

*These notes refer to the Justice and Security (Northern Ireland)  
Act 2007 (c.6) which received Royal Assent on 24 May 2007*

# JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Supplemental*

#### ***Sections 50 to 54: Repeals and revocations, Financial provisions, Extent, Commencement, Short title***

122. **Section 50** brings Schedule 7 (repeals and revocations) into effect.
123. **Section 52** details the extent of the Act. Sections 14 to 20 (Human Rights Commission), section 44 and Schedule 5 (Northern Ireland department with policing and justice functions), section 47 (altering title of resident magistrate) and sections 48 and 49 and Schedule 6 (private security industry) extend to the whole of the UK. The amendments made by Schedule 1 (trials on indictment without a jury: consequential amendments) (and sections 8 and 9(1) to (4) so far as relating to those amendments) have the same extent as the enactments being amended. Subsections (6) and (7) of section 9 extend to England and Wales and Northern Ireland. The other provisions of the Act extend to Northern Ireland only.
124. **Section 53** provides for sections 21 to 40 (and Schedules 3 and 4) to come into force on 1 August 2007. Sections 9 and 51 to 54 will come into force on Royal Assent and other provisions of the Act will come into force by statutory instrument on a day appointed by the Secretary of State by order. An order under the section may make transitory or transitional provision or savings.

#### ***Schedule 1: Trials on indictment without a jury: consequential amendments***

125. This Schedule makes amendments consequential on the creation of the new system of non-jury trial created by the Act (see sections 1 to 9). In particular, it amends section 14A(1) of the Criminal Procedure and Investigations Act 1996 in order to provide a procedure to apply for the consideration of disclosure issues in relation to trials without a jury. *Paragraph 3* of the Schedule provides that the non-jury trial provisions contained in Part 7 of the Criminal Justice Act 2003 are not to apply if the new procedures for non-jury trial in this Act are being used.

#### ***Schedule 2: Restrictions on disclosure of juror information: further amendments***

126. **Schedule 2** makes a number of amendments to the Juries (Northern Ireland) Order 1996 to complement the restrictions on the disclosure of juror information. *Paragraph 2* removes the right to inspect and obtain copies of jurors lists and panels; *paragraph 3* restricts those persons who may be present at the call-over of the jury panel (i.e. the procedure for ascertaining the attendance of jurors); and *paragraph 4* provides that the balloting of jurors shall be conducted using assigned numbers rather than by name.

**Schedule 3: Munitions and Transmitters: Search and Seizure**

127. *Paragraph 2* provides officers (defined at *paragraph 1* as members of the armed forces on duty or constables) with a power to enter and search premises to ascertain if there are munitions unlawfully on the premises, or wireless apparatus on the premises. *Paragraph 1(3)* defines munitions and transmitters. *Paragraph 2(3)* enables a constable to be accompanied, if necessary, by other persons. This power allows civilian members of the police force, and those supporting the police (for example, Scenes of Crime Officers), to enter premises with constables.
128. In order to enter a dwelling an officer must have a reasonable suspicion that there are munitions unlawfully on the premises, or wireless apparatus on the premises. The officer must also be authorised to do so, if a member of the armed forces, by being on duty and being authorised by a commissioned officer, and if a constable, by being authorised by an officer of the Police Service of Northern Ireland of at least the rank of Inspector.
129. *Paragraph 3* gives an officer the power, when carrying out a search of a building, to require someone who is in the building or comes into the building to remain there. The officer may also require a person to remain in a certain part of the building or to go from one part of the building to another. An officer may also stop someone who does not live in the building from entering it. An officer may only impose these requirements if he reasonably believes it is necessary in order for the search to be carried out or to stop the search from being interfered with and frustrated. Any requirements the officer makes must cease when the search finishes. No requirement can last for more than four hours from when the first requirement was imposed, unless it is extended for up to a further four hours by a superintendent (in the case of the police) or a major (in the case of the army). The extension may only be granted if the authorising officer reasonably believes it to be necessary to carry out the search or in order to prevent the search being frustrated. The power to extend a requirement for up to a further four hours can only be exercised once in relation to a particular search.
130. *Paragraph 4* provides that officers may stop and search a person in a public place to establish whether he has munitions unlawfully with him or wireless apparatus with him. In order to search an individual when not in a public place the officer must have reasonable suspicion that the individual has munitions unlawfully with him or wireless apparatus with him. *Paragraph 4* also provides that, having entered a dwelling under *paragraph 2*, members of the armed forces may search a person entering or found inside. Dwelling is defined at section 42 of this Act.
131. *Paragraph 5* allows that, when using powers of search under Schedule 3 or section 25 or 26, an officer may seize, retain and destroy any munitions (unless it appears to him that they have been, are, and will be used lawfully). An officer may also seize and retain any wireless apparatus found in the course of the search (unless it appears to him that it has been, is, and will be used lawfully).
132. *Paragraph 6* requires, unless it is not reasonably practical, that records are made for any search carried out using the powers in this Schedule. *Paragraph 7* states that a copy of the record should be supplied as soon as possible to whoever appears to be the occupier of the building that has been searched.
133. *Paragraph 8* creates an offence where a person knowingly fails to comply with requirements under *paragraph 3* or wilfully obstructs or seeks to frustrate searches of premises carried out under powers in the Schedule.
134. *Paragraph 9* creates an offence of not stopping when required to do so in accordance with *Paragraph 4*.

#### **Schedule 4: Compensation**

135. This Schedule provides for a scheme of compensation where, in exercising powers under sections 21 to 32, property is taken, occupied, destroyed or damaged, or where any other act interferes with private rights of property. Compensation must be paid to those who have an interest in the property or who suffer loss or damage.
136. *Paragraph 3* provides that an application must be made within 28 days of the event for which compensation is being claimed. *Sub-paragraph (2)* gives the Secretary of State discretion to allow applications after this time, within a defined timeframe of no more than six months after the incident, if he receives a written request. *Sub-paragraph (3)* provides that if the Secretary of State decides not to use this discretion a notice of refusal must be served on whoever made the request, and they may appeal that decision to the county court. The county court may then exercise the power under *sub-paragraph (2)* to extend the period in which an application can be made.
137. Decisions either to award or deny compensation must be communicated to the applicant as noted in *paragraph 4*. *Paragraph 5* provides that appeals against decisions can then be made to the county court. *Paragraph 6* allows that the award may be reduced, withheld or refused if the Secretary of State considers that the applicant made a false or misleading statement, made a statement he did not believe to be true, or knowingly failed to disclose a relevant fact.
138. *Paragraph 7* provides that the Secretary of State may make a payment to cover the costs of the application for compensation, where that application was successful.
139. *Paragraph 8* allows for a situation where the right of compensation passes on to another individual after an application has been made. In that case the Secretary of State may treat that person as the applicant.
140. In *paragraph 9*, where an act, which is the subject of the claim for compensation, was done in connection with or revealed evidence of an offence for which proceedings are brought the right to compensation is not enforceable until those proceedings have concluded and is lost if a person is convicted. For example, if an individual made a claim for damage done to his or her property during a search carried out using the powers in Schedule 3 of this Act, but that search revealed illegal ammunition for which the claimant was charged, their claim would effectively be suspended. If they were convicted as a result of those proceedings they would lose any right to compensation.
141. *Paragraphs 10* and *11* provide details of how notices related to compensation must be served.
142. *Paragraph 12* creates an offence of obtaining compensation by deception or by making false or misleading statements, making statements which a person does not believe to be true, or knowingly failing to disclose a relevant fact.

#### **Schedule 5: Northern Ireland department with policing and justice functions**

143. Schedule 5 to the Act inserts an additional Part 3A into Schedule 4A to the Northern Ireland Act 1998, and sets out the detail of the new model provided for in section 44. The provisions will only have effect if a Northern Ireland department with policing and justice functions using this model is set up either by an Assembly Act or by an Order in Council.
144. *Paragraph 11B* of new Part 3A modifies the normal arrangements set out in section 16A of the Northern Ireland Act 1998 for appointing the First and deputy First Ministers and Northern Ireland Ministers following an Assembly election. This ensures that the Minister and deputy Minister of the new department for policing and justice are appointed after the First and deputy First Minister, but before the other Northern Ireland Ministers. This is needed to ensure that the relevant Ministerial office is counted for the purposes of the d'Hondt formula for allocating ministerial posts. (Section 16A of

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the Northern Ireland Act 1998 was inserted by section 8 of the Northern Ireland (St Andrews Agreement) Act 2006.)

145. *Paragraph 11C* provides for a modification of the d'Hondt process which is set out in section 18 of the Northern Ireland Act 1998 so that, where a party is entitled to two or more Ministerial offices under d'Hondt, the new Ministerial office will count as the party's second, rather than its first, choice of office.
146. *Paragraph 11D* ensures that the deputy Minister (who will not be a member of the Executive) is not counted as holding a Ministerial office for d'Hondt purposes. It also specifies that the functions of the deputy Minister will be determined by the Minister and deputy Minister acting jointly, after consultation with the First Minister and deputy First Minister.
147. *Paragraph 11E* sets out the arrangements for electing the Minister and deputy Minister. Any member of the Assembly may stand for election, provided they belong to one of the two largest political designations, they are nominated by another member, and their party's nominating officer agrees. The Minister and deputy Minister must come from different designations; and both must be elected with cross community support on a 50:50:50 basis. Once elected they must affirm the pledge of office before taking up post. The two Ministers stand for election individually, so if one ceases to hold office, the other may remain in post. The exception to this is in circumstances where a new Minister comes from the different designation from his predecessor, necessitating a change in the designation of the deputy Minister as well.
148. *Paragraph 11F* provides that, as with other models and other Ministries, the First Minister and deputy First Minister are not precluded from holding the office of Minister or deputy Minister of the new department by virtue of their being First or deputy First Minister. It also provides that candidates for Minister or deputy Minister may not come from parties excluded by the Assembly or by the Secretary of State.
149. *Paragraph 11G* provides that where a new Minister comes from a different political party from his predecessor and thus unbalances the Executive, the d'Hondt process will be run anew. The exception, again as with other models, is where the original party refused to agree the nomination of a new candidate or a successful candidate refused to affirm the pledge of office.

***Schedule 6: Private Security Industry: Interim Arrangements***

150. This Schedule (which is given effect by section 48(2)) sets out the interim arrangements prior to the commencement of the provisions in the 2001 Act in Northern Ireland.
151. *Paragraphs 4 to 7* detail the offences of providing or using unlicensed private security services. Security services are defined in *paragraph 1* as the services of one or more individuals as security guards, which may or may not be provided together with services relating to the protection of property or persons. It is an offence if a person provides or offers to provide security services for reward unless he holds a licence or acts on behalf of someone who holds a licence. A person also commits an offence if he pays money in respect of the provision of security services to a person who does not hold a licence or is not acting on behalf of someone who holds a licence.
152. *Paragraph 8* sets out the application process. A firm wishing to provide a security service must make an application to the Secretary of State for a licence, who may require information about the applicant, a security services business he intends to carry on, a person whom he proposes to employ as a security guard, or his partners, members or officers (including directors, managers or secretaries). It is an offence if a person makes a false or misleading statement in connection with the application for a licence.
153. *Paragraph 9* states that a licence will be granted unless the Secretary of State is satisfied that any one of four conditions applies. Condition 1 is that a proscribed organisation (as defined by the Terrorism Act 2000), or an organisation which appears to be closely

associated with a proscribed organisation would benefit from the granting of that licence. Condition 2 is that there are reasonable grounds to suspect that the applicant's security services business, employees, partner, members or officers are engaged in criminal activity. Conditions 3 and 4 respectively are the applicant's persistent failure to comply with the Schedule, and the applicant's failure to comply with conditions imposed on a licence.

154. *Paragraph 10* states that the Secretary of State may impose a condition on a licence if satisfied that it is necessary to prevent a proscribed organisation, an organisation which appears to be closely associated with a proscribed organisation, or a person who engages in criminal activity from benefiting from the licence (whether direct or indirect, financial or not).
155. *Paragraph 11* states that the Secretary of State shall notify the applicant if his application for a licence is refused.
156. *Paragraph 12* details the duration of a licence. The licence shall come into force on the day it is issued and will be valid for 12 months beginning with that day. If a new licence is issued to a person who already holds a licence, it will be valid for 12 months from the day after the current licence expires.
157. *Paragraph 13* provides for the Secretary of State to revoke a licence if satisfied that a proscribed organisation, or an organisation which appears to be closely associated with a proscribed organisation would benefit from that licence, or if the licence holder's security services business (or associates) are engaged in criminal activity. A licence may also be revoked if the licence holder has persistently failed to comply with the requirements of this Schedule, or has failed to comply with a condition imposed on the licence.
158. The Secretary of State shall not revoke a licence unless the holder has been notified of his intention to revoke the licence. Neither shall the licence be revoked by the Secretary of State unless the holder has been given a reasonable opportunity to make representations to the Secretary of State.
159. *Paragraph 14* states that upon the refusal or revocation of a licence, or in the event of having conditions imposed on it, the applicant may appeal to the High Court. Where an appeal is brought to the High Court, the Secretary of State may issue a certificate to show that his decision was made in order to prevent a proscribed organisation, an organisation closely associated with a proscribed organisation or a person engaged in criminal activity, from benefiting from that licence; and can be justified by these reasons. The appellant shall be notified of the Secretary of State's decision to issue a certificate, and may appeal against the certificate to the Tribunal established by the Northern Ireland Act 1998.
160. Where a licence-holder or an applicant proposes to employ a security guard about whom information was not given under paragraph 8, *paragraphs 16 to 19* state that he shall give the Secretary of State specified information about the security guard, no less than 14 days before his employment is to commence. Where there is a relevant change in personnel (changes to the members of a partnership or officers of a body corporate), the Secretary of State must be given any information as he may specify at least 14 days before the change in personnel, or as soon as is reasonably practical. It is an offence if a person fails to give the Secretary of State information he has requested about a proposed security guard or a change in personnel.
161. *Paragraph 20* provides that a constable may enter premises where security services are being provided and require records about employed security guards to be produced for his inspection. He may use reasonable force to enter the premises, and he must identify himself as a constable. It is an offence if the provider of security services does not produce the records that the constable requires. *Paragraph 21* provides that it is

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also an offence if he keeps records about any employees which he knows are false or misleading.

162. *Paragraph 22* states that where an offence is committed by a body corporate with the consent of an officer, or due to the neglect of an officer, the officer as well as the body corporate shall be guilty of the offence.
163. *Paragraph 23* states that any information required by the Secretary of State must be in writing and may be sent by post. It also sets out how the Secretary of State may serve a notice on an individual, a partnership or a body corporate.