

JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007

EXPLANATORY NOTES

BACKGROUND AND SUMMARY

3. The purpose of the Act is to deliver a number of measures which are necessary to deliver a commitment to security normalisation in Northern Ireland.
4. Under the Belfast ('Good Friday') Agreement, the Government made a commitment to make as early a return as possible to normal security arrangements in Northern Ireland consistent with the level of threat. In April 2003 the Government set out proposals to normalise the security profile across Northern Ireland. In response to the IRA statement of 28 July 2005, on 1 August 2005, the Secretary of State Peter Hain announced a programme of security normalisation, subject to an enabling environment. A key part of the normalisation timetable is the repeal of counter-terrorist legislation particular to Northern Ireland (that is, Part 7 of the Terrorism Act 2000) by July 2007.
5. Part 7 of the Terrorism Act 2000 ('the 2000 Act') underpins the long-standing Diplock system. This is a system whereby certain offences (known as 'scheduled offences') are tried without a jury unless the Attorney General exercises his discretion and directs that a case is to be tried before a jury (known as 'descheduling'). In exercising his discretion, the Attorney General applies a non-statutory test: that he will not deschedule a case unless he is satisfied that it is not connected with the emergency. Under security normalisation the Diplock system will be repealed in July 2007.
6. However, although Northern Ireland is in a process of security normalisation, some arrangements are necessary to ensure that jurors in Northern Ireland are protected from intimidation. This Act therefore makes provision to reform the jury system in Northern Ireland. Sections 10 to 13 and Schedule 2 amend the Juries (Northern Ireland) Order 1996 to give effect to a number of reforms which it is considered will reduce the risk of juror intimidation and partisan juries by achieving greater anonymity for jurors and by promoting greater randomness in jury selection.
7. Despite the proposed jury reforms, it is not yet possible for Northern Ireland to operate entirely without the fall-back of some special arrangements for a small number of exceptional cases. This Act therefore provides for a new system of non-jury trial. The new system provides the Director of Public Prosecutions for Northern Ireland with discretion to issue a certificate stating that a trial is to take place without a jury if certain conditions which are set out in the Act are met. This means that the presumption will be for jury trial in all cases, while the small number of exceptional cases requiring non-jury trial will still be able to be treated appropriately. Such a system is necessary to ensure that trials continue to be fair in Northern Ireland and that the quality of justice remains high.
8. This Act makes provision to extend the powers of the Northern Ireland Human Rights Commission (the 'Commission'). It amends the Northern Ireland Act 1998 by granting three new powers to the Commission – powers to require the provision of information or a document, or for a person to give oral evidence; to access places of detention; and to

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institute judicial proceedings in the Commission's own right, and when doing so to rely upon the European Convention on Human Rights. This will mean that the Commission can bring test cases without the need for a victim to do so personally. Additionally, this Act requires the Commission to report to the Secretary of State on the effectiveness of these new powers, within two years of their commencement. The use of these powers will be governed by safeguards to help ensure that they are used appropriately by the Commission and complied with by public authorities.

9. This Act provides additional powers for the police and military. These include powers of entry, search and seizure that go over and above common law and existing statutory powers available to the police, for example those granted by the Police and Criminal Evidence (Northern Ireland) Order 1989 ('PACE'). Since the armed forces have no statutory powers above those of ordinary members of the public, they require specific legislative provision in order to stop, search and arrest persons, to enter premises and to seize items. A compensation scheme is provided for in respect of damage or loss caused by the exercise of powers in the Act.
10. This Act also makes provision for the permanent regulation of the private security industry in Northern Ireland. The current licensing scheme is provided for in section 106 of the Terrorism Act 2000, and the details are set out in Schedule 13 to that Act. The Schedule 13 provisions are designed to ensure licences are not granted to persons and companies with a paramilitary connection. The Act prepares for a normalised security situation by bringing Northern Ireland within the same statutory framework as exists in Great Britain. The Act amends the Private Security Industry Act 2001 ('the 2001 Act'), which currently extends to Scotland and England and Wales only, to include Northern Ireland. This will have the effect of giving the Security Industry Authority ('the SIA') responsibility for the regulation of matters designated by the Secretary of State, such as manned guarding and wheel clamping. In extending the 2001 Act to Northern Ireland the only changes to it are those technically necessary to make that regime work effectively in Northern Ireland. Explanatory Notes have been produced by the Home Office in relation to the operation of the 2001 Act.
11. In August 2006, the Northern Ireland Office published a consultation document entitled 'Regulating the Private Security Industry in Northern Ireland'. The document detailed four options for the regulation of the industry, and indicated that the preferred option for thorough and permanent regulation of the industry was to extend the remit of the SIA to Northern Ireland. Of the responses received from security companies, all were strongly in favour of the proposals. This view was shared by local authorities as well as the Police Service of Northern Ireland ('PSNI') and the British Security Industry Association. Some areas of concern were raised which have been taken into account in developing the provisions of this Act.
12. Because the SIA will not be able to commence regulation immediately, this Act also provides for an interim scheme of licensing in Northern Ireland from 1 August 2007. The interim scheme builds on and widens the scope of the current licensing scheme so as to prevent those engaged in criminal activity from benefiting from security industry activities.
13. On 5 February 2007 the Government published a Protocol for Community-based Restorative Justice Schemes which sets standards for schemes seeking to receive referrals of certain low level criminal cases from the criminal justice system for a reparative community-led disposal. The Act provides a statutory framework for the inspection of schemes by the Chief Inspector of Criminal Justice in Northern Ireland, to ensure that those standards are being met, and for the maintenance of a public register, by the Secretary of State, of schemes which are accredited under the Protocol.
14. The Act inserts into the Northern Ireland Act 1998 a further alternative departmental model for a Northern Ireland policing and justice department. Under the model the department would be headed by an elected Northern Ireland Minister, who would be supported by an elected deputy Minister for a period determined by the Northern Ireland

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Assembly. The Act also enables such a department to be established by Order in Council in certain circumstances.

15. Finally, the Act adds the Northern Ireland Court Service and two other bodies to the remit of the Criminal Justice Inspectorate, enables the renaming of judicial tiers (enabling the fulfilment of a recommendation of the Criminal Justice Review of March 2000) and makes a technical change to legal aid arrangements to enable legal aid certificates to be made that are restricted to certain stages of a case.