

(a) the reference in subsection (2) above to section 1 of the [M2] Prevention of Crime Act 1953 is to be construed as a reference to Article 22 of the [M3] Public Order (Northern Ireland) Order 1987; and

(b) [[F27]the reference in subsection (6) above to [[F28]section 4 of the Education Act 1996 is to be construed as a reference to Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986.

Extent Information

E4 This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales only

Textual Amendments

F22 S. 139A inserted (1.9.1996) by 1996 c. 26, **s. 4(1)(4)**; S.I. 1996/2071, **art. 2**

F26 S. 139A(5)(6) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 52**, 111(1) (with Sch. 6 para. 4(2))

F27 S. 139A(7)(b) repealed (N.I.) (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(1), **Sch. 8 Pt. 5**

F28 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

Marginal Citations

M1 1953 c. 14.

M2 1953 c. 14.

M3 S.I. 1987/463 (N.I. 7).

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
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[F25 139AA Offence of threatening with article with blade or point or offensive weapon

(1) A person is guilty of an offence if that person—
  (a) has an article to which this section applies with him or her in a public place or on school premises,
  (b) unlawfully and intentionally threatens another person with the article, and
  (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.

(2) In relation to a public place this section applies to an article to which section 139 applies.

(3) In relation to school premises this section applies to each of these—
  (a) an article to which section 139 applies;
  (b) an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953.

(4) For the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.

(5) In this section—
  "public place" has the same meaning as in section 139;
  "school premises" has the same meaning as in section 139A.

(6) A person guilty of an offence under this section is liable—
  (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
  (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.

(7) Where a person aged 16 or over is convicted of an offence under this section, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
  (a) relate to the offence or to the offender, and
  (b) would make it unjust to do so in all the circumstances.

(8) In this section "appropriate custodial sentence" means—
  (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
  (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.

(9) In considering whether it is of the opinion mentioned in subsection (7) in the case of a person aged under 18, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.

(10) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (6)(a) to 12 months is to be read as a reference to 6 months.

(11) In relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (8)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of

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conviction, is to be read as a reference to a sentence of detention in a young offender institution.

(12) If on a person's trial for an offence under this section (whether on indictment or not) the person is found not guilty of that offence but it is proved that the person committed an offence under section 139 or 139A, the person may be convicted of the offence under that section.**]**

Textual Amendments

F25 S. 139AA inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), **ss. 142(2)**, 151(1); S.I. 2012/2770, art. 2(a)

F26 S. 139A(5)(6) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 52**, 111(1) (with Sch. 6 para. 4(2))

F27 S. 139A(7)(b) repealed (N.I.) (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(1), **Sch. 8 Pt. 5**

F28 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

139B [F29]Power of entry to search for articles with a blade or point and offensive weapons.

(1) A constable may enter school premises and search those premises and any person on those premises for—

(a) any article to which section 139 of this Act applies, or

(b) any offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953,

if he has reasonable grounds for **[**[F30]suspecting**]** that an offence under section 139A **[**[F31]or 139AA**]** of this Act is being, or has been, committed.

(2) If in the course of a search under this section a constable discovers an article or weapon which he has reasonable grounds for suspecting to be an article or weapon of a kind described in subsection (1) above, he may seize and retain it.

(3) The constable may use reasonable force, if necessary, in the exercise of the power of entry conferred by this section.

(4) In the application of this section to Northern Ireland**[**[F32]—

(a) the reference in subsection (1)(b) above to section 1 of the Prevention of Crime Act 1953 is to be construed as a reference to Article 22 of the Public Order (Northern Ireland) Order 1987.**][**[F33], and

(b) the reference in subsection (1) to section 139AA is omitted.**]**

Textual Amendments

F26 S. 139A(5)(6) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 52**, 111(1) (with Sch. 6 para. 4(2))

F27 S. 139A(7)(b) repealed (N.I.) (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(1), **Sch. 8 Pt. 5**

F28 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

F29 S. 139B inserted (1.9.1996) by 1996 c. 26, **s. 4(1)(4)**; S.I. 1996/2071, **art.2**

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
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F30 Word in s. 139B(1) substituted (31.5.2007) by Violent Crime Reduction Act 2006 (c. 38), **ss. 48**, 51, 66(2), **Sch. 2 para. 13**; S.I. 2007/858, **art. 3(c)-(e)**

F31 Words in s. 139B(1) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 26 para. 6(2)**; S.I. 2012/2770, art. 2(f)

F32 Words in s. 139B(4) renumbered as s. 139B(4)(a) (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 26 para. 6(3)(a)**; S.I. 2012/2770, art. 2(f)

F33 S. 139B(4)(b) and word inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 26 para. 6(3)(b)**; S.I. 2012/2770, art. 2(f)

140 Extension of constable's power to stop and search.

(1) In section 1 of the [M5]Police and Criminal Evidence Act 1984 (powers of constable to stop and search)—

(a) [F34]. . . . . .

(b) [F34]. . . . . .

(c) the following subsection shall be inserted after subsection (8)—

"(8A) This subsection applies to any article in relation to which a person has committed, or is committing or is going to commit an offence under section 139 of the Criminal Justice Act 1988.".

(2) In section 5(2)(a)(ii) of that Act (annual reports to contain total numbers of searches for offensive weapons) after the word "weapons" there shall be inserted the words "or articles to which section 1(8A) above applies".

Textual Amendments

F34 S. 140(1)(a)(b) repealed (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 174, 178, **Sch. 17 Pt. 2**; S.I. 2005/1521, **art. 3(1)(cc)(ee)(i)** (subject to art. 3(4)(5))

Marginal Citations

M5 1984 c. 60.

141 Offensive weapons.

(1) Any person who manufactures, sells or hires or offers for sale or hire, exposes or has in his possession for the purpose of sale or hire, or lends or gives to any other person, a weapon to which this section applies shall be guilty of an offence and liable **[**[F35]on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both**]**

[[F35](a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.

.

(2) The Secretary of State may by order made by statutory instrument direct that this section shall apply to any description of weapon specified in the order except—

(a) any weapon subject to the [M6]Firearms Act 1968; and

(b) crossbows.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F36](3) . . . . . .

(4) The importation of a weapon to which this section applies is hereby prohibited.

(5) It shall be a defence for any person charged in respect of any conduct of his relating to a weapon to which this section applies—

(a) with an offence under subsection (1) above; or

(b) with an offence under section 50(2) or (3) of the [M7]Customs and Excise Management Act 1979 (improper importation),

to **[**[F37]show**]** that his conduct was only for the purposes of functions carried out on behalf of the Crown or of a visiting force.

(6) In this section the reference to the Crown includes the Crown in right of Her Majesty's Government in Northern Ireland; and

"visiting force" means any body, contingent or detachment of the forces of a country—

(a) mentioned in subsection (1)(a) of section 1 of the [M8]Visiting Forces Act 1952; or

(b) designated for the purposes of any provision of that Act by Order in Council under subsection (2) of that section,

which is present in the United Kingdom (including United Kingdom territorial waters) or in any place to which subsection (7) below applies on the invitation of Her Majesty's Government in the United Kingdom.

(7) This subsection applies to any place on, under or above an installation in a designated area within the meaning of section 1(7) of the [M9]Continental Shelf Act 1964 or any waters within 500 metres of such an installation.

(8) It shall be a defence for any person charged in respect of any conduct of his relating to a weapon to which this section applies—

(a) with an offence under subsection (1) above; or

(b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979,

to **[**[F37]show**]** that the conduct in question was only for the purposes of making the weapon available to a museum or gallery to which this subsection applies.

(9) If a person acting on behalf of a museum or gallery to which subsection (8) above applies is charged with hiring or lending a weapon to which this section applies, it shall be a defence for him to **[**[F37]show**]** that he had reasonable grounds for believing that the person to whom he lent or hired it would use it only for cultural, artistic or educational purposes.

(10) Subsection (8) above applies to a museum or gallery only if it does not distribute profits.

(11) In this section "museum or gallery" includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it.

[[F38](11A) Subject to subsection (11C), where a person is charged with an offence under subsection (1) above in respect of conduct of his relating to a weapon to which this section applies, it shall be a defence to show that his conduct was for the purpose only

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of making the weapon in question available for one or more of the purposes specified in subsection (11B).

(11B) Those purposes are—

(a) the purposes of theatrical performances and of rehearsals for such performances;

(b) the production of films (as defined in section 5B of the Copyright, Designs and Patents Act 1988 (c. 48));

(c) the production of television programmes (as defined in section 405(1) of the Communications Act 2003 (c. 21)).

(11C) Where—

(a) a person is charged with an offence under subsection (1) above in respect of conduct of his relating to a weapon to which this section applies (a "relevant weapon"), and

(b) the relevant weapon is one the importation of which is prohibited,

subsection (11A) does not apply unless the condition in subsection (11D) is satisfied.

(11D) The condition is that there is in force as respects Scotland provision to the effect that it is a defence for a person ("A") charged with a relevant offence in respect of A's conduct relating to a relevant weapon to show that A's conduct was for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (11B).

(11E) In subsection (11D), "relevant offence" means an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (c. 2) (penalty for improper importation of goods).

(11F) For the purposes of this section, a person shall be taken to have shown a matter specified in subsection (5), (8), (9) or (11A) above if—

(a) sufficient evidence of the matter is adduced to raise an issue with respect to it; and

(b) the contrary is not proved beyond a reasonable doubt.

(11G) The Scottish Ministers may by order made by statutory instrument modify the application of this section in relation to any description of weapon specified in the order.

(11H) An order under subsection (11G) may make different provision for different purposes.

(11J) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.**]**

[[F39](11A) It shall be a defence for a person charged in respect of conduct of his relating to a weapon to which this section applies—

(a) with an offence under subsection (1) above, or

(b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979,

to show that his conduct was for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (11B).

(11B) Those purposes are—

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(a) the purposes of theatrical performances and of rehearsals for such performances;

(b) the production of films (within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 – see section 5B of that Act);

(c) the production of television programmes (within the meaning of the Communications Act 2003 – see section 405(1) of that Act).

(11C) For the purposes of this section a person shall be taken to have shown a matter specified in subsection (5), (8), (9) or (11A) if—

(a) sufficient evidence of that matter is adduced to raise an issue with respect to it; and

(b) the contrary is not proved beyond a reasonable doubt.

(11D) The Secretary of State may by order made by statutory instrument—

(a) provide for exceptions and exemptions from the offence under subsection (1) above or from the prohibition in subsection (4) above; and

(b) provide for it to be a defence in proceedings for such an offence, or for an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979, to show the matters specified or described in the order.

(11E) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.**]**

(12) This section shall not have effect in relation to anything done before it comes into force.

(13) In the application of this section to Northern Ireland **[**[F40]in subsection (2) above the reference to the Secretary of State shall be construed as a reference to the Department of Justice in Northern Ireland and the reference**]** to the [M10]Firearms Act 1968 shall be construed as a reference to the [M11]Firearms (Northern Ireland) Order **[**[F41]2004**]** .

[[F42](14) In the application of this section to Northern Ireland, the power under subsection (11D) above to provide by order—

(a) for exceptions and exemptions from the offence under subsection (1) above; and

(b) for it to be a defence in proceedings for such an offence to show the matters specified or described in the order,

is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary of State).

(15) Any power of the Department of Justice in Northern Ireland to make an order under this section shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (and not by statutory instrument).

(16) No order shall be made by the Department of Justice under this section unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

(17) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (16) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.**]]**

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F35 Words in s. 141(1) substituted (N.I.) (16.7.2008) by The Criminal Justice (Northern Ireland) Order S.I. 2008/1216 (N.I. 1), arts. 1, **90(5)**; S.R. 2008/293, **art. 2**, Sch.

F36 S. 141(3) repealed (S.) (1.11.2007) by Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17), ss. 66(2), 67, **Sch. 5**; S.S.I. 2007/431, **art. 3** Sch. and s. 141(3) repealed (E.W.N.I.) (1.4.2008) by Violent Crime Reduction Act 2006 (c. 38), ss. 65, 66(2), **Sch. 5**; S.I. 2008/791, arts. 2(e)

F37 Word in s. 141(5)(8)(9) substituted (S.) (1.11.2007) by Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17), **s. 60(1)(a)**; S.S.I. 2007/431, **art. 3**, Sch. and the same word in s. 141(5)(8)(9) substituted (E.W.N.I.) (6.4.2008) by Violent Crime Reduction Act 2006 (c. 38), ss. 43(3), 51, 66(2), Sch. 2 para. 11(2); S.I. 2008/791, **art. 3(a)(c)**

F38 S. 141(11A)-(11J) inserted (S.) (1.11.2007 for purpose of inserting subsections (11F) to (11J) and otherwise prosp. for inserting (11A) to (11E)) by Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17), **ss. 60(2)**, 67; S.S.I. 2007/431, **art. 3**, Sch.

F39 S. 141(11A)-(11E) inserted (E.W.N.I.) (1.4.2008 for purpose of inserting (11D) and (11E) and 6.4.2008 in so far as not already in force) by Violent Crime Reduction Act 2006 (c. 38), ss. 43(4), 51, 66(2), **Sch. 2 para. 11(3)**; S.I. 2008/791, arts. 2(c), **3(c)**

F40 Words in s. 141(13) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 31(2)** (with arts. 28-31)

F41 Word in s. 141(13) substituted (1.2.2005) by The Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)), arts. 81, 82, **Sch. 7 para. 11**; S.R. 2005/4, **art. 3** (with transitional provisions in arts. 4-7)

F42 S. 141(14)-(17) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 31(3)** (with arts. 28-31)

Modifications etc. (not altering text)

C1 S. 141 applied (S.) (29.9.2005) by The Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (S.S.I. 2005/483), art. 2, **Sch.**

Marginal Citations

M6 1968 c. 27.
M7 1979 c. 2.
M8 1952 c. 67.
M9 1964 c. 29.
M10 1968 c. 27.
M11 S.I. 1981/155 (N.I. 2).

[F43 141Z Application of section 141 to swords: further provision

(1) This section applies where the Scottish Ministers make an order under subsection (2) of section 141 directing that the section shall apply to swords.

(2) The Scottish Ministers may include in the order provision for or in connection with modifying section 141 in its application to swords.

(3) The Scottish Ministers may in particular—

(a) provide for defences (including in particular defences relating to religious, cultural or sporting purposes) to offences;

(b) increase the penalties specified in subsection (1) of section 141 (or that subsection as modified) so as to make a person liable—

(i) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or both;

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
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(ii) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both;

(c) create an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) relating to the provision, without reasonable excuse, of false information by a person acquiring a sword in circumstances specified in the order.

(4) In making provision under subsection (3)(a) the Scottish Ministers may make provision for or in connection with—

(a) the granting, and revocation, by them of authorisations in relation to the acquisition of swords;

(b) enabling them to specify conditions in such authorisations;

(c) requiring persons to whom authorisations are granted to comply with such conditions;

(d) making it an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) to fail to comply with any such conditions.

(5) Defences specified under subsection (3)(a) may relate to swords in general or to a class, or classes, of sword specified in the order.

(6) The penalty is—

(a) imprisonment for a term not exceeding 12 months; or

(b) a fine not exceeding level 5 on the standard scale,

or both.

(7) The power conferred by subsection (2) is without prejudice to the generality of the power conferred by section 141(11G).**]**

Textual Amendments

F43 S. 141ZA inserted (S.) (1.11.2007) by Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17), **ss. 61(2)**, 67; S.S.I. 2007/431, **art. 3**, Sch.

PROSPECTIVE

[F44 141ZB Importation of offensive weapons: prohibition

(1) The importation of an offensive weapon is prohibited, subject to section 141ZC.

(2) In this section " offensive weapon " means a weapon of a description specified in an order made by the Secretary of State for the purposes of this subsection.

(3) The Secretary of State may not specify any of the following under subsection (2)—

(a) a weapon subject to the Firearms Act 1968;

(b) a crossbow.

(4) Orders under this section are to be made by statutory instrument.

(5) 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 a resolution of each House of Parliament.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) In the application of this section to Northern Ireland the reference in subsection (3) to the Firearms Act 1968 is to be construed as a reference to the Firearms (Northern Ireland) Order 2004.

Textual Amendments

F26 S. 139A(5)(6) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 52**, 111(1) (with Sch. 6 para. 4(2))

F27 S. 139A(7)(b) repealed (N.I.) (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(1), **Sch. 8 Pt. 5**

F28 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

F44 Ss. 141ZB-141ZD inserted (prosp.) by Policing and Crime Act 2009 (c. 26), **ss. 102**, 116

PROSPECTIVE

141ZC Prohibition on importation of offensive weapons: exceptions

(1) The importation of a weapon is not prohibited by section 141ZB if one of the following exceptions applies.

(2) Exception 1 is that the weapon is imported for the purposes only of functions carried out on behalf of—
- (a) the Crown, or
- (b) a visiting force.

(3) Exception 2 is that the weapon is imported for the purposes only of making it available to a museum or gallery which does not distribute profits.

(4) Exception 3 is that the weapon is imported for the purposes only of making it available for one or more of the following—
- (a) theatrical performances;
- (b) rehearsals of theatrical performances;
- (c) the production of films;
- (d) the production of television programmes.

(5) In subsection (4)—

" films " has the meaning given by section 5B of the Copyright, Designs and Patents Act 1988;

" television programmes " has the meaning given by section 405 of the Communications Act 2003.

(6) The Secretary of State may by order provide for further exceptions from the prohibition on importation of weapons under section 141ZB.

(7) Orders under this section are to be made by statutory instrument.

(8) 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 a resolution of each House of Parliament.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) Expressions used in this section and in section 141 have the same meaning in this section as in that section.

Textual Amendments

F26 S. 139A(5)(6) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 52**, 111(1) (with Sch. 6 para. 4(2))

F27 S. 139A(7)(b) repealed (N.I.) (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(1), **Sch. 8 Pt. 5**

F28 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

F44 Ss. 141ZB-141ZD inserted (prosp.) by Policing and Crime Act 2009 (c. 26), **ss. 102**, 116

PROSPECTIVE

141ZD Prohibition on importation of offensive weapons: burdens of proof

(1) This section applies for the purposes of proceedings for an offence under the Customs and Excise Management Act 1979 relating to a weapon the importation of which is prohibited by section 141ZB above.

(2) An exception conferred by or under section 141ZC is to be taken not to apply unless sufficient evidence is adduced to raise an issue with respect to the exception.

(3) Where sufficient evidence is adduced to raise an issue with respect to an exception, it is to be taken to apply unless the contrary is proved beyond a reasonable doubt.**]]]]]]**

Textual Amendments

F26 S. 139A(5)(6) substituted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 52**, 111(1) (with Sch. 6 para. 4(2))

F27 S. 139A(7)(b) repealed (N.I.) (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), s. 111(1), **Sch. 8 Pt. 5**

F28 Words in s. 139A(6)(7) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para.69** (with ss. 1(4), 582(3), Sch. 39)

F44 Ss. 141ZB-141ZD inserted (prosp.) by Policing and Crime Act 2009 (c. 26), **ss. 102**, 116

[141A [F45] Sale of knives and certain articles with blade or point to persons under sixteen. E+W

(1) Any person who sells to a person under the age of **[**[F46]eighteen**]** years an article to which this section applies shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

(2) Subject to subsection (3) below, this section applies to—

(a) any knife, knife blade or razor blade,

(b) any axe, and

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(c) any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.

(3) This section does not apply to any article described in—

(a) section 1 of the [M12] Restriction of Offensive Weapons Act 1959,

(b) an order made under section 141(2) of this Act, or

(c) an order made by the Secretary of State under this section.

(4) It shall be a defence for a person charged with an offence under subsection (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(5) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Extent Information

E5 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F45 S. 141A inserted (1.1.1997) by 1996 c. 26, **s. 6(1)(3)**; S.I. 1996/3063, **art.2**

F46 Word in s. 141A(1) substituted (E.W.) (1.10.2007) by Violent Crime Reduction Act 2006 (c. 38), **ss. 43(2)**, 66(2); S.I. 2007/2180, **art. 3(j)**

Modifications etc. (not altering text)

C2 S. 141A(1) excluded (1.1.1997) by S.I. 1996/3064, **art.2**

Marginal Citations

M12 1959 c. 37.

[141A [F45][F93]Sale of knives and certain articles with blade or point to persons under eighteen] S

(1) **[**[F94]Subject to subsection (3A) below**]**Any person who sells**[**[F95]or lets on hire**]** to a person under the age of **[**[F96]eighteen**]** years an article to which this section applies shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

(2) Subject to subsection (3) below, this section applies to—

(a) any knife, knife blade or razor blade,

(b) any axe, [F97] . . .

[F98]**[**(ba) any sword; and**]]**

(c) any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.

(3) This section does not apply to any article described in—

(a) section 1 of the [M12]Restriction of Offensive Weapons Act 1959,

(b) an order made under section 141(2) of this Act, or

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(c) an order made by the Secretary of State under this section.

[[F99](3A) It is not an offence under subsection (1) to sell **[**[F100]or let on hire**]**a knife or knife blade to a person if—

(a) the person is aged 16 or over; and

(b) the knife or blade is designed for domestic use.**]**

[[F101](4) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as " the accused ") to show that—

(a) the accused believed the person to whom the article was sold or let on hire (referred to in this section as " the purchaser or hirer ") to be of or above the relevant age, and

(b) either—

(i) the accused had taken reasonable steps to establish the purchaser or hirer's age, or

(ii) no reasonable person could have suspected from the purchaser or hirer's appearance that the purchaser or hirer was aged under the relevant age.

(4A) For the purposes of subsection (4)(b)(i), the accused is to be treated as having taken reasonable steps to establish the purchaser or hirer's age if and only if—

(a) the accused was shown any of the documents mentioned in subsection (4B), and

(b) the document would have convinced a reasonable person.

(4B) Those documents are any document bearing to be—

(a) a passport,

(b) a European Union photocard driving licence, or

(c) such other document, or a document of such other description, as the Scottish Ministers may by order prescribe.

(4C) In subsection (4), "the relevant age" is—

(a) in the case where the article is a knife or knife blade designed for domestic use, 16 years, and

(b) in any other case, 18 years.**]**

(5) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Extent Information

E8 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F45 S. 141A inserted (1.1.1997) by 1996 c. 26, **s. 6(1)(3)**; S.I. 1996/3063, **art.2**

F93 S. 141A sidenote substituted (S.) (1.9.2006) by virtue of Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 75(5)**, 104; S.S.I. 2006/432, **art. 2(d)**

F94 Words in s. 141A(1) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 75(2)(a)**, 104; S.S.I. 2006/432, **art. 2(d)**

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F95 Words in s. 141A(1) inserted (S.) (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 36(2)**, 206(1); S.S.I. 2011/178, art. 2, Sch.

F96 Word in s. 141A(1) substituted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 75(2)(b)**, 104; S.S.I. 2006/432, **art. 2(d)**

F97 Word in s. 141A(2) repealed (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 75(3)(a)**, 104; S.S.I. 2006/432, **art. 2(d)**

F98 S. 141A(2)(ba) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 75(3)(b)**, 104; S.S.I. 2006/432, **art. 2(d)**

F99 S. 141A(3A) inserted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 75(4)**, 104; S.S.I. 2006/432, **art. 2(d)**

F100 Words in s. 141A(3A) inserted (S.) (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 36(3)**, 206(1); S.S.I. 2011/178, art. 2, Sch.

F101 S. 141A(4)-(4C) substituted (S.) (28.3.2011) for s. 141A(4) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 36(4)**, 206(1); S.S.I. 2011/178, art. 2, Sch.

Modifications etc. (not altering text)

C2 S. 141A(1) excluded (1.1.1997) by S.I. 1996/3064, **art.2**

Marginal Citations

M12 1959 c. 37.

142 Power of justice of the peace to authorise entry and search of premises for offensive weapons.

(1) If on an application made by a constable a justice of the peace (including, in Scotland, the sheriff) is satisfied that there are reasonable grounds for believing—

(a) that there are on premises specified in the application—

(i) knives such as are mentioned in section 1(1) of the [M13]Restriction of Offensive Weapons Act 1959; or

(ii) weapons to which section 141 above applies; and

(b) that an offence under section 1 of the Restriction of Offensive Weapons Act 1959 or section 141 above has been or is being committed in relation to them; and

(c) that any of the conditions specified in subsection (3) below applies,

he may issue a warrant authorising a constable to enter and search the premises.

(2) A constable may seize and retain anything for which a search has been authorised under subsection (1) above.

(3) The conditions mentioned in **[**[F47]subsection (1)(c)**]** above are—

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the knives or weapons to which the application relates;

(c) that entry to the premises will not be granted unless a warrant is produced;

(d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(4) Subsection (1)(a)(i) shall be omitted in the application of this section to Northern Ireland.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F47 Words in s. 142(3) substituted (S.) (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 101, 104, **Sch. 6 para. 2**; S.S.I. 2006/432, **art. 2(g)(h)** and said words substituted (E.W.N.I.) (1.4.2007) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 14**; S.I. 2007/709, **art. 3(o)** (subject to arts. 6 and 7)

Marginal Citations

M13 1959 c. 37.

Serious fraud

143 Assistance to Isle of Man and Channel Islands.

In subsection (1) of section 2 of the [M14]Criminal Justice Act 1987 (investigation powers of Director of Serious Fraud Office) after the word "above," there shall be inserted the words "or, on a request made by the Attorney General of the Isle of Man, Jersey or Guernsey, under legislation corresponding to that section and having effect in the Island whose Attorney General makes the request,".

Marginal Citations

M14 1987 c. 38.

[F48]144 Transferred charges.

. . . . . .

Textual Amendments

F48 S. 144 repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 37 Pt. 4**; S.I. 2012/1320, art. 4(1)(d)(2)(3) (with art. 5) (see S.I. 2012/2574, art. 4(2) and S.I. 2013/1103, art. 4); S.I. 2012/2574, art. 2(2)(3)(d), Sch. (with arts. 3, 4) (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with S.I. 2013/1103, art. 4); S.I. 2013/1103, art. 2(1)(d)

145 Power to petition for winding-up etc. on information obtained on investigation by Director of Serious Fraud Office.

The words "or section 2 of the Criminal Justice Act 1987" shall be inserted—

[[F49](a) in section 440 of the [M15]Companies Act 1985, after the words "that Act";**]**

(b) in section 8(1) of the [M16]Company Directors Disqualification Act 1986, after the words "the Financial Services Act 1986", in the second place where they occur; and

[F50](c) . . . . . .

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F49 S. 145(a) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 215, **Sch. 24**

F50 S. 145(c) repealed (1. 10. 1991) by S.I. 1990/1504 (N.I. 10), art. 113, **Sch. 6**; S.R. 1991/438, **art. 5(d)**.

Marginal Citations

M15 1985 c. 6.

M16 1986 c. 46.

Evidence before Service courts

146 Evidence before [F51certain service courts].

Schedule 13 to this Act shall have effect in relation to evidence before **[**F52certain service courts**]**.

Textual Amendments

F51 S. 146: words in sidenote substituted (28.3.2009 for certain purposes and 31.10.2009 insofar as not yet in force) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para 113(a)**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

F52 Words in s. 146 substituted (28.3.2009 for certain purposes and 31.10.2009 insofar as not yet in force) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 113(b)**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

Amendments of Police and Criminal Evidence Act 1984 etc.

147 Searches of detained persons.

In section 54 of the M17Police and Criminal Evidence Act l984 (searches of detained persons)—

(a) the following paragraph shall be substituted for subsection (1)(b)—

"(b) arrested at the station or detained there under section 47(5) above."; and

(b) the following subsections shall be inserted after subsection (6)—

"(6A) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in subsection (4)(a) above.

(6B) Subject to subsection (6C) below, a constable may seize and retain, or cause to be seized and retained, anything found on such a search.

(6C) A constable may only seize clothes and personal effects in the circumstances specified in subsection (4) above.".

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M17 1984 c. 60.

[F53]148 Computer data about fingerprints.

. . . . . .

Textual Amendments
F53 S. 148 repealed (31.10.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 10 Pt. 1** (with s. 97); S.I. 2013/2104, art. 3(d)

149 . . . . . [F54]

Textual Amendments
F54 S. 149 repealed by S.I. 1989/1341 (N.I. 12), art. 90(2), **Sch. 7**

Provisions relating to Customs and Excise

PROSPECTIVE

150 Bail for persons in customs detention.

At the end of section 114(2)(b) of the [M18]Police and Criminal Evidence Act 1984 there shall be added the words "and

(c) that in relation to customs detention (as defined in any order made under this subsection) the Bail Act 1976 shall have effect as if references in it to a constable were references to an officer of Customs and Excise of such grade as may be specified in the order.".

Marginal Citations
M18 1984 c. 60.

151 Customs and Excise power of arrest.

(1) If—

(a) a person—

(i) has been released on bail in criminal proceedings for an offence falling within subsection (4) below; and

(ii) is under a duty to surrender into customs detention; and

(b) an officer of Customs and Excise has reasonable grounds for believing that that person is not likely to surrender to custody,

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he may be arrested without warrant by an officer of Customs and Excise.

(2) A person arrested in pursuance of subsection (1) above shall be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace [F55]. . . .

(3) In reckoning for the purposes of subsection (2) above any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.

(4) The offences that fall within this subsection are—

(a) an offence against section 5(2) of the [M19]Misuse of Drugs Act 1971 (possession of controlled drugs);[F56]. . .

(b) a drug trafficking offence.

[[F57](c) a money laundering offence;**]**

(5) In this section and section 152 below "drug trafficking offence" means **[**[F58]any offence which is specified in—

(a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or

(b) so far as it relates to that paragraph, paragraph 10 of that Schedule.**]**

[[F59](6) In this section "money laundering offence" means any offence which by virtue of section 415 of the Proceeds of Crime Act 2002 is a money laundering offence for the purposes of Part 8 of that Act.**]**

Textual Amendments

F55 Words in s. 151(2) omitted (1.4.2005) by virtue of The Courts Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/886), art. 2, **Sch. para. 45**

F56 Word in s. 151(4) repealed (24.2.2003) by 2002 c. 29, ss. 456, 457, 458, Sch. 11 para. 17(3), Sch. 12; S.I. 2003/120, **art. 2(1)**, Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

F57 S. 151(4)(c) inserted (24.2.2003) by 2002 c. 29, ss. 456, 458, Sch. 11 para. 17(3); S.I. 2003/120, **art. 2(1)**, Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

F58 S. 151(5)(a)(b) substituted (24.3.2003) for words by 2002 c. 29, ss. 456, 458, Sch. 11 para. 17(4); S.I. 2003/333, **art. 2(1)**, Sch. (subject to transitional provisions and savings in arts. 3-14 (as amended by S.I. 2003/531, art. 3))

F59 S. 151(6) inserted (24.2.2003) by 2002 c. 29, ss. 456, 458, Sch. 11 para. 17(5); S.I. 2003/120, **art. 2(1)**, Sch. (subject to transitional provisions and savings in arts. 3-7 (as amended (24.3.2003) by S.I. 2003/333, art. 14 and S.I. 2003/531, art. 3))

Commencement Information

I1 S. 151 partly in force; s. 151 not in force at Royal Assent, see s. 171; s. 151(5) in force at 3.4.1989 by S.I. 1989/264, art. 2, **Sch. Pt. II**

Marginal Citations

M19 1971 c. 38.

152 Remands of suspected drug offenders to [F60]. . . detention.

(1) Subject—

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) to subsection (2) below; and
(b) to section 4 of the Bail Act 1976,

where—

(i) a person is brought before a magistrates' court on a charge of an offence against section 5(2) of the Misuse of Drugs Act 1971 or a drug trafficking offence; and
(ii) the court has power to remand him,

it shall have power, if it considers it appropriate to do so, to remand him to customs detention, that is to say, commit him to the custody of a customs officer for a period not exceeding 192 hours.

[[F61](1A) In subsection (1) the power of a magistrates' court to remand a person to customs detention for a period not exceeding 192 hours includes power to commit the person to the custody of a constable to be detained for such a period.**]**

(2) This section does not apply where a charge is brought against a person under the age of 17.

(3) In the application of this section to Northern Ireland, for the words from the beginning of subsection (1) above to "1976" there shall be substituted the words "Subject to subsection (2) below,".

[[F62](4) In the application of this section to Northern Ireland, "drug trafficking offence" means**][**[F63]any offence which is specified in—

(a) paragraph 1 of Schedule 5 to the Proceeds of Crime Act 2002 (drug trafficking offences), or
(b) so far as it relates to that paragraph, paragraph 10 of that Schedule.**]**

Textual Amendments

F60 S. 152: word in title left out (1.1.2006) by Drugs Act 2005 (c. 17), **ss. 8(a)**, 24; S.I. 2005/3053, **art. 3(d)**

F61 S. 152(1A) inserted (1.1.2006) by Drugs Act 2005 (c. 17) {ss. 8(b)}, 24; S.I. 2005/3053, **art. 3(d)**

F62 S. 152(4) substituted (25.8.1996) by S.I. 1996/1299 (N.I.9), art. 57(1), **Sch. 3 para. 7**

F63 S. 152(4)(a)(b) substituted (24.3.2003) for words by 2002 c. 29, ss. 456, 458, Sch. 11 para. 17(6); S.I. 2003/333, **art. 2(1)**, Sch. (subject to transitional provisions and savings in arts. 3-14) (as amended by S.I. 2003/531)

Bail and custody

153 Court to give reasons for granting bail to a person accused of serious offence.

The following paragraph shall be inserted after paragraph 9 (decisions as to grant or refusal of bail) of Part I of Schedule 1 to the [M20]Bail Act 1976—

"9A (1) If—

(a) the defendant is charged with an offence to which this paragraph applies; and
(b) representations are made as to any of the matters mentioned in paragraph 2 of this Part of this Schedule; and

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(c) the court decides to grant him bail,

the court shall state the reasons for its decision and shall cause those reasons to be included in the record of the proceedings.

(2) The offences to which this paragraph applies are—

(a) murder;
(b) manslaughter;
(c) rape;
(d) attempted murder; and
(e) attempted rape.”.

Marginal Citations

M20 1976 c. 63.

154 Decisions where bail refused on previous hearing.

The following new Part shall be inserted after Part II of Schedule 1 to the Bail Act 1976—

“**PART IIA**

DECISIONS WHERE BAIL REFUSED ON PREVIOUS HEARING

1 If the court decides not to grant the defendant bail, it is the court’s duty to consider, at each subsequent hearing while the defendant is a person to whom section 4 above applies and remains in custody, whether he ought to be granted bail.

2 At the first hearing after that at which the court decided not to grant the defendant bail he may support an application for bail with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).

3 At subsequent hearings the court need not hear arguments as to fact or law which it has heard previously.”.

155 Remands in custody for more than eight days.

(1) The following section shall be inserted after section 128 of the [M21]Magistrates’ Courts Act 1980—

“**128A Remands in custody for more than eight days.**

(1) The Secretary of State may by order made by statutory instrument provide that this section shall have effect—

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) in an area specified in the order; or
(b) in proceedings of a description so specified,

in relation to any accused person ("the accused") who has attained the age of 17.

(2) A magistrates' court may remand the accused in custody for a period exceeding 8 clear days if—
(a) it has previously remanded him in custody for the same offence; and
(b) he is before the court,

but only if, after affording the parties an opportunity to make representations, it has set a date on which it expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place, and only—
(i) for a period ending not later than that date; or
(ii) for a period of 28 clear days,

whichever is the less.

(3) Nothing in this section affects the right of the accused to apply for bail during the period of the remand.

(4) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before Parliament and been approved by a resolution of each House.".

(2) After paragraph 9A of Schedule 1 to the [M22]Bail Act 1976 there shall be inserted—

Cases under section 128A of Magistrates' Courts Act 1980

"9B Where the court is considering exercising the power conferred by section 128A of the Magistrates' Courts Act 1980 (power to remand in custody for more than 8 clear days), it shall have regard to the total length of time which the accused would spend in custody if it were to exercise the power.".

Marginal Citations
M21 1980 c. 43.
M22 1976 c. 63.

Appeals

156 Appeals to Crown Court.

In paragraph (a) of section 48(2) of the [M23][F64]Senior Courts Act 1981] (which sets out the powers of the Crown Court on the termination of the hearing of an appeal) for the words "the decision appealed against" there shall be substituted the words "any part of the decision appealed against, including a determination not to impose a separate penalty in respect of an offence".

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F64 Words in s. 156 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 59, 148, **Sch. 11 para. 1**; S.I. 2009/1604, **art. 2(d)**

Marginal Citations

M23 1981 c. 54.

157 Groundless appeals and applications for leave to appeal.

The following section shall be substituted for section 20 of the [M24]Criminal Appeal Act 1968—

"**20 Disposal of groundless appeal or application for leave to appeal.**

If it appears to the registrar that a notice of appeal or application for leave to appeal does not show any substantial ground of appeal, he may refer the appeal or application for leave to the Court for summary determination; and where the case is so referred the Court may, if they consider that the appeal or application for leave is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal or application for leave summarily, without calling on anyone to attend the hearing or to appear for the Crown thereon.".

Marginal Citations

M24 1968 c. 19.

Reports of criminal proceedings

158 Anonymity in rape etc. cases.

(1) The [M25]Sexual Offences (Amendment) Act 1976 shall be amended as follows.

(2) The following subsections shall be substituted for subsection (1) of section 4 (anonymity of complainants in rape etc. cases)—

"(1) Except as authorised by a direction given in pursuance of this section—

(a) after an allegation that a woman has been the victim of a rape offence has been made by the woman or by any other person, neither the woman's name nor her address nor a still or moving picture of her shall during her lifetime—

(i) be published in England and Wales in a written publication available to the public; or

(ii) be broadcast or included in a cable programme in England and Wales,

if that is likely to lead members of the public to identify her as an alleged victim of such an offence; and

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) after a person is accused of a rape offence, no matter likely to lead members of the public to identify a woman as the complainant in relation to that accusation shall during her lifetime—

(i) be published in England and Wales in a written publication available to the public; or

(ii) be broadcast or included in a cable programme in England and Wales;

but nothing in this subsection prohibits the publication or broadcasting or inclusion in a cable programme of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

(1A) In subsection (1) above "picture" includes a likeness however produced.".

(3) The following subsections shall be inserted after subsection (5) of that section—

"(5A) Where a person is charged with an offence under subsection (5) of this section in respect of the publication or broadcast of any matter or the inclusion of any matter in a cable programme, it shall be a defence, subject to subsection (5B) below, to prove that the publication, broadcast or cable programme in which the matter appeared was one in respect of which the woman had given written consent to the appearance of matter of that description.

(5B) Written consent is not a defence if it is proved that any person interfered unreasonably with the woman's peace or comfort with intent to obtain the consent.".

(4) In subsection (3) of that section—

(a) the words "before the Crown Court at which a person is charged with a rape offence" and "relating to the complainant" shall cease to have effect; and

(b) for the words "an acquittal of a defendant at" there shall be substituted the words "the outcome of".

(5) Section 6 (anonymity of defendants in rape etc. cases) shall cease to have effect.

(6) In section 7(2), in the definition of a "rape offence" , for the words "and incitement to rape" there shall be substituted the words, "incitement to rape, conspiracy to rape and burglary with intent to rape".

Marginal Citations

M25 1976 c. 82.

159 Crown Court proceedings— orders restricting or preventing reports or restricting public access.

(1) A person aggrieved may appeal to the Court of Appeal, if that court grants leave, against—

(a) an order under section 4 or 11 of the [M26]Contempt of Court Act 1981 made in relation to a trial on indictment;

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[[F65](aa) an order made by the Crown Court under section 58(7) or (8) of the [M27]Criminal Procedure and Investigations Act 1996 in a case where the Court has convicted a person on a trial on indictment;**]**

(b) any order restricting the access of the public to the whole or any part of a trial on indictment or to any proceedings ancillary to such a trial; and

(c) any order restricting the publication of any report of the whole or any part of a trial on indictment or any such ancillary proceedings;

and the decision of the Court of Appeal shall be final.

(2) Subject to Rules of Court, the jurisdiction of the Court of Appeal under this section shall be exercised by the criminal division of the Court, and references to the Court of Appeal in this section shall be construed as references to that division.

(3) On an application for leave to appeal under this section a judge shall have power to give such directions as appear to him to be appropriate and, without prejudice to the generality of this subsection, power—

(a) to order the production in court of any transcript or note of proceedings or other document;

(b) to give directions as to persons who are to be parties to the appeal or who may be parties to it if they wish and as to service of documents on any person;

and the Court of Appeal shall have the same powers as the single judge.

(4) Subject to Rules of Court made by virtue of subsection (6) below, any party to an appeal under this section may give evidence before the Court of Appeal orally or in writing.

(5) On the hearing of an appeal under this section the Court of Appeal shall have power—

(a) to stay any proceedings in any other court until after the appeal is disposed of;

(b) to confirm, reverse or vary the order complained of; and

(c) to make such order as to costs as it thinks fit.

(6) [F66]. . . Rules of Court may make in relation to trials satisfying specified conditions special provision as to the practice and procedure to be followed in relation to hearings in camera and appeals from orders for such hearings and may in particular, but without prejudice to the generality of this subsection, provide that subsection (4) above shall not have effect.

(7) In the application of this section to Northern Ireland—

(a) subsection (2) shall be omitted; and

[[F67](b) in subsection (6), before "Rules of Court" there shall be inserted Without prejudice to the generality of sections 52 and 55 of the Judicature (Northern Ireland) Act 1978.**]**

Textual Amendments

F65 S. 159(1)(aa) inserted (1.4.1997) by 1996 c. 25, **s. 61(6)** (with s. 78(1)); SI. 1997/682, art. 2(1)(b)

F66 Words in s. 159(6) omitted (1.9.2004) by virtue of The Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035), art. 3, **Sch. para. 27(2)** (with art. 2(2))

F67 S. 159(7)(b) substituted (1.9.2004) by The Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035), art. 3, **Sch. para. 27(3)** (with art. 2(2))

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C3 S. 159(4) excluded by S.R.&O. 1968/218, rule 22B(9) (as inserted by S.R. 1989/295, **rule 4**)

Marginal Citations

M26 1981 c. 49.

M27 1996 c. 25.

Possession of indecent photograph of child

160 [F68Possession of indecent photograph of child]

(1) [F69Subject to section 160A,] it is an offence for a person to have any indecent photograph [F70or pseudo-photograph]of a child F71. . . in his possession.

(2) Where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove—

(a) that he had a legitimate reason for having the photograph [F72or pseudo-photograph] in his possession; or

(b) that he had not himself seen the photograph [F72or pseudo-photograph] and did not know, nor had any cause to suspect, it to be indecent; or

(c) that the photograph [F72or pseudo-photograph] was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

[F73(2A) A person shall be liable on conviction on indictment of an offence under this section to imprisonment for a term not exceeding five years or a fine, or both.]

(3) A person shall be liable on summary conviction of an offence under this section to [F74imprisonment for a term not exceeding six months or] a fine not exceeding level 5 on the standard scale [F74, or both].

(4) Sections 1(3), 2(3), 3 and 7 of the M28Protection of Children Act 1978 shall have effect as if any reference in them to that Act included a reference to this section.

F75(5) . . . . . .

Textual Amendments

F68 Sidenote to s. 160 substituted (11.1.2001) by 2000 c. 43, **s. 41(3)(b)**; S.I. 2000/3302, **art. 2**

F69 Words in s. 160(1) substituted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 148, 153(2)(b), **Sch. 26 para. 24**

F70 Words in s. 160(1) inserted (3.2.1995) by 1994 c. 33, **s. 84(4)(a)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F71 Words in s. 160(1) omitted (3.2.1995) by virtue of 1994 c. 33, **s. 84(4)(a)**; S.I. 1995/127, art. 2(1), **Sch. 1** (and expressed to be repealed (4.9.1995) by 1994 c. 33, s. 168(3), **Sch. 11**; S.I. 1995/1957, **art. 6**)

F72 Words in s. 160(2)(a)-(c) inserted (3.2.1995) by 1994 c. 33, **s. 84(4)(b)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F73 S. 160(2A) inserted (11.1.2001) by 2000 c. 43, **s. 41(3)(a)**; S.I. 2000/3302, **art. 2**

F74 Words in s. 160(3) inserted (3.2.1995) by 1994 c. 33, **s. 86(1)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F75 S. 160(5) repealed (4.9.1995) by 1994 c. 33, s. 168(3), **Sch. 11**; S.I. 1995/1957, **art. 6**

Marginal Citations

M28 1978 c. 37.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F76 160A Marriage and other relationships

(1) This section applies where, in proceedings for an offence under section 160 relating to an indecent photograph [F77 or pseudo-photograph] of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—

(a) were married [F78 or civil partners of each other] , or

(b) lived together as partners in an enduring family relationship.

(2) This section also applies where, in proceedings for an offence under section 160 relating to an indecent photograph [F77 or pseudo-photograph] of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—

(a) were married [F78 or civil partners of each other] , or

(b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph [F77 or pseudo-photograph] showed the child alone or with the defendant, but not if it showed any other person.

(4) If sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph [F77 or pseudo-photograph] being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.]

Textual Amendments

F76 S. 160A inserted (1.5.2004) by Sexual Offences Act 2003 (c. 42), **ss. 45(4)**, 141; S.I. 2004/874, **art. 2**

F77 Words in s. 160A inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), **ss. 69(2)**, 182(5) (with s. 180, Sch. 22); S.I. 2010/816, art. 2, Sch. para. 2

F78 Words in s. 160A(1)(a)(2)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 127**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

161 Possession of indecent photographs of children: Scotland.

(1) The following section shall be inserted after section 52 of the [M29] Civic Government (Scotland) Act 1982—

"**52A Possession of indecent photographs of children.**

(1) It is an offence for a person to have any indecent photograph of a child (meaning in this section a person under the age of 16) in his possession.

(2) Where a person is charged with an offence under subsection (1), it shall be a defence for him to prove—

(a) that he had a legitimate reason for having the photograph in his possession; or

(b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent; or

(c) that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) A person shall be liable on summary conviction of an offence under this section to a fine not exceeding level 5 on the standard scale.

(4) Subsections (2) and (8) of section 52 of this Act shall have effect for the purposes of this section as they have for the purposes of that section.”.

(2) Section 52A of that Act shall not have effect in relation to anything done before it comes into force.

Marginal Citations

M29 1982 c. 45.

Video recordings

162 Enforcement of Video Recordings Act 1984.

The following section shall be inserted after section 16 of the [M30]Video Recordings Act 1984—

“**16A Enforcement.**

(1) The functions of a local weights and measures authority include the enforcement in their area of this Act.

(2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of this Act by such an authority as in relation to the enforcement of that Act—

section 27 (power to make test purchases),

section 28 (power to enter premises and inspect and seize goods and documents),

section 29 (obstruction of authorised officers), and

section 33 (compensation for loss, &c. of goods seized under s. 28).

(3) Nothing in this section shall be taken as authorising a local weights and measures authority in Scotland to initiate proceedings for an offence.

(4) Subsection (1) above does not apply in relation to the enforcement of this Act in Northern Ireland, but the functions of the Department of Economic Development include the enforcement of this Act in Northern Ireland.

For that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

(5) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if the provisions of this Act were contained in that Act and as if the functions of any person in relation to the enforcement of this Act were functions under that Act.”.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M30 1984 c. 39.

Restitution orders

[F79]163 . . . . . .

Textual Amendments
F79 S. 163 repealed (25.8.2000) by 2000 c. 6, ss. 165(4), 168(1), **Sch. 12 Pt. I** (with Sch. 11 paras. 1, 2)

Magistrates' courts areas and officers

[F80]164 . . . . . .

Textual Amendments
F80 S. 164 repealed (19.6.1997) by 1997 c. 25, ss. 73(3), 74(1), **Sch. 6 Pt.I**

[F81]165 . . . . . .

Textual Amendments
F81 S. 165 repealed (1.4.1995) by 1994 c. 29, s. 93, **Sch. 9 Pt.II**; S.I. 1995/685, **arts. 4(n)**, 8(r)

Costs and expenses

166 Costs and expenses of prosecution witnesses and other persons.

(1) Section 14 of the [M31]Prosecution of Offences Act 1985 (control of certain fees and expenses etc. paid by Crown Prosecution Service) shall be amended as follows—

(a) at the end of paragraph (b) of subsection (1) there shall be added the words "and, subject to subsection (1A) below, of any other person who in the opinion of the Service necessarily attends for the purpose of the case otherwise than to give evidence";

(b) the following subsections shall be inserted after that subsection—

"(1A) The power conferred on the Attorney General by subsection (1)(b) above only relates to the costs and expenses of an interpreter if the interpreter is required because of the lack of English of a person attending to give evidence at the instance of the Service.

Status: *Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.*
Changes to legislation: *Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(1B) In subsection (1)(b) above "attending" means attending at the court or elsewhere."; and

(c) the following subsection shall be inserted after subsection (2)—

"(3) Regulations made under subsection (1)(b) above may provide that scales or rates of costs and expenses shall be determined by the Attorney General with the consent of the Treasury.".

(2) In paragraph (a) of section 19(3) of that Act (regulations as to payment out of central funds) after the word "proceedings" there shall be inserted the words ", and any other person who in the opinion of the court necessarily attends for the purpose of the proceedings otherwise than to give evidence,".

(3) The following subsection shall be inserted after that subsection—

"(3A) In subsection (3)(a) above "attendance" means attendance at the core elsewhere.".

(4) The amendments made by subsections (2) and (3) above shall be deemed to have come into force on 1st October 1986.

(5) In Schedule 1 to the [M32]Criminal Justice Act 1987 (control of certain fees and expenses etc. paid by Serious Fraud Office)—

(a) in sub-paragraph (1)(b) of paragraph 8, for the word "to" in the third place it occurs there shall be substituted the word "of"; and

(b) the following sub-paragraph shall be inserted after sub-paragraph (4) of that paragraph—

"(5) In sub-paragraph (1)(b) above "attends" means attends at the court or elsewhere."

Marginal Citations

M31 1985 c. 23.

M32 1987 c. 38.

Acquisition of easements etc.

167 Acquisition of easements etc. under Prison Act 1952.

The power to purchase land conferred on the Secretary of State by section 36 of the [M33]Prison Act 1952 (acquisition of land for prisons) shall include and be deemed always to have included power to purchase easements and other rights over land, including easements and other rights not previously in existence.

Marginal Citations

M33 1952 c. 52.

Status:
Point in time view as at 13/03/2014. This version of this part contains provisions that are prospective.

Changes to legislation:
Criminal Justice Act 1988, Part XI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.