

# LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT AND APPLICATION

53. [Section 152](#) sets out the territorial extent of the Act.
54. The majority of the Act's provisions extend to England and Wales only, but certain provisions also extend to Scotland or Northern Ireland or both. The Act addresses non-devolved and devolved matters.

#### *Provisions in the Act that extend to Northern Ireland*

55. The following provisions extending to Northern Ireland relate to excepted matters:
- Schedule 8 amends the Court Martial Appeals Act 1968 and aligns the availability of legal costs under that Act with the availability of legal costs in criminal proceedings in England and Wales under the Prosecution of Offences Act 1985, as amended by the Act.
  - Section 140 relates to immigration and nationality proceedings. It amends the UK Borders Act 2007 to exclude immigration or nationality decision making, including initial decisions and any subsequent proceedings, from the operation of the Rehabilitation of Offenders Act 1974.
56. The following provisions extending to Northern Ireland relate to transferred matters:
- Section 22 enables the Director of Legal Aid Casework and others to obtain access to benefits information from the Department for Social Development in Northern Ireland and the Department of Finance and Personnel in Northern Ireland for the purpose of assessing individual financial eligibility for criminal and civil legal aid.
  - Section 33 restricts the circumstances in which information provided under section 22 can be disclosed, including providing a criminal offence for disclosure in contravention of section 33.
  - Section 40 and Schedule 6 make provision about sharing benefits information in relation to checking a person's financial eligibility for legal aid in Northern Ireland in two ways. First, they allow the chief executive of the Northern Ireland Legal Aid Commission (or other prescribed person) to request information from the Secretary of State and the Commissioners for Her Majesty's Revenue and Customs. Second, they allow the chief executive of the Northern Ireland Legal Aid Commission (or other prescribed person) to request information from the Department for Social Development in Northern Ireland and the Department of Finance and Personnel in Northern Ireland.
57. As these provisions relate to devolved matters, they required the consent of the Northern Ireland Assembly through a legislative consent motion. This was agreed to on 17 October 2011.

***Provisions in the Act that extend to Scotland***

58. The following provisions extend to Scotland and relate to reserved matters:
- Schedule 8 amends the Court Martial Appeals Act 1968 and aligns the availability of legal costs under that Act with the availability of legal costs in criminal proceedings in England and Wales under the Prosecution of Offences Act 1985, as amended by the Act.
  - Section 140 relates to immigration and nationality proceedings. It amends the UK Borders Act 2007 to exclude immigration or nationality decision making, including initial decisions and any subsequent proceedings, from the operation of “the ROA 1974”.
  - Section 143 creates a new offence of causing serious injury by dangerous driving. The offence will extend to Scotland as well as England and Wales. The offence amends the Road Traffic Act 1988 (“RTA”) and requires consequential amendments to the Road Traffic Offenders Act 1988 (“RTOA”). The subject matter of this legislation is reserved.
59. [Sections 130](#) and [131](#) relate to the transfer of prisoners into and out of Great Britain. International relations, including the negotiation of prisoner transfer arrangements are a reserved matter. However, consideration of individual transfers is a devolved matter. Sections 130 and 131 make amendments to the Repatriation of Prisoners Act 1984. At the request of the Scottish Executive these amendments will apply to Scotland. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. A Legislative Consent Motion in this respect was passed by the Scottish Parliament on 7 December 2012.

***Provisions in the Act that apply in Wales***

60. The provisions in the Act relate to non-devolved matters in Wales. The Act does not affect the powers of Welsh Ministers and does not make different provision in relation to England and Wales.