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STATUTORY INSTRUMENTS

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**1989 No. 1344**

**The Treatment of Offenders (Northern Ireland) Order 1989**

**Title and commencement**

1.—(1) This Order may be cited as the Treatment of Offenders (Northern Ireland) Order 1989.

(2) This Order shall come into operation on the expiration of two months from the day on which it is made.

**Interpretation**

2. The Interpretation Act (Northern Ireland) 1954(1) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

**Requirements in probation orders**

3. After section 2 of the Probation Act (Northern Ireland) 1950(2) there shall be inserted the following sections—

**“Requirements in probation orders.**

2A.—(1) Without prejudice to the generality of section 1(3), the power conferred by that subsection includes power, subject to the provisions of this section, to require the probationer—

- (a) to present himself to a person or persons specified in the order at a place or places so specified;
- (b) to participate in activities specified in the order—
  - (i) on a day or days so specified; or
  - (ii) during the probation period or such portion of it as may be so specified.

(2) A court shall not include in a probation order a requirement such as is mentioned in subsection (1) unless it has first consulted a probation officer as to—

- (a) the offender’s circumstances; and
- (b) the feasibility of securing compliance with the requirements,

and is satisfied, having regard to the probation officer’s report, that it is feasible to secure compliance with them.

(3) A court shall not include a requirement such as is mentioned in subsection (1) if it would involve the co-operation of a person other than the probationer and the probation officer responsible for his supervision, unless that other person consents to its inclusion.

(4) A requirement such as is mentioned in subsection (1)(a) shall operate to require the probationer—

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(1) 1954 c. 33 (N.I.)  
(2) 1950 c. 7 (N.I.)

- (a) in accordance with instructions given by the probation officer responsible for his supervision, to present himself at a place for not more than 60 days during the probation period; and
  - (b) while there, to comply with instructions given by, or under the authority of, the person in charge of the place.
- (5) A place specified in the order shall be a place for the time being approved by the Probation Board as providing facilities suitable for persons subject to probation orders.
- (6) A requirement such as is mentioned in paragraph (1)(b) shall operate to require the probationer—
- (a) in accordance with instructions given by the probation officer responsible for his supervision, to participate in the activities for not more than 60 days; and
  - (b) while participating, to comply with instructions given by, or under the authority of, the person in charge of the activities.
- (7) Instructions given by a probation officer under subsection (4) or (6) shall, as far as practicable, be such as to avoid any interference with the times, if any, at which the probationer normally works or attends a school or other educational establishment.

**Probation orders requiring attendance at day centre.**

- 2B.—**(1) Without prejudice to the generality of sections 1(3) and 2A, the power conferred by section 1(3) includes power, subject to the provisions of this section, to require the probationer during the probation period to attend at a day centre specified in the order.
- (2) A court shall not include such a requirement in a probation order unless—
- (a) it has consulted a probation officer; and
  - (b) it is satisfied—
    - (i) that arrangements can be made for the probationer’s attendance at a centre; and
    - (ii) that the person in charge of the centre consents to the inclusion of the requirement.
- (3) A requirement under subsection (1) shall operate to require the probationer—
- (a) in accordance with instructions given by the probation officer responsible for his supervision, to attend on not more than 60 days at the centre specified in the order; and
  - (b) while attending there to comply with instructions given by, or under the authority of, the person in charge of the centre.
- (4) Instructions given by a probation officer under subsection (3) shall, so far as is practicable, be such as to avoid any interference with the times, if any, at which the probationer normally works or attends a school or other educational establishment.
- (5) References in this section to attendance at a day centre include references to attendance elsewhere than at the centre for the purpose of participating in activities in accordance with instructions given by, or under the authority of, the person in charge of the centre.
- (6) In this section “day centre” means premises at which non-residential facilities are provided for use in connection with the rehabilitation of offenders and which—
- (a) are provided by the Probation Board; or
  - (b) are for the time being approved by the Probation Board as providing facilities suitable for persons subject to probation orders.”.

### **Remittal of persons under 17 to juvenile courts for trial**

4. After section 64 of the Children and Young Persons Act (Northern Ireland) 1968(3) there shall be inserted the following section—

#### **“Power of magistrates' court to remit a person under 17 for trial to a juvenile court.**

**64A.**—(1) This section shall have effect where—

- (a) a child or young person appears or is brought before a magistrates' court other than a juvenile court on a complaint jointly charging him and one or more other persons with an offence; and
- (b) that other person, or any of those other persons, has attained the age of seventeen, and in this section “the older accused” means such one or more of the accused as have attained the age of seventeen.

(2) If—

- (a) the court hears the complaint or (as the case may be) deals summarily with the charge in the case of both or all of the accused, and the older accused or each of the older accused pleads guilty; or
- (b) the court—
  - (i) in the case of the older accused or each of the older accused, conducts a preliminary investigation or preliminary inquiry and either commits him for trial or discharges him; and
  - (ii) in the case of the child or young person, hears the complaint or (as the case may be) deals summarily with the charge,

then, if in either situation the child or young person pleads not guilty, the court may, before any evidence is called in his case, remit him for trial to a juvenile court acting for the same place as the remitting court or for the place where he resides.

(3) A person remitted to a juvenile court under subsection (2) shall be brought before and tried by a juvenile court accordingly.

(4) Where a person is so remitted to a juvenile court—

- (a) he shall have no right of appeal against the order of remission; and
- (b) the remitting court may give such directions as appear to be necessary with respect to his custody or for his release on bail until he can be brought before the juvenile court.

(5) The preceding provisions of this section shall apply in relation to a corporation as if it were an individual who has attained the age of seventeen.”.

### **Attendance centre orders**

5.—(1) In section 76 of the Children and Young Persons Act (Northern Ireland) 1968(4) (power of court to make orders against parents) after subsection (2) there shall be inserted the following subsection—

“(2A) Where the court makes an order under section 135(1) in respect of any child or young person, it may order his parent or guardian to enter into a recognizance as security for his compliance with that order.”.

(2) In section 135 of that Act (attendance centre orders)—

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(3) 1968 c. 34 (N.I.)

(4) 1968 c. 34 (N.I.)

- (a) subsection (4) (order not to be made where a person has previously been sentenced to imprisonment or detention) shall cease to have effect;
- (b) at the end of that section there shall be added the following subsections—
- “(6) A court may make an order under subsection (1) in respect of an offender before a previous order under that subsection in respect of him has ceased to have effect, and may determine the number of hours to be specified in the order without regard—
- (a) to the number specified in the previous order; or
- (b) to the fact that that order is still in effect.
- (7) Where a court makes an order under subsection (1), the clerk of the court shall serve a copy of the order on—
- (a) the officer in charge of the attendance centre specified therein; and
- (b) on the offender.
- (8) Where a person has been ordered to attend at an attendance centre in default of the payment of any sum of money, then—
- (a) on payment of the whole sum to any person authorised to receive it, the order shall cease to have effect;
- (b) on the payment of a part of the sum to any such person, the total number of hours for which the offender is required to attend at the centre shall be reduced proportionately, that is to say by such number of complete hours as bears to the total number the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the said sum.”.
- (3) For section 136 of that Act (provisions supplementary to section 135) there shall be substituted the following section—

**“136 Discharge, revocation or variation of orders under section 135(1).**

- (1) A court of summary jurisdiction may, on an application made by complaint by the offender or by the officer in charge of the attendance centre specified in an order under section 135(1)—
- (a) discharge the order; or
- (b) vary the day or hour specified therein for the offender’s first attendance at the centre; and where the application is made by the said officer, the court may deal with it without summoning the offender.
- (2) Where an order under section 135(1) has been made and it appears upon a complaint made to a justice of the peace that the offender—
- (a) has failed to attend in accordance with the order; or
- (b) while attending at the centre has committed a breach of the rules made under section 134(2) which cannot be adequately dealt with under those rules;
- the justice may—
- (i) issue a summons directed to that person requiring him to appear before a juvenile court for the petty sessions district in which that person resides or in which the attendance centre specified in the order is situated; or
- (ii) if the complaint is in writing and on oath, issue a warrant for that person’s arrest requiring him to be brought before such a court.
- (3) If it appears to the satisfaction of the court before which an offender appears or is brought under subsection (2) that—

- (a) he has failed without reasonable excuse to attend as mentioned in paragraph (a) of that subsection; or
- (b) he has committed such a breach of rules as is mentioned in paragraph (b) of that subsection,

that court may revoke the order under section 135(1) and deal with him in any manner in which he could have been dealt with by the court which made the order, if the order had not been made.

(4) Where a person in respect of whom an order under section 135(1) is in effect is convicted by a court of an offence, the court may—

- (a) revoke the order under section 135(1); and
- (b) in passing sentence for the offence take into account the number of hours which, but for the revocation, the offender would have had to attend at an attendance centre to comply with the order.

(5) The discharge, variation or revocation under this section of an order under section 135(1) shall be by order of the court, and where a court makes an order under this section the clerk of the court shall serve a copy of the order on—

- (a) the officer in charge of the attendance centre specified in the order under section 135(1) which is discharged, varied or revoked; and
- (b) the offender.”.

### **Training school orders**

6.—(1) In section 87 of the Children and Young Persons Act (Northern Ireland) 1968(5) (duration of training school orders) for subsections (1) and (2) there shall be substituted the following subsection—

“(1) Where a court orders a person to be sent to a training school, the order shall be an authority for his detention in a training school until the expiration of a period of two years from the date of the order or until he attains the age of nineteen, whichever is the earlier.”.

(2) In Schedule 5 to that Act in paragraph 8(2) (period in which detained person may not be placed out under licence) for the words “twelve months” there shall be substituted the words “six months”.

(3) Paragraph (1) does not apply in relation to any training school order made before the coming into operation of that paragraph.

### **Detention in a young offenders centre**

7.—(1) For section 5 of the Treatment of Offenders Act (Northern Ireland) 1968(6) there shall be substituted the following section—

#### **“5 Detention in a young offenders centre.**

(1) Where—

- (a) a person of not less than sixteen but under twenty-one years of age has been convicted (whether summarily or on indictment) of an offence which is punishable with imprisonment in the case of a person aged twenty-one years or over; and
- (b) the court considers that he should serve a term of detention,

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(5) 1968 c. 34 (N.I.)

(6) 1968 c. 29 (N.I.)

the court may, subject to section 72(3) of the Children and Young Persons Act (Northern Ireland) 1968(7), order him to be detained in a young offenders centre for a term which shall not exceed—

- (i) the maximum term of imprisonment which the court could impose for the offence in the case of a person aged twenty-one years or over; or
- (ii) four years,

whichever is the lesser.

(2) Where a court orders a person to be detained in a young offenders centre under subsection (1) for a term which exceeds—

- (a) eighteen months, in the case of a person who has previously served a sentence of imprisonment or a term of detention in a young offenders centre;
- (b) six months, in any other case,

it shall state the reason and cause it to be entered in the record of the proceedings along with the sentence.

(3) Where—

- (a) a person of not less than sixteen but under twenty-one years of age has been guilty of any default for which the court could, if he were aged twenty-one years or over, commit him to prison; and
- (b) the court considers that he should serve a term of detention,

the court may, subject to section 72(3) of the Children and Young Persons Act (Northern Ireland) 1968, order him to be detained in a young offenders centre for a term not exceeding that for which, if he were aged twenty-one years or over, he could be committed to prison.

(4) Where a court orders a person to be detained in a young offenders centre, it may order that the term of that detention shall commence on the expiration of any other term of detention ordered by that or any other court.

(5) Where the Crown Court orders a person to be detained in a young offenders centre for two or more terms of detention to run consecutively, the aggregate of those terms shall not exceed four years.

(6) Where a magistrates' court orders a person to be detained in a young offenders centre for two or more terms of detention to run consecutively, the aggregate of those terms shall not exceed—

- (a) except as provided by paragraph (b) or any other enactment, twelve months;
- (b) in the case of terms of detention in respect of indictable offences tried summarily, eighteen months.”.

(2) In section 1(2) of that Act (power to pass sentence of imprisonment for term of three years or more on a person under 21 years) for the words “three years or more” there shall be substituted the words “more than four years”.

### **Abolition of power to pass recorded sentence**

8.—(1) A court shall not after the coming into operation of this Article pass a recorded sentence of imprisonment on any person or make a recorded order for detention in a young offenders centre in relation to any person.

(2) Paragraph (3) applies to a case where—

- (a) a court has before the coming into operation of this Article passed a recorded sentence of imprisonment on any person or made a recorded order for detention in a young offenders centre in relation to any person; and
  - (b) the court has not ordered that the sentence or order take effect.
- (3) In a case to which this paragraph applies—
- (a) the recorded sentence of imprisonment or order for detention shall, subject to the following provisions of this Article, have effect as if it were a suspended sentence of imprisonment or order for detention;
  - (b) sections 18(5), 19, 20 and 21 of the Act of 1968 shall apply to the recorded sentence or order for detention as if it were a suspended sentence or order for detention passed or made at the same time and for the same term as the recorded sentence under—
    - (i) where the offence in respect of which it was imposed was not a serious offence within the meaning of section 18(1B) of the Act of 1968, section 18(1) of that Act; and
    - (ii) in any other case, section 18(1A) of that Act; and
  - (c) for the purposes of the provisions mentioned in sub-paragraph (b), the operational period of the suspended sentence shall be—
    - (i) where the period for which the court, in connection with imposing the recorded sentence on a person, bound that person over to be of good behaviour and keep the peace (in this sub-paragraph referred to as “the recorded period”) is 5 years or less, the same period as the recorded period;
    - (ii) where the recorded period is more than 5 years and has expired before the coming into operation of this Article, the same period as the recorded period; and
    - (iii) where the recorded period is more than 5 years and has not expired before the coming into operation of this Article, the period of 5 years from the date on which the sentence was imposed or the period beginning on that date and ending on the date on which this Article comes into operation, whichever is the longer.
- (4) Paragraph (3) applies—
- (a) notwithstanding that a suspended sentence of imprisonment or order for detention for the same term as the recorded sentence of imprisonment could not be passed or made under subsection (1) or (as the case may be) (1A) of section 18 of the Act of 1968;
  - (b) notwithstanding that the operational period provided for by paragraph (3)(c) is not one which could be specified by a court in relation to a suspended sentence under subsection (1) or (as the case may be) (1A) of section 18 of that Act;
  - (c) whether any offence committed during the operational period provided for by paragraph (3)(c) was committed before or after the coming into operation of this Article.
- (5) The references in section 26(2) and (3) of the Act of 1968 to a suspended sentence shall not be construed as including references to a recorded sentence which by virtue of this Article has effect as if it were a suspended sentence.
- (6) Any statutory provision (other than the Act of 1968) which applies to a suspended sentence shall, with such modifications as are appropriate in consequence of this Article, apply to a sentence which by virtue of this Article has effect as if it were a suspended sentence.
- (7) A notice issued by a court before the coming into operation of this Article to any person on whom that court has imposed a recorded sentence requiring that person to appear before the court on a date after the coming into operation of this Article shall have effect as if it were a summons issued under section 21(1) of the Act of 1968 requiring that person to appear at the place and time specified therein.

(8) In this Article “the Act of 1968” means the Treatment of Offenders Act (Northern Ireland) 1968(8).

### **Suspended sentences**

9.—(1) In section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (suspended sentences) for subsection (1) there shall be substituted the following subsections—

“(1) A court which—

- (a) passes a sentence of imprisonment for a term of not more than two years for an offence which is not a serious offence within the meaning of subsection (1B); or
- (b) makes an order for detention in a young offenders centre for a term of not more than two years for such an offence,

may order that the sentence or order for detention shall not take effect unless, during the period specified in the order, being not less than one year or more than three years from the date of the order, the offender commits in Northern Ireland another offence punishable with imprisonment in the case of a person aged twenty-one years or over, and thereafter a court having power to do so orders under section 19 that the original sentence or order for detention shall take effect.

(1A) A court which—

- (a) passes a sentence of imprisonment for a term of not more than seven years for a serious offence within the meaning of subsection (1B); or
- (b) makes an order for detention in a young offenders centre for such an offence,

may order that the sentence or order for detention shall not take effect unless, during the period specified in the order, being not less than one year or more than five years from the date of the order, the offender commits in Northern Ireland another offence punishable with imprisonment in the case of a person aged twenty-one years or over, and thereafter a court having power to do so orders under section 19 that the original sentence shall take effect.

(1B) In—

- (a) subsections (1) and (1A) “serious offence” means an offence for which a person aged twenty-one years or over may, on conviction on indictment, be sentenced to imprisonment for a term of five years or more; and
- (b) this section and sections 19 to 21 “operational period” in relation to a suspended sentence or order for detention means the period specified in the order under subsection (1) or, as the case may be, (1A).”.

(2) In section 19(1) of that Act (power of court on conviction of further offence to deal with suspended sentence)—

(a) for paragraph (c) there shall be substituted the following paragraph—

“(c) it may by order vary the original order under section 18—

- (i) where it was made under subsection (1) of that section, by substituting for the period specified therein a period expiring not later than three years from the date of the variation;
- (ii) where it was made under subsection (1A) of that section, by substituting for the period specified therein a period expiring not later than five years from the date of the variation;”;

- (b) the words “which have arisen since the suspended sentence or order for detention was passed or made” shall cease to have effect.

### **Minimum age for community service orders**

**10.** In Article 7 of the Treatment of Offenders (Northern Ireland) Order 1976(9) (community service orders)—

- (a) in paragraph (1) for the word “seventeen” there shall be substituted the word “sixteen”; and the words from “for such number of hours” to the end shall cease to have effect;
- (b) after paragraph (1) there shall be inserted the following paragraph—
  - “(1A) The number of hours which a person may be required to work under a community service order shall be specified in the order and shall be in the aggregate—
    - (a) not less than 40; and
    - (b) not more—
      - (i) in the case of an offender aged sixteen, than 120; and
      - (ii) in other cases, than 240.”.

### **Deferment of sentence**

**11.**—(1) Subject to the provisions of this Article, the Crown Court or a magistrates' court may defer passing sentence on an offender for the purpose of enabling the court to have regard, in determining his sentence, to his conduct after conviction (including, where appropriate, the making by him of reparation for his offence) or to any change in his circumstances.

(2) Any deferment under this Article shall be until such date as may be specified by the court, not being more than six months after the date on which the deferment is announced by the court; and where the passing of sentence has been deferred under this Article it shall not be further deferred thereunder.

(3) The power conferred by this Article shall be exercisable only if the offender consents and the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power.

(4) A court which under this Article has deferred passing sentence on an offender may pass sentence on him before the expiration of the period of deferment if during that period he is convicted in Northern Ireland of any offence.

(5) If an offender on whom a court has under this Article deferred passing sentence in respect of one or more offences is during the period of deferment convicted in Northern Ireland of any offence (“the subsequent offence”), then, without prejudice to paragraph (4) but subject to paragraph (6), the court which (whether during that period or not) passes sentence on him for the subsequent offence may also, if this has not already been done, pass sentence on him for the first-mentioned offence or offences.

(6) The power conferred by paragraph (5) shall not be exercised by a magistrates' court if the court which deferred passing sentence was the Crown Court; and the Crown Court, in exercising that power in a case in which the court which deferred passing sentence was a magistrates' court, shall not pass any sentence which could not have been passed by a magistrates' court in exercising it.

(7) A court which under this Article has deferred passing sentence on an offender may issue a summons requiring him to appear before the court, or may issue a warrant for his arrest where—

- (a) the court proposes to sentence him, whether on the date originally specified by the court or by virtue of paragraph (4) before that date; or

(b) the offender does not appear on the date so specified.

(8) In deferring the passing of sentence under this Article a magistrates' court shall be regarded as exercising the power of adjourning the trial which is conferred by Article 161(1) of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(10)</sup> and accordingly Articles 23 and 25(3) of that Order (non-appearance of the accused) apply (without prejudice to paragraph (7)) if the offender does not appear on the date specified in pursuance of paragraph (2).

(9) A court which under this Article defers passing sentence on an offender shall not on the same occasion remand him.

(10) Nothing in this Article shall affect the power of the Crown Court to bind over an offender to come up for judgment when called upon or the power of any court to defer passing sentence for any purpose for which it may lawfully do so apart from this Article.

(11) The power of a court under this Article to pass sentence on an offender in a case where the passing of sentence has been deferred thereunder includes power to deal with him in any way in which the court which deferred passing sentence could have dealt with him.

### **Increase in maximum term of imprisonment for certain offences**

**12.**—(1) In section 52 of the Offences Against the Person Act 1861<sup>(11)</sup> (indecent assault on a female) for the words “two years” there shall be substituted the words “ten years”.

(2) A person guilty of attempting to commit rape shall be liable on conviction on indictment to imprisonment for life; and accordingly the following statutory provisions shall cease to have effect, namely—

- (a) section 1 of the Attempted Rape, etc., Act (Northern Ireland) 1960<sup>(12)</sup>;
- (b) Article 5(3)(d) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983<sup>(13)</sup>.

(3) In section 2 of the Attempted Rape, etc., Act (Northern Ireland) 1960 (assault with intent to commit rape) for the words “for a term not exceeding seven years” there shall be substituted the words “for life”.

(4) In section 20(1)(a) of the Children and Young Persons Act (Northern Ireland) 1968<sup>(14)</sup> (cruelty to persons under 16) for the words “two years” there shall be substituted the words “ten years”.

(5) This Article does not affect the punishment for an offence committed before it comes into operation.

### **Remand or committal to custody of persons aged between 17 and 21**

**13.**—(1) Where a person of not less than 17 but under 21 years of age—

- (a) is—
  - (i) charged with an offence and committed in custody for trial; or
  - (ii) charged with or convicted of an offence and remanded in custody; and
- (b) is committed to prison;

the Secretary of State may direct that he be removed to a young offenders centre.

(2) Where—

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<sup>(10)</sup> 1981 NI 26  
<sup>(11)</sup> 1861 c. 100  
<sup>(12)</sup> 1960 c. 3 (N.I.)  
<sup>(13)</sup> 1983 NI 13  
<sup>(14)</sup> 1968 c. 34 (N.I.)

- (a) immediately before a person is brought before a court he is detained in a young offenders centre (whether by virtue of this Article, of any other statutory provision or of any order of a court); and
  - (b) the court decides to remand that person in custody, that court shall commit him to custody in the young offenders centre referred to in sub-paragraph (a).
- (3) The Secretary of State may direct—
- (a) that a person removed to a young offenders centre under paragraph (1) or sub-paragraph (b) or committed to a young offenders centre under paragraph (2) be removed to prison;
  - (b) that a person removed to prison under sub-paragraph (a) be removed to a young offenders centre.
- (4) A person who is—
- (a) committed or removed to a young offenders centre under this Article; or
  - (b) removed to prison under this Article,

shall, subject to paragraph (3), be detained in the place to which he is removed or committed for the period for which he is remanded in custody or until he is thence delivered in due course of law.

(5) In section 2 of the Treatment of Offenders Act (Northern Ireland) 1968<sup>(15)</sup> for paragraph (a) there shall be substituted the following paragraph—

- “(a) young offenders centres, that is to say, places—
- (i) in which offenders, who have been ordered to be detained therein under any enactment, may be kept for suitable training and instruction; and
  - (ii) in which persons not less than 14 but under 21 years of age who are either remanded in custody or committed in custody for trial may be detained in accordance with any enactment.”.

(6) This Article shall cease to have effect on the day appointed by order under section 36(3) of the Treatment of Offenders Act (Northern Ireland) 1968 for the coming into operation of section 9 of that Act.

### **Amendments and repeals**

14.—(1) The statutory provisions set out in Schedule 1 shall have effect subject to the amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 2 (which include certain provisions which are spent or unnecessary) are hereby repealed to the extent specified in the third column of that Schedule.

G. I. de Deney  
Clerk of the Privy Council

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<sup>(15)</sup> 1968 c. 29 (N.I.)