

# **JUSTICE ACT (NORTHERN IRELAND) 2011**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Justice Act (Northern Ireland) 2011 which received Royal Assent on 4 May 2011. They have been prepared by the Department of Justice in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The need to make various changes to Northern Ireland's justice system came from a range of sources: from a desire within the justice system to do its business better; from a need to reduce costs – particularly in the area of legal aid; and a need to improve access to the justice system. In parallel with these come the desire to deliver better and enhanced services to victims and witnesses alongside the need to improve public safety and build stronger and safer communities.
4. In terms of doing its business better and reducing costs, the Act's provisions tackle delay by providing new and speedier ways of delivering justice. They improve efficiency through the removal of many low level cases from the court system. The provisions also tackle the problem of criminal legal aid expenditure by allowing for the introduction of means testing and ensure that the resources that are available are targeted at the most deserving cases.
5. The Act improves services for victims and witnesses. It creates a victims of crime fund funded through a levy imposed on offenders generating additional resources for the provision of victim support services; special measures for the giving of evidence by vulnerable and intimidated witnesses are expanded; and video link powers are widened to include for example psychiatric hospitals.
6. The Act tackles a number of issues around community safety and public order which have built up over time: problems with behaviour, violence and occasional sectarianism at major sporting events alongside the sharpening up of the enforcement of sex offender law. The Act creates better, simpler and more cost-effective ways of engaging communities and statutory bodies in delivering community safety structures along with administrative rationalisation.

7. Other miscellaneous provisions include extending the rights of audience for solicitor advocates in higher courts; allowing for the deduction of the costs of certain services provided by stockbrokers from funds held in court on behalf of minors and patients; and the power to allocate the proceeds of criminal assets remitted to the Northern Ireland Consolidated Fund.
8. The Act builds on a series of separate policy consultations (see below) and is a key and specific commitment in the Hillsborough Castle Agreement of 5 February 2010.

## **CONSULTATION**

9. Consultation was a key feature of the provisions for the Justice Act (Northern Ireland) 2011. All of the main components were the subject of public consultation; many of the miscellaneous technical and procedural improvements proposed were the subject of targeted or specialist consultation; and the package as a whole was presented to and considered by the Justice Committee.
10. The provisions in the Act are largely based on a series of public policy consultations – some 7 in total – carried out across 2008-2010.
11. A number of other matters are included in the Act – in essence a list of “miscellaneous” matters: some largely technical adjustments or corrections to drafting errors in previous legislation; some addressing the removal of existing legislative flaws; others that are system improvements that benefited from specialist views by way of “targeted” consultation.
12. For completeness these were also included in the equality impact assessment for consultation.
13. In overall terms across all of the consultations respondents were generally positive about the proposals and where adjustments were required, they were made.

## **OVERVIEW**

14. The Act consists of 112 sections and 8 Schedules and is divided into 10 Parts.
15. Part 1 of the Act provides new services to victims and witnesses. Chapter 1 creates a new offender levy and Chapter 2 expands the special measures facilities available to vulnerable and intimidated witnesses. Part 2 provides an expansion in court services by extending the range of matters that can be dealt with by way of live video link.
16. Part 3 creates new Policing and Community Safety Partnership structures.
17. Part 4 creates a new package of powers in the area of sports and spectator law designed to promote good behaviour amongst sports fans in Northern Ireland.
18. Part 5 provides a series of standalone and individual sentencing powers across a range of areas under the collective heading of Treatment of Offenders.

19. Part 6 creates new alternatives to prosecution by introducing penalty notices and conditional cautions.
20. Part 7 makes a series of changes to legal aid legislation.
21. Part 8 extends solicitors' rights of audience in the higher courts in Northern Ireland.
22. Finally Part 9 provides for improvements to a range of miscellaneous powers available to courts along with several other business improvement matters.

## **COMMENTARY ON SECTIONS**

### **Part 1: Victims and Witnesses**

This Part contains two sets of powers to assist victims and witnesses in the criminal justice system.

The principal aim of the offender levy, Part 1 Chapter 1, is to make offenders more accountable for the harm which their actions cause by requiring them to make a financial contribution to the delivery of support services to victims and witnesses of crime. It is intended to help increase victim satisfaction with the criminal justice system and create a new revenue stream which would be used exclusively to resource a non-statutory victims of crime fund. The fund would pay for projects that support victims and witnesses during their engagement with the criminal justice system as well as grants to support initiatives by local groups working with victims in the community.

Special measures, Part 1 Chapter 2, are statutory provisions to assist vulnerable and intimidated witnesses give their best possible evidence in criminal proceedings. These provisions introduce a number of improvements for young witnesses, adult complainants of sexual offences, and vulnerable defendants as well as some procedural changes such as formalising the presence of a supporter in the live link room when a witness is giving evidence.

### **Chapter 1 - The Offender Levy**

This Chapter contains the power for a financial levy to be imposed by the court on conviction or attached to certain fixed penalties.

#### **Section 1: Offender levy imposed by court**

This section sets out the sentences which attract the offender levy. These are: imprisonment; detention in the young offenders centre; a suspended custodial sentence; a community order; or a fine. The levy will only be attached to those offenders 18 years old or over. Where a period of imprisonment or detention is applied concurrent with a previous sentence of imprisonment or detention and a levy has been imposed on that previous sentence, a further levy will not be applied. Payment of compensation orders will take priority over the levy and the levy must be reduced (to nil if necessary) by the court where it has been determined that the offender has insufficient means to pay both the compensation order and the levy. The amount of any fine imposed can only be reduced on account of the levy where the offender

has insufficient means to pay both the fine and the levy. The Department may by affirmative resolution amend the list of sentences to which a levy applies.

**Section 2:** Enforcement and treatment of offender levy imposed by court

This section states that the offender levy shall, except where provided for in this Act, be enforced in the same manner as a fine, and that the Department of Justice can make regulations with respect to the enforcement of the levy where it considers this appropriate.

**Section 3:** Deduction of offender levy imposed by court from prisoners' earnings

This section permits the governor of a prison or young offenders centre (or a person authorised by the governor) to deduct money from the earnings of a prisoner to recover the value of levy imposed by the court. It also enables the Department of Justice to make directions on the rate, timing and conditions of those deductions.

**Section 4:** Offender levy imposed by court: other supplementary provisions

Section 4 states that a court cannot, at the point of sentencing, set a default period of imprisonment for non-payment of the offender levy. When a fine and an offender levy are imposed together, any payment made will first discharge the levy. If an offender defaults on paying a fine and is imprisoned, or given a supervised activity order, the court may remit such part of the levy which remains outstanding. Where an offender has been given a determinate sentence of imprisonment or detention (which is not suspended) and has made payments towards discharging the levy through deductions from earnings whilst in prison, any outstanding levy amount will be discharged by statute on the full expiry of their sentence i.e. when they are no longer eligible for recall to custody for deductions from prison earnings to recommence.

**Section 5:** Offender levy on certain penalties

This section sets out the fixed penalties which will attract an offender levy: fixed penalties (introduced in this Act); endorsable road traffic offences; and conditional offers of fixed penalties for speed camera detections for persons aged 18 years and over. It also provides that other Departmental penalties may be levied, subject to approval by an affirmative order of the Assembly. Where the relevant penalty is increased on default, the levy will be increased by the same proportion.

**Section 6:** Amount of the offender levy

This section sets out the amount of offender levy to be paid depending on the sentence or fixed penalty given. Where more than one sentence is given at the same time, the levy will be applied to the sentence which attracts the highest rate.

If the sentence includes a determinate sentence of imprisonment for more than two years or an indeterminate sentence of imprisonment the levy value is £50.

Where the sentence includes a determinate sentence of imprisonment less than two years it is £25.

Where a sentence includes a community order or suspended sentence of imprisonment it is £20.

Where it includes a fine, it is £15.

For fixed penalties the levy is £5.

The Department may make an order by affirmative resolution of the Assembly which amends the list and values of the levy.

## **Chapter 2 - Vulnerable and Intimidated Witnesses**

This Chapter amends the Criminal Justice (Northern Ireland) Order 1999 to introduce improvements to special measures provisions and deal with some procedural changes.

### **Section 7: Eligibility for special measure: age of child witnesses**

This section amends the age at which persons are considered to be young witnesses to be 18 years rather than 17 years.

### **Section 8: Special measures directions for child witnesses**

This section allows the views of young witnesses to be taken into account when special measures applications are being made, subject to certain specified safeguards. It also removes the category of child witnesses who are in need of special protection thereby placing all child witnesses on the same footing regardless of the offence to which the proceedings relate.

### **Section 9: Special provisions relating to sexual offences**

This section gives adult complainants of sexual offences automatic entitlement to give video recorded evidence in chief. This section does not apply in magistrates' courts.

### **Section 10: Evidence by live link: presence of supporter**

This section formalises the presence of a supporter in the live link room when a witness is giving evidence.

### **Section 11: Video recorded evidence in chief: supplementary testimony**

This section relaxes the restrictions on a witness giving additional evidence in chief after their video recorded statement has been admitted.

### **Section 12: Examination of accused through intermediary**

Section 12 allows any examination of vulnerable defendants to be conducted through an interpreter or other person approved by the court. A vulnerable defendant is a person who has not attained the age of 18 or else is over 18 but suffers from a mental disorder or otherwise has a significant impairment of intelligence and social functioning. The court can give direction allowing examination through an intermediary if the above conditions are met and it is necessary in order to ensure the accused receives a fair trial.

**Section 13: Age of child complainant**

This section amends Article 23 of the Criminal Justice (Northern Ireland) Order 1999 so that the age of a child complainant is raised to 18 from 17.

**Part 2: Live Links**

This Part provides an expansion in court services by extending the range of matters that can be dealt with by way of “live link”.

The Act extends the conditions for a vulnerable accused live link direction to include those of any age who have a physical disability or suffer from a physical disorder. This is consistent with the eligibility criteria applied to witnesses. The Act improves the services for mentally disordered offenders by allowing live link connections between courts and psychiatric hospitals.

A number of technical improvements are also made to fill gaps in existing law.

The provisions do not change a patient’s or defendant’s entitlement to be present at a hearing nor do they alter the right to consult privately with their legal representative before during or after a live link.

**Section 14: Live links for patients detained in hospital**

This section provides for the use of live links between courts and psychiatric units for patients detained in hospitals under Part 3 of the Mental Health (Northern Ireland) Order 1986.

**Section 15: Live links at preliminary hearings in the High Court**

This section provides for the use of live links at preliminary hearings in the High Court. Previously accessible by live link by way of the court’s inherent jurisdiction, the Act puts this on a statutory footing.

**Section 16: Live links at preliminary hearing on appeals to the county court**

This section extends the use of live links to preliminary hearings in connection with appeals to the county court where the appellant is likely to be held in custody during the hearing. The court will not give or rescind a live link direction unless the parties to the proceedings have been given the opportunity to make representations.

**Section 17: Live link in sentencing hearing on appeals to the county court**

This section allows for the use of live links in relation to sentencing hearings in connection with appeals to a county court where the appellant is likely to be held in custody during the hearing. A live link direction may be given by the court with the appellant’s consent or on an application by a party.



### **Section 18:** Live links in the Court of Appeal

This section extends the use of live links in the Court of Appeal in relation to certain specified criminal appeal proceedings if a party to those proceedings is expected to be in custody. The Court of Appeal would only issue a live link direction with the consent of the party whose sentencing is the subject of the appeal and after the other parties to the proceedings have had the opportunity to make representations.

### **Section 19:** Live link direction for vulnerable accused or appellant

This section provides for an accused person of any age who has a physical disability or suffers from a physical disorder to make an application to the court to give oral evidence through a live link. The court must be satisfied that the accused person suffers from the said disability or disorder; use of a live link would enable them to participate more effectively in the proceedings; and that it is in the interests of justice for them to give evidence through a live link. This is in any proceedings in a magistrates' court or before the Crown Court for an offence and to any proceedings in a county court on an appeal.

## **Part 3: Policing and Community Safety Partnerships**

This Part integrates the roles of Community Safety Partnerships (CSPs) and District Policing Partnerships (DPPs) to create a single partnership for each district council. These single partnerships are known as Policing and Community Safety Partnerships (PCSPs). Each single partnership comprises of councillors, independent members and representatives of delivery partners (both statutory and voluntary). Within that partnership sits a 'policing committee' comprising councillors and independents performing the police monitoring functions inherited from the DPPs and reporting on these to the Policing Board. All the other functions of DPPs and CSPs are passed to the whole partnership reporting to the relevant council, the Department of Justice and the Policing Board.

### **Section 20:** Establishment of PCSPs and DPCSPs

This section requires each district council to establish a PCSP and the district council for Belfast to establish a DPCSP for each police district. It also states that a joint committee shall be formed with representatives from the Department of Justice and the Policing Board to oversee the PCSPs.

The section also gives effect to Schedules 1 and 2. Schedule 1 provides for the membership composition and rules; the election of a chair and vice chair; procedure of the partnership; details of the policing committee and any other committees; insurance; finance; the establishment of joint PCSPs; and modifications specific to Belfast PCSP. Schedule 2 does this for the Belfast DPCSPs.

### **Section 21:** Functions of PCSP

This section sets out the functions of a PCSP. The functions are in relation to policing and community safety in the district. The functions are to obtain and fully consider the views of the public; to act as a forum for discussion and consultation on these matters; to prepare plans to reduce crime; to identify targets to measure the success of the plans; and to provide

financial or other support to persons involved in ventures designed to reduce crime or enhance community safety in the district.

This section also explains that there are a number of “restricted functions” which must be carried out by the policing committee of the PCSP. These are the specific functions inherited from DPPs in relation to holding PSNI to account for its performance in respect of the local policing plan; making arrangements for obtaining the co-operation of the public with the police; and reporting on these to the Policing Board.

**Section 22: Functions of DPCSP**

This section sets out the functions of the DPCSP which are the same as in section 21 except they are all in relation to the police district rather than district.

**Section 23: Code of practice for PCSPs and DPCSPs**

This section states the joint committee will issue a code of practice containing guidance as to the exercising of functions of the PCSPs. Before issuing a code the joint committee will consult with district councils and the Chief Constable. The code of practice may include provisions concerning procedures for meetings; holding public meetings; arrangements for giving notice of meetings; arrangements for submitting reports or other documents to the joint committee; and arrangements for dealing with the Policing Board and the Department. It can also contain arrangements for the policing committee’s functions in relation to monitoring the police.

**Section 24: Annual report by PCSP to council**

Section 24 outlines that annual reports (for each council except Belfast) must be sent to the district council and the joint committee by a PCSP no later than three months after the end of the financial year. Before a report is submitted, the policing committee shall consult with the relevant district commander. The council will arrange for the report to be published in such a manner as it feels appropriate.

**Section 25: Annual report by Belfast PCSP to council**

This section states that the PCSP for the district of Belfast has up to four months after the end of each financial year to produce a report on the exercise during that year of its functions and those of the DPCSPs. The PCSP report and the various DPCSP reports must be submitted to the council and copied to the joint committee. Before a report is submitted the policing committee shall consult with the district commander of each police district in the district of Belfast. The council will arrange for the PCSP report to be published and if appropriate the DPCSP reports.

**Section 26: Annual report by DPCSPs to principal PCSP**

This section states that a DPCSP must, no later than two months after the end of the financial year, submit to the principal PCSP a report on its functions in that year. Before submitting the report the DPCSP shall consult the relevant district commander.



**Section 27:** Reports by PCSP to joint committee

This section requires the PCSP (except Belfast) to provide a report at any time when requested by the joint committee. The report must be provided within three months, or a longer period if agreed by both parties, from the request. The joint committee can publish the report as it sees appropriate.

**Section 28:** Reports by Belfast PCSP to joint committee

This section allows the joint committee to request reports on the Belfast PCSP or any of the DPCSPs. The report must be received within three months unless it relates wholly or partly to the functions of a DPCSP in which case the time limit is four months. The joint committee can publish the report as it sees appropriate.

**Section 29:** Reports by DPCSP to principal PCSP

This section requires a DPCSP to provide a report on its functions to the PCSP whenever it is requested. This must be done within two months or an agreed longer timescale. The PCSP can publish this report as it sees fit.

**Section 30:** Reports by policing committees to Policing Board

This section allows the Policing Board to request a report from a policing committee of a PCSP, except Belfast, at any stage. The policing committee has three months, or longer if agreed, to provide the report which the Policing Board may publish if appropriate.

**Section 31:** Reports by policing committee of Belfast PCSP to Policing Board

This section requires the policing committee of the Belfast PCSP to submit reports to the Policing Board on request. The report must be received within three months unless it relates wholly or partly to the functions of a DPCSP in which case the time limit is four months. When submitting the report the policing committee of the Belfast PCSP must also send any relevant policing committee reports from the DPCSPs. The Policing Board may publish any reports if appropriate.

**Section 32:** Reports by policing committee of DPCSP to policing committee of principal PCSP

This section requires a policing committee of a DPCSP to submit a report to the policing committee of the principal PCSP at any point it is requested. The policing committee of a DPCSP has two months, or longer if agreed, to comply. The policing committee of the principal PCSP can arrange for the report to be published if appropriate.

**Section 33:** Other community policing arrangements

This section allows policing committees, with the Policing Board's approval, to make arrangements to facilitate consultation by the police with any local community within their district. If it appears to the Policing Board that this has not been done the Board itself may make arrangements to facilitate consultation by the police with that local community. The

Policing Board may pay reasonable expenses of any body set up to achieve the consultation. The Chief Constable shall be consulted to ensure the arrangements are satisfactory.

### **Section 34: Functions of joint committee and Policing Board**

This section states that the joint committee must assess the level of public satisfaction with the partnerships and assess the effectiveness of the partnerships to perform their functions. The Policing Board must assess the level of public satisfaction with the policing committees and assess the effectiveness of the policing committees to perform their functions.

## **Part 4: Sport**

This Part creates new offences to promote good behaviour by fans of association football, Gaelic games and rugby. The offences are unauthorised pitch incursion; offensive chanting; missile throwing; the possession of flares or fireworks; and the possession of alcohol on hired buses en route to regulated matches. It also introduces football banning orders for the purpose of helping to prevent violence and disorder at association football matches. A court will be able to make a banning order prohibiting a person from attending certain football matches for a set period. It will be a criminal offence to fail to comply with a football banning order.

Chapter 1 and Schedule 3 set out the definitions for regulated matches and the period of a regulated match. Chapter 2 deals with the new offences at regulated matches. Chapter 3 deals with alcohol on vehicles travelling to a regulated match. Chapter 4 deals with banning orders.

### **Chapter 1 - Regulated matches**

This Chapter consists only of section 35, which sets out which sports matches are covered by each Chapter in this Part of the Act and also the period during which the offences in Chapter 2 are to apply.

#### **Section 35: Regulated matches**

This section outlines what matches are affected by each of the Chapters in this Part by reference to Schedule 3. The notes on Schedule 3, at the end of this document, outline the matches concerned.

In Chapter 2 (offences at regulated matches) a regulated match is those outlined in paragraph 2, 3, 6 or 8 of Schedule 3. For Chapter 3 (alcohol on transport) designated matches are those specified in paragraph 2, 3, 4, 6, 7, 8 or 9 of Schedule 3. For Chapter 4 (banning orders) regulated matches are matches named in paragraph 2, 3, 4, or 5 of Schedule 3.

This section also explains, for the purposes of all offences in Chapter 2, the period of a regulated match, including occasions where a match is postponed or cancelled. The period of a regulated match begins one hour before the start of the match or (if earlier) one hour before the time at which it is advertised to start. The period ends 30 minutes after the end of the match. Postponements or match delays are catered for by retaining the same period before the advertised match starting time as would have applied had the match taken place as advertised.

The Department may amend Schedule 3 by order subject to negative resolution.

## **Chapter 2 - Conduct at Regulated Matches**

This Chapter outlines all of the offences being introduced which relate to conduct at matches.

### **Section 36: Throwing of articles capable of causing injury**

This section creates an offence of throwing any article capable of causing injury if it strikes a person at or towards a playing area or other specified areas without lawful authority. A person guilty of this offence is liable to a fine not exceeding level 3 on the standard scale. Currently a level 3 fine has a maximum value of £1,000.

### **Section 37: Chanting**

This section creates an offence of sectarian or indecent chanting during regulated matches. Chanting is defined as the repeated uttering of any words or sounds whether alone or in concert with one or more others. Chanting that consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability is also covered by this offence. A person guilty of this offence is liable to a fine not exceeding level 3 on the standard scale currently with a maximum of £1,000.

### **Section 38: Going onto the playing area**

This section makes it an offence for a person to go onto the playing area, or any area adjacent to the playing area to which spectators are not generally admitted, without lawful authority or excuse. A person guilty of this offence is liable to a fine not exceeding level 3 on the standard scale (current maximum £1,000).

### **Section 39: Possession of fireworks, flares, etc.**

This section creates an offence of having a specified article when at a regulated match or trying to enter a ground during the regulated period. A specified article is a firework or an article or substance whose main purpose is the emission of a flare for purposes of illuminating or signalling (as opposed to igniting or heating) or the emission of smoke or a visible gas. In particular this applies to distress flares, fog signals and pellets and capsules intended to be used as fumigators or for pipe testing but not to matches, cigarette lighters or heaters. A person guilty of this offence is liable to a fine not exceeding level 3 on the standard scale (current maximum £1,000) or to imprisonment for a term not exceeding 3 months.

## **Chapter 3 - Alcohol on vehicles travelling to regulated match**

This Chapter relates to possession of alcohol on vehicles which are travelling to a regulated match.

#### **Section 40: Offences in connection with alcohol on vehicles**

This section creates two offences around alcohol on certain transport to regulated matches. First, it defines which vehicles are covered by the offences created. These are motor vehicles which can carry 9 or more passengers and are being used principally for the purpose of carrying passengers for reward for the whole or part of a journey to a regulated match.

The first offence is that of causing or permitting intoxicating liquor to be carried on such a vehicle and applies to an operator, servant or agent of the operator; or the person who hired the vehicle, their servant or agent. The operator of a vehicle is the driver if the driver owns the vehicle. In any other case it is the person for whom the driver works. A person guilty of this offence is liable to a fine not exceeding level 4 on the standard scale. Currently a level 4 fine has a maximum value of £2,500.

It is also an offence to possess intoxicating liquor while on a relevant vehicle. A person guilty of this offence is liable to a fine not exceeding level 3 on the standard scale (current maximum £1,000) or to imprisonment for a term not exceeding 3 months.

A constable may stop and search a vehicle if he/she suspects that one of these offences has taken or is taking place. Definitions of ‘intoxicating liquor’ and ‘motor vehicle’ are provided.

The section gives the Department an order-making power to amend which vehicles this offence applies to. Such orders would be subject to affirmative resolution of the Assembly.

#### **Chapter 4 - Banning orders in relation to regulated matches**

This Chapter creates banning orders and provides for their content, period, additional requirements, termination, enforcement and related appeals.

#### **Section 41: Banning orders: making on conviction**

This section states the sorts of which offences which will trigger the sentencing court’s consideration of a banning order. These are where the person who committed the offence engaged in violence or disorder at, entering or leaving a regulated match; on the journey to or from a regulated match; or where it appears to the court the offence was motivated by a regulated match. The court must impose a banning order if a person has been convicted of such an offence and the court believes making a banning order would help to prevent violence or disorder at or in conjunction with any regulated matches.

The section states what evidence may be considered and that a banning order may only be made in addition to a sentence or conditional discharge. A banning order is to be taken to be a sentence for the purposes of appeal rights.

#### **Section 42: Banning orders: content**

This section provides a definition of banning order as an order prohibiting the person from entering any premises for the purpose of attending a regulated match. The court is required to explain the effect of the banning order to the subject in ordinary language.

This section requires the person to report initially to a police station. It also sets out a list of events which require the person to notify the police (e.g. a change of address), and the time period in which notification may take place. It also provides for the suspension of reporting requirements when the person is in legal custody or when the person is living outside Northern Ireland.

**Section 43: Banning orders: supplementary**

This section gives the requirements for the adjournment of proceedings, covering warrants, remand and bail. It gives a right of appeal to the prosecution where the court has not made a banning order.

**Section 44: Banning orders: “violence” and “disorder”**

This section gives the definitions of violence and disorder for the purposes of this Chapter.

Violence is defined as violence against persons or property and includes threatening violence and doing anything which endangers the life of any person.

Disorder includes stirring up sectarian hatred or hatred against groups of persons defined by reference to colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability or against an individual as a member of such a group; using threatening, abusive or insulting words or behaviour or disorderly behaviour; and displaying any writing or other things which are threatening, abusive or insulting.

**Section 45: Banning order: duration**

This section explains how the minimum and maximum period of a banning order is determined. The period starts when the banning order is made. Where an order is made in addition to a sentence of immediate detention the maximum is 10 years and the minimum is 6 years. In any other case the maximum is 5 years and the minimum is 3 years.

**Section 46: Banning orders: additional requirements**

This section provides that in making a banning order court may, if it thinks fit, include additional requirements of the person. It also provides that the court which made the order may vary it on the request of the person or of the prosecutor.

**Section 47: Termination of banning orders**

This section allows that when two thirds of the period of the order has elapsed the person subject to an order may apply to have the order terminated. On application the court may terminate the order or refuse the application. The section sets out factors which must be considered by the court such as the person’s character, conduct of the person since the order was made and the nature of the offence which led to it. A second termination application may not be made within 6 months of the refusal of the first. The applicant may be required to pay the costs of the application.

**Section 48:** Information about banning orders

This section determines to whom the court must send a copy of each banning order and each terminating order. These are, as relevant, the person; the Chief Constable; the police station that the person must report to initially; if the person is being detained in custody, the person in whose custody they are detained; and any other person prescribed by the Department. Notice of the subject's release from custody, in certain circumstances, must also be provided to the Chief Constable.

**Section 49:** Failure to comply with banning order

This section creates the offence of failing to comply with any requirement imposed by a banning order and a person guilty of that offence is liable to imprisonment for a term not exceeding 6 months; a fine not exceeding level 5 on the standard scale (current maximum £5,000); or both.

**Chapter 5 - Enforcement**

This Chapter consists only of section 50.

**Section 50:** Powers of enforcement

This section sets out what constables may do in enforcing the provisions of this Part of the Act. Where they suspect an offence has been committed under this Part constables may enter a sports ground and / or search a person.

**Part 5: Treatment of Offenders**

This Part makes various amendments to existing legislation.

**Section 51:** Increase in maximum term of imprisonment for common assault or battery

This section increases the maximum term of imprisonment for common assault or battery under section 42 of the Offences against the Person Act 1861 to six months. As a consequence it also repeals section 43 (aggravated assault).

**Section 52:** Penalty for certain knife offences

This section increases the maximum penalty for the offence of having a weapon on school premises on summary conviction to 12 months' imprisonment; a fine not exceeding the statutory maximum; or both. On conviction on indictment, the maximum penalties are 4 years' imprisonment, an unlimited fine, or both.

**Section 53:** Extension of maximum period of deferment of sentence

This section increases the maximum period for which sentencing for an offence may be deferred from six months to twelve months. An exception is where an interim driving disqualification is also being imposed in which case the maximum remains at six months.



**Section 54:** Breach of licence conditions by sex offenders

This section amends article 27 of the Criminal Justice (Northern Ireland) Order 1996 so that if a person breaches the conditions of their licence and have no known address in Northern Ireland they can be brought before the court which made the original order.

**Section 55:** Sexual offences: closure orders

This section amends the Sexual Offences Act 2003 to ensure that a district judge (magistrates' courts) will hear applications relating to closure orders.

**Section 56:** Financial reporting orders

This section adds to the list of offences which can receive a financial reporting order.

**Section 57:** Dangerous offenders: serious and specified offences

This section makes the offence of hijacking under section 2 of the Criminal Jurisdiction Act 1975 eligible for both indeterminate and extended custodial sentences under the provisions of the Criminal Justice (Northern Ireland) Order 2008.

**Section 58:** Supervised activity order in respect of certain financial penalties

This section ensures that supervised activity orders (community-based alternatives to custody for fine default) are available to magistrates' courts in respect of anyone who has had a financial penalty imposed elsewhere in the EU, who then returns or moves to Northern Ireland without having paid the fine, and in respect of whom the penalty is transferred to Northern Ireland.

**Part 6: Alternatives to Prosecution**

This Part provides for two new diversionary disposals - penalty notices and conditional cautions - aimed at dealing effectively with minor offences outside the court room. They may be offered to offenders as an alternative to prosecution in suitable cases but offenders retain the right to ask to have their case heard at court instead.

Penalty notices are for first-time or non-habitual offenders committing a prescribed offence. Paying the notice within 28 days discharges their liability for that offence. They are issued by the police without a direction from the Public Prosecution Service (PPS). There are 7 eligible offences which are listed in Schedule 4 (below). Offences attract either £40 or £80 penalties. Where recipients take no action within 28 days of the issue of the penalty, its value is uplifted by 50%, registered as a court fine and enforced through existing court fine default arrangements.

The PPS is currently able to direct the issue of an unconditional caution (by police or Departmental officials) as a disposal in suitable cases. The conditional caution provisions will enable prosecutors to attach rehabilitative and reparative conditions to a caution with which the offender must comply or face reconsideration of prosecution for the original offence. This disposal is to be used for individuals who might willingly avail of the opportunity to begin addressing any issues underpinning their offending behaviour in order to minimise their risk

of re-offending. Rehabilitative conditions will include for example attendance at relevant programmes whilst reparative conditions may include an oral or written apology to a victim or other reparative activity to make good the harm caused.

## **Chapter 1 - Penalty Notices**

This Chapter creates a power for police to dispose of certain prescribed offences, without a direction from the PPS, aimed at giving a first-time or non-habitual offender a notice offering the opportunity to discharge his liability for that offence by paying a penalty notice within 28 days (“the suspended enforcement period”).

### **Section 59: Penalty offences and penalties**

This section brings in Schedule 4 which lists the offences which can attract a penalty notice and the amount payable in relation to that offence. Offences which attract a £40 penalty are indecent behaviour (urination) in any street, road, highway or other public place, or in any place to which the public have access; and being drunk in any road or other public place. Offences with an £80 penalty are theft (guidance will state this is for first-time shoplifting only); criminal damage (i.e. destroying, damaging or intending to do so to any property belonging to or being reckless as to whether any such property would be destroyed or damaged); disorderly behaviour in any public place; behaviour likely to cause a breach of the peace in a public place; and assaulting, resisting, obstructing or impeding a constable in the execution of his duty.

The penalty payable in respect of a penalty offence may not exceed one quarter of the maximum fine for which a person is liable on summary conviction of the offence. Penalty notices are also subject to the offender levy provisions in this Act.

The Department may amend Schedule 4 by an affirmative resolution order of the Assembly.

### **Section 60: Penalty notices**

This section defines a “penalty notice” as a notice offering the opportunity to discharge any liability to be convicted of the offence to which the notice relates by paying a fixed penalty. Penalty notices are issued by the police to a person over the age of 18.

### **Section 61: Form of penalty notice**

This section dictates that a penalty notice must state the alleged offence; specifics about the alleged offence so as to provide reasonable information about it; specify the period before prosecution will be brought about (suspended enforcement period); the amount of the penalty, to whom and where the penalty must be paid; and inform the alleged offender of the right to request a trial.

### **Section 62: Effect of penalty notice**

This section states that if the alleged offender requests to be tried for the alleged offence then proceedings may be brought against them. The request to be tried must be made in the manner specified in the notice within the suspended enforcement period. If the suspended enforcement period elapses and the person has neither requested to be tried nor paid the

amount then the sum of the notice is increased by 50% and the penalty may be registered as a court fine.

**Section 63:** General restrictions on prosecution

This section sets out the restrictions on prosecution. No proceedings can be brought within the suspended enforcement period, which is 28 days from the date on which the notice was given, unless the individual requests to be tried. If the penalty is paid before the end of the suspended enforcement period no proceedings may be brought for the offence.

**Section 64:** Guidance

This section allows the Department of Justice to issue guidance about issuing penalty notices; about the exercise of the discretion given to police officers; and with a view to encouraging good practice in connection with the operation of the provisions of Chapter 1.

**Section 65:** Payment of penalty

This section sets out the procedure for payment of a penalty. The payment must be made to, or at an office of, the fixed penalty clerk specified in the penalty notice. Where payment is made by post, this is to be done by addressing, pre-paying and posting a letter to the fixed penalty clerk containing the penalty notice and the amount of the penalty. Sums paid by way of a penalty for an offence shall be treated as if they were fines imposed on summary conviction of that offence. The fixed penalty clerk is the clerk of petty sessions or such other persons as the Department of Justice may by order direct.

**Section 66:** Registration certificates

This section comes into effect if a person either does not pay their penalty notice or requests to be tried within the suspended enforcement period. In this instance the Chief Constable, or a person authorised by him, may issue a certificate stating that the sum can be registered as a fine. This certificate must be issued to the fixed penalty clerk.

**Section 67:** Registration of penalty

This section states that the fixed penalty clerk must upon receiving a certificate under section 66 register a sum in default for enforcement as a court fine. Once registered as a fine the individual who received the penalty notice is given a notice of registration specifying the amount and date for payment alongside information with respect to the offence. It will be treated as a court fine and therefore attract the normal payment and enforcement methods such as payment by instalments; extra time to pay; or any of the sanctions available for fine default.

The Department can make regulations with respect to the enforcement of payment of sums registered under this section as it considers appropriate.

**Section 68:** Challenge to notice

This section applies where a person who has received a notice of registration of a sum under section 67 for enforcement as a fine, makes a declaration within 21 days (or outside that period at the discretion of the court) that they were not the person to whom the relevant

penalty notice was given, or that they gave notice requesting to be tried. If the person is not the individual to whom the penalty notice was issued the registration as a fine and any other proceedings made will be void. If the person requested to be tried within the specified period then the registration of the fine is void and the case shall be treated as if the person requested to be tried as stated.

**Section 69:** Setting aside of sum enforceable under section 67

This section allows a court of summary jurisdiction to void the penalty notice, the registration as a fine; and any proceedings related to the alleged offence if it considers it is in the interests of justice to do so. It also allows the court to set aside the registration as a fine and to treat the case as if the person concerned had given notice requesting to be tried in respect of the offence.

**Section 70:** Interpretation of this Chapter

This section defines some of the terms used in this Chapter.

**Chapter 2 - Conditional cautions**

This Chapter enables prosecutors to attach rehabilitative and reparative conditions to a caution with which the offender must comply or face reconsideration of prosecution for the original offence.

**Section 71:** Conditional cautions

This section introduces conditional cautions which are cautions given in respect of an offence which have conditions attached to it that the offender must comply with. A conditional caution can be given if the five requirements set out in section 72 are satisfied. The conditions will have the objective of facilitating the rehabilitation of the offender and/or ensuring the offender makes reparation for the offence. For this Chapter an “authorised person” is a police officer or a person authorised by the Director of Public Prosecutions for Northern Ireland.

**Section 72:** The five requirements

This section sets out the requirements that must be met for a conditional caution to be issued. The first requirement is that the authorised person has evidence that the offender committed an offence other than an offence triable only on indictment. The second is that a Public Prosecutor decides there is sufficient evidence to charge the offender with the offence and that a conditional caution should be given to the offender. The third is that the offender admits to the authorised person that they committed the offence. The fourth is that the authorised person explains the effect of a conditional caution and that failure to comply may result in the offender being prosecuted for the offence. Finally the offender must sign a document detailing the offence; admitting the offence; consenting to be given a conditional caution; and outlining the conditions attached to the caution.

**Section 73:** Variation of conditions

This section allows a Public Prosecutor, with the consent of the offender, to vary the conditions attached to a caution by modifying or omitting any of the conditions or adding a condition.

**Section 74:** Failure to comply with conditions

This section details that if an offender fails without reasonable excuse to comply with the conditions then criminal proceedings may be instituted against the offender for the offence in question in which case the conditional caution will cease to have effect

**Section 75:** Arrest for failure to comply

This section states that a constable can arrest an offender without a warrant if he/she has reasonable grounds for believing that the offender has failed without reasonable excuse to comply with any of the conditions attached to the caution. It also makes provision for dealing with such circumstances. The arrested person must (i) be charged, (ii) released without charge on bail to enable a decision to be made as to whether he should be charged or (iii) released without charge or bail and with or without any variations to the conditions of his caution as appropriate. Conditional cautions are issued to an offender by PPS with a clear indication that a failure to comply may result in prosecution for the original offence. This power enables the facilitation of such a prosecution in the event of default of conditions by an offender.

**Section 76:** Application of PACE provisions

This section ensures that the relevant provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) apply in relation to a person arrested.

**Section 77:** Code of practice

This section requires the Department of Justice to prepare a code of practice in relation to conditional cautions. The code may include provisions as to the circumstances, procedures and places for giving a conditional caution; what conditions can be attached to a caution and time they can have effect for; the people who can give a caution; the form the caution takes and the manner in which they are to be given and recorded; the monitoring of compliance with conditions; the use of arrest powers for non-compliance; and who makes decisions about the release of persons arrested.

The code must be published in draft and the Department of Justice may amend the code accordingly. The draft code cannot be amended or published without the consent of the Attorney General for Northern Ireland. Once the draft is agreed it must be laid before, and approved by a resolution of, the Assembly. The code can then be brought in by order. The Department may from time to time revise the code.

**Section 78:** Powers of Probation Board

This section gives to the Probation Board for Northern Ireland power to make provision to assist Public Prosecutors in determining whether a conditional caution should be given and

which conditions to attach. The Probation Board can also make provision for the supervision and rehabilitation of persons to whom a conditional caution is given.

**Section 79:** Interpretation of this Chapter

This section defines some of the terms used in this Chapter.

**Part 7: Legal Aid, etc.**

This Part allows rules/regulations to be made to introduce a new means test for the grant of criminal legal aid in Northern Ireland and to make further amendments to Legal Aid legislation. These include powers to enable the courts to make recovery of defence costs orders; repeal of a provision which prevents the Northern Ireland Legal Services Commission from establishing or funding services under a Litigation Funding Agreement; and a number of miscellaneous amendments to legal aid legislation mainly relating to the scope of civil legal services.

**Section 80:** Eligibility for criminal legal aid

This section allows the introduction of a new means test for the grant of criminal legal aid in Northern Ireland. This is an enabling power to make rules. The rules will prescribe the financial eligibility limits. The first rules under this section shall not be made unless a draft of the rules has been laid before, and approved by a resolution of, the Assembly.

**Section 81:** Order to recover costs of legal aid

This section allows courts to make recovery of defence costs orders against legally aided defendants if the court considers that the defendant has sufficient funds to pay all, or a proportion of, the costs of his defence. The section is for an enabling power which allows rules to be made. The rules would subsequently include the detail of how these orders would operate in practice.

**Section 82:** Eligibility of persons in receipt of guarantee credit

This section amends the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 to include applicants in receipt of the guarantee credit element of State Pension Credit as automatically meeting, in certain circumstances, the financial test for civil legal aid.

**Section 83:** Legal aid for certain bail applications

This section ensures that an accused person who has been granted a criminal aid certificate for proceedings before the magistrates' court will continue to get free legal aid not only for any bail application heard in the magistrates' court but also for a repeat bail application made in the Crown Court. For an accused person who has been granted a criminal aid certificate for proceedings before the Crown Court, this certificate will now include free legal aid not only for any bail application in the Crown Court but also for any compassionate bail application made in the magistrates' court.



**Section 84:** Financial eligibility for grant of right to representation

The section amends the Access to Justice (Northern Ireland) Order 2003 and provides that the power of the court or the Northern Ireland Legal Services Commission to grant criminal legal aid may only be exercised following an assessment of the applicant's means.

**Section 85:** Litigation funding agreements

This section removes the restriction on the Northern Ireland Legal Services Commission from establishing or funding services under a Litigation Funding Agreement (LFA). LFAs are a type of agreement that allows litigants to pursue money damages cases, including personal injury litigation, on the basis that they would not be liable for their legal costs if their case was unsuccessful. If a client, funded by way of an LFA, was successful then either a success fee obtained from the losing side, or a portion of the clients' award (or both) would be paid into a fund. This fund would then help meet the cost of legal fees in unsuccessful cases.

**Section 86:** Civil legal services: scope

This section ensures that civil legal services are available for applications in the Crown Court or in a court of summary jurisdiction to vary or discharge a witness anonymity order or an order under the Protection from Harassment (Northern Ireland) Order 1997. In a court of summary jurisdiction, civil legal services will also be available for applications for a foreign travel restriction order or to vary, renew or discharge a foreign travel restriction order; for applications to discharge an investigation anonymity order; or for applications to release property subject to a confiscation order under the Proceeds of Crime Act 2002.

**Section 87:** Enhanced legal aid fees for certain solicitors

This section brings in Schedule 5 which provides the power to allow legal aid regulations to be made in order to remunerate at an enhanced rate solicitors who exercise rights of audience in the lower courts and certain tribunals where they have undergone the requisite advocacy training specified by the Law Society and have complied with certain duties.

**Part 8: Solicitors' rights of audience**

This Part extends solicitors' rights of audience in the High Court and Court of Appeal.

It creates a system of authorisation for solicitors wishing to exercise rights of audience in the High Court and Court of Appeal and the authorisation process is to be prescribed by the Law Society in regulations. A solicitor holding authorisation shall have the same rights of audience as counsel in the High Court and Court of Appeal. The sections also contain a range of measures which are designed to ensure that competition for advocacy services is maintained and conflicts of interest prevented.

The Part gives the Department an order-making power to make technical amendments to certain legal aid primary legislation to take account of the extension of solicitors' rights of audience. These orders are subject to the negative resolution procedure.

**Section 88:** Authorisation of Society conferring additional rights of audience

This section makes various amendments to the Solicitors (Northern Ireland) Order 1976 which are related to the granting of authorisation to solicitors by the Law Society to appear in the High Court and Court of Appeal. The application for authorisation shall be made in a way, and accompanied by such fee, as the Law Society may prescribe together with such information the Society may reasonably require.

The Law Society is required to make regulations with regard to the education, training and experience which a solicitor must possess before authorisation can be granted. These regulations may provide that a solicitor who has already completed such training, education or experience shall be taken to hold such authorisation. These regulations are subject to the concurrence of the Lord Chief Justice and the Department which must consult with the Attorney General.

Where a solicitor meets the prescribed training, education and experience requirements, the Law Society shall grant authorisation. The Law Society must maintain a register of authorised solicitors.

**Section 89:** Rights of audience of solicitors

This section amends the Judicature (Northern Ireland) Act 1978 to provide that a solicitor holding authorisation shall have the same rights of audience as counsel in the High Court and Court of Appeal. It also amends the Solicitors (Northern Ireland) Order 1976 to create certain duties which will apply where a solicitor is minded to engage an authorised solicitor to represent a client in the High Court or Court of Appeal or, where he is an authorised solicitor, to provide that representation himself.

Specifically, in these circumstances, a solicitor will be required to advise their client in writing of the advantages and disadvantages of representation by an authorised solicitor and by counsel respectively and that the decision as to representation is entirely that of the client. The detail of the matters to be covered by this advice is to be prescribed by the Law Society in regulations. These regulations are subject to the concurrence of the Lord Chief Justice and the Department, which must consult with the Attorney General.

When advising a client, a solicitor must act in the best interest of the client and give effect to any decision of the client. The solicitor must inform the court, in a way and timescale provided by court rules, that they have complied with these requirements. If a solicitor breaches any of these duties, any person may make a complaint to the Solicitors' Disciplinary Tribunal.

This section also makes a technical amendment to the County Courts (Northern Ireland) Order 1980 to remove a restriction which prevents a solicitor being retained by another solicitor as an advocate. A solicitor may now instruct an authorised solicitor to act on behalf of a client in the County Court.

**Section 90:** Consequential and supplementary provisions

This section gives the Department an order-making power to make technical amendments to certain legal aid primary legislation to take account of the extension of solicitors' rights of audience. These orders are be subject to the negative resolution procedure

**Part 9: Miscellaneous**

This Part contains miscellaneous provisions.

**Section 91:** Bail: compassionate grounds

This section gives magistrates' courts the power to grant defendants compassionate bail. Previously, only the High Court or Crown Court had the jurisdiction to do so.

**Section 92:** Bail: repeat application

This section allows repeat bail applications to be heard by the Crown Court (i.e. where bail has been refused by the magistrates' court and there has not been a change in circumstances).

**Section 93:** Possession of offensive weapon with intent to commit an offence

This section replaces part of section 4 of the Vagrancy Act 1824, the offence of being armed with a dangerous or offensive weapon with intent to commit an arrestable offence. It creates an equivalent, free-standing offence with increased penalties of up to 4 years' imprisonment; an unlimited fine; or both on conviction on indictment.

**Section 94:** Power of Department to make payments in relation to prevention of crime, etc.

This section gives the Department of Justice the power to allocate the proceeds of criminal assets, remitted to the NI Consolidated Fund, up to a limit to be agreed between the Department of Finance and Personnel and HM Treasury to prevent crime and reduce the fear of crime and to support the recovery of criminal assets.

**Section 95:** Publication of material relating to legal proceedings

This section enables court rules to be made on disclosure of information relating to family proceedings concerning children without the need for a court order authorising the disclosure. This disclosure will be between specified persons and in specified circumstances.

**Section 96:** Membership of Crown Court Rules Committee

This section provides for a Public Prosecutor nominated by the Director of Public Prosecutions and a practising member of the Bar or practising solicitor nominated by the Attorney General for Northern Ireland to be included within the membership of the Crown Court Rules Committee.

**Section 97:** Membership of the Court of Judicature Rules Committee

This section provides for the Attorney General for Northern Ireland or a practising member of the Bar or practising solicitor nominated by the Attorney General for Northern Ireland to be included within the membership of the Court of Judicature Rules Committee.

**Section 98:** Funds in court: investment fees or expenses

This section gives the court a power to order the payment, from funds held under the court's protective jurisdiction on behalf of minors and patients, of any fees or expenses (at an amount or rate approved by the court) incurred in connection with or for the purposes of the investment of those funds in securities by the Accountant General of the Court of Judicature. The court shall not make such an order unless it is necessary and proportionate to do so and the court may also order the refund of any fees which have been deducted where it is in the interests of justice to do so.

**Section 99:** Appeals from Crown Court: Proceeds of Crime Act 2002

This section makes provision for appeals from the Crown Court (following committal to that court for consideration of a confiscation order under section 219 of the Proceeds of Crime Act) to be dealt with by the Court of Appeal.

**Section 100:** Witness summons in a magistrates' court

This section allows magistrates' courts to consider applications for third party disclosure in respect of any evidence that may be of use to a party to the proceedings in presenting their case. This brings the powers of the magistrates' courts into line with those available to the Crown Court.

**Section 101:** Criminal conviction certificates to be given to employers

This section enables AccessNI to issue a copy of a criminal conviction certificate (or basic disclosure) to an employer in addition to issuing the certificate to the applicant.

**Section 102:** Accounts of the Law Commission

This section removes the requirement for the Northern Ireland Law Commission to produce a full set of audited accounts, removing the need for the Comptroller & Auditor General for Northern Ireland to undertake separate examination and certification. A requirement remains to include a financial summary within their annual report.

**Section 103:** Variation of firearms certificate

This section allows variations to firearms certification to be made by a dealer where the individual is exchanging firearms of a similar type and calibre. The dealer must then notify the PSNI. Previously this was available for only shotguns however this section extends it to all firearms other than prohibited weapons.

**Section 104:** Restrictions on use of shotguns by young persons

This section allows persons under the age of 18 to shoot shotguns in certain supervised situations. The person acting as the supervisor must be over the age of 18 and hold a firearms certificate authorising them to possess such a shotgun as is being used.

**Section 105:** Restrictions on possession of air guns by young persons

This section changes the age restrictions on possessing a low power air gun. It provides that all individuals under 18 are to be supervised if they possess such an air gun. The section also lowers the age of a person who can act as the supervisor to someone 18 years or older and introduces a new requirement that the supervisor must hold a firearms certificate authorising them to possess such an air gun.

**Part 10: Supplementary Provisions**

This Part contains the supplementary provisions including powers to make regulations.

**Section 106:** Supplementary, incidental, consequential and transitional provision, etc

This section provides for supplementary, incidental, consequential and transitional provisions.

**Section 107:** Regulations and orders

This section provides that regulations and orders made by the Department may include such additional provisions as the Department considers necessary.

**Section 108:** Interpretation

This section contains interpretation provisions.

**Section 109:** Transitional provisions and savings

This section provides for transitional provisions and savings set out in Schedule 6 to have effect.

**Section 110:** Minor and consequential amendments and repeals

This section provides for minor and consequential amendments and repeals set out in Schedules 7 and 8 to have effect.

**Section 111:** Commencement

The section concerns the commencement of the Act and enables the Department to make Commencement Orders.

**Section 112:** Short title

This section provides a short title for the Act.

## **Schedules**

### **Schedule 1: Policing and Community Safety Partnerships**

This Schedule sets out how a Policing and Community Safety Partnership (PCSP) under Part 3 is to be established and the arrangements for its proceedings.

#### **Paragraph 3: Political members**

This paragraph details that the number of political members is determined by the council based on the number of members constituting the council. In appointing political members the council must ensure as far as possible that they reflect the balance of the parties prevailing among the members of the council immediately after the last local general election. This paragraph also details how long a political member can hold office, how they vacate office and when a casual vacancy can and cannot be filled.

#### **Paragraphs 4 - 6: Independent members**

These paragraphs detail how the number of independent members should be determined; how the independent members should be appointed; how long they should hold office; how they vacate office; and when a casual vacancy can and cannot be filled. These paragraphs also detail that the Department of Justice is responsible for preparing and revising a code of practice in relation to the appointment of independent members.

#### **Paragraph 7: Representatives of designated organisations**

This paragraph details the minimum number of representatives from delivery partners that should be on each PCSP and who is responsible for designating organisations that must be represented. It provides that there should be at least four designated organisations. The paragraph also details that a PCSP is responsible for the revoking a designated organisation's membership. It also allows the Department of Justice by order to designate organisations which must be on each PCSP. The Department must consult with each PCSP and lay the order before the Northern Ireland Assembly for approval by resolution before making the order.

#### **Paragraph 8: Removal of members**

This paragraph details that the Policing Board or the council with the approval of the Policing Board is responsible for the removal of political and independent members of a PCSP. The paragraph sets out the circumstances in which members of a PCSP can be removed.

#### **Paragraph 9: Disqualification**

This paragraph sets out the circumstances in which persons are disqualified from membership of a PCSP.

#### **Paragraph 10: Chair and vice-chair**

This paragraph provides for the appointment of a chair and a vice-chair of a PCSP. It sets out that the chair must be appointed by the council from among the political members and that the vice-chair will be elected by the independent members from such members. The person



appointed to the office of chair shall usually be appointed for a term of 12 months and the office will be held in turn by each of the largest four parties represented on the council. The paragraph explains how a member resigns from the position of chair and vice-chair of the PCSP.

**Paragraph 11:** Procedure of PCSP

This paragraph details that there is a quorum for each meeting of a PCSP which shall be one-quarter of the total of members. The paragraph also sets out how each question at a meeting of a PCSP shall be determined and what happens in the event of the elected chair and vice-chair being absent from a meeting of a PCSP.

**Paragraph 12:** Policing committee: constitution

This paragraph sets out that there shall be a policing committee for each PCSP consisting of political members and independent members. The paragraph explains that each policing committee shall have a chair who is the chair of the PCSP and a vice-chair elected by the independent members. If a person wishes to resign from the position of vice-chair they must do so in writing to the Policing Board. The paragraph also explains that if a person ceases to be a member of the policing committee they will automatically vacate the position of chair or vice-chair.

**Paragraph 13:** Policing committee: procedure

This paragraph details that there is a quorum of 5 for a meeting of the policing committee. The paragraph also sets out how each question at a meeting of a policing committee shall be determined and what happens in the event of the elected chair and vice-chair being absent from a meeting of a PCSP. The paragraph explains that a policing committee may constitute sub-committees to be made up of 5 or more of its members. The policing committee can delegate to a sub-committee any of its functions.

**Paragraph 14:** Other committees

This paragraph provides for a PCSP to constitute other committees made up of 5 or more of its members. A PCSP can delegate to a committee any of the functions of the PCSP except the functions restricted to the policing committee. This paragraph allows for a committee appointed to co-opt other persons who are not members of the committee or the PCSP.

**Paragraph 15:** Indemnities

This paragraph details that the council can cover a PCSP member in respect of liability incurred by that member in connection with the business of the PCSP.

**Paragraph 16:** Insurance against accidents

This paragraph sets out that the council may insure against risks of a member of the PCSP meeting with a personal accident, whether fatal or not, whilst engaged in PCSP business.

**Paragraph 17: Expenses**

This paragraph provides that the council may pay members of the PCSP such expenses as the council determines.

**Paragraph 18: Finance**

This paragraph requires the Department of Justice and the Policing Board to make a grant for each financial year to the district council towards the expenses incurred by the council in connection with the establishment of, or the exercise of the functions by, PCSPs.

**Paragraphs 19 & 20:** Validity of proceedings & Disclosure of pecuniary interests, family connections etc.

These paragraphs set out the circumstances which should not affect the proceedings of a PCSP.

**Paragraph 21: Joint PCSPs**

This paragraph enables the Department of Justice, after consultation with the Policing Board and the councils affected, to provide by order that two or more councils can establish a joint PCSP for their districts.

**Paragraph 22: Belfast PCSP**

This paragraph makes modifications to the Schedule in relation to the Belfast PCSP to accommodate the DPCSPs.

**Schedule 2: District Policing and Community Safety Partnerships**

This Schedule sets out how a District Policing and Community Safety Partnerships (DPCSP) in Part 3 is to be established for each police district of Belfast and the arrangements for their proceedings.

**Paragraph 2: Composition**

This paragraph sets out that each DPCSP shall consist of 6 political members; 5 independent members; and representatives nominated by designated organisations. It also provides that members of DPCSPs need not be members of the principal PCSP.

**Paragraph 3: Political members**

This paragraph details that the number of political members is determined by the council based on the number of members constituting the council. In appointing political members the council must ensure as far as possible that they reflect the balance of the parties prevailing among the members of the council immediately after the last local general election. This paragraph also details how long a political member can hold office, how they vacate office and when a casual vacancy can and cannot be filled.

**Paragraphs 4 - 6: Independent members**

These paragraphs detail how the number of independent members should be determined; how the independent members should be appointed; how long they should hold office; how they vacate office; and when a casual vacancy can and cannot be filled. These paragraphs also detail that the Department of Justice is responsible for preparing and revising a code of practice in relation to the appointment of independent members.

**Paragraph 7: Representatives of designated organisations**

This paragraph details the minimum number of representatives from delivery partners that should be on each DPCSP and who is responsible for designating organisations that must be represented on each DPCSP. It provides that there should be at least 4 designated organisations. The paragraph also details that a DPCSP is responsible for the revoking a designated organisation's membership. It also allows the Department of Justice by order to designate organisations which must be on each DPCSP. The Department must consult with each DPCSP and lay the order before the Northern Ireland Assembly for approval by resolution before making the order.

**Paragraph 8: Removal of members**

This paragraph details that the Policing Board or the council with the approval of the Policing Board is responsible for the removal of political and independent members of a DPCSP. The paragraph sets out the circumstances in which members of the DPCSP can be removed.

**Paragraph 9: Disqualification**

This paragraph sets out the circumstances in which persons are disqualified from membership of a DPCSP.

**Paragraph 10: Chair and vice-chair**

This paragraph provides for the appointment of a chair and a vice-chair of a DPCSP. It sets out that the chair must be appointed by the council from among the political members and that the vice-chair will be elected by the independent members from such members. The person appointed to the office of chair shall usually be appointed for a term of 12 months and the office will be held in turn by each of the largest four parties represented on the council. The paragraph explains how a member resigns from the position of chair and vice-chair of the DPCSP.

**Paragraph 11: Procedure of DPCSP**

This paragraph details that there is a quorum for each meeting of a PCSP which shall be one-quarter of the total of members. The paragraph also sets out how each question at a meeting of a DPCSP shall be determined and what happens in the event of the elected chair and vice-chair being absent from a meeting of a DPCSP.

**Paragraph 12:** Policing committee: constitution

This paragraph sets out that there shall be a policing committee for each DPCSP consisting of political members and independent members. The paragraph explains that each policing committee shall have a chair who is the chair of the DPCSP and a vice-chair elected by the independent members. If a person wishes to resign from the position of vice-chair they must do so in writing to the Policing Board. The paragraph also explains that if a person ceases to be a member of the policing committee they will automatically vacate the position of chair or vice-chair.

**Paragraph 13:** Policing Committee: procedure

This paragraph details that there is a quorum of 5 for a meeting of the policing committee. The paragraph also sets out how each question at a meeting of a policing committee shall be determined and what happens in the event of the elected chair and vice-chair are absent from a meeting of a DPCSP. The paragraph explains that a policing committee may constitute sub-committees to be made up of 5 or more of its members. The policing committee can delegate to a sub-committee any of its functions.

**Paragraph 14:** Other committees

This paragraph provides for a DPCSP to constitute other committees made up of 5 more of its members. A DPCSP can delegate to a committee any of the functions of the DPCSP except the functions restricted to the policing committee. This paragraph allows for a committee appointed to co-opt other persons who are not members of the committee or the DPCSP.

**Paragraph 15:** Indemnities

This paragraph details that the council can cover a DPCSP member in respect of liability incurred by that member in connection with the business of the DPCSP.

**Paragraph 16:** Insurance against accidents

This paragraph sets out that the council may insure against risks of a member of the DPCSP meeting with a personal accident, whether fatal or not, whilst engaged in DPCSP business.

**Paragraph 17:** Expenses

This paragraph provides that the council may pay members of the DPCSP such expenses as the council determines.

**Paragraph 18:** Finance

This paragraph requires the Department of Justice and the Policing Board to make a grant for each financial year to the district council towards the expenses incurred by the council in connection with the establishment of, or the exercise of the functions by DPCSPs.

**Paragraphs 19 & 20:** Validity of proceedings & Disclosure of pecuniary interests, family connections etc.

These paragraphs set out the circumstances which should not affect the proceedings of a DPCSP.

### **Schedule 3: Regulated matches**

This Schedule sets out the “regulated matches” for the sports law provisions under Part 4 of the Act. The provisions in each of the Chapters 1 to 4 of Part 4 apply to a different set of “regulated matches”. Each of the Schedule’s paragraphs 2 to 9 describes a different set of matches and section 35 specifies which of those paragraphs applies to which Chapter in Part 4.

**Paragraph 1:** This paragraph of the Schedule defines terms: “the IFA” as the Irish Football Association; “the FAI” as the Football Association of Ireland; “FIFA” as the Fédération Internationale de Football Association; “the IRFU” as the Irish Rugby Football Union; “gaelic game” as gaelic football (including international rules football), hurling or camogie; “member” to include a full or associate member; and “UEFA” as Union des Associations Européennes de Football.

**Paragraphs 2 - 5:** Association football.

These are association football matches where -

Paragraph 2: one or both participating teams represent a country or territory.

Paragraph 3: one or both participating teams represents a club which is for the time being a member of:

- the IFA Premiership,
- the IFA Championship,
- the FAI Premier League, or
- the FAI First Division.

Paragraph 4: one or both participating teams represents a club which is for the time being a member of:

- the Football League,
- the Football Association Premier League,
- the Football Conference,
- the Welsh Premier League,
- the Scottish Premier League, or

- the Scottish Football League.

Paragraph 5: a match being played in Northern Ireland -

- in which one or both participating teams is a member of, or affiliated to, a national football association which is a member of FIFA,
- which is part of a competition or tournament organized by, or under the authority of FIFA or UEFA

**Paragraphs 6 & 7: Gaelic games.**

These include a match played at a sports ground in Northern Ireland which is designated as requiring a safety certificate under Part 2 of the Safety of Sports ground (Northern Ireland) Order 2006 (paragraph 6); and a match played outside Northern Ireland in which one or both participating teams represents a county or which is an international rules football match (paragraph 7).

**Paragraphs 8 & 9: Rugby union.**

These comprise a rugby union match which subject to regulation by the IRFU, and is played at a sports ground in Northern Ireland which is designated as requiring a safety certificate under Part 2 of the Safety of Sports ground (Northern Ireland) Order 2006 (paragraph 8); and a match which is subject to regulation by the IRFU, is played outside Northern Ireland and in which one or both participating teams represents Ireland or Ulster Rugby (paragraph 9).

**Schedule 4: Penalty offences and penalties**

This Schedule lists the offences covered by the Penalty Notices created by Part 6 and the penalty payable in respect of that penalty offence.

The offences and the penalties are:

- indecent behaviour in any street, road, highway or other public place, or in any place to which the public have access - £40
- theft (guidance will state this is for first-time shoplifting only) - £80
- destroying, damaging or intending to do so to any property belonging to or being reckless as to whether any such property would be destroyed or damaged (guidance will state this is for damage valued at under £200) - £80
- drunk in any road or other public place - £40
- disorderly behaviour in any public place - £80
- behaviour likely to cause a breach of the peace in a public place - £80
- assaulting, resisting, obstructing or impeding a constable in the execution of his duty - £80



## **Schedule 5: Enhanced legal aid fees for certain solicitors**

### **Paragraph 1: Power to provide for enhanced fee**

This paragraph provides the power to provide for enhanced fees to a solicitor who is exercising a relevant right of audience; is accredited by the Law Society; and has complied with the duties listed in paragraph 3. The Schedule applies to rights of audience in the Crown Court, a county court, a magistrates' court and certain tribunals.

### **Paragraph 2: Accreditation of Solicitors**

This paragraph outlines that the Law Society will make regulations regarding the accreditation of solicitors. It allows a solicitor to apply to the Law Society for accreditation and outlines the application process.

### **Paragraph 3: Duties of solicitor**

This paragraph sets out the duties of the solicitor where the client will be represented by an accredited solicitor. The solicitor is required to advise the client of the advantages and disadvantages of representation by an accredited solicitor and by counsel. The Law Society will make regulations outlining how this is to be done. The solicitor must inform a court or tribunal before which they are representing the client that they have given such advice. The solicitor must act in the best interest of the client and comply with any decision they make as to representation by an accredited solicitor or counsel. If the solicitor fails to comply with any of the duties in this paragraph any person may make a complaint against the solicitor to the Solicitors Disciplinary Tribunal.

### **Paragraph 4: Regulations**

This paragraph sets out that regulations made under this Schedule require the concurrence of the Lord Chief Justice and the Department of Justice which must consult with the Attorney General.

### **Paragraph 5: Consequential Amendments**

This paragraph allows the Department of Justice to make consequential amendments to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or to Schedule 3 to the Access to Justice (Northern Ireland) Order 2003 as appears necessary.

### **Paragraph 6: Interpretation**

This paragraph provides definitions for the terms used in this Schedule.

## **Schedule 6: Transitional and saving provisions**

This Schedule lists the transitional and saving provisions necessary to the Act.

## **Schedule 7: Minor and consequential amendments**

This Schedule lists the minor and consequential amendments necessary in the Act.

## **Schedule 8: Repeals**

This Schedule lists the repeals brought in by the Act.

## **HANSARD REPORTS**

23. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

<b>STAGE</b>	<b>DATE</b>
Introduction to the Assembly	18 October 2010
Justice Committee - Departmental briefing on contents of the Bill	21 October 2010
Second Stage debate	2 November 2010
Justice Committee - Evidence Session: Sports Law	18 November 2010
Justice Committee - Evidence Session: Victims and Witnesses and Live Links	25 November 2010
Justice Committee - Evidence Session: Parts 7,8 and 9	2 December 2010
Justice Committee - Evidence Session: Parts 5 and 6	9 December 2010
Justice Committee - Evidence Session: Part 3 and Schedules 1 and 2	16 December 2010
Justice Committee - Evidence Session: Equality Impact Assessment	11 January 2011
Justice Committee - Evidence Session: PSNI Briefing and Departmental Officials' Response	11 January 2011
Justice Committee - Informal Clause-by-Clause Consideration - Parts 1 and 2	13 January 2011
Justice Committee - Evidence from Northern Ireland Human Rights Commission	13 January 2011
Justice Committee - Briefing from the Attorney General on Clause 34 of the Justice Bill	18 January 2011
Justice Committee - Informal Clause-by-Clause Consideration - Part 3	18 January 2011

*These Notes refer to the Justice Act (Northern Ireland) 2011 (c.24)  
which received Royal Assent on 4 May 2011*

<b>STAGE</b>	<b>DATE</b>
Justice Committee - Informal Clause-by-Clause Consideration - Schedules 1 and 2	20 January 2011
Justice Committee - Formal Clause-by-Clause Scrutiny - Parts 1 and 2	20 January 2011
Justice Committee - Informal Clause-by-Clause Consideration - Part 4	25 January 2011
Justice Committee - Informal Clause-by-Clause Consideration - Part 5	27 January 2011
Justice Committee - Formal Clause-by-Clause Consideration - Part 3	27 January 2011
Justice Committee - Informal Clause by Clause Consideration - Parts 6 and 7	1 February 2011
Justice Committee - Formal Clause by Clause Consideration - Part 4	1 February 2011
Justice Committee - Briefing on Court Funds and Rights of Audience for Solicitors	3 February 2011
Justice Committee - Formal Clause-by-Clause Scrutiny - Parts 5 to 9 and Schedules 4 to 7	3 February 2011
Justice Committee - Formal Clause-by-Clause Scrutiny - Part 3	8 February 2011
Justice Committee - New Provisions Relating to Court Funds and Solicitors' Rights of Audience	8 February 2011
Committee's report on the Act - Report number NIA 41/10/11R	10 February 2011
Justice Committee - Clause 34	17 February 2011
Consideration Stage in the Assembly	22 - 23 February 2011
Justice Committee - Sex Offender Notification	24 February 2011
Justice Committee - Sex Offender Notification	28 February 2011
Further Consideration Stage	7 March 2011
Exceptional Further Consideration Stage	21 March 2011

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**STAGE**

**DATE**

Final Stage

23 March 2011

Royal Assent

4 May 2011

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