

# Northern Ireland (Offences) Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Northern Ireland Office, are published separately as 81 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Hain has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Northern Ireland (Offences) Bill are compatible with the Convention rights.



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# B I L L

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Make special provision about certain offences committed, or alleged to have been committed, before 10th April 1998 in connection with terrorism and the affairs of Northern Ireland; and to provide for the amendment of the Northern Ireland (Sentences) Act 1998.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## *Introductory*

### **1 Offences to which the Act applies**

- (1) An offence is one to which this Act applies if it is—
  - (a) an offence under the law of any part of the United Kingdom committed before 10th April 1998 in connection with terrorism and the affairs of Northern Ireland (whether committed for terrorist purposes or not), or 5
  - (b) an escape offence committed before that date in respect of an offence within paragraph (a).
- (2) In subsection (1) “escape offence” means—
  - (a) an offence specified in paragraph 9 of Schedule 9 to the Terrorism Act 2000 (c. 11) (offences under the Prison Act (Northern Ireland) 1953 (c. 18 (N.I.))), or 10
  - (b) an offence committed in another part of the United Kingdom which would, if committed in Northern Ireland, have constituted an offence specified in that paragraph. 15

## *Certification*

### **2 Certification commissioner**

- (1) There is to be a certification commissioner appointed by the Secretary of State.
- (2) Schedule 1 (further provision about the commissioner) has effect.

### 3 Certificates of eligibility

- (1) Where an application is made to the certification commissioner for a certificate of eligibility, the commissioner must issue a certificate if –
- (a) the applicant falls within subsection (2), and
  - (b) it appears to the commissioner, on the information available to him, that the applicant meets the conditions in subsection (3). 5
- Otherwise, the commissioner must refuse the application.
- (2) An applicant falls within this subsection if –
- (a) a senior member of the Police Service of Northern Ireland states in writing – 10
    - (i) that members of that Service have, and have had since before 1st November 2005, reasonable grounds for suspecting the applicant to be guilty of an offence to which this Act applies, and
    - (ii) that the applicant would have been arrested for the offence before that date but for the fact that he was believed to be outside the United Kingdom; 15
  - (b) the applicant has been charged with an offence to which this Act applies (but not convicted or acquitted of it); or
  - (c) the applicant has been convicted of such an offence and – 20
    - (i) has not been sentenced for it,
    - (ii) is serving (whether in custody or on licence) a sentence of imprisonment imposed in respect of it, or
    - (iii) is unlawfully at large during the currency of such a sentence.
- (3) The conditions are – 25
- (a) that the applicant does not support a specified organisation;
  - (b) that he is not concerned or likely to be concerned in the commission, preparation or instigation of acts of terrorism;
  - (c) that he has not been convicted of an offence committed on or after 10th April 1998 which would, if committed before that date, be an offence to which this Act applies; 30
  - (d) that no sentence of imprisonment for a term of five years or more has been imposed on him on conviction of –
    - (i) an offence under the law of any part of the United Kingdom committed on or after 10th April 1998, or 35
    - (ii) a serious foreign offence committed on or after that date.
- (4) A statement under subsection (2)(a) must identify, so far as possible by date and place, the conduct constituting each relevant offence.
- (5) In subsection (4) “relevant offence” means an offence, other than an offence with which the applicant has been charged or of which he has been convicted, of which he is and has been suspected as mentioned in subsection (2)(a). 40
- (6) A certificate of eligibility must specify –
- (a) where paragraph (a) of subsection (2) applies, the conduct identified under subsection (4);
  - (b) where paragraph (b) of subsection (2) applies, each offence with which the applicant has been charged as mentioned in that paragraph; 45
  - (c) where paragraph (c) of subsection (2) applies, each offence of which he has been convicted as mentioned in that paragraph.

- (7) An offence is a “certified offence” for the purposes of this Act if it is –
- (a) an offence to which this Act applies constituted by conduct specified under subsection (6)(a),
  - (b) an offence committed before 10th April 1998 in connection with an offence within paragraph (a) above, or 5
  - (c) an offence specified under subsection (6)(b) or (c).

A reference in this Act to a certified offence, in relation to a person holding a certificate of eligibility, is a reference to an offence of that person certified by virtue of that certificate.

- (8) In this section – 10
- “senior member”, in relation to the Police Service of Northern Ireland, means a member of that service who is of at least the rank of superintendent;
  - “serious foreign offence” means an offence under the law of a country or territory outside the United Kingdom which, if the conduct in question occurred in Northern Ireland, would be an offence under the law of Northern Ireland punishable with imprisonment for five years or more. 15

#### 4 Making and dealing with applications for certificates

- (1) An application for a certificate of eligibility must be made by or on behalf of the applicant in the manner required by the certification commissioner. 20
- (2) The applicant (or those acting on his behalf) must provide any information or document required by the commissioner.
- (3) The applicant must provide any physical evidence of his identity, of a kind prescribed by rules made by the Secretary of State, that the commissioner may require. 25
- (4) The commissioner must inform the Secretary of State and the Director of Public Prosecutions for Northern Ireland of the application.
- (5) The Secretary of State may make representations to the commissioner about the application.
- (6) When the commissioner grants or refuses an application for a certificate of eligibility he must give notice of the decision and of the reasons for it – 30
- (a) to the applicant, and
  - (b) to the Secretary of State.
- (7) The Secretary of State must make rules governing the procedure to be followed by the commissioner. 35
- (8) The rules may in particular include –
- (a) provision as to the period within which an application must be determined;
  - (b) provision about providing, obtaining or disclosing information, documents or evidence in connection with an application; 40
  - (c) provision preventing information about an applicant from being disclosed to anyone other than the commissioner if the Secretary of State certifies that it satisfies conditions specified in the rules;
  - (d) provision preventing reasons that are required to be given under subsection (6)(a) from making reference to any matter that is certified by the Secretary of State as satisfying conditions so specified; 45

- (e) provision about the persons to be notified of the grant or refusal of an application for a certificate of eligibility;
- (f) provision about amendment of certificates of eligibility (whether by the addition or deletion of certified offences or otherwise).
- (9) The Secretary of State may give directions as to the provision of assistance by members of the Police Service of Northern Ireland to the certification commissioner in connection with the exercise of his functions, including in particular directions as to the content and form of statements under section 3(2)(a). 5
- (10) Every member of the Police Service of Northern Ireland must comply with— 10
- (a) any requirement imposed by or under rules made under this section;
- (b) any direction given under subsection (9).
- (11) If the Secretary of State is satisfied that the provision of any particular information to the commissioner would be prejudicial to national security or would pose a significant risk to a person's safety— 15
- (a) he need not provide that information to the commissioner when responding to a request for information from him;
- (b) he may when exercising his power under subsection (9) direct that the information is not to be provided to the commissioner.
- 5 No proceedings while application for certificate pending** 20
- (1) Where a person applies for a certificate of eligibility—
- (a) no proceedings may be commenced for—
- (i) an offence to which this Act applies, or
- (ii) an offence committed before 10th April 1998 in connection with such an offence, 25
- until the application is determined;
- (b) any such proceedings already commenced are to be suspended until then.
- (2) Where proceedings are adjourned by virtue of subsection (1)(b) the court has the same powers to remand the person (in custody or on bail) as it has in the case of an adjournment for any other reason. 30
- (3) Subsection (1) does not apply in the case of a second or subsequent application unless the certification commissioner certifies that there has been a material change of circumstances since the previous application.
- (4) For the purposes of this section a person's application for a certificate is determined when— 35
- (a) the certificate is granted and either the Secretary of State's appeal against the grant has been determined or the time allowed for him to bring an appeal has expired without his having brought one, or
- (b) the certificate is refused and either the person's appeal against the refusal has been determined or the time allowed for him to bring an appeal has expired without his having brought one. 40
- 6 Cancellation of certificate**
- (1) The Secretary of State may cancel a person's certificate of eligibility if he believes that— 45

- (a) the conditions mentioned in section 3(3) were not met by the person at the time the certificate was granted or are no longer met by him, or
  - (b) the person has at any time supported an organisation that—
    - (i) is currently a specified organisation, and
    - (ii) has become a specified organisation since the certificate was granted. 5
- (2) When the Secretary of State cancels a person's certificate of eligibility he must—
- (a) give him notice of the cancellation and of the reasons for it;
  - (b) inform the Director of Public Prosecutions for Northern Ireland. 10
- (3) The Secretary of State may make rules preventing reasons that are required to be given under subsection (2)(a) from making reference to any matter that satisfies conditions specified in the rules.

*Exemptions, special procedures and licences*

- 7 Exemption from arrest etc 15**
- (1) Where a person holds a certificate of eligibility, none of the following powers may be exercised in respect of him in connection with a certified offence if he has not been convicted of it.
- (2) The powers are—
- (a) a power of arrest or detention; 20
  - (b) a power of entry or search;
  - (c) a power to remand in custody or on bail;
  - (d) a power to take fingerprints or samples.
- (3) Where a person holds a certificate of eligibility, no power to obtain information exercisable in relation to criminal proceedings is exercisable in respect of him in connection with a certified offence if he has not been convicted of it. 25
- (4) Nothing done in relation to a person before a certificate of eligibility is issued to him is to be treated as unlawful by reason of the issue of the certificate.
- 8 Trial by Special Tribunal 30**
- (1) A person who holds a certificate of eligibility may be tried for a certified offence only by a tribunal to be known as the Special Tribunal. 30
- (2) The Special Tribunal may not try any offence that is not a certified offence. This is subject to paragraph 4 of Schedule 2.
- (3) There is no obligation on a defendant to appear before the Special Tribunal.
- (4) Where a defendant declines to appear but is represented, pleas may be entered on his behalf by his representative. 35
- (5) A defendant who declines to appear is to be taken as having pleaded not guilty to all the charges against him, except for any to which a plea is entered by virtue of subsection (4).

- (6) Where the Special Tribunal convicts a person of an offence, it must give a judgment stating the reasons for the conviction at or as soon as is reasonably practicable after the time of conviction.
- (7) Subject to the provisions of this Act—
- (a) the Special Tribunal has the same powers, authorities and jurisdiction as the Crown Court (including power to determine any question and to make any finding that would, in the case of the Crown Court sitting with a jury, be required to be determined or made by the jury); 5
  - (b) anything done by or in relation to the Special Tribunal has effect as if done by or in relation to the Crown Court. 10
- (8) Schedule 2 (further provision about the Special Tribunal) has effect.

## 9 Entitlement to licence

- (1) Where—
- (a) a person who holds a certificate of eligibility receives a sentence of imprisonment in respect of a certified offence, or 15
  - (b) a certificate of eligibility is issued to a person who is—
    - (i) serving (whether in custody or on licence) a sentence of imprisonment imposed in respect of a certified offence, or
    - (ii) unlawfully at large during the currency of such a sentence,
 then, subject to subsections (2) and (3), he must as soon as possible be given a licence under this section. 20
- (2) A person is not eligible for a licence under this section unless he complies with such requirements as the Secretary of State may impose as to attendance at a specified place and provision of fingerprints and non-intimate samples.
- (3) A person subject to a sentence of life imprisonment is not eligible for a licence under this section if it appears to the Secretary of State that, on release, he would be a danger to the public. 25
- (4) A person to whom a licence under this section is given in relation to a sentence is not required to serve any part, or any further part, of the sentence in custody unless the licence is suspended or revoked. 30
- (5) Where a person is on licence under this section in relation to a sentence for a fixed term, the sentence expires (and the licence lapses) on the expiry of two thirds of what would (apart from this subsection) be the full term of the sentence.
- (6) Where—
- (a) a person becomes eligible for a licence under this section in relation to a sentence for a fixed term, and 35
  - (b) at the time when he becomes eligible, at least two thirds of what would (apart from this section) be the full term of the sentence has expired,
- the sentence expires at that time. 40
- (7) Subsections (5) and (6) have effect in relation to consecutive sentences as if the sentences were a single sentence and the aggregate of their terms were a single term.

- (8) A licence under this section given in respect of a sentence has effect in place of any other licence that had effect in respect of that sentence immediately before the licence under this section was given.

## 10 Conditions of licence

- (1) A person's licence under section 9 is subject to the following conditions, but no others. 5
- (2) The conditions are –
- (a) those mentioned in section 3(3);
  - (b) in the case of a sentence of life imprisonment, the condition that he does not become a danger to the public; 10
  - (c) the condition that no organisation that he has at any time supported becomes a specified organisation after the licence is given.

## 11 Suspension and revocation of licence

- (1) The Secretary of State may suspend a person's licence under section 9 if he believes that any of the conditions mentioned in section 3(3) or 10(2)(b) and (c) has been broken or is likely to be broken. 15
- (2) He must give notice of the suspension and of the reasons for it –
- (a) to the person, and
  - (b) to the appeals commissioners.
- (3) Where a licence is suspended, the person's case is to be considered by the appeals commissioners. 20
- (4) If the commissioners think that none of the conditions imposed by the licence has been or is likely to be broken, they must confirm the licence; otherwise, they must revoke it.
- (5) The commissioners must give notice of their decision and of the reasons for it – 25
- (a) to the person, and
  - (b) to the Secretary of State.
- (6) While a licence is suspended, the person is to be detained in pursuance of his sentence and, if at large, is unlawfully at large; and such detention is not made unlawful by a subsequent confirmation of the licence. 30
- (7) If a licence is confirmed, the person is entitled to be released immediately (so far as the relevant sentence is concerned).
- (8) If a licence is revoked, the person becomes subject to whatever provision for his release would have applied in his case had the licence not been given.
- (9) The Secretary of State may make rules – 35
- (a) preventing reasons that are required to be given under subsection (2) from making reference to any matter that satisfies conditions specified in the rules;
  - (b) preventing reasons that are required to be given under subsection (5)(a) from making reference to any matter that is certified by the Secretary of State as satisfying conditions so specified. 40
- (10) In this section "appeals commissioners" means the commissioners appointed under section 13.

*Appeals etc***12 Rights of appeal: certificates of eligibility**

- (1) A person whose application for a certificate of eligibility is refused may appeal to the appeals commissioners against the refusal.
- (2) The Secretary of State may appeal to the appeals commissioners against the grant of a certificate of eligibility. 5
- (3) A person whose certificate of eligibility is cancelled under section 6 may appeal to the appeals commissioners against the cancellation.

**13 Appeals commissioners**

- (1) There are to be appeals commissioners appointed by the Secretary of State. 10
- (2) In making appointments the Secretary of State must have regard to the desirability of the commissioners, as a group, commanding widespread acceptance throughout the community in Northern Ireland.
- (3) Schedule 3 (further provision about the commissioners) has effect.

**14 Procedure of appeals commissioners** 15

Schedule 4 (provision about the procedure of the appeals commissioners) has effect.

**15 Review by appeals commissioners**

- (1) The exercise of functions under this Act by –
  - (a) the certification commissioner, or 20
  - (b) the Secretary of State,
 may be questioned in legal proceedings only before the appeals commissioners.
- (2) The appeals commissioners are the appropriate tribunal for the purposes of section 7 of the Human Rights Act 1998 (c. 42) in relation to proceedings all or part of which call into question the exercise of any of the functions under this Act of –
  - (a) the certification commissioner, or 25
  - (b) the Secretary of State.
- (3) The appeals commissioners may hear proceedings that could, but for this section, be brought in the High Court. 30
- (4) In proceedings brought by virtue of subsection (3), the appeals commissioners may do anything that the High Court may do.
- (5) The exercise by the appeals commissioners of functions under this Act may not be questioned in any criminal proceedings. 35

**16 Appeal to Special Appeal Tribunal**

- (1) A person convicted of an offence by the Special Tribunal may appeal to a tribunal to be known as the Special Appeal Tribunal.

- (2) He may appeal—
- (a) against his conviction, on any ground;
  - (b) against sentence passed on conviction, unless the sentence is fixed by law.
- (3) For the purposes of subsection (2)(b) an order under Article 5(1) or (3) of the Life Sentences (Northern Ireland) Order 2001 (S.I. 2001/2564 (N.I. 2)) (tariffs etc in life sentence cases) is a sentence passed on conviction (but not a sentence fixed by law). 5
- (4) No leave is required for an appeal to be brought under this section.
- (5) There is no appeal from the Special Appeal Tribunal exercising jurisdiction under this section. 10
- (6) Subject to the provisions of this Act—
- (a) the Special Appeal Tribunal has the same powers, authorities and jurisdiction as the Court of Appeal;
  - (b) anything done by or in relation to the Special Appeal Tribunal has effect as if done by or in relation to the Court of Appeal. 15
- (7) Schedule 5 (further provision about the Special Appeal Tribunal) has effect.
- (8) In this section (and in that Schedule) “Court of Appeal” means the court referred to as such in the Criminal Appeal (Northern Ireland) Act 1980 (c. 47).
- 17 Review by Special Appeal Tribunal** 20
- (1) The exercise of functions under this Act by the appeals commissioners may be questioned in legal proceedings only before the Special Appeal Tribunal.
  - (2) The Special Appeal Tribunal is the appropriate tribunal for the purposes of section 7 of the Human Rights Act 1998 (c. 42) in relation to proceedings all or part of which call into question the exercise of any of the functions under this Act of the appeals commissioners. 25
  - (3) The Special Appeal Tribunal may hear proceedings that could, but for this section, be brought in the High Court.
  - (4) In proceedings brought by virtue of subsection (3), the Special Appeal Tribunal may do anything that the High Court may do. 30
  - (5) There is no appeal from the Special Appeal Tribunal exercising jurisdiction under this section.
- Conduct of prosecutions*
- 18 Special Prosecutor**
- (1) The Secretary of State, after consultation with the Advocate General for Northern Ireland, must appoint a person, to be known as the Special Prosecutor—
- (a) to institute and have the conduct on behalf of the Crown of all proceedings before the Special Tribunal, and
  - (b) to have the conduct on behalf of the Crown of all proceedings before the Special Appeal Tribunal. 40

- (2) The Special Prosecutor must exercise his functions under the superintendence of the Advocate General for Northern Ireland.
- (3) Schedule 6 (further provision about the Special Prosecutor) has effect.

*Interpretation*

- 19 Interpretation** 5
- (1) In this Act –
    - “certificate of eligibility” means a certificate under section 3;
    - “certified offence” has the meaning given by section 3(7) (and see paragraph 4 of Schedule 2);
    - “enactment” includes Northern Ireland legislation; 10
    - “fingerprint” and “non-intimate sample” have the meaning given by Article 53 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));
    - “high judicial office” has the same meaning as in Part 3 of the Constitutional Reform Act 2005 (c. 4); 15
    - “specified organisation” has the same meaning as in section 3 of the Northern Ireland (Sentences) Act 1998 (c. 35);
    - “terrorism” has the same meaning as in the Terrorism Act 2000 (c. 11).
  - (2) A reference in this Act to a person being charged with an offence includes a reference to – 20
    - (a) a summons or warrant being issued in respect of an offence under Article 20 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) or section 1 of the Magistrates’ Courts Act 1980 (c. 43), or
    - (b) a warrant being issued in Scotland to arrest and commit a person suspected of an offence. 25
  - (3) For the purposes of this Act a person holds a certificate of eligibility if such a certificate has been issued to him and has not been cancelled.
  - (4) A reference in this Act to a sentence of imprisonment, in relation to a person sentenced to some other form of detention by reason of being below the minimum age for imprisonment, is a reference to that other form of detention. In particular, a reference to a sentence of life imprisonment includes a reference to a sentence of detention at Her Majesty’s, or the Secretary of State’s, pleasure. 30
  - (5) A reference in this Act to a sentence of imprisonment for a term of five years or more includes a reference to a sentence of life imprisonment. 35

*Miscellaneous*

- 20 Subsequent inadmissibility of information provided to commissioners**
- (1) This section relates to evidence and information that –
    - (a) concerns a person’s entitlement to a certificate of eligibility, and
    - (b) is provided by or on behalf of that person to the certification commissioner or to the appeals commissioners. 40

- (2) The evidence or information is not admissible in proceedings before the Special Tribunal or the Special Appeal Tribunal.
- (3) The evidence or information is not admissible in –
- (a) proceedings for an offence under section 29, 30(1), 31 or 35 of the Northern Ireland (Emergency Provisions) Act 1996 (c. 22); 5
  - (b) proceedings for an offence under section 2(1), 3, 9, 10, 11 or 18 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4);
  - (c) proceedings for an offence under section 5 of the Criminal Law Act (Northern Ireland) 1967 (c. 18 (N.I.)) or of the Criminal Law Act 1967 (c. 58) that relates to an offence mentioned in paragraph (a) or (b); 10
  - (d) proceedings for an offence of aiding, abetting, counselling, procuring or inciting the commission of an offence mentioned in any of paragraphs (a) to (c), or of attempting or conspiring to commit an offence so mentioned.
- (4) The evidence or information – 15
- (a) is not admissible in proceedings on applications made under paragraph 1, 2, 5, 11, 13, 22, 28 or 30 of Schedule 5 to the Terrorism Act 2000 (c. 11);
  - (b) is not admissible in proceedings under Article 50 or 51 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)) or Part 8 of the Proceeds of Crime Act 2002 (c. 29); 20
  - (c) is not to be the subject of an order made by virtue of Article 54 of the Proceeds of Crime (Northern Ireland) Order 1996 or section 350 or 385 of the Proceeds of Crime Act 2002;
  - (d) is not to be the subject of a notice under Schedule 2 to the Proceeds of Crime (Northern Ireland) Order 1996. 25
- (5) Subsections (2) and (3) do not prevent the admission of evidence adduced on behalf of the defendant.
- (6) Subsection (2) does not prevent the admission of evidence as to the defendant's identity. 30
- (7) A reference in subsection (3) to an offence under a provision (“the old provision”) of –
- (a) the Northern Ireland (Emergency Provisions) Act 1996, or
  - (b) the Prevention of Terrorism (Temporary Provisions) Act 1989,
- is to be taken as including a reference to an offence under the Terrorism Act 2000 that is committed in circumstances that would have amounted to the commission of an offence under the old provision before it ceased to have effect. 35

## 21 Consequential amendments

- (1) In Article 56 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) (further provision as to prisoners under sentence), in paragraph (3), after “the Sentence Review Commissioners” there is inserted “, the certification commissioner”. 40
- (2) In Article 79 of that Order (powers in relation to restricted patients subject to restriction directions) – 45
- (a) in paragraph (5A)(a)(ii), after “the Sentence Review Commissioners” there is inserted “or the certification commissioner”;

- (b) in paragraph (5A)(b), the “or” before sub-paragraph (ii) is omitted and at the end of that sub-paragraph there is inserted “or –  
 (iii) he is eligible for a licence under section 9 of the Northern Ireland (Offences) Act 2006 by virtue of which he would become so entitled.” 5
- (3) In section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to exclusion of matters from legal proceedings) –
- (a) in subsection (1), the “or” before paragraph (f) is omitted and after that paragraph there is inserted –  
 “(g) any proceedings before the appeals commissioners appointed under the Northern Ireland (Offences) Act 2006 or any proceedings arising out of proceedings before those commissioners.”; 10
- (b) in subsection (2), for “paragraph (e) or (f)” there is substituted “paragraph (e), (f) or (g)”; 15
- (c) in that subsection, the “or” before paragraph (b) is omitted and after that paragraph there is inserted –  
 “(c) in the case of proceedings falling within paragraph (g), to –  
 (i) a party, other than the Secretary of State, to any proceedings so falling; or  
 (ii) any person who for the purposes of any proceedings so falling (but otherwise than by virtue of an appointment under paragraph 7(2) of Schedule 4 to the Northern Ireland (Offences) Act 2006) represents such a party.” 20 25

*General*

**22 Suspension and revival of section 3**

- (1) The Secretary of State may make orders suspending, or later reviving, the operation of section 3. 30
- (2) The effect of a suspension order under this section is –
- (a) to prevent the granting of a certificate of eligibility for which an application has already been made;
- (b) to suspend the operation of section 5 in relation to an application already made; 35
- (c) to suspend the operation of sections 7 and 8 in relation to a certificate already granted;
- (d) to prevent the granting of a licence under section 9 pursuant to a certificate already granted.
- This is subject to any later revival order. 40
- (3) A suspension order under this section has no effect in relation to a sentence in respect of which a licence under section 9 is current or suspended when the order comes into force.

**23 Power to repeal provisions of this Act, etc**

- (1) The Secretary of State may by order repeal any provision of this Act if, at any time no earlier than two years after its commencement, he is satisfied that no useful purpose would be served by the provision remaining in force.
- (2) Where section 3 is repealed by an order under subsection (1), the Secretary of State may by order amend the Northern Ireland (Sentences) Act 1998 (c. 35) (accelerated release) so that it gives an eligible person a right to be released immediately, or as soon as is reasonably practicable, so far as the relevant sentence is concerned. 5
- (3) For the purposes of subsection (2) – 10
- (a) a person is an “eligible person” if he is granted a declaration under section 3(1) of the Northern Ireland (Sentences) Act 1998 and there is no outstanding application under section 8(1) of that Act for the declaration to be revoked;
- (b) “the relevant sentence” is the sentence to which the declaration relates. 15

**24 Commencement**

The preceding provisions of this Act come into force in accordance with provision made by the Secretary of State by order.

**25 Orders and rules**

- (1) Any order or rules under this Act must be made by statutory instrument. 20
- (2) Any order or rules under this Act –
- (a) may include incidental, supplemental, consequential, saving or transitional provisions;
- (b) may make different provision for different purposes.
- (3) Rules under Schedule 2 or 5 are to be made by the Secretary of State after consultation with the Lord Chancellor. 25
- (4) Rules under this Act, and orders under Schedule 6, are subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subject to subsection (6), an order under section 22 may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament. 30
- (6) A suspension order under section 22 may be made without a draft having been approved if the Secretary of State thinks it necessary by reason of urgency, in which case the order – 35
- (a) must include a declaration to that effect;
- (b) must be laid before Parliament after being made;
- (c) ceases to have effect at the end of the period of 40 days (computed in accordance with section 7(1) of the Statutory Instruments Act 1946 (c. 36)) starting with the day on which it was made unless a resolution has been passed by each House approving it. 40
- (7) If a suspension order under section 22 ceases to have effect by virtue of subsection (6) above, nothing done in relation to a person while the order was in force is to be treated as unlawful by reason only of the order’s ceasing to have effect.

- (8) An order under section 23 may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

**26 Money**

*Expenditure incurred by the Secretary of State by virtue of this Act is to be paid out of money provided by Parliament.*

5

**27 Short title**

This Act may be cited as the Northern Ireland (Offences) Act 2006.

## SCHEDULES

### SCHEDULE 1

Section 2

#### CERTIFICATION COMMISSIONER

##### *Tenure*

- |   |  |    |
|---|--|----|
| 1 | The commissioner –   | 5  |
|   | (a) is to hold office in accordance with the terms of his appointment, but   |    |
|   | (b) may resign by giving written notice to the Secretary of State.   |    |
| 2 | The Secretary of State may dismiss the commissioner if satisfied –   |    |
|   | (a) that he has without reasonable excuse failed to exercise his functions for a continuous period of three months beginning not earlier than six months before the day of dismissal,        | 10 |
|   | (b) that he has been convicted of a criminal offence,  |    |
|   | (c) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors, or | 15 |
|   | (d) that he is unable or unfit to exercise his functions.  |    |

##### *Remuneration and allowances*

- |   |   |  |
|---|---|--|
| 3 | The Secretary of State is to pay such remuneration, fees and allowances as he considers appropriate to, or in respect of, the commissioner. |  |
|---|---|--|

##### *Staff, premises and other facilities*

- |   |   |    |
|---|---|----|
| 4 | The Secretary of State is to provide for the commissioner – | 20 |
|   | (a) the services of such staff, and                         |    |
|   | (b) the use of such premises and other facilities,          |    |
|   | as the Secretary of State considers appropriate.            |    |

##### *Information for victims*

- |   |  |    |
|---|--|----|
| 5 | (1) It is the duty of the commissioner to secure that appropriate arrangements are made for giving information to victims about the case of each person who is granted a certificate of eligibility. | 25 |
|   | (2) “Victims”, in relation to a person granted a certificate –   |    |
|   | (a) means persons who are victims of a certified offence, and  | 30 |
|   | (b) includes members of the families of such persons.  |    |
|   | (3) The arrangements must not allow information to be given if doing so would create a danger to the safety of any person.   |    |

*Annual report*

- 6 (1) As soon as reasonably practicable after the end of each financial year, the commissioner must report to the Secretary of State on the exercise of the commissioner’s functions during the year.
- (2) The Secretary of State must lay a copy of the report before Parliament. 5
- (3) “Financial year” means –
- (a) the period beginning with the date on which the commissioner is appointed and ending with the next 31st March, and
  - (b) each successive period of twelve months.

*Parliamentary disqualification*

- 7 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (disqualifying offices), there is inserted at the appropriate place – 10  
“Certification commissioner appointed under section 2 of the Northern Ireland (Offences) Act 2006.”
- 8 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices), there is inserted at the appropriate place – 15  
“Certification commissioner appointed under section 2 of the Northern Ireland (Offences) Act 2006.”

## SCHEDULE 2

Section 8 20

## SPECIAL TRIBUNAL

*Procedure for bringing cases before Special Tribunal*

- 1 (1) Rules may make provision for the process by which the Special Tribunal is to become seised of charges for offences.
- (2) Such provision need not prescribe any function for magistrates’ courts in that process. 25

*Constitution of Special Tribunal*

- 2 (1) The Special Tribunal is to consist of a person who has held high judicial office or office as a county court judge (in Northern Ireland) or circuit judge (in England and Wales). 30
- (2) Rules may make provision as to –
- (a) the appointment of persons by whom the jurisdiction of the Special Tribunal is to be exercisable;
  - (b) the tenure of such appointments;
  - (c) the payment by the Secretary of State of remuneration, fees or allowances to, or in respect of, such persons. 35

*Venue*

- 3 The Special Tribunal is to sit in Northern Ireland.

*Jurisdiction*

- 4 (1) The Special Tribunal may not try an offence under the law of England and Wales or Scotland.
- (2) Where the Special Tribunal is prevented by sub-paragraph (1) from trying a person for a certified offence, it may try him for any offence under the law of Northern Ireland for which it could try him if the conduct in question was alleged to have occurred in Northern Ireland; and the person may be convicted and sentenced accordingly. 5
- (3) Where a person is sentenced for an offence by virtue of sub-paragraph (2), the sentence may not exceed the maximum sentence that could be imposed for the offence under the law of England and Wales or Scotland to which that offence corresponds. 10
- (4) A reference in section 7 to a person being convicted of a certified offence is to be read as including a reference to the case where, by virtue of sub-paragraph (2), a person is convicted of an offence corresponding to that offence. 15
- (5) A reference in section 8 to a person being tried for a certified offence by the Special Tribunal is to be read as including a reference to the case where, by virtue of sub-paragraph (2), a person is tried by that Tribunal for an offence corresponding to that offence. 20
- (6) A reference in section 9 to a person receiving a sentence in respect of a certified offence is to be read as including a reference to the case where, by virtue of sub-paragraph (2), a person receives a sentence in respect of an offence corresponding to that offence.

*Application of other legislation* 25

- 5 (1) Subject to the provisions of this Act, any provision about the Crown Court or proceedings on indictment contained in or made under any enactment (including provision about publicly-funded legal assistance in relation to such proceedings) applies, so far as relevant, in relation to the Special Tribunal or proceedings before that Tribunal. 30
- (2) Any such provision –
- (a) has effect, in its application by virtue of sub-paragraph (1), subject to such modifications as are necessary or are prescribed by rules;
- (b) if rules so provide, does not apply in relation to the Special Tribunal or proceedings before that Tribunal. 35
- (3) The reference in sub-paragraph (1) to a provision about proceedings on indictment includes a reference to any provision about criminal proceedings that is not restricted to summary proceedings.

*Procedure*

- 6 Subject to any direction of the Special Tribunal, the procedure to be followed in proceedings before the Tribunal is to correspond to that followed in proceedings on indictment. 40

*Staff, premises and other facilities*

- 7 The Secretary of State is to provide for the Special Tribunal –
- (a) the services of such staff, and
  - (b) the use of such premises and other facilities,
- as the Secretary of State considers appropriate. 5

## SCHEDULE 3

Section 13

## APPEALS COMMISSIONERS

*Chairman*

- 1 (1) The Secretary of State must appoint a chairman from among the commissioners. 10
- (2) The chairman must be a person who has held high judicial office or office as a county court judge (in Northern Ireland) or circuit judge (in England and Wales).

*Tenure*

- 2 A commissioner – 15
- (a) is to hold office in accordance with the terms of his appointment, but
  - (b) may resign by giving written notice to the Secretary of State.
- 3 The Secretary of State may dismiss a commissioner if satisfied –
- (a) that he has without reasonable excuse failed to exercise his functions for a continuous period of three months beginning not earlier than six months before the day of dismissal, 20
  - (b) that he has been convicted of a criminal offence,
  - (c) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors, or 25
  - (d) that he is unable or unfit to exercise his functions.

*Remuneration and allowances*

- 4 The Secretary of State is to pay such remuneration, fees and allowances as he considers appropriate to, or in respect of, each commissioner.

*Staff, premises and other facilities* 30

- 5 The Secretary of State is to provide for the commissioners –
- (a) the services of such staff, and
  - (b) the use of such premises and other facilities,
- as he considers appropriate.

*Parliamentary disqualification* 35

- 6 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975

- (c. 24) (disqualifying offices), there is inserted at the appropriate place –  
“Appeals commissioner appointed under section 13 of the Northern Ireland (Offences) Act 2006.”
- 7 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices), there is inserted at the appropriate place – 5  
“Appeals commissioner appointed under section 13 of the Northern Ireland (Offences) Act 2006.”

#### SCHEDULE 4

Section 14

#### PROCEDURE OF APPEALS COMMISSIONERS 10

##### *Rules*

- 1 (1) The Secretary of State may make rules prescribing the procedure to be followed in relation to proceedings of the appeals commissioners.
- (2) The rules may in particular – 15  
(a) make provision for the matters set out in this Schedule;  
(b) confer functions on the chairman.

##### *Allocation of cases*

- 2 The rules may provide – 20  
(a) for the allocation of proceedings to panels of commissioners;  
(b) for the taking of specified decisions by a single commissioner.

##### *Order of proceedings*

- 3 The rules may provide for appeals to be dealt with in the order decided by the commissioners.

##### *Appeals*

- 4 The rules may require an appeal – 25  
(a) to be brought within a specified period;  
(b) to be made in a specified form;  
(c) to be accompanied by specified documents.

##### *Evidence and information*

- 5 The rules may make provision about evidence and information, including in particular – 30  
(a) provision requiring the commissioners to send to the Secretary of State copies of appeals and such related documents as the rules may specify;  
(b) provision requiring the Secretary of State to provide specified information to the commissioners; 35  
(c) provision for the giving of evidence by or on behalf of the Secretary of State, the Police Service of Northern Ireland and others;

- (d) provision about the way in which information or evidence is given;
- (e) provision for evidence or information about an applicant not to be disclosed to anyone other than a commissioner if the Secretary of State certifies that it satisfies conditions specified in the rules;
- (f) provision preventing an applicant from calling any witness without leave of the commissioners. 5

*Exclusion of persons from proceedings*

- 6 The rules may provide for proceedings to be held in private except where the commissioners direct otherwise.
- 7 (1) The rules may permit the commissioners to hold proceedings in specified circumstances in the absence of any person, including the applicant and any representative appointed by him. 10
- (2) Where an applicant and any representative appointed by him are excluded from proceedings by virtue of sub-paragraph (1), the Advocate General for Northern Ireland may appoint a person to represent the applicant's interests in those proceedings. 15
- (3) In relation to any time before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the reference in sub-paragraph (2) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland. 20

*Successive applications*

- 8 The rules may prevent successive appeals being made in specified circumstances.

*Legal aid*

- 9 (1) The rules may allow the commissioners to award an applicant money for legal advice or representation. 25
- (2) The rules may provide for awards to be available –
- (a) only to applicants who satisfy prescribed criteria;
  - (b) only in relation to prescribed descriptions of proceedings.
- (3) The Secretary of State must pay any sums awarded by the commissioners. 30

*Interpretation*

- 10 (1) A reference in this Schedule to an appeal includes a reference to proceedings brought by virtue of section 15.
- (2) In this Schedule “applicant” means the person who is or was the applicant for the certificate of eligibility in question. 35

SCHEDULE 5

Section 16

SPECIAL APPEAL TRIBUNAL

*Constitution of Special Appeal Tribunal*

- 1 (1) The Special Appeal Tribunal is to consist of a person who has held high judicial office. 5
- (2) Rules may make provision as to –
- (a) the appointment of persons by whom the jurisdiction of the Special Appeal Tribunal is to be exercisable;
  - (b) the tenure of such appointments;
  - (c) the payment by the Secretary of State of remuneration, fees or allowances to, or in respect of, such persons. 10

*Application of other legislation*

- 2 (1) This paragraph applies in relation to the Special Appeal Tribunal in its appeal capacity.
- (2) Subject to the provisions of this Act, any provision about the Court of Appeal or proceedings in the Court of Appeal contained in or made under any enactment (including provision about publicly-funded legal assistance in relation to such proceedings) applies, so far as relevant, in relation to the Special Appeal Tribunal or proceedings before that Tribunal. 15
- (3) Any such provision – 20
- (a) has effect, in its application by virtue of sub-paragraph (2), subject to such modifications as are necessary or are prescribed by rules;
  - (b) if rules so provide, does not apply in relation to the Special Appeal Tribunal or proceedings before that Tribunal.

*Procedure* 25

- 3 (1) Subject to any direction of the Special Appeal Tribunal, the procedure to be followed in proceedings before the Tribunal in its appeal capacity is to correspond to that followed in proceedings before the Court of Appeal.
- (2) In relation to proceedings of the Special Appeal Tribunal in its review capacity, rules may – 30
- (a) make provision prescribing the procedure to be followed (including, in particular, provision of the kind that may be made by virtue of paragraphs 5 to 8 of Schedule 4);
  - (b) apply, with such modifications as may be prescribed, any provision about publicly-funded legal assistance in relation to proceedings in the High Court that is contained in or made under any enactment. 35

*Staff, premises and other facilities*

- 4 The Secretary of State is to provide for the Special Appeal Tribunal –
- (a) the services of such staff, and
  - (b) the use of such premises and other facilities, 40
- as the Secretary of State considers appropriate.

*Interpretation*

- 5 For the purposes of this Schedule –
- (a) the appeal capacity of the Special Appeal Tribunal is the capacity it has by virtue of section 16;
  - (b) the review capacity of the Special Appeal Tribunal is the capacity it has by virtue of section 17. 5

## SCHEDULE 6

Section 18

## SPECIAL PROSECUTOR

*Qualification for appointment*

- 1 A person is not qualified for appointment as Special Prosecutor unless he is a barrister or solicitor, in Northern Ireland or in England and Wales, of at least ten years' standing. 10

*Tenure*

- 2 The Special Prosecutor –
- (a) is to hold office in accordance with the terms of his appointment, but
  - (b) may resign by giving written notice to the Secretary of State. 15
- 3 The Secretary of State, after consultation with the Advocate General for Northern Ireland, may remove the Special Prosecutor from office on the ground of misbehaviour or inability to perform the functions of the office.

*Remuneration and allowances* 20

- 4 The Secretary of State is to pay such remuneration, allowances and sums for the provision of pensions as he considers appropriate to, or in respect of, the Special Prosecutor.

*Staff, premises and other facilities*

- 5 (1) The Secretary of State is to provide for the Special Prosecutor –
- (a) the services of such staff, and
  - (b) the use of such premises and other facilities,
- as the Secretary of State considers appropriate.
- (2) Members of the staff of the Special Prosecutor are subject to his direction and control. 30

*Information for victims*

- 6 (1) It is the duty of the Special Prosecutor to secure that appropriate arrangements are made for giving information to victims about the case of each person against whom proceedings are taken for an offence before the Special Tribunal. 35
- (2) “Victim” means the victims of any such offence, and includes members of the families of such persons.

- (3) The arrangements must not allow information to be given if doing so would create a danger to the safety of any person.

*Conducting proceedings or appearing without instructing solicitor*

- 7 Neither the Special Prosecutor nor a member of his staff, if a barrister, is prevented from – 5
- (a) conducting proceedings before the Special Tribunal or the Special Appeal Tribunal, or
  - (b) exercising a right of audience in such proceedings, by not having been instructed by a solicitor.

*Exercise of Special Prosecutor’s functions by staff or others* 10

- 8 (1) The Special Prosecutor may delegate any of his powers (to such extent as he determines) to a member of his staff.
- (2) The Special Prosecutor may at any time appoint a person who is not a member of his staff but who is – 15
- (a) a barrister or solicitor in Northern Ireland or in England and Wales, or
  - (b) an advocate or solicitor in Scotland,
- to conduct any proceedings before the Special Tribunal or the Special Appeal Tribunal that are assigned to him by the Special Prosecutor.
- (3) A person conducting proceedings assigned to him under sub-paragraph (2) has all the powers of the Special Prosecutor but must exercise them subject to any instructions given to him by the Special Prosecutor. 20

*Interpretation etc*

- 9 (1) For the purposes of section 18 (and this Schedule) references to the conduct of proceedings include references to discontinuing the proceedings and the taking of any steps that may be taken in relation to the proceedings (including making representations on applications for judicial review). 25
- (2) In relation to any time before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), a reference in section 18 (or this Schedule) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland. 30

*Modification of enactments etc*

- 10 The Secretary of State may by order provide for any provision about the Director of Public Prosecutions for Northern Ireland contained in or made under any enactment to apply, with such modifications as may be specified in the order, in relation to the Special Prosecutor. 35

*Parliamentary disqualification*

- 11 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (disqualifying offices), there is inserted at the appropriate place – 40
- “Special Prosecutor appointed under section 18 of the Northern Ireland (Offences) Act 2006.”

- 12 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices), there is inserted at the appropriate place—

“Special Prosecutor appointed under section 18 of the Northern Ireland (Offences) Act 2006.”



# Northern Ireland (Offences) Bill

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A

## B I L L

To make special provision about certain offences committed, or alleged to have been committed, before 10th April 1998 in connection with terrorism and the affairs of Northern Ireland; and to provide for the amendment of the Northern Ireland (Sentences) Act 1998.

*Presented by Mr Secretary Hain  
supported by  
The Prime Minister, Mr Chancellor of the Exchequer,  
Mr Secretary Clarke, Mr David Hanson,  
Mr Shaun Woodward and Bridget Prentice*

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*Ordered, by The House of Commons,  
to be printed, 9th November 2005.*

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