

SCHEDULES

SCHEDULE 6

Article 6(3)

Mercy and miscarriages of justice

Criminal Justice Act 1988

1. Amend the Criminal Justice Act 1988(1) as follows.
- 2.—(1) In section 133(2) (compensation for miscarriages of justice) after subsection (6) insert—
 - “(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
 - (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.

(1) 1988 c. 33.

(2) Section 133 was amended by section 61 of the Criminal Justice and Immigration Act 2008 (c. 4). Other amendments have been made to section 133 but none are relevant.

Status: This is the original version (as it was originally made).

(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(3);
- (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.”

(2) Section 133(6A) to (6K) (as inserted by sub-paragraph (1) above) does not apply in relation to an application for compensation made before the coming into force of this Order (“an existing application”).

(3) Sub-paragraphs (4) to (7) below apply to an existing application if—

- (a) the application relates to a person convicted in Northern Ireland of a criminal offence,
- (b) if the person was pardoned, the pardon is a devolved pardon (as defined in section 133(6J)), and
- (c) after the coming into force of this Order further steps are required to be taken under section 133 or 133A in relation to the application.

(4) Before any further steps are taken the Secretary of State must take a view as to whether or not any protected information (as defined in section 133(6I)) is relevant to the application.

(5) 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 to the Department of Justice.

(6) If the Secretary of State takes the view that protected information is relevant to the application, the Secretary of State must refer the application to the Department of Justice 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.

(3) 1998 c. 47.

(7) If the Secretary of State refers the application to the Department of Justice under sub-paragraph (5) or (6)—

- (a) the Secretary of State’s functions in relation to the application are transferred to the Department of Justice;
- (b) anything done in connection with the application by or in relation to the Secretary of State is treated as having been done by or in relation to the Department of Justice so far as necessary or appropriate for continuing its effect after the transfer of functions;
- (c) if the application is referred under sub-paragraph (6), the Secretary of State must provide the Department of Justice with either—
 - (i) the protected information, or
 - (ii) 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.

3. In section 133A(4) (miscarriages of justice: amount of compensation) after subsection (8) insert—

“(9) In relation to compensation payable by the Department of Justice in Northern Ireland, 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(5) (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(6) 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.”

4.—(1) Amend Schedule 12(7) (assessors of compensation for miscarriages of justice) as follows.

(2) In paragraph 6(4) omit the words from “Lord Chancellor” to “concurrence of the”.

(3) After paragraph 7 insert—

“8. In relation to an assessor appointed by the Department of Justice in Northern Ireland, in this Schedule—

- (a) references to the Secretary of State are to be read as references to the Department of Justice;
- (b) references to the Treasury are to be read as references to the Department of Finance and Personnel in Northern Ireland.”

Criminal Appeal Act 1995

5. Amend the Criminal Appeal Act 1995(8) as follows.

(4) Section 133A was inserted by section 61 of the Criminal Justice and Immigration Act 2008 (c. 4).

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

(6) 1954 c. 33 (N.I.). Section 41(3) was substituted by S.I. 1999/663.

(7) Amendment have been made to Schedule 12 but none are relevant.

(8) 1995 c. 35.

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

6.—(1) Amend section 16⁽⁹⁾ (assistance in connection with prerogative of mercy) as follows.

(2) After subsection (2) insert—

“(2A) Where the Minister in charge of the Department of Justice in Northern Ireland refers to the Commission any matter which arises in the consideration of whether Her Majesty’s prerogative of mercy should be exercised on Her behalf under section 23(2) of the Northern Ireland Act 1998⁽¹⁰⁾ in relation to a conviction and on which the Minister desires the Commission’s assistance, the Commission shall—

- (a) consider the matter referred, and
- (b) give to the Minister a statement of their conclusions on it;

and for the purposes of the consideration of whether Her Majesty’s prerogative of mercy should be so exercised, the Commission’s statement shall be treated as conclusive of the matter referred.

(2B) Where in any case the Commission are of the opinion that Her Majesty’s prerogative of mercy should be so exercised, they shall give the Minister reasons for their opinion.”

(3) Sub-paragraph (4) below applies if—

- (a) before the coming into force of this Order the Secretary of State referred a matter to the Commission under section 16(1),
- (b) immediately before the coming into force of this Order there are still steps to be taken in relation to the matter by the Commission or the Secretary of State, and
- (c) the matter, had it been referred to the Commission after the coming into force of this Order, would have had to have been referred under section 16(2A) (as inserted by sub-paragraph (2) above).

(4) The matter is to be treated as having been referred under section 16(2A) and, accordingly—

- (a) if the Commission have already given their statement of conclusions to the Secretary of State, the Secretary of State must give the statement to the Minister in charge of the Department of Justice, or
- (b) if the Commission have not already done so, they must give their statement to the Minister (and not to the Secretary of State),

and the Minister must, in accordance with section 16(2A), consider whether Her Majesty’s prerogative of mercy should be exercised on Her behalf under section 23(2) of the Northern Ireland Act 1998.

7. In section 24(1)(b) (exceptions from obligations of non-disclosure) after “Secretary of State” insert “or the Department of Justice in Northern Ireland”.

8.—(1) Amend Schedule 1 (the Commission) as follows.

(2) In paragraph 6(3) for the “and” after paragraph (c) substitute—

“(ca) giving to the Minister in charge of the Department of Justice in Northern Ireland a statement under section 16(2A)(b), and”.

(3) In paragraph 8—

- (a) in sub-paragraph (1) after “Secretary of State” insert “and the Department of Justice in Northern Ireland”;
- (b) after sub-paragraph (3) insert—

⁽⁹⁾ Section 16 was amended by Schedule 11 to the Armed Forces Act 2006 (c. 52).

⁽¹⁰⁾ 1998 c. 47.

“(4) The Department of Justice shall lay before the Northern Ireland Assembly a copy of every report sent to the Department of Justice under sub-paragraph (1).

(5) Section 41(3) of the Interpretation Act (Northern Ireland) 1954⁽¹¹⁾ applies for the purposes of sub-paragraph (4) in relation to the laying of a copy of a report as it applies in relation to the laying of a statutory document under an enactment.”

⁽¹¹⁾ 1954 c. 33 (N.I.). Section 41(3) was substituted by S.I. 1999/663.