

SCHEDULES

SCHEDULE 5

Article 6(2)

Release of prisoners on licence

Life Sentences (Northern Ireland) Order 2001

1. Amend the Life Sentences (Northern Ireland) Order 2001(1) as follows.
2. In Article 2 (interpretation)—
 - (a) in paragraph (2), in sub-paragraph (b) of the definition of “life sentence”, for “Secretary of State” substitute “Minister in charge of the Department of Justice”;
 - (b) after paragraph (2) insert—

“(3) In this Order “protected information” means evidence or information the disclosure of which may, in the opinion of the Secretary of State, be against the interests of national security.”
3. In Article 5 (determination of tariffs)—
 - (a) in paragraphs (4) and (5) for “Secretary of State” substitute “Department of Justice”; and
 - (b) in paragraph (6)—
 - (i) for “Secretary of State” substitute “Department of Justice”;
 - (ii) for “by him” substitute “by the Department of Justice”; and
 - (iii) for “for him” substitute “for the Department of Justice”.
4. In Article 6 (duty to release certain life prisoners) for “Secretary of State” (wherever occurring) substitute “Department of Justice”.
5. In Article 7 (power to release life prisoners on compassionate grounds)—
 - (a) in paragraph (1)—
 - (i) for “Secretary of State” substitute “Department of Justice”;
 - (ii) for “he” substitute “the Department of Justice”;
 - (b) in paragraph (2) for “Secretary of State” substitute “Department of Justice”;
 - (c) after paragraph (2) insert—

“(3) The Secretary of State may notify the Department of Justice that a life prisoner is not to be released under this Article without the Secretary of State’s agreement; and, if the Secretary of State gives such a notification in relation to a prisoner, the Department of Justice may not release the prisoner under this Article without the Secretary of State’s agreement.
 - (4) But the Secretary of State may—
 - (a) give a notification, or

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

Status: This is the original version (as it was originally made).

- (b) refuse his agreement to a release,
only if his decision to do so is arrived at (wholly or partly) on the basis of protected information.”
- 6. In Article 8 (duration and conditions of licences)—
 - (a) in paragraphs (2) and (3) for “Secretary of State” substitute “Department of Justice”;
 - (b) for paragraph (4) substitute—
 - “(4) Rules made under paragraph (2) shall be subject to negative resolution.”;
 - (c) after paragraph (4) insert—
 - “(5) The Secretary of State may exercise any power of the Department of Justice to include, insert, vary or cancel conditions in a licence but only if his decision to exercise the power is arrived at (wholly or partly) on the basis of protected information; and, in relation to the exercise of such a power by the Secretary of State, in paragraph (3) the reference to the Department of Justice is to be read as a reference to the Secretary of State.
 - (6) The Department of Justice must exercise its powers subject to anything done by the Secretary of State by virtue of paragraph (5).”
- 7. In Article 9 (recall of life prisoners while on licence)—
 - (a) in paragraph (1) before “Secretary of State” insert “Department of Justice or the”;
 - (b) in paragraph (2)—
 - (i) before “Secretary of State” insert “Department of Justice or the”;
 - (ii) after “appears to” insert “it or”;
 - (c) in paragraphs (3) and (4) before “Secretary of State” insert “Department of Justice or (as the case may be) the”;
 - (d) in paragraph (5) for “Secretary of State” substitute “Department of Justice”;
 - (e) after paragraph (6) insert—
 - “(7) The Secretary of State may revoke the licence of a life prisoner and recall him to prison under this Article only if his decision to revoke the licence and make the recall is arrived at (wholly or partly) on the basis of protected information.”
- 8. In Article 10 (life prisoners transferred to Northern Ireland)—
 - (a) in paragraph (1)—
 - (i) for “Secretary of State” substitute “Department of Justice”; and
 - (ii) for “his opinion” substitute “its opinion”;
 - (b) in paragraph (2)—
 - (i) for “the Secretary of State certifies his opinion” substitute “the Department of Justice certifies its opinion”; and
 - (ii) for “the Secretary of State would have directed” substitute “a direction would have been given”; and
 - (c) in paragraph (4)(b)(ii) and (iii) omit “by the Secretary of State”.
- 9. In Article 11 (existing life prisoners)—
 - (a) in paragraph (1)—
 - (i) for “Secretary of State” substitute “Department of Justice”; and
 - (ii) for “his opinion” substitute “its opinion”; and
 - (b) in paragraph (2)—

- (i) for “the Secretary of State certifies his opinion” substitute “the Department of Justice certifies its opinion”; and
- (ii) for “the Secretary of State would have directed” substitute “a direction would have been given”.

Criminal Justice (Northern Ireland) Order 2008

- 10.** Amend the Criminal Justice (Northern Ireland) Order 2008(2) as follows.
- 11.** In Article 16 (interpretation of Chapter 4 of Part 2) after paragraph (3) insert—
 - “(4) In this Chapter “protected information” means evidence or information the disclosure of which may, in the opinion of the Secretary of State, be against the interests of national security.”
- 12.** In the italic cross-headings before Articles 17 and 19 omit “of Secretary of State”.
- 13.** In Article 17(1) (duty to release certain fixed-term prisoners) for “Secretary of State” substitute “Department of Justice”.
- 14.** In Article 18 (duty to release prisoners serving indeterminate or extended custodial sentences) for “Secretary of State” (wherever occurring) substitute “Department of Justice”.
- 15.** In Article 19(1) and (4) (power to release prisoners on licence before required to do so) for “Secretary of State” substitute “Department of Justice”.
- 16.—**(1) Amend Article 20 (power to release certain prisoners on compassionate grounds) as follows.
 - (2) In paragraphs (1) and (3) for “Secretary of State” substitute “Department of Justice”.
 - (3) After paragraph (4) insert—
 - “(5) The Secretary of State may notify the Department of Justice that a prisoner is not to be released under this Article without the Secretary of State’s agreement; and, if the Secretary of State gives such a notification in relation to a prisoner, the Department of Justice may not release the prisoner under this Article without the Secretary of State’s agreement.
 - (6) But the Secretary of State may—
 - (a) give a notification, or
 - (b) refuse his agreement to a release,only if his decision to do so is arrived at (wholly or partly) on the basis of protected information.”
- 17.** In Article 22(4) and (6) (duration of licences: prisoners serving indeterminate custodial sentences) for “Secretary of State” (wherever occurring) substitute “Department of Justice”.
- 18.** In Article 23(1) and (2) (power of court to recommend licence conditions for sentences of 12 months or more) for “Secretary of State” substitute “Department of Justice”.
- 19.** In Article 24 (licence conditions)—
 - (a) for “Secretary of State” (wherever occurring) substitute “Department of Justice”;
 - (b) in paragraph (6) after “been consulted” insert “by the Department of Justice”.
- 20.** In Article 25(2)(b) and (3) (licence conditions on re-release of prisoners serving sentence of less than 12 months) for “Secretary of State” substitute “Department of Justice”.

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

22. After Article 27 insert—

“Licence conditions: national security

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) After paragraph (4) insert—

“(5) Arrangements under section 1A(7) of the Prison Act (Northern Ireland) 1953⁽³⁾ may include arrangements for purposes connected with any of the Secretary of State’s functions by virtue of—

- (a) the Life Sentences (Northern Ireland) Order 2001⁽⁴⁾,
- (b) Chapter 4 of this Part, or
- (c) this Chapter (including rules made under paragraph 4 or 4A of Schedule 4);

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

30. For Article 100 substitute—

“Regulations, orders and rules

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

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

(3) An order under Article 22(4) is not a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979⁽⁵⁾.

(4) Rules made by the Secretary of State under this Order shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946⁽⁶⁾ shall apply accordingly.

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

- (a) any incidental, supplementary or consequential provision, and
- (b) any transitory, transitional or saving provisions,

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

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

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

(3) After paragraph 4 insert—

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

(2) In particular, rules under this paragraph may include—

- (a) provision for the purpose of ensuring that the Secretary of State is informed of cases where protected information may be relevant;
- (b) provision for dealing with cases pending a decision of the Secretary of State as to whether protected information is relevant;

(3) 1953 c. 18 (N.I.).

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

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

(6) 1946 c. 36.

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

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

Parole Commissioners’ Rules (Northern Ireland) 2009

- 32.** Amend the Parole Commissioners’ Rules (Northern Ireland) 2009(7) as follows.
- 33.** Subject to what follows, in Parts 1 to 6 for “Secretary of State” (wherever occurring) substitute “Department of Justice”.
- 34.** In rules 2(1), 3(4), 6(1) and 12(1) omit “by the Secretary of State”.
- 35.** In rule 9(1) for “Secretary of State’s” substitute “Department of Justice’s”.
- 36.** In rule 25—
 - (a) for “the Secretary of State refers a life prisoner’s case” substitute “a life prisoner’s case is referred”;
 - (b) after “extended custodial prisoner’s case” insert “is referred”.
- 37.** After rule 32(2) insert—
 - “(3) If proceedings on a case as is referred to in rule 31(1) are not completed under the 2001 Rules before the coming into force of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, the functions of the Secretary of State under the 2001 Rules in relation to the proceedings are transferred to the Department of Justice; and—
 - (a) in the 2001 Rules references to the Secretary of State are to be read accordingly;
 - (b) anything done in connection with the proceedings by or in relation to the Secretary of State is treated as having been done by or in relation to the Department of

(7) S.R. (N.I.) 2009 No. 82.

Justice so far as necessary or appropriate for continuing its effect after the transfer of functions.”

38. After Part 7 insert—

“PART 8

A.—(1) The functions under rule 9(1) above by virtue of rule 9(1)(e) are exercisable by the Secretary of State (and not the Department of Justice).

(2) Where in any case the Secretary of State certifies by virtue of rule 9(1)(e) any information, document or evidence as confidential information, Parts 1 to 6 above apply for that case subject to paragraphs (3) to (5) below.

(3) Rule 9(3) above applies in relation to the Secretary of State’s certification as if references to the Department of Justice were references to the Secretary of State.

(4) So far as required by the Secretary of State for purposes connected with the confidential information certified by the Secretary of State, the Commissioners (or any of them) must—

- (a) conduct the case and otherwise carry out their functions as if the Secretary of State were a party (instead of, or in addition to, the Department of Justice);
- (b) permit the Secretary of State to carry out functions of the Department of Justice accordingly.

(5) Rule 28(1) above has effect as if after sub-paragraph (b) there were inserted—

“(ba) in the case of a document directed to the Secretary of State, to any offices of the Northern Ireland Office;”.

(6)

The cases covered by paragraph (2) above include cases where the certification was made before the coming into force of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

B.—(1) This rule applies to any case to which rule 32(3) above applies.

(2) The functions under rule 15(1) of the 2001 Rules by virtue of rule 15(1)(e) are to continue to be exercisable by the Secretary of State and, accordingly, rule 32(3) does not transfer—

- (a) any function under rule 15(1) by virtue of rule 15(1)(e), or
- (b) any function under rule 15(3) of the 2001 Rules in relation to a certification by virtue of rule 15(1)(e).

(3) Paragraphs (4) and (5) below apply if—

- (a) before the coming into force of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 a certification was made by virtue of rule 15(1)(e) of the 2001 Rules, or
- (b) after the coming into force of that Order a certification is made by virtue of rule 15(1)(e) of the 2001 Rules.

(4) So far as required by the Secretary of State for purposes connected with the information, document or evidence certified, the Commissioners (or any of them) must—

- (a) conduct the case and otherwise carry out their functions as if the Secretary of State were a party (instead of, or in addition to, the Department of Justice);

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

(b) permit the Secretary of State to carry out functions of the Department of Justice accordingly.

(5) Rule 21(1) of the 2001 Rules has effect as if after sub-paragraph (b) there were inserted—

“(ba) in the case of a document directed to the Secretary of State, to any offices of the Northern Ireland Office;”.

39.—(1) Amend Schedule 2 as follows.

(2) In paragraph 9 of Part A—

(a) omit “Secretary of State’s”;

(b) for “the Secretary of State considered it” substitute “it was considered”.

(3) In paragraph 1 of Part B omit “Secretary of State’s”.

40.—(1) Parts 1 to 7 of the Parole Commissioners’ Rules (Northern Ireland) 2009⁽⁸⁾ (as amended by paragraphs 33 to 37 and 39 above) continue in effect as if made by the Department of Justice under paragraph 4 of Schedule 4 to the Criminal Justice (Northern Ireland) Order 2008⁽⁹⁾.

(2) Part 8 of those Rules (as inserted by paragraph 38 above) has effect as if made by the Secretary of State under paragraph 4A of Schedule 4 to the 2008 Order (as inserted by paragraph 31(3) above).

(3) Sub-paragraphs (4) and (5) below apply to a case as is referred to in rule 31(1) of those Rules.

(4) If under the Life Sentence Review Commissioners’ Rules 2001⁽¹⁰⁾ a prisoner and any representative appointed by him are excluded from proceedings, the Advocate General for Northern Ireland may appoint a person to represent the prisoner’s interests in those proceedings; and, accordingly—

(a) rule 2(2) of the 2001 Rules has effect as if for the definition of “special advocate” there were substituted—

““special advocate” means a person appointed under paragraph 40(4) of Schedule 5 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.”;

(b) rule 16(1) of the 2001 Rules has effect as if for “Attorney General” (in each place) there were substituted “Advocate General for Northern Ireland”.

(5) A person appointed under sub-paragraph (4) above is not responsible to the prisoner whose interests he represents.

⁽⁸⁾ S.R. (N.I.) 2009 No. 82.

⁽⁹⁾ S.I. 2008/1216 (N.I. 1).

⁽¹⁰⁾ S.R. (N.I.) 2001 No. 317.