



## **REPEAL OF SECTION 8 OF THE ALIENS RESTRICTION (AMENDMENT) ACT 1919 A RESPONSE BY THE CRIMINAL BAR ASSOCIATION**

### **Introduction**

1. The Criminal Bar Association represents about 3,600 employed and self-employed members of the Bar who prosecute and defend in the most serious criminal cases across England and Wales. It is the largest specialist bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts; ensuring on our part that all persons enjoy a fair trial and that the adversarial system, which is at the heart of criminal justice, is maintained.
2. The CBA has been asked by the Ministry of Justice Better Trials Unit for its views on the repeal of section 8 Aliens Restriction (Amendment) Act 1919. This section provides: *"No alien shall sit upon a jury in any judicial or other proceedings if challenged by any party to such proceedings."*
3. The short answer is that the CBA believes that the provision is redundant and should be repealed as the history recounted below shows that the intention was that this section be repealed nearly 40 years ago.

### **The History of Section 8 Repeal**

4. The Ministry of Justice state that according to the National Archives statute law database, section 8 was repealed in Scotland by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 and in Northern Ireland by SI 1974/2143. It was repealed prospectively in England and Wales by the Criminal Justice Act 1972, section 64/Schedule 6, Part I.
5. The Ministry of Justice have consulted the Bill Book for the Criminal Justice Act 1972. Part II of the Act contained provisions that reformed the jury system on lines recommended by the Morris Committee. It replaced the property disqualification for jury service in England and Wales with a basic qualification of citizenship as evidenced by inclusion in the electoral register. At the same time: *"The Aliens Restriction (Amendment) Act 1919 section 8*

*which prohibits an alien from sitting on any jury if challenged by any party to the proceedings is repealed. Now that qualifications for jury service depend upon being registered as an elector the possibility of summoning aliens will not arise since they are not included in the electoral register.”*

6. The rest of Schedule 6 to the Act was commenced in 1973. However, with regard to the jury provisions it was noted that: *“Since these provisions require the preparation of new electoral registers, they will not come into effect until February 1974.”* Unfortunately the Bill Book sheds no light on why in the event repeal of section 8 was brought into effect only in Northern Ireland (and subsequently Scotland).
7. The MoJ Library has searched the commentary, cases and journals functions on the Westlaw and LexisNexis legal databases (including Halsbury’s Laws) and found nothing on section 8. There is no mention of the provision in Archbold or Blackstone’s and colleagues of the Better Trials Unit in the HMCS Victim and Witness and Juror Branch are not aware of any usage.

### **Conclusion**

8. For very good reasons, it was concluded by the Morris Committee 45 years ago that section 8 Aliens Restriction (Amendment) Act 1919 was redundant and it was the clear intention of Parliament nearly 40 years ago in the Criminal Justice Act 1972 section 64/Schedule 6 that it be repealed. By an administrative oversight, that repeal was not brought into effect although it has been in both Scotland and Northern Ireland. In my view, it should now be repealed in England and Wales.

**Paul Mendelle QC**  
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