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## 2015 CHAPTER 9

### PART 1

#### SINGLE JURISDICTION FOR COUNTY COURTS AND MAGISTRATES' COURTS

VALID FROM 31/10/2016

##### **Single jurisdiction: abolition of county court divisions and petty sessions districts**

1.—(1) Northern Ireland is no longer to be divided into county court divisions and petty sessions districts.

(2) The jurisdiction and powers of a county court or a magistrates' court are exercisable throughout the whole of Northern Ireland.

VALID FROM 31/10/2016

##### **Administrative court divisions**

2.—(1) The Department, after consultation with the Lord Chief Justice, shall by directions divide Northern Ireland into areas to be known as administrative court divisions.

(2) The directions may specify different administrative court divisions for different courts and for different purposes of the same court and, in particular, may specify administrative court divisions—

(a) for all purposes of a court;

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- (b) for specified purposes of a court (for example for the purposes of a county court sitting as a family care centre or a court of summary jurisdiction sitting as a family proceedings court);
  - (c) for the residual purposes of a court (that is to say for all purposes other than those dealt with under paragraph (b)).
- (3) For the purposes of this section “court” means—
- (a) a county court;
  - (b) a magistrates' court.
- (4) Each administrative court division established by directions under this section is to be known by such name as is specified in the directions.

VALID FROM 31/10/2016

### **Directions as to distribution of business**

- 3.—**(1) The Lord Chief Justice may give directions as to—
- (a) the distribution of the business of county courts among such courts;
  - (b) the transfer of such business from one county court to another;
  - (c) the distribution of the business of magistrates' courts among such courts;
  - (d) the transfer of such business from one magistrates' court to another.
- (2) For the purpose of subsection (1) “the business of county courts” includes—
- (a) all such proceedings and matters whatsoever (whether civil or criminal) as under any statutory provision are to be heard by a county court (of any description);
  - (b) all such other things as under any statutory provision are to be done by, or in relation to, a county court (of any description).
- (3) For the purpose of subsection (1) “the business of magistrates' courts” includes—
- (a) all such proceedings and matters whatsoever (whether civil or criminal) as under any statutory provision are to be heard by a magistrates' court (of any description);
  - (b) all such other things as under any statutory provision are to be done by, or in relation to, a magistrates' court (of any description).
- (4) The Department may give directions as to—
- (a) the distribution among chief clerks of the functions exercisable under any statutory provision by a chief clerk;

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(b) the distribution among clerks of petty sessions of the functions exercisable under any statutory provision by a clerk of petty sessions.

(5) In any statutory provision—

(a) a reference, in connection with any proceedings or matter, to the chief clerk is a reference to the chief clerk who, in accordance with directions under subsection (4), is to act in relation to those proceedings or that matter;

(b) a reference, in connection with any proceedings or matter, to the clerk of petty sessions is a reference to the clerk of petty sessions who, in accordance with directions under subsection (4), is to act in relation to those proceedings or that matter.

VALID FROM 31/10/2016

### Lay magistrates

4.—(1) The Northern Ireland Judicial Appointments Commission must appoint persons to be lay magistrates.

(2) A lay magistrate shall—

(a) be appointed for an administrative court division which is specified under section 2 for all or the residual purposes of a magistrates' court; but

(b) have as regards the whole of Northern Ireland the jurisdiction and duties which immediately before commencement were vested in or imposed on a lay magistrate as regards a county court division.

(3) Accordingly, so much of any existing statutory provision as requires or authorises anything to be done by, or in relation to, a lay magistrate acting for a particular county court division shall be disregarded; and that thing may be done by, or in relation to, any lay magistrate.

(4) A lay magistrate shall sit in courts in accordance with directions given by the Lord Chief Justice; and in giving such directions the Lord Chief Justice is to have regard to the desirability of a lay magistrate sitting in courts held in reasonable proximity to where the lay magistrate lives or works.

(5) A person may not be appointed to be a lay magistrate unless that person—

(a) has completed a course of training approved by the Lord Chief Justice after consultation with the Department, or

(b) has given an undertaking in writing to attend such a course of training.

(6) It is a condition of the appointment of a person under subsection (5) (b) that the person will complete such a course of training within the period

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of one year beginning with the date of appointment or such longer period as the Lord Chief Justice may, after consulting the Department, allow.

(7) The Department may, after consultation with the Lord Chief Justice, by order make further provision about eligibility for appointment as a lay magistrate.

(8) The provision which may be made by an order under subsection (7) includes (in particular) provision that a person (“P”) may not be appointed to be a lay magistrate—

(a) if P, or a person related to or otherwise connected with P in a prescribed manner—

(i) holds an office of a prescribed description,

(ii) has an occupation of a prescribed description, or

(iii) has been selected as a candidate for election to a prescribed body,

(b) if P is, under the law of any part of the United Kingdom—

(i) an undischarged bankrupt or a person whose estate has been sequestered under an order which has not been discharged,

(ii) subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order, or

(iii) subject to a moratorium period under a debt relief order or subject to a debt relief restrictions order or an interim debt relief restrictions order,

(c) if P has been convicted of a prescribed offence, or

(d) if P does not live or work in, or within a prescribed distance of, the administrative court division for which P is to be appointed,

unless the Department, after consultation with the Lord Chief Justice, otherwise determines in P's particular case.

(9) In subsection (8) “prescribed” means prescribed in an order under subsection (7).

(10) An act by a person appointed to be a lay magistrate is not invalidated by reason only that that person is not a lay magistrate because that person was not eligible to be appointed.

(11) A lay magistrate ceases to hold office on attaining the age of 70.

(12) An act by a person who has been a lay magistrate is not invalidated by reason only that that person has ceased to hold office under subsection (11).

(13) The Department must pay to lay magistrates any such allowances as it may determine.

(14) The Lord Chief Justice, Lords Justices of Appeal, judges of the High Court and county court judges may exercise any function of a lay magistrate.

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VALID FROM 31/10/2016

### Justices of the peace

5.—(1) There shall be a commission of the peace for Northern Ireland—

- (a) issued under the Great Seal of Northern Ireland; and
- (b) addressed generally, and not by name, to all such persons as may from time to time hold office as justices of the peace for Northern Ireland.

(2) Justices of the peace for Northern Ireland—

- (a) shall be appointed by the Department by instrument on behalf and in the name of Her Majesty, and
- (b) may be removed from office in the same manner.

(3) A justice of the peace shall have as regards the whole of Northern Ireland the jurisdiction and duties which immediately before commencement were vested in or imposed on a justice of the peace as regards a county court division.

(4) Accordingly, so much of any existing statutory provision as requires or authorises anything to be done by, or in relation to, a justice of the peace acting for a particular county court division shall be disregarded; and that thing may be done by, or in relation to, any justice of the peace.

(5) The Department shall make arrangements—

- (a) for keeping a copy of any instrument appointing or removing a justice of the peace; and
- (b) for keeping, and from time to time rectifying, a record of all persons for the time being holding office as justice of the peace.

### Consequential amendments

6.—(1) Schedule 1 (which contains amendments consequential on the preceding provisions of this Part) has effect.

(2) The Department may by order make such supplementary, incidental or consequential provision as it considers appropriate in consequence of, or for giving full effect to, this Part.

(3) An order under subsection (2) may amend, repeal, revoke or otherwise modify any statutory provision.

### Commencement Information

II S. 6(2) in operation at 30.9.2015 by S.R. 2015/324, art. 3(a)

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**12** S. 6(3) in operation at 30.9.2015 by S.R. 2015/324, art. 3(a)

PROSPECTIVE

## PART 2

### COMMITTAL FOR TRIAL

#### <sup>F1</sup>CHAPTER 1

#### RESTRICTION ON HOLDING OF PRELIMINARY INVESTIGATIONS AND MIXED COMMITTALS

##### Textual Amendments

**F1** Pt. 2 Ch. 1 repealed (17.10.2022) by Criminal Justice (Committal Reform) Act (Northern Ireland) 2022 (c. 4), s. 5(2), Sch. para. 18(a); S.R. 2022/221, art. 2(d)

##### Preliminary investigations

7 .....

##### Mixed committals: evidence on oath at preliminary inquiry

8 .....

#### CHAPTER 2

#### DIRECT COMMITTAL FOR TRIAL IN CERTAIN CASES

##### *Application of this Chapter*

##### Application of this Chapter

**9.—(1)** Subject to subsection (3), this Chapter applies where a person (“the accused”) appears or is brought before a magistrates' court charged with an offence and [<sup>F2</sup>one] of the conditions mentioned in subsection (2) is satisfied.

(2) Those conditions are—

(a) that the offence is an offence triable only on indictment; or

[<sup>F3</sup>(aa) that the offence is an indictable offence to which Article 45 of the Magistrates' Courts (Northern Ireland) Order 1981 or Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 applies; or]

(b) that the offence is a summary offence and—

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- (i) the accused claims, in accordance with Article 29 of the Magistrates' Courts (Northern Ireland) Order 1981 or any other statutory provision, to be tried on indictment;
- (ii) the prosecutor exercises any right conferred by any statutory provision to claim that the accused is to be tried on indictment; or
- (iii) it is otherwise determined that the accused is to be tried on indictment.

(3) But this Chapter does not apply where—

- (a) notice has been given in relation to the offence under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 or Article 4 of the Children's Evidence (Northern Ireland) Order 1995;
- (b) in the case of an adult, the court is to deal summarily with the offence under Article 45 of the Magistrates' Courts (Northern Ireland) Order 1981;
- (c) in the case of a child, the court is to deal summarily with the offence under Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998.

(4) In this section “summary offence” has the meaning given by Article 2(2) of the Magistrates' Courts (Northern Ireland) Order 1981.

#### Textual Amendments

- F2** Word in s. 9(1) substituted (13.5.2016) by Justice Act (Northern Ireland) 2016 (c. 21), ss. 57(2), 61(1)
- F3** S. 9(2)(aa) inserted (13.5.2016) by Justice Act (Northern Ireland) 2016 (c. 21), ss. 57(3), 61(1)

#### *Direct committal for trial: guilty pleas*

#### **Direct committal: indication of intention to plead guilty**

**10.—(1)** Where—

- (a) this Chapter applies in relation to an accused charged with an offence,
- (b) the court has not begun to conduct committal proceedings in relation to the offence, and
- (c) the accused indicates to the court an intention to plead guilty to the offence,

the court shall forthwith commit the accused to the Crown Court for trial for the offence (and accordingly shall not conduct committal proceedings in relation to that offence).

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(2) Where the court commits an accused for trial for an offence under this section, the functions of the court then cease in relation to that offence, except as provided by—

- (a) the following provisions of this section;
- (b) section 13; or
- (c) Article 29(2)(a) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003.

(3) A court committing an accused for trial for an offence under this section may order—

- (a) the making of such inquiries, and
- (b) the preparation, and sending to the Crown Court sitting at the specified place of trial, of such reports,

as appear to the court to be appropriate in connection with the sentencing of the accused for that offence (should the accused plead guilty to that offence on arraignment in the Crown Court).

(4) Where—

- (a) an accused is committed for trial for an offence under this section, and
- (b) on arraignment the accused does not plead guilty to the offence,

the Crown Court shall make an order annulling the committal for trial of the accused for that offence.

(5) Where the Crown Court makes an order under subsection (4)—

- (a) any count in the indictment relating to the charge for that offence against the accused is quashed;
- (b) subject to subsection (6), the magistrates' court shall again have the functions in relation to the accused and the offence which it would have had if the accused had not been committed for trial under this section (and the proceedings against the accused shall, as far as practicable, resume from the point immediately before the accused was committed for trial);
- (c) the Crown Court shall remand the accused, in custody or on bail, to appear before the magistrates' court as soon as is practicable;
- (d) the annulment of the committal for trial does not affect the lawfulness of anything done on foot of that committal (such as the remanding of the accused in custody or on bail).

(6) Subsection (1) does not apply where a magistrates' court resumes proceedings against an accused under subsection (5).



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*Direct committal for trial: specified offences*

**Direct committal: specified offences**

**11.—(1) Where—**

- (a) this Chapter applies in relation to an accused charged with an offence, and
- (b) the offence is a specified offence,

the court shall forthwith commit the accused to the Crown Court for trial for the offence (and accordingly shall not conduct committal proceedings in relation to that offence).

(2) Where the court commits an accused for trial for an offence under this section, the functions of the court then cease in relation to that offence, except as provided by—

- (a) section 13; or
- (b) Article 29(2)(a) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003.

**(3) For the purposes of this Chapter a specified offence is—**

- (a) murder;
- (b) manslaughter;
- (c) an offence—
  - (i) of aiding, abetting, counselling, procuring or inciting the commission of an offence specified above;
  - (ii) of conspiring to commit an offence so specified;
  - (iii) of attempting to commit an offence so specified;
  - (iv) under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence specified above.

**(4) The Department may by order amend subsection (3).**

*Direct committal for trial: offences related to specified offences*

**Direct committal: offences related to specified offences**

**12.—(1) Where—**

- (a) this Chapter applies in relation to an accused (“A”) who—
  - (i) is charged with an offence (“offence A”) which is not a specified offence, and
  - (ii) is not also charged with a specified offence,

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- (b) A appears or is brought before the court on the same occasion as another person (“B”) charged with a specified offence,
- (c) the court commits B for trial for the specified offence under section 11, and
- (d) offence A appears to the court to be related to the specified offence for which the court commits B for trial,

the court shall forthwith commit A to the Crown Court for trial for offence A.

(2) Where—

- (a) this Chapter applies in relation to an accused (“A”) who—
  - (i) is charged with an offence (“offence A”) which is not a specified offence, and
  - (ii) is not also charged with a specified offence,
- (b) on a previous occasion another person (“B”) has appeared or been brought before the court charged with a specified offence,
- (c) the court has on that occasion committed B for trial for the specified offence under section 11, and
- (d) offence A appears to the court to be related to the specified offence for which the court committed B for trial,

the court may forthwith commit A to the Crown Court for trial for offence A if the court considers that it is necessary or appropriate in the interests of justice to do so.

(3) Where the court commits the accused for trial for an offence under this section—

- (a) it shall accordingly not conduct committal proceedings in relation to that offence; and
- (b) the functions of the court then cease in relation to that offence, except as provided by—
  - (i) section 13; or
  - (ii) Article 29(2)(a) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003.

(4) For the purposes of this section an offence is related to a specified offence if a count charging the offence could be included in the same indictment as a count charging the specified offence.

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### *Direct committal for trial: procedures*

#### **Direct committal: procedures**

**13.—**(1) The court committing a person for trial to the Crown Court under this Chapter shall specify in a notice (“the notice of committal”)—

- (a) the charge or charges on which the person is committed for trial;
- (b) the place (determined under section 48(1) of the Judicature (Northern Ireland) Act 1978) at which that person is to be tried;
- (c) such other matters as magistrates' court rules under subsection (2)(b) may require.

(2) Magistrates' court rules—

- (a) shall provide that, where a person is committed for trial under this Chapter on any charge or charges—
  - (i) a copy of the notice of committal is given to that person and to the Crown Court sitting at the specified place of trial; and
  - (ii) copies of the documents containing the evidence on which the charge or charges are based are given to that person and to that court, either at the same time as the copy of the notice of committal or as soon as practicable thereafter; and
- (b) may make such further provision in relation to notices of committal, including provision as to the matters to be included in such notices and the duties of a court in relation to such notices.

(3) Paragraphs (3) and (4) of Article 37 of the Magistrates' Court (Northern Ireland) Order 1981 and Articles 51(3) and 134 of that Order (which relate to committal for trial on bail or in custody) apply in relation to a person committed for trial under this Chapter as they apply in relation to a person committed for trial under paragraph <sup>F4</sup>... (2) of Article 37 of that Order (committal for trial after committal proceedings).

#### **Textual Amendments**

- F4** Words in s. 13(3) repealed (17.10.2022) by [Criminal Justice \(Committal Reform\) Act \(Northern Ireland\) 2022 \(c. 4\)](#), s. 5(2), [Sch. para. 18\(b\)](#); S.R. 2022/221, art. 2(d)

#### **Specified offences: application to dismiss**

**14.—**(1) A person who is committed for trial on any charge or charges under section 11 or 12 may, at any time—

- (a) after that person is served with copies of the documents containing the evidence on which the charge or charges are based; and

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- (b) before that person is arraigned (and whether or not an indictment has been presented against that person),

apply orally or in writing to the Crown Court sitting at the specified place of trial for the charge, or any of the charges, in the case to be dismissed.

(2) The judge shall dismiss a charge (and accordingly quash any count relating to it in any indictment presented against the applicant) if it appears to the judge that the evidence against the applicant would not be sufficient for the applicant to be properly convicted.

(3) No oral application may be made under subsection (1) unless the applicant has given the Crown Court sitting at the specified place of trial written notice of intention to make the application.

(4) Oral evidence may be given on such an application only with the leave of the judge or by order of the judge; and the judge shall give leave or make an order only if it appears to the judge, having regard to any matters stated in the application for leave, that the interests of justice require it.

(5) If the judge gives leave permitting, or makes an order requiring, a person to give oral evidence, but that person does not do so, the judge may disregard any document indicating the evidence that that person might have given.

(6) Dismissal of the charge, or all the charges, against the applicant has the same effect as a refusal by a magistrates' court to commit for trial; except that no further proceedings may be brought on a dismissed charge except by means of the presentment of an indictment such as is specified in paragraph (c), (d) or (e) of section 2(2) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.

(7) Crown Court rules may make provision for the purposes of this section and may in particular make provision—

- (a) as to the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);
- (b) as to the contents and form of notices or other documents;
- (c) as to the manner in which evidence is to be submitted; and
- (d) as to persons to be served with notices or other material.

### **Restrictions on reporting applications for dismissal**

**15.—**(1) Except as provided by this section—

- (a) no written report of an application under section 14(1) shall be published in Northern Ireland;
- (b) no report of such an application shall be included in a relevant programme for reception in Northern Ireland.

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(2) The judge dealing with an application under section 14(1) may order that subsection (1) shall not apply, or shall not apply to a specified extent, to a report of the application.

(3) Where an accused objects to the making of an order under subsection (2), the judge shall make the order if (and only if) satisfied after hearing the representations of the accused that it is in the interests of justice to do so; and if the order is made it shall not apply to the extent that a report deals with any such objection or representations.

(4) Subsection (1) does not apply where the application is successful.

(5) Where—

(a) two or more persons are jointly charged, and

(b) applications under section 14(1) are made by more than one of them, subsection (4) shall have effect as if for the words “the application is” there were substituted “all the applications are”.

(6) Subsection (1) does not apply to—

(a) the publication of a report of an unsuccessful application made under section 14(1),

(b) the inclusion in a relevant programme of a report of an unsuccessful application made under section 14(1),

at the conclusion of the trial of the accused or of the last of the accused to be tried.

(7) Subsection (1) does not apply to a report which contains only one or more of the following matters—

(a) the identity of the court and the name of the judge;

(b) the names, ages, home addresses and occupations of the accused and witnesses;

(c) the offence or offences, or a summary of them, with which the accused is or are charged;

(d) the names of counsel and solicitors in the proceedings;

(e) where the proceedings are adjourned, the date and place to which they are adjourned;

(f) any arrangements as to bail;

(g) whether legal aid was granted to the accused or any of the accused.

(8) The addresses that may be published or included in a relevant programme under subsection (7) are addresses—

(a) at any relevant time, and

(b) at the time of their publication or inclusion in a relevant programme;

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and “relevant time” here means a time when events giving rise to the charges to which the proceedings relate occurred.

(9) Nothing in this section affects any prohibition or restriction imposed by virtue of any other statutory provision on a publication or on matter included in a programme.

(10) If a report is published or included in a relevant programme in contravention of this section each of the following persons is guilty of an offence—

- (a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
- (b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it;
- (c) in the case of the inclusion of a report in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(11) A person guilty of an offence under this section is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

(12) Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(13) In this section—

- (a) “publish”, in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public;
- (b) “relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990.

### **Supplementary and consequential provisions**

**16.—**(1) Schedule 2 (which contains amendments consequential on the preceding provisions of this Chapter) has effect.

(2) Subject to subsection (3), any statutory provision which applies to a person who has been committed for trial under the Magistrates' Courts (Northern Ireland) Order 1981 applies also to a person who has been committed for trial under this Chapter.

(3) Subsection (2) does not apply—

- (a) to a provision in the Magistrates' Courts (Northern Ireland) Order 1981 (except as provided by section 13(3));

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(b) to a provision which is amended by Schedule 2 to make express provision for persons committed for trial under this Chapter.

(4) In this Chapter, in relation to a person committed for trial, references to the specified place of trial are references to the place specified in the notice of committal under section 13(1) or such other place as is substituted for it by a direction under section 48(2) or (3) of the Judicature (Northern Ireland) Act 1978.

PROSPECTIVE

### PART 3

#### PROSECUTORIAL FINES

##### *Prosecutorial fine*

##### **Prosecutorial fine: notice of offer**

17.—(1) Where a Public Prosecutor receives a report that a summary offence has been committed and that the alleged offender was at the time of the offence aged over 18, the Public Prosecutor may issue a notice to that person offering that person the opportunity of receiving a prosecutorial fine notice in respect of that offence.

(2) Where a Public Prosecutor receives a report that—

- (a) a number of summary offences have been committed by an alleged offender,
- (b) the offences all arise out of the same circumstances, and
- (c) the alleged offender was at the time of the offences aged over 18,

the Public Prosecutor may issue a notice to that person offering that person the opportunity of receiving a prosecutorial fine notice in respect of all the offences.

(3) In subsections (1) and (2) “summary offence” means an offence which is punishable on summary conviction, whether or not it is also triable on indictment.

(4) A notice under subsection (1) must—

- (a) state the alleged offence;
- (b) give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;



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- (c) state the amount of the prosecutorial fine for that offence and each of the amounts referred to in paragraphs (a) and (b) of section 19(1) or (in the case of an offence falling within section 19(2)) each of the amounts referred to in paragraphs (a), (b) and (c) of section 19(2);
  - (d) indicate that the alleged offender may accept or decline the offer by giving notice to the Public Prosecutor within 21 days of the date on which the notice was issued;
  - (e) indicate that if the offer is declined, or no notice is served under paragraph (d) within the period mentioned in that paragraph, the alleged offender is liable to be prosecuted for the offence;
  - (f) indicate that if the offer is accepted—
    - (i) the alleged offender will be discharged from liability to be prosecuted for the offence; and
    - (ii) a prosecutorial fine notice will be issued to the offender under section 18; and
  - (g) state the effect of section 20(1) and (2).
- (5) A notice under subsection (2) must—
- (a) state the alleged offences;
  - (b) give such particulars of the circumstances alleged to constitute the offences as are necessary to provide reasonable information about them;
  - (c) state the amount of the prosecutorial fine for all the offences and each of the amounts referred to in paragraphs (a) and (b) of section 19(3) or (in a case where section 19(4) applies) each of the amounts referred to in paragraphs (a), (b) and (c) of section 19(4);
  - (d) indicate that the alleged offender may accept or decline the offer by giving notice to the Public Prosecutor within 21 days of the date on which the notice was issued;
  - (e) indicate that if the offer is declined, or no notice is served under paragraph (d) within the period mentioned in that paragraph, the alleged offender is liable to be prosecuted for the offences;
  - (f) indicate that if the offer is accepted—
    - (i) the alleged offender will be discharged from liability to be prosecuted for the offences; and
    - (ii) a prosecutorial fine notice will be issued to the offender under section 18; and
  - (g) state the effect of section 20(3) and (4).



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### **Prosecutorial fine notice**

**18.**—(1) Where a person has accepted the offer under section 17(1) or (2), the Public Prosecutor must issue a prosecutorial fine notice to that person.

(2) Where a person has accepted an offer under section 17(1), a “prosecutorial fine notice” is a notice which—

- (a) states the alleged offence;
- (b) gives such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
- (c) states the amount of the prosecutorial fine for the offence and each of the amounts referred to in paragraphs (a) and (b) of section 19(1) or (in the case of an offence falling within section 19(2)) each of the amounts referred to in paragraphs (a), (b) and (c) of section 19(2);
- (d) requires payment of the prosecutorial fine within the period allowed for payment (see subsection (4)); and
- (e) states the fines clerk to whom, and the address at which, the prosecutorial fine may be paid.

(3) Where a person has accepted an offer under section 17(2), a “prosecutorial fine notice” is a notice which—

- (a) states the alleged offences;
- (b) gives such particulars of the circumstances alleged to constitute the offences as are necessary to provide reasonable information about them;
- (c) states the amount of the prosecutorial fine for all the offences and each of the amounts referred to in paragraphs (a) and (b) of section 19(3) or (in a case where section 19(4) applies) each of the amounts referred to in paragraphs (a), (b) and (c) of section 19(4);
- (d) requires payment of the prosecutorial fine within the period allowed for payment (see subsection (4)); and
- (e) states the fines clerk to whom, and the address at which, the prosecutorial fine may be paid.

(4) The period allowed for payment of a prosecutorial fine is the period of 28 days beginning with the date on which the prosecutorial fine notice relating to that fine was issued.

(5) A Public Prosecutor who issues a prosecutorial fine notice must send a copy of that notice to the fines clerk mentioned in the notice under subsection (2)(e) or (3)(e).

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### **Amount of prosecutorial fine**

**19.—**(1) Except as provided by subsection (2), for the purposes of a notice under section 17(1) or 18(2), the amount of the prosecutorial fine in respect of any offence is the aggregate of—

- (a) such amount as the Public Prosecutor determines appropriate having regard to the circumstances of the offence; and
- (b) an offender levy of £10.

(2) In respect of an offence under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977, the amount of the prosecutorial fine for those purposes is the aggregate of—

- (a) such amount as the Public Prosecutor determines appropriate having regard to the circumstances of the offence;
- (b) an offender levy of £10; and
- (c) such amount (if any) as the Public Prosecutor determines appropriate to compensate any person in respect of any damage to the property of that person as a result of the offence.

(3) Except as provided by subsection (4), for the purposes of a notice under section 17(2) or 18(3), the amount of the prosecutorial fine in respect of all the offences is the aggregate of—

- (a) such amount as the Public Prosecutor determines appropriate having regard to the circumstances of the offences; and
- (b) an offender levy of £10.

(4) Where one or more of the offences is an offence under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977, the amount of the prosecutorial fine for those purposes is the aggregate of—

- (a) such amount as the Public Prosecutor determines appropriate having regard to the circumstances of the offences;
- (b) an offender levy of £10; and
- (c) such amount (if any) as the Public Prosecutor determines appropriate to compensate any person or persons in respect of any damage to their property as a result of the offence or offences.

(5) The amount determined under subsection (1)(a), (2)(a), (3)(a) or (4)(a) may not exceed the amount for the time being of level 1 on the standard scale.

(6) The amount determined under subsection (2)(c) or (4)(c) may not exceed the amount for the time being specified in Article 14(11) of the Criminal Justice (Northern Ireland) Order 1994 (maximum compensation under compensation order made by a magistrates' court).

(7) In section 6(3) of the Justice Act (Northern Ireland) 2011 (power to increase amount of offender levy) at the end add “ and the amount specified in

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section 19(1)(b), (2)(b), (3)(b) and (4)(b) of the Justice Act (Northern Ireland) 2015 ”.

### **Restrictions on prosecutions**

**20.**—(1) Proceedings for the offence to which a notice under section 17(1) relates may not be brought before the end of the period of 21 days beginning with the date on which the notice was issued.

(2) If the offer in a notice under section 17(1) is accepted, no proceedings may be brought for the offence to which the notice relates.

(3) Proceedings for any of the offences to which a notice under section 17(2) relates may not be brought before the end of the period of 21 days beginning with the date on which the notice was issued.

(4) If the offer in a notice under section 17(2) is accepted, no proceedings may be brought for any of the offences to which the notice relates.

### *Payment of prosecutorial fine*

### **Payment of prosecutorial fine**

**21.**—(1) Payment of a prosecutorial fine must be made to, or at the office of, the fines clerk specified in the prosecutorial fine notice relating to that fine; and references in this Part, in relation to any prosecutorial fine or prosecutorial fine notice, to the fines clerk are to the fines clerk specified in the prosecutorial fine notice relating to that prosecutorial fine or (as the case may be) in that prosecutorial fine notice.

(2) Without prejudice to payment by any other method, payment of a prosecutorial fine may be made by properly addressing, pre-paying and posting a letter containing the prosecutorial fine notice and the amount of the fine and, unless the contrary is proved, shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(3) A letter is properly addressed for the purposes of subsection (2) if it is addressed to the fines clerk at the address specified in the prosecutorial fine notice as the address at which the fine may be paid.

(4) Except in a case to which subsection (5) or (6) applies, sums paid by way of a prosecutorial fine for an offence shall be treated as if they were fines imposed on summary conviction of that offence.

(5) Where—

- (a) the offence in respect of which a prosecutorial fine notice is issued under section 18(2) is an offence under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977, and

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- (b) in calculating the prosecutorial fine an amount has been included under paragraph (c) of section 19(2),

the fines clerk must arrange for that amount to be paid to the person mentioned in that paragraph.

- (6) Where—

- (a) the offences in respect of which a prosecutorial fine notice is issued under section 18(3) include one or more offences under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977; and
- (b) in calculating the prosecutorial fine an amount has been included under paragraph (c) of section 19(4),

the fines clerk must arrange for that amount to be paid to the person mentioned in that paragraph or, if more than one person is so mentioned, to those persons in such proportions as the Public Prosecutor may determine.

#### *Non-payment of prosecutorial fine*

#### **Failure to pay prosecutorial fine**

- 22.—(1) This section applies if—

- (a) a prosecutorial fine notice is issued to a person under section 18; and
- (b) by the end of the period allowed for payment, the fine has not been paid in accordance with this Part.

(2) The enhanced sum may be registered under section 24 for enforcement against that person as a fine.

(3) The fines clerk must notify the Director of Public Prosecutions for Northern Ireland that the prosecutorial fine has not been paid.

(4) Except in a case falling within subsection (5) or (7), the enhanced sum is a sum equal to one and a half times the amount of the prosecutorial fine.

- (5) Where—

- (a) the offence to which the prosecutorial fine notice issued under section 18(2) relates is an offence under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977; and
- (b) in calculating the prosecutorial fine an amount has been included under section 19(2)(c),

the enhanced sum is the amount specified in subsection (6).

- (6) That amount is the aggregate of—

- (a) one and a half times the amount determined by the Public Prosecutor under section 19(2)(a);
- (b) one and a half times the amount mentioned in section 19(2)(b); and

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(c) the amount determined by the Public Prosecutor under section 19(2)(c).

(7) Where—

(a) the offences to which a prosecutorial fine notice issued under section 18(3) relates includes one or more offences under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977; and

(b) in calculating the prosecutorial fine an amount has been included under section 19(4)(c),

the enhanced sum is the amount specified in subsection (8).

(8) That amount is the aggregate of—

(a) one and a half times the amount determined by the Public Prosecutor under section 19(4)(a);

(b) one and a half times the amount mentioned in section 19(4)(b); and

(c) the amount determined by the Public Prosecutor under section 19(4)(c).

### **Registration certificates**

**23.—**(1) This section and section 24 apply where by virtue of section 22 an enhanced sum may be registered under section 24 for enforcement against any person as a fine.

(2) In this section and section 24—

(a) that sum is referred to as a “sum payable in default”, and

(b) the person against whom that sum may be so registered is referred to as the “defaulter”.

(3) The Director of Public Prosecutions for Northern Ireland—

(a) may in respect of any sum payable in default issue a certificate (a “registration certificate”) stating that the sum is registrable under section 24 for enforcement against the defaulter as a fine; and

(b) must cause any certificate so issued to be sent to the fines clerk.

(4) A registration certificate must—

(a) give particulars of the offence or offences to which the prosecutorial fine notice relates; and

(b) state the name and last known address of the defaulter and the amount of the sum payable in default.

### **Registration of sum payable in default**

**24.—**(1) Where the fines clerk receives a registration certificate in respect of any sum payable in default, the clerk must register that sum for enforcement as a fine by entering it in the Order Book of a court of summary jurisdiction.

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(2) On registering any sum under this section for enforcement as a fine, the fines clerk must give to the defaulter notice of registration—

- (a) specifying the amount of that sum and requiring payment of it by such date, not less than [<sup>F5</sup>28 days] from the date of registration, as may be specified in the notice; and
- (b) giving the information with respect to the offence included in the registration certificate by virtue of section 23(4)(a).

(3) On the registration of any sum in the Order Book of a court of summary jurisdiction by virtue of this section, any statutory provision referring (in whatever terms) to a fine imposed or a sum adjudged to be paid by a conviction of such a court shall, subject to regulations made under subsection (4), have effect in the case in question as if the sum so registered were a fine imposed by that court on the conviction of the defaulter on the date of the registration.

[<sup>F6</sup>(3A) The fines clerk must refer the case to a district judge (magistrates' courts) for the judge to consider whether to make a collection order; and the order may be made without a court hearing.

(3B) Where a collection order is made in that case, the date specified in the order as the date by which the sum due must be paid must, unless the court directs otherwise, be the same as the date specified in the notice of registration under subsection (2)(a).]

(4) The Department may make such regulations with respect to the enforcement of payment of sums registered under this section as it considers appropriate.

(5) Regulations under subsection (4) may in particular—

- (a) modify the provisions of the Magistrates' Courts (Northern Ireland) Order 1981 relating to the satisfaction and enforcement of sums adjudged to be paid by a conviction, as they have effect by virtue of subsection (3) in relation to sums registered under this section; and
- (b) make such incidental, supplemental or consequential provision (including provision to modify a statutory provision) as appears to the Department to be expedient.

(6) In subsection (5) “modify” includes the making of additions, omissions, exceptions and amendments.

#### Textual Amendments

- F5** Words in s. 24(2)(a) substituted (1.6.2018) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\)](#), s. 61(2), [Sch. 2 para. 8\(1\)](#); [S.R. 2018/99](#), art. 2(c) (but this amendment cannot take effect until the commencement of 2015 c. 9 (NI), s. 24)

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**F6** S. 24(3A)(3B) inserted (1.6.2018) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\), s. 61\(2\), Sch. 2 para. 8\(2\)](#); [S.R. 2018/99, art. 2\(c\)](#) (but this amendment cannot take effect until the commencement of 2015 c. 9 (NI), s. 24)

### Challenge to notice of registration

**25.**—(1) This section applies where—

- (a) a person who has received notice of the registration of a sum under section 24 for enforcement against that person as a fine makes a statutory declaration to the effect mentioned in subsection (2), and
- (b) that declaration is, within 21 days of the date on which the person making it received notice of the registration, served on the fines clerk.

(2) The statutory declaration must state that the person making the declaration was not the person to whom the relevant prosecutorial fine notice was issued.

(3) In any case within subsection (2) the relevant prosecutorial fine notice, the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void.

(4) References in this section to the relevant prosecutorial fine notice are to the prosecutorial fine notice relating to the prosecutorial fine concerned.

(5) Subsection (6) applies where, on the application of a person who has received notice of the registration of a sum under section 24 for enforcement against that person as a fine, it appears to a court of summary jurisdiction that it was not reasonable to expect that person to serve, within 21 days of the date on which that person received the notice, a statutory declaration to the effect mentioned in subsection (2).

(6) The court may accept service of such a declaration by that person after that period has expired; and a statutory declaration so accepted shall be taken to have been served as required by subsection (1).

(7) In this section references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum [<sup>F7</sup>(including the making of a collection order)] .

(8) For the purposes of this section, a person shall be taken to receive notice of the registration of a sum under section 24 for enforcement against that person as a fine when that person receives notice either of the registration as such or of any proceedings for enforcing payment of the sum registered.

(9) Nothing in this section is to be read as prejudicing any rights a person may otherwise have by virtue of the invalidity of any action purportedly taken under this Part which is not in fact authorised by this Part in the circumstances of the case.



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(10) Accordingly, references in this section to the registration of any sum or to any other action taken under this Part are not to be read as implying that the registration or action was validly made or taken in accordance with that provision.

#### Textual Amendments

**F7** Words in s. 25(7) inserted (1.6.2018) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\)](#), s. 61(2), [Sch. 2 para. 8\(3\)](#); S.R. 2018/99, art. 2(c) (but this amendment cannot take effect until the commencement of 2015 c. 9 (NI), s. 25)

### Setting aside of sum enforceable under section 24

**26.—**(1) A court of summary jurisdiction may, in the interests of justice, set aside a sum enforceable as a fine as a result of section 24.

(2) Where a court sets aside such a sum—

- (a) the notice under section 17(1) or (2), the prosecutorial fine notice concerned, the registration and any proceedings taken for enforcing payment of the fine shall be void; but
- (b) no further action is to be taken in respect of the alleged offence or offences that gave rise to the notice under section 17(1) or (2) and the prosecutorial fine notice concerned.

(3) In this section references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum [<sup>F8</sup>(including the making of a collection order)] .

#### Textual Amendments

**F8** Words in s. 26(3) inserted (1.6.2018) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\)](#), s. 61(2), [Sch. 2 para. 8\(4\)](#); S.R. 2018/99, art. 2(c) (but this amendment cannot take effect until the commencement of s. 26)

### Interpretation

#### Interpretation of this Part

**27** In this Part—

[<sup>F9</sup>“collection order” means an order under section 3 of the Justice Act (Northern Ireland) 2016;]

“the fines clerk” means the clerk of petty sessions or such other person as the Department may by order appoint (and see also section 21(1));



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“the period allowed for payment” has the meaning given in section 18(4);  
 “prosecutorial fine notice” has the meaning given in section 18(2) and (3);  
 “Public Prosecutor” has the meaning given in section 29(5) of the Justice (Northern Ireland) Act 2002;  
 “registration certificate” has the meaning given in section 23(3).

#### Textual Amendments

- F9** Words in s. 27 inserted (1.6.2018) by Justice Act (Northern Ireland) 2016 (c. 21), s. 61(2), Sch. 2 para. 8(5); S.R. 2018/99, art. 2(c) (but this amendment cannot take effect until the commencement of 2015 c. 9 (NI), s. 27)

## PART 4

### VICTIMS AND WITNESSES

#### *The Victim Charter and the Witness Charter*

#### The Victim Charter

- 28.—**(1) The Department must issue a Victim Charter.
- (2) The Charter must set out—
- (a) the services which are to be provided to victims by specified criminal justice agencies and the standards which are to be expected in relation to those services;
  - (b) the standards which are to be expected in relation to the treatment of victims by such agencies.
- (3) In particular the Charter must include provision for a victim—
- (a) to be treated with courtesy, dignity and respect;
  - (b) to be informed about the services available to victims;
  - (c) to be informed about—
    - (i) the progress of relevant proceedings, and the reasons for any delay in those proceedings, at such intervals or at such times as are specified;
    - (ii) the final outcome of relevant proceedings, within such time as is specified;
  - (d) where in the course of relevant proceedings a decision is taken not to prosecute a person in respect of the criminal conduct concerned, to be given the reasons for that decision within such time as is specified;

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- (e) to be informed about any special measures which may be available to the victim under Article 4 or 5 of the Criminal Evidence (Northern Ireland) Order 1999 if called as a witness in criminal proceedings arising out of the criminal conduct concerned;
  - (f) to be informed about the opportunity to make a victim statement under section 33;
  - (g) to have considered by an independent body any complaint against a criminal justice agency in relation to any provision of the Charter which has not been resolved by that agency.
- (4) The Charter may restrict the application of any of its provisions and, in particular, may restrict the application of any of its provisions to—
- (a) specified descriptions of victims;
  - (b) victims of specified offences or descriptions of conduct;
  - (c) specified criminal justice agencies;
  - (d) cases where the criminal conduct concerned has been reported to the police.
- (5) The Charter may provide for exceptions to its provisions, including in particular exceptions for the purpose of—
- (a) ensuring compliance with any statutory provision or order of a court;
  - (b) avoiding jeopardising any criminal investigation or criminal proceedings;
  - (c) avoiding endangering any individual.
- (6) The Charter may include provision requiring or permitting the services which are to be provided to a victim to be provided to one or more other persons as well as the victim.
- (7) The Charter may not require anything to be done by—
- (a) a person acting in a judicial capacity;
  - (b) a person acting in the discharge of a function of a member of the Public Prosecution Service for Northern Ireland which involves the exercise of a discretion.
- (8) In this section “criminal justice agency” means a body or person which has any functions relating to—
- (a) victims; or
  - (b) any other aspect of the criminal justice system.
- (9) A criminal justice agency must, in carrying out any functions mentioned in subsection (8), have regard to the Charter.
- (10) In this section—
- “criminal conduct concerned”, in relation to a victim, is to be construed in accordance with section 29(1);

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“relevant proceedings”, in relation to a victim, means the investigation into the criminal conduct concerned, the taking of a decision whether to prosecute any person in respect of that criminal conduct and any criminal proceedings taken against any person in respect of that criminal conduct;

“specified” means specified in the Victim Charter.

#### Commencement Information

**I3** S. 28 in operation at 1.9.2015 by S.R. 2015/320, art. 2(a)

#### Meaning of victim

**29.—**(1) Subject to subsections (3) to (6), in section 28 “victim” means an individual who is a victim of criminal conduct; and, in relation to a victim, references to “the criminal conduct concerned” are to be construed accordingly.

(2) In determining whether an individual is a victim of criminal conduct, it is immaterial that no person has been charged with or convicted of an offence in respect of the conduct.

(3) If (whether as a result of the criminal conduct concerned or not)—

- (a) the physical or mental state of a victim is such that it is unreasonable to expect the victim to act on his or her own behalf, or
- (b) a victim has died,

references in section 28 to the victim are to be read as references to a member of the family of the victim.

(4) If a victim is under the age of 18, references in section 28 to the victim are to be read as including references to a parent of the victim.

(5) Subsection (3)(a) and subsection (4) do not apply in any case where a criminal justice agency determines that it would not be in the best interests of the victim for that provision to apply.

(6) The Victim Charter may make provision—

- (a) as to the persons who are to be treated as members of the family of the victim for the purposes of subsection (3) and the identification of the person who is to act for the purposes of that subsection;
- (b) for criminal justice agencies, in circumstances specified in the Charter, to treat any other person as if that person were the victim (either instead of or in addition to the actual victim or a person who would fall to be treated as the victim under subsection (3) or (4)).

(7) Nothing in this section enables or requires an individual to be treated as a victim if that individual is under investigation for, or has been charged with, an offence arising from the criminal conduct concerned.

**Status:** Point in time view as at 02/11/2015. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Justice Act (Northern Ireland) 2015 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(8) In this section—

“criminal conduct” means conduct constituting an offence;

“criminal justice agency” has the meaning given by section 28(8);

“parent”, in relation to a child, includes a person who has parental responsibility for the child (within the meaning of the Children (Northern Ireland) Order 1995).

#### Commencement Information

I4 S. 29 in operation at 1.9.2015 by S.R. 2015/320, art. 2(b)

VALID FROM 30/12/2016

#### The Witness Charter

**30.—**(1) The Department must issue a Witness Charter.

(2) The Charter must set out—

- (a) the services which are to be provided to witnesses in criminal investigations and criminal proceedings by specified criminal justice agencies and the standards which are to be expected in relation to those services;
- (b) the standards which are to be expected in relation to the treatment of witnesses by such agencies.

(3) The Charter may restrict the application of any of its provisions and, in particular, may restrict the application of any of its provisions to—

- (a) specified descriptions of witnesses;
- (b) witnesses in criminal investigations of, or criminal proceedings for, specified offences or descriptions of conduct;
- (c) specified criminal justice agencies.

(4) The Charter may provide for exceptions to its provisions, including in particular exceptions for the purpose of—

- (a) ensuring compliance with any statutory provision or order of a court;
- (b) avoiding jeopardising any criminal investigation or criminal proceedings;
- (c) avoiding endangering any individual.

(5) The Charter may include provision requiring or permitting the services which are to be provided to a witness to be provided to one or more other persons instead of or in addition to the witness.

(6) The Charter may not require anything to be done by—

*Status: Point in time view as at 02/11/2015. This version of this Act contains provisions that are not valid for this point in time.*

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- (a) a person acting in a judicial capacity;
- (b) a person acting in the discharge of a function of a member of the Public Prosecution Service for Northern Ireland which involves the exercise of a discretion.

(7) In this section “criminal justice agency” means a body or person which has any functions relating to—

- (a) witnesses in criminal investigations or criminal proceedings; or
- (b) any other aspect of the criminal justice system.

(8) A criminal justice agency must, in carrying out any functions mentioned in subsection (7), have regard to the Charter.

(9) In this section—

“defendant”, in relation to any criminal proceedings, means a person who has been charged with, or convicted of, a criminal offence in the proceedings;

“specified” means specified in the Witness Charter;

“witness” means a person (other than the defendant) who—

- (a) has witnessed criminal or other conduct in relation to which that person may be or has been called to give evidence in criminal proceedings;
- (b) is able to provide or has provided information or any other thing which might assist a criminal investigation or which might be or has been used in evidence in criminal proceedings; or
- (c) for any other reason is called or might be called to give evidence in criminal proceedings.

### **Procedure for issuing Charters**

**31.—**(1) This section applies in relation to a Charter required to be issued under section 28 or 30.

(2) After preparing the Charter, the Department must lay the Charter before the Assembly.

(3) The Charter comes into operation on such date as the Department may by order appoint.

(4) The Department may revise a Charter which is in operation; and subsections (2) and (3) apply to a revised Charter as they apply to the Charter as first prepared.

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**Commencement Information**

**I5** S. 31 in operation at 1.9.2015 by S.R. 2015/320, art. 2(c)

**Effect of non compliance**

**32.**—(1) If a criminal justice agency fails to comply with the Charter issued under section 28 or 30, the failure does not of itself make the agency liable to criminal or civil proceedings.

(2) But the Charter is admissible in evidence in criminal or civil proceedings and a court may take into account a failure to comply with the Charter in determining a question in the proceedings.

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**Commencement Information**

**I6** S. 32 in operation at 1.9.2015 by S.R. 2015/320, art. 2(d)

*Victim statements*

**Persons to be afforded opportunity to make victim statement**

**33.**—(1) A natural person against whom an offence has been committed or is alleged to have been committed (“the victim”) is to be afforded an opportunity to make a statement under this section.

(2) If (whether as a result of the offence or not)—

- (a) the physical or mental state of the victim is such that it is unreasonable to expect the victim to act on his or her own behalf, or
- (b) the victim has died,

a member of the family of the victim is to be afforded an opportunity to make a statement under this section.

(3) If the victim is under the age of 18, a parent of the victim is to be afforded an opportunity to make a statement under this section in addition to the victim.

(4) Where subsection (2)(a) or (3) applies such other person as may be determined under or in accordance with regulations may, in prescribed circumstances, be afforded the opportunity to make a statement under this section (in addition to or instead of any person entitled to be afforded that opportunity under that subsection).

(5) Where subsection (2)(b) applies such other person as may be determined under or in accordance with regulations may, in prescribed circumstances, be afforded the opportunity to make a statement under this section (in addition

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to or instead of any person entitled to be afforded that opportunity under that subsection).

(6) The opportunity to make a statement under this section is to be afforded—

- (a) by the prescribed body or person; and
- (b) at such time and in such manner as may be prescribed.

(7) Nothing in this section or regulations under this section requires an opportunity to be afforded where in all the circumstances of the case it is impracticable for the prescribed body or person to do so.

(8) A statement under this section—

- (a) is to be made in writing;
- (b) is referred to in this Part as a victim statement;
- (c) if made by a person under subsection (1), (2)(b) or (5), is a statement as to the way in which, and degree to which, the offence or alleged offence has affected and continues to affect, the person making the statement and members of the victim's family;
- (d) if made by a person under subsection (2)(a), (3) or (4), is a statement as to the way in which, and degree to which, the offence or alleged offence has affected and continues to affect, the victim, and members of the victim's family.

(9) Regulations may provide that, except in prescribed cases or circumstances, paragraphs (c) and (d) of subsection (8) are to have effect with the omission of the words “and members of the victim's family”.

(10) The provisions of the Victim Charter referred to in section 29(6)(a) apply for the purposes of subsections (2) and (8)(c) and (d) as they apply for the purposes of subsection (3) of section 29.

(11) In this section—

“parent”, in relation to a child, includes a person who has parental responsibility for the child (within the meaning of the Children (Northern Ireland) Order 1995);

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department.

#### Commencement Information

I7 S. 33 in operation at 1.9.2015 by S.R. 2015/320, art. 2(e)

#### Supplementary statement

**34.—**(1) The Department may by regulations make provision for a person who has made a victim statement in relation to an offence to be afforded on

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request an opportunity to make a statement supplementary to, or in amplification of, the victim statement.

(2) The regulations may in particular make provision as to the time at which, manner in which and person or body by which that opportunity is to be afforded; but the regulations may not require an opportunity to be afforded where in all the circumstances of the case it is impracticable to do so.

(3) References in section 35 to a victim statement include references to any statement made under this section in relation to that statement.

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**Commencement Information**

**I8** S. 34 in operation at 1.9.2015 by S.R. 2015/320, art. 2(f)

**Use of victim statement**

**35.—**(1) The Department may by regulations make provision in relation to the provision of a copy of any victim statement made in respect of an offence to the defence and the court.

(2) Where a person is convicted of an offence by or before a court, the court must in determining the sentence in respect of the offence have regard to so much of any victim statement provided to it in accordance with regulations under subsection (1) as it considers to be relevant to that offence.

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**Commencement Information**

**I9** S. 35 in operation at 1.9.2015 by S.R. 2015/320, art. 2(g)

*Information sharing*

**Disclosure for purposes of victim and witness support services and victim information schemes**

**36** Schedule 3 (which makes provision for the disclosure of information for the purposes of victim and witness support services and victim information schemes) has effect.

**PART 5**

**CRIMINAL RECORDS**

**Restriction on information provided to certain persons**

**37.—**(1) The following provisions are repealed—



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- (a) section 101 of the Justice Act (Northern Ireland) 2011 (which, if commenced, would insert section 112(2A) into the Police Act 1997 requiring copies of certain criminal conviction certificates to be given to employers etc.);
  - (b) section 113A(4) of the Police Act 1997 (requirement to send copy of criminal record certificate to registered person); and
  - (c) section 113B(5) and (6) of that Act (requirement to give relevant information, and copy of enhanced criminal record certificate to registered person).
- (2) After section 120AB of the Police Act 1997 (procedure for certain cancellations or suspensions of registration) insert—

**“120AC Registered persons: information on progress of an application**

(1) The Department must, in response to a request from a person who is acting as the registered person in relation to an application under section 113A or 113B, inform that person whether or not a certificate has been issued in response to the application.

(2) Subsections (3) and (4) apply if, at the time a request is made under subsection (1), a certificate has been issued.

(3) In the case of a certificate under section 113A, if it was a certificate stating that there is no relevant matter recorded in central records, the Department may inform the person who made the request that the certificate was such a certificate.

(4) In the case of a certificate under section 113B, if it was a certificate—

- (a) stating that there is no relevant matter recorded in central records and no information provided in accordance with subsection (4) of that section, and
- (b) if section 113BA(1) or 113BB(1) applies to the certificate, containing no suitability information indicating that the person to whom the certificate is issued—
  - (i) is barred from regulated activity relating to children or to vulnerable adults, or
  - (ii) is included in a list kept under Article 70(2)(e)(iii) or 88A(2)(b)(iii) of the Education and Libraries (Northern Ireland) Order 1986,

the Department may inform the person who made the request that the certificate was such a certificate.

(5) If no certificate has been issued, the Department must inform the person who made the request of such other matters relating to the processing of the application as the Department considers appropriate.

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(6) Subject to subsections (2) to (4), nothing in this section permits the Department to inform a person who is acting as the registered person in relation to an application under section 113A or 113B of the content of any certificate issued in response to the application.

(7) The Department may refuse a request under subsection (1) if it is made after the end of a prescribed period beginning with the day on which the certificate was issued.

(8) In this section—

“central records” and “relevant matter” have the same meaning as in section 113A;

“suitability information” means information required to be included in a certificate under section 113B by virtue of section 113BA or 113BB.

(9) Expressions in subsection (4)(b) and in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 have the same meaning in that paragraph as in that Order.

#### **120AD Registered persons: copies of certificates in certain circumstances**

(1) Subsection (2) applies if—

- (a) the Department gives up-date information in relation to a criminal record certificate or enhanced criminal record certificate,
- (b) the up-date information is advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate, and
- (c) the person whose certificate it is in respect of which the up-date information is given applies for a new criminal record certificate or (as the case may be) enhanced criminal record certificate.

(2) The Department must, in response to a request made within the prescribed period by the person who is acting as the registered person in relation to the application, send to that person a copy of any certificate issued in response to the application if the registered person—

- (a) has counter-signed the application or transmitted it to the Department under section 113(2A) or 113B(2A),
- (b) has informed the Department that the applicant for the new certificate has not, within such period as may be prescribed, sent a copy of it to a person of such description as may be prescribed, and
- (c) no prescribed circumstances apply.

(3) The power under subsection (2)(b) to prescribe a description of person may be exercised to describe the registered person or any other person.

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(4) In this section “up-date information” has the same meaning as in section 116A.”.

#### Commencement Information

**I10** S. 37(1) in operation at 2.11.2015 by S.R. 2015/358, art. 2(a)

**I11** S. 37(2) in operation at 2.11.2015 for specified purposes by S.R. 2015/358, art. 2(b)

#### Minimum age for applicants for certificates or to be registered

**38.—**(1) In sections 113A(1), 113B(1), 114(1) and 116(1) of the Police Act 1997 (applications for certificates), before the word “and” at the end of paragraph (a), insert—

“(aa) except in prescribed circumstances, is aged 16 or over at the time of making the application,”.

(2) After section 120(4) of that Act (registered persons) insert—

“(4A) An individual under the age of 18 applying for registration under subsection (4)(b) or (c) must satisfy the Department that there is good reason for being registered.”.

#### Commencement Information

**I12** S. 38 in operation at 2.11.2015 by S.R. 2015/358, art. 2(c)

#### Additional grounds for refusing an application to be registered

**39** After subsection (3) of section 120AA of the Police Act 1997 (refusal, etc. of registration on grounds not related to disclosure) insert—

“(4) Subsection (6) applies if an application is made under section 120 by an individual who—

- (a) has previously been a registered person; and
- (b) has been removed from the register (otherwise than at that individual's own request).

(5) Subsection (6) also applies if an application is made under section 120 by a body corporate or unincorporate which—

- (a) has previously been a registered person; and
- (b) has been removed from the register (otherwise than at its own request).

(6) The Department may refuse the application.”.

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### Commencement Information

**I13** S. 39 in operation at 2.11.2015 by S.R. 2015/358, art. 2(d)

### Enhanced criminal record certificates: additional safeguards

**40.**—(1) In subsection (4) of section 113B of the Police Act 1997 (enhanced criminal record certificates: requests by the Department to chief officers for information)—

- (a) for “the chief officer of every relevant police force” substitute “ any relevant chief officer ”,
- (b) omit “, in the chief officer's opinion”,
- (c) in paragraph (a), for “might” substitute “ the chief officer reasonably believes to ”, and
- (d) in paragraph (b), at the beginning insert “ in the chief officer's opinion, ”.

(2) After subsection (4) of that section of that Act insert—

“(4A) The Department may from time to time publish guidance to chief officers as to the exercise of functions under subsection (4); and in exercising functions under that subsection a relevant chief officer must have regard to any guidance for the time being published under this subsection.”.

(3) In subsection (9) of that section of that Act—

- (a) before the definition of “relevant police force” insert—
 

“relevant chief officer” means any chief officer of a police force who is identified by the Department for the purposes of making a request under subsection (4);”, and
- (b) omit the definition of “relevant police force”.

(4) After section 117(1) of that Act (disputes about accuracy of certificates) insert—

“(1A) Where any person other than the applicant believes that the information contained in a certificate under any of sections 112 to 116 is inaccurate, that person may make an application in writing to the Department for a decision as to whether or not the information is inaccurate.”.

(5) After section 117 of that Act insert—

#### “117A Other disputes about section 113B(4) information

(1) Subsection (2) applies if a person believes that information provided in accordance with section 113B(4) and included in a certificate under section 113B or 116—

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(a) is not relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), or

(b) ought not to be included in the certificate.

(2) The person may apply in writing to the independent monitor appointed under section 119B for a decision as to whether the information is information which falls within subsection (1)(a) or (b).

(3) The independent monitor, on receiving such an application, must ask such chief officer of a police force as the independent monitor considers appropriate to review whether the information concerned is information which—

(a) the chief officer reasonably believes to be relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), and

(b) in the chief officer's opinion, ought to be included in the certificate.

(4) In exercising functions under subsection (3), the chief officer concerned must have regard to any guidance for the time being published under section 113B(4A).

(5) If, following a review under subsection (3), the independent monitor considers that any of the information concerned is information which falls within subsection (1)(a) or (b)—

(a) the independent monitor must inform the Department of that fact, and

(b) on being so informed, the Department must issue a new certificate.

(6) In issuing such a certificate, the Department must proceed as if the information which falls within subsection (1)(a) or (b) had not been provided under section 113B(4).

(7) In deciding for the purposes of this section whether information is information which falls within subsection (1)(a) or (b), the independent monitor must have regard to any guidance for the time being published under section 113B(4A).

(8) Subsections (10) and (11) of section 113B apply for the purposes of this section as they apply for the purposes of that section.”.

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**Commencement Information**

**I14** S. 40 in operation at 2.11.2015 by S.R. 2015/358, art. 2(e)

**Status:** Point in time view as at 02/11/2015. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/03/2016

### Review of criminal record certificates

**41.**—(1) The Police Act 1997 is amended as follows.

(2) After section 117A (inserted by section 40(5)) insert—

#### “117B Review of criminal record certificates

**117B** Schedule 8A (which provides for an independent review of certain criminal record certificates) has effect”.

(3) After Schedule 8 insert as Schedule 8A the Schedule set out in Schedule 4 to this Act.

PROSPECTIVE

### Up-dating certificates

**42** After section 116 of the Police Act 1997 (enhanced criminal record certificates: judicial appointments and Crown employment) insert—

#### “116A Up-dating certificates

(1) The Department must, on the request of a relevant person and subject to subsection (2), give up-date information to that person about—

- (a) a criminal conviction certificate,
- (b) a criminal record certificate, or
- (c) an enhanced criminal record certificate,

which is subject to up-date arrangements.

(2) The Department may impose conditions about—

- (a) the information to be supplied in connection with such a request for the purpose of enabling the Department to decide whether the person is a relevant person,
- (b) any other information to be supplied in connection with such a request.

(3) For the purposes of subsection (1) a certificate is subject to up-date arrangements if condition A, B or C is met and the arrangements have not ceased to have effect in accordance with a notice given under section 118(3B).

(4) Condition A is that—

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- (a) the individual who applied for the certificate made an application at the same time, or within such period after making the application as may be prescribed, to the Department for the certificate to be subject to up-date arrangements,
  - (b) the individual has paid in the prescribed manner any prescribed fee,
  - (c) the Department has granted the application for the certificate to be subject to up-date arrangements, and
  - (d) the period of 12 months beginning with the date on which the grant comes into force has not expired.
- (5) Condition B is that—
- (a) the individual whose certificate it is has made an application to the Department to renew or (as the case may be) further renew unexpired up-date arrangements in relation to the certificate,
  - (b) the individual has paid in the prescribed manner any prescribed fee,
  - (c) the Department has granted the application,
  - (d) the grant has come into force on the expiry of the previous up-date arrangements, and
  - (e) the period of 12 months beginning with the date on which the grant has come into force has not expired.
- (6) Condition C is that—
- (a) the certificate was issued under section 117(2) or 117A(5)(b), and
  - (b) the certificate which it superseded—
    - (i) was subject to up-date arrangements immediately before it was superseded, and
    - (ii) would still be subject to those arrangements had it not been superseded.
- (7) The Department must not grant an application as mentioned in subsection (4)(c) or (5)(c) unless any fee prescribed under subsection (4)(b) or (as the case may be) (5)(b) has been paid in the manner so prescribed.
- (8) The Department must not grant an application as mentioned in subsection (4)(c) or (5)(c) if—
- (a) the certificate in question is an enhanced criminal record certificate; and
  - (b) the certificate contains (or would contain) information which relates to an individual other than the individual whose certificate it is.

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- (9) In this section “up-date information” means—
- (a) in relation to a criminal conviction certificate or a criminal record certificate—
    - (i) information that there is no information recorded in central records which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate,
  - (b) in relation to an enhanced criminal record certificate which includes suitability information relating to children or vulnerable adults—
    - (i) information that there is no information recorded in central records, no information of the kind mentioned in section 113B(4), and no information of the kind mentioned in section 113BA(2) or (as the case may be) 113BB(2), which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate, and
  - (c) in relation to any other enhanced criminal record certificate—
    - (i) information that there is no information recorded in central records, nor any information of the kind mentioned in section 113B(4), which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate.
- (10) If up-date information is given under subsection (9)(a)(i), (9)(b)(i) or (9)(c)(i) and the certificate to which that information relates is one to which subsection (11) applies, the up-date information must include that fact.
- (11) This subsection applies to a certificate which—
- (a) in the case of a criminal conviction certificate, states that there are no convictions of the applicant recorded in central records,
  - (b) in the case of a criminal record certificate, is as described in section 120AC(3), and
  - (c) in the case of an enhanced criminal record certificate, is as described in section 120AC(4).
- (12) In this section—
- “central records” has the same meaning as in section 113A,



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“criminal record certificate” includes a certificate under section 114,  
 “enhanced criminal record certificate” includes a certificate under section 116,

“exempted question” has the same meaning as in section 113A,

“relevant person” means—

- (a) in relation to a criminal conviction certificate—
  - (i) the individual whose certificate it is, or
  - (ii) any person authorised by the individual,
- (b) in relation to a criminal record certificate—
  - (i) the individual whose certificate it is, or
  - (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question, and
- (c) in relation to an enhanced criminal record certificate—
  - (i) the individual whose certificate it is, or
  - (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question asked for a purpose prescribed under section 113B(2)(b).”.

PROSPECTIVE

### **Applications for enhanced criminal record certificates**

**43** In section 113B of the Police Act 1997 (enhanced criminal record certificates) in subsection (2) for paragraph (b) substitute—

- “(b) be accompanied by—
  - (i) a statement by the registered person that the certificate is required for the purposes of an exempted question asked for a prescribed purpose; or
  - (ii) a statement by the applicant that the certificate is required for a prescribed purpose.”.

### **Electronic transmission of applications**

**44.**—(1) In section 113A of the Police Act 1997 (criminal record certificates) after subsection (2) insert—

- “(2A) But an application for a criminal record certificate need not be countersigned by a registered person if—

**Status:** Point in time view as at 02/11/2015. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Justice Act (Northern Ireland) 2015 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) the application is transmitted to the Department electronically by a registered person who satisfies conditions determined by the Department, and
- (b) it is transmitted in accordance with requirements determined by the Department.”.

(2) In section 113B of that Act (enhanced criminal record certificates) after subsection (2) insert—

“(2A) But an application for an enhanced criminal record certificate need not be countersigned by a registered person if—

- (a) the application is transmitted to the Department electronically by a registered person who satisfies conditions determined by the Department, and
- (b) it is transmitted in accordance with requirements determined by the Department.”.

#### Commencement Information

**I15** S. 44 in operation at 2.11.2015 by S.R. 2015/358, art. 2(f)

#### Disclosures by Department of Justice to Disclosure and Barring Service

**45** In section 119 of the Police Act 1997 (sources of information) after subsection (4) insert—

“(4A) The Department of Justice may provide to the Disclosure and Barring Service any information it holds for the purposes of this Part in order to enable the Disclosure and Barring Service to determine whether, in relation to any person, paragraph 1, 2, 3, 5, 7, 8, 9 or 11 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 applies or appears to apply.”.

#### Commencement Information

**I16** S. 45 in operation at 2.11.2015 by S.R. 2015/358, art. 2(g)

#### Inclusion of cautions and other diversionary disposals in criminal records

**46** In Article 29 of the Police and Criminal Evidence (Northern Ireland) Order 1989 for paragraph (4) substitute—

“(4) The Department of Justice may by regulations make provision for recording—

- (a) convictions for such offences as are specified in the regulations (“recordable offences”);

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- (b) cautions given in respect of recordable offences;
  - (c) informed warnings given in respect of recordable offences;
  - (d) diversionary youth conferences in respect of recordable offences.
- (5) For the purposes of paragraph (4)—
- (a) “caution” means a caution given to a person in respect of an offence which, at the time when the caution is given, the person has admitted;
  - (b) “diversionary youth conference” has the meaning given by Part 3A of the Criminal Justice (Children) (Northern Ireland) Order 1998.”

#### Commencement Information

**I17** S. 46 in operation at 2.11.2015 by S.R. 2015/358, art. 2(h)

#### Consequential amendments

**47** Schedule 5 (which contains amendments consequential on the preceding provisions of this Part) has effect.

#### Commencement Information

**I18** S. 47 in operation at 2.11.2015 by S.R. 2015/358, art. 2(i)

VALID FROM 14/03/2016

## PART 6

### CHILD PROTECTION DISCLOSURES

#### Child protection disclosures

**48.**—(1) The Criminal Justice (Northern Ireland) Order 2008 is amended as follows.

(2) In Article 49(1) (interpretation of Part 3)—

(a) after the definition of “agencies” insert—

““child” means a person under the age of 18;

“conviction” includes—

(i) a conviction by or before a court outside Northern Ireland;

(ii) any finding (other than a finding linked with a finding of insanity) in any criminal proceedings that a person has

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committed an offence or done the act or made the omission charged;

(iii) a caution given to a person in respect of an offence which, at the time when the caution was given, the person has admitted;”;

(b) after the definition of “specified” insert—

““relevant previous conviction”, in relation to a person, means a conviction for a sexual or violent offence by reason of which the person falls within a specified description of persons;”.

(3) In Article 50 (guidance to agencies on assessing and managing certain risks to the public) after paragraph (2) insert—

“(2A) Guidance under this Article must contain provisions about arrangements for considering the disclosure, to any particular member of the public, of information concerning any relevant previous convictions of a person where it is necessary to protect a particular child or particular children from serious harm caused by that person; and the guidance may, in particular, contain provisions for the purpose of preventing a member of the public from disclosing that information to any other person.”.

(4) In Article 50(3) for “Paragraph (2) does” substitute “ Paragraphs (2) and (2A) do ”.

VALID FROM 29/04/2016

## PART 7

### LIVE LINKS IN CRIMINAL PROCEEDINGS

#### Live links: accused at committal proceedings

**49.**—(1) This section applies in relation to committal proceedings in a magistrates' court.

(2) Where it appears to the court before which the committal proceedings are to take place that the accused (“A”) is likely to be held in custody or detained in hospital during the proceedings, the court may give a live link direction under this section in relation to the attendance of A at the committal proceedings.

(3) A live link direction under this section is a direction requiring A, if A is being held in custody or detained in a hospital during the committal proceedings, to attend those proceedings through a live link from the place at which A is being held or detained.

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**Changes to legislation:** Justice Act (Northern Ireland) 2015 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) A is to be treated as present in court when, by virtue of a live link direction under this section, A attends committal proceedings through a live link.
- (5) The court may not give a live link direction under this section unless—
- (a) A has given consent to the direction; and
  - (b) the court is satisfied that it is not contrary to the interests of justice to give the direction.
- (6) The court may not give a live link direction under this section unless—
- (a) it has been notified by the Department that a live link is available between the court and the institution in which the accused is, or is to be, held or detained; and
  - (b) the notice has not been withdrawn.
- (7) The court may rescind a live link direction under this section at any time before or during the committal proceedings to which it relates if it appears to the court to be in the interests of justice to do so (but this does not affect the court's power to give a further live link direction under this section in relation to A).
- (8) The court shall not give or rescind a live link direction under this section (whether at a hearing or otherwise) unless A and the prosecutor have been given the opportunity to make representations.
- (9) If a hearing takes place in relation to the giving or rescinding of a live link direction under this section, the court may require or permit a person attending the hearing to do so through a live link.
- (10) The court must—
- (a) state in open court its reasons for refusing to make or rescinding a live link direction under this section; and
  - (b) cause those reasons to be entered in the Order Book.
- (11) If where A is attending committal proceedings through a live link it appears to the court—
- (a) that A is not able to see and hear the court and to be seen and heard by it, and
  - (b) that this cannot be immediately corrected, the court must adjourn the proceedings.
- (12) A may not give oral evidence while attending committal proceedings through a live link by virtue of this section unless—
- (a) A consents to give evidence in that way; and
  - (b) the court is satisfied that it is not contrary to the interests of justice for A to give evidence in that way.

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(13) In this section—

- (a) references to A being held in custody are references to A's being held in custody in a prison, young offenders centre, juvenile justice centre or other institution;
- (b) references to A being detained in hospital are references to A's being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986;
- (c) “live link” means an arrangement by which a person (when not in the place where the proceedings are being held) is able to see and hear, and to be seen and heard by, the court during the proceedings (and for this purpose any impairment of eyesight or hearing is to be disregarded);
- (d) “the Order Book” means the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984.

PROSPECTIVE

**Live links from another courtroom: first remands, etc.**

**50.—(1)** This section applies in relation to hearings which are—

- (a) held in a magistrates' court in relation to a person (“A”)—
  - (i) where A is in custody, is charged with an offence and is appearing before the court for the first time in connection with that charge;
  - (ii) where A has been arrested in pursuance of a warrant issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 and is brought before the court for the first time after A's arrest;
  - (iii) where A has been arrested under Article 6 of the Criminal Justice (Northern Ireland) Order 2003, or in pursuance of a warrant issued under that Article, and is brought before the court for the first time after A's arrest; or
  - (iv) where A has been arrested in pursuance of a warrant issued under Article 25 of the Magistrates' Courts (Northern Ireland) Order 1981 or section 51(3) of the Judicature (Northern Ireland) Act 1978 and is brought before the court for the first time after A's arrest; and
- (b) held on—
  - (i) a Saturday;
  - (ii) a Sunday, or
  - (iii) a public holiday.

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(2) Where it appears to the court before which the hearing is to take place that A is likely to be present in another courtroom during the hearing, the court may give a live link direction under this section in relation to the attendance of A at the hearing.

(3) A live link direction under this section is a direction requiring A, if A is present in another courtroom during the hearing, to attend the hearing through a live link from that courtroom.

(4) A is to be treated as present in court when, by virtue of a live link direction under this section, A attends a hearing through a live link.

(5) A court may not give a live link direction under this section unless the court is satisfied that it is not contrary to the interests of justice to give the direction.

(6) A court may not give a live link direction under this section unless—

- (a) it has been notified by the Department that a live link is available between the court and the courtroom in which the accused is to be present; and
- (b) the notice has not been withdrawn.

(7) The court may rescind a live link direction under this section at any time before or during the hearing to which it relates.

(8) If a hearing takes place in relation to the giving or rescinding of a live link direction, the court may require or permit a person attending the hearing to do so through a live link.

(9) If where A is attending a hearing through a live link it appears to the court—

- (a) that A is not able to see and hear the court and to be seen and heard by it, and
- (b) that this cannot be immediately corrected,

the court must adjourn the hearing.

(10) In this section “live link” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during the hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded).

(11) The Department may by order—

- (a) amend subsection (1) by adding any description of hearing to the list in paragraph (a) of that subsection;
- (b) amend subsection (1) by adding any day of the week to the list in paragraph (b) of that subsection or removing any day for the time being in that list;
- (c) repeal subsection (1)(b) (and the word “and” immediately before it).



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(12) Nothing in this section affects the operation of the Sunday Observance Act (Ireland) 1695 or section 13 of the Criminal Justice Act (Northern Ireland) 2013.

**Live links: proceedings for failure to comply with certain orders or licence conditions**

**51.**—(1) This section applies to the following proceedings in a magistrates' court or the Crown Court in relation to a person (“the offender”)—

- (a) proceedings under Article 27 of the Criminal Justice (Northern Ireland) Order 1996 (failure of the offender to comply with any of the conditions specified in a licence under Article 26 of that Order);
- (b) proceedings under paragraph 3 or 4 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996 (failure of the offender to comply with any of the requirements of a probation order, community service order, combination order or custody probation order);
- (c) proceedings under Article 38(3) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (failure of the offender to comply with requirements of attendance centre order);
- (d) proceedings under Article 41 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (failure of the offender to comply with supervision requirements under Article 40(2) or (3) of that Order);
- (e) proceedings under paragraphs 3 or 4 of Schedule 1A to the Criminal Justice (Children) (Northern Ireland) Order 1998 (failure of the offender to comply with any requirement of a reparation order, community responsibility order or youth conference order).

(2) If it appears to the court that it is likely that the offender will be held in custody or detained in hospital during any proceedings to which this section applies, the court may give a live link direction under this section in relation to the attendance of the offender at those proceedings.

(3) A live link direction under this section is a direction requiring the offender, if the offender is being held in custody or detained in hospital during the proceedings, to attend them through a live link from the place at which the offender is being held or detained.

(4) The offender is to be treated as present in court when, by virtue of a live link direction under this section, the offender attends proceedings through a live link.

- (5) The court may not give a live link direction under this section unless—
- (a) the offender has given consent to the direction; and
  - (b) the court is satisfied that it is not contrary to the interests of justice to give the direction.



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- (6) The court may rescind a live link direction given under this section at any time before or during the proceedings to which it relates if it appears to the court to be in the interests of justice to do so (but this does not affect the court's power to give a further live link direction under this section in relation to the offender).
- (7) The court may give or rescind a live link direction under this section of its own motion or on an application by a party.
- (8) The offender may not give oral evidence while attending proceedings through a live link by virtue of this section unless—
- (a) the offender consents to give evidence in that way; and
  - (b) the court is satisfied that it is not contrary to the interests of justice for the offender to give evidence in that way.
- (9) The court must—
- (a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this section; and
  - (b) if it is a magistrates' court, cause those reasons to be entered in the Order Book.
- (10) If where the offender is attending proceedings through a live link it appears to the court—
- (a) that the offender is not able to see and hear the court and to be seen and heard by it, and
  - (b) that this cannot be immediately corrected,
- the court must adjourn the proceedings.
- (11) A court shall not give a live link direction under this section unless—
- (a) it has been notified by the Department that a live link is available between the court and the institution in which the accused is, or is to be, held in custody or detained; and
  - (b) the notice has not been withdrawn.
- (12) The Department may by order amend subsection (1) by adding—
- (a) proceedings for failure to comply with an order of a court made on conviction of a person;
  - (b) proceedings for breach of the conditions of a licence granted on release from a custodial sentence.
- (13) In this section—
- (a) references to a person being held in custody are references to the person's being held in custody in a prison, young offenders centre, juvenile justice centre or other institution;

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- (b) references to a person being detained in hospital are references to the person's being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986;
- (c) “live link” means an arrangement by which a person (when not in the place where the proceedings are being held) is able to see and hear, and to be seen and heard by, the court during the proceedings (and for this purpose any impairment of eyesight or hearing is to be disregarded);
- (d) “the Order Book” means the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984.

PROSPECTIVE

### **Live links: expert witnesses**

**52.**—(1) Part 3 of the Criminal Justice (Northern Ireland) Order 2004 (live links for witnesses in certain criminal proceedings) is amended as follows.

(2) In Article 10 (witness other than defendant may give evidence through live link if court so directs) after “other than the defendant” insert “ or an expert witness to whom Article 11A applies ”.

(3) After Article 11 insert—

#### **“Expert witnesses**

**11A.**—(1) An expert witness to whom this Article applies shall, unless the court otherwise directs, give evidence through a live link in the criminal proceedings mentioned in Article 10(2).

(2) The court shall not give a direction under paragraph (1) unless the court is satisfied that it is in the interests of justice, and of the efficient administration of justice, for the person concerned to give evidence in the proceedings in person.

(3) The court may rescind a direction under paragraph (1) if it appears to the court that the condition in paragraph (2) is no longer satisfied.

(4) Where it does so, the person concerned shall give evidence through a live link, but this does not prevent the court from giving a further direction under paragraph (1) in relation to that person.

(5) The court shall not give or rescind a direction under paragraph (1) unless the parties to the proceedings have been given the opportunity to make representations.

(6) This Article applies to expert witnesses of such class or description as the Department may prescribe in regulations.

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(7) Regulations shall not be made under paragraph (6) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”.

(4) In Article 12(1) (magistrates' court permitted to sit at other locations) for sub-paragraph (a) substitute—

“(a) evidence is to be given through a live link under this Part in proceedings before a magistrates' court; and”.

(5) In Article 13 (warning to jury in Crown Court) for paragraph (1) substitute—

“(1) This Article applies where evidence has been given through a live link under this Part in proceedings before the Crown Court.”.

(6) In Article 14 (rules of court) after paragraph (2)(a) insert—

“(aa) as to the procedure to be followed in connection with the making of representations under Article 11A; and”.

VALID FROM 31/10/2016

### **Live links: witnesses outside the United Kingdom**

**53.**—(1) Part 3 of the Criminal Justice (Northern Ireland) Order 2004 (live links for witnesses in certain criminal proceedings) is amended in accordance with subsections (2) and (3).

(2) After Article 11A (inserted by section 52) insert—

#### **“Witnesses outside the United Kingdom**

**11B.**—(1) This Part applies whether the witness is in the United Kingdom or elsewhere.

(2) A statement made on oath by a person outside the United Kingdom and given in evidence through a link under this Part shall be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979 as having been made in the proceedings in which it is given in evidence.”.

(3) In Article 15 (interpretation)—

(a) in paragraph (2) for “at a place in the United Kingdom which is outside the building” substitute “absent from the place”;

(b) after paragraph (4) insert—

“(4A) Where two or more legal representatives are acting for a party to the proceedings, paragraph (3)(c) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.”.

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(4) In section 29(3) of the Crime (International Co-operation) Act 2003 (hearing witnesses abroad through live television links) for “Article 80A(4) of the Police and Criminal Evidence (Northern Ireland) Order 1989” substitute “ Article 10(2) of the Criminal Justice (Northern Ireland) Order 2004 ” and after “to apply” insert “ in relation to witnesses who are outside the United Kingdom ”.

#### **Live links: patients detained in hospital under Mental Health Order**

**54.—**(1) In each of the following provisions (which enable a live link direction to be given in relation to a person expected to be in custody) after “in custody” insert “ or detained in hospital ”

- (a) Articles 79(4)(a), 80(2), (3) and (8) and 81(2) and (3) of the Criminal Justice (Northern Ireland) Order 2008 (live link for accused in preliminary hearings and sentencing hearings);
- (b) sections 16(2), (3), (8) and (10)(a) and 17(2), (3) and (10)(a) of the Justice Act (Northern Ireland) 2011 (live link for appellant in preliminary hearing or sentencing hearing on appeal to the county court).

(2) In each of the following at the end add “ or detained ”

- (a) Articles 80(3) and 81(3) of the Criminal Justice (Northern Ireland) Order 2008;
- (b) sections 16(3) and 17(3) of the Justice Act (Northern Ireland) 2011.

(3) In Article 79(3) of the Criminal Justice (Northern Ireland) Order 2008 after sub-paragraph (a) insert—

“(aa) references to a person being detained in hospital are references to the person's being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986;”.

(4) In section 16(11) of the Justice Act (Northern Ireland) 2011 after sub-paragraph (a) insert—

“(aa) references to a person being detained in hospital are references to the person's being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986;”.

(5) In section 17(11) of the Justice Act (Northern Ireland) 2011 after sub-paragraph (a) insert—

“(aa) references to a person being detained in hospital are references to the person's being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986;”.

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## PART 8

### VIOLENT OFFENCES PREVENTION ORDERS

VALID FROM 01/12/2016

#### *Violent offences prevention orders*

#### **Violent offences prevention orders**

**55.**—(1) A violent offences prevention order is an order made under section 56 or 57 in respect of a person (“D”) which—

- (a) contains such prohibitions or requirements authorised by section 59 as the court making the order considers necessary for the purpose of protecting the public from the risk of serious violent harm caused by D, and
- (b) has effect for such period of not less than 2, nor more than 5, years as is specified in the order (unless renewed or discharged under section 60).

(2) For the purposes of this Part any reference to protecting the public from the risk of serious violent harm caused by a person is a reference to protecting—

- (a) the public, or
- (b) any particular members of the public,

from a current risk of serious physical or psychological harm caused by that person committing one or more specified offences.

(3) In this Part “specified offence” means an offence for the time being listed in Part 1 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 2008 (violent offences).

(4) But the offence mentioned in paragraph 7 of that Part (assault occasioning actual bodily harm) is not a specified offence for the purposes of sections 56(2) or (3) or 58(2) or (3) unless—

- (a) it was committed against—
  - (i) a vulnerable adult (within the meaning of Article 2(2) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007);
  - (ii) a person under the age of 18; or
  - (iii) a person living in the same household as the offender; or
- (b) the court in sentencing the offender for the offence treated the offence as aggravated by hostility (within the meaning of Article 2 of the Criminal Justice (No. 2) (Northern Ireland) Order 2004).

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### **Violent offences prevention order made on conviction, etc.**

**56.**—(1) A court may make a violent offences prevention order in respect of D where subsection (2) or (3) applies to D and the court is satisfied that it is necessary to make such an order for the purpose of protecting the public from the risk of serious violent harm caused by D.

(2) This subsection applies to D where the court deals with D in respect of a specified offence.

(3) This subsection applies to D where the court deals with D in respect of a finding—

- (a) that D is not guilty of a specified offence by reason of insanity, or
- (b) that D is unfit to plead and has done the act charged against D in respect of such an offence.

(4) Subsections (2) and (3) apply whether the specified offence was committed (or alleged to have been committed) before or after commencement.

### **Violent offences prevention order made on application of Chief Constable**

**57.**—(1) A court of summary jurisdiction may make a violent offences prevention order in respect of D where subsection (2) applies to D and the court is satisfied that D's behaviour since the appropriate date makes it necessary to make such an order for the purpose of protecting the public from the risk of serious violent harm caused by D.

(2) This subsection applies to D where—

- (a) an application under subsection (3) has been made to the court in respect of D, and
- (b) on the application, it is proved that D is a qualifying offender.

(3) The Chief Constable may by complaint apply for a violent offences prevention order to be made in respect of a person who resides in Northern Ireland or who the Chief Constable believes is in, or is intending to come to, Northern Ireland if it appears to the Chief Constable that—

- (a) the person is a qualifying offender, and
- (b) the person has, since the appropriate date, acted in such a way as to give reasonable cause to believe that it is necessary for a violent offences prevention order to be made in respect of the person.

(4) In this section “the appropriate date” means the date (or, as the case may be, the first date) on which the person became a person within any of paragraphs (a) to (c) of section 58(2) or (3).

(5) On an application under subsection (3) in respect of D the court must—

- (a) afford D an opportunity of making representations; and

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- (b) in deciding whether it is necessary to make a violent offences prevention order for the purpose of protecting the public from the risk of serious violent harm caused by D, have regard to whether D would, at any time when such an order would be in force, be subject under any other statutory provision to any measures that would operate to protect the public from the risk of such harm.

### **Qualifying offenders**

**58.**—(1) In this Part “qualifying offender” means a person who is within subsection (2) or (3).

(2) A person is within this subsection if (whether before or after commencement)—

- (a) the person has been convicted of a specified offence;
- (b) the person has been found not guilty of a specified offence by reason of insanity, or
- (c) the person has been found to be unfit to be tried and to have done the act charged in respect of a specified offence.

(3) A person is within this subsection if, under the law in force in a country outside Northern Ireland (and whether before or after commencement)—

- (a) the person has been convicted of a relevant offence,
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person was not guilty by reason of insanity, or
- (c) such a court has, in respect of a relevant offence, made a finding equivalent to a finding that the person was unfit to be tried and did the act charged in respect of the offence.

(4) In subsection (3) “relevant offence” means an act which—

- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted a specified offence if it had been done in Northern Ireland.

(5) An act punishable under the law in force in a country outside Northern Ireland constitutes an offence under that law for the purposes of subsection (4) however it is described in that law.

(6) Subject to subsection (7), on an application under section 57, the condition in subsection (4)(b) (where relevant) is to be taken as met in relation to the person to whom the application relates unless, not later than magistrates' court rules may provide, that person serves on the Chief Constable a notice—



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- (a) denying that, on the facts as alleged with respect to the act in question, the condition is met,
- (b) giving the reasons for denying that it is met, and
- (c) requiring the Chief Constable to prove that it is met.

(7) If the court thinks fit, it may permit that person to require the Chief Constable to prove that the condition is met even though no notice has been served under subsection (6).

#### **Provisions that violent offences prevention orders may contain**

**59.**—(1) A violent offences prevention order may contain provisions prohibiting D from doing anything described in the order or requiring D to do anything described in the order (or both).

(2) The only prohibitions or requirements that may be included in the order are those necessary for the purpose of protecting the public from the risk of serious violent harm caused by D.

#### **Variation, renewal or discharge of violent offences prevention orders**

**60.**—(1) D or the Chief Constable may apply to the appropriate court—

- (a) for an order varying or discharging a violent offences prevention order;
- (b) for an order renewing a violent offences prevention order for such period of not more than 5 years as is specified in the renewal order.

(2) Subject to subsections (3) to (5), on an application under this section the court may, after hearing—

- (a) the applicant, and
- (b) the other person mentioned in subsection (1), if that person wishes to be heard,

make such order varying, renewing or discharging the violent offences prevention order as the court considers appropriate.

(3) A violent offences prevention order may only be—

- (a) renewed, or
- (b) varied so as to impose additional prohibitions or requirements on D,

if the court considers that it is necessary to do so for the purpose of protecting the public from the risk of serious violent harm caused by D (and any renewed or varied order may contain only such prohibitions or requirements as the court considers necessary for this purpose).

(4) References in subsection (3) to prohibitions or requirements are to prohibitions or requirements authorised by section 59.



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(5) The court may not discharge a violent offences prevention order before the end of the period of 2 years beginning with the date on which it comes into force unless consent to its discharge is given by D and the Chief Constable.

(6) In this section “the appropriate court” means—

- (a) where the violent offences prevention order was made under section 56 by (or on appeal from) the Crown Court, that court; and
- (b) in any other case, a court of summary jurisdiction.

(7) An application under this section may be made—

- (a) where the appropriate court is the Crown Court, in accordance with Crown Court rules;
- (b) in any other case by complaint under Part 7 of the Magistrates' Court (Northern Ireland) Order 1981 and in accordance with magistrates' court rules.

#### **Interim violent offences prevention orders**

**61.—**(1) This section applies where an application under section 57 (“the main application”) in respect of D has not yet been determined.

(2) An application for an order under this section (“an interim violent offences prevention order”) may be made—

- (a) by the complaint by which the main application is made, or
- (b) if the main application has already been made to a court, by means of a further complaint made to that court by the Chief Constable.

(3) If it appears to the court—

- (a) that D is a qualifying offender,
- (b) that, if the court were determining that application, it would be likely to make a violent offences prevention order in respect of D, and
- (c) that it is desirable to act before that application is determined, with a view to securing the immediate protection of the public from the risk of serious violent harm caused by D,

the court may make an interim violent offences prevention order in respect of that person that contains such prohibitions or requirements as it considers necessary for the purpose of protecting the public from the risk of such harm.

(4) The reference in subsection (3) to prohibitions or requirements is to prohibitions or requirements authorised by section 59 in the case of a violent offences prevention order.

(5) An interim violent offences prevention order—

- (a) has effect only for such period as is specified in the order, and

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(b) ceases to have effect (if it has not already done so) at the appropriate time.

(6) “The appropriate time” means—

- (a) if the court grants the main application, the time when a violent offences prevention order made in pursuance of it comes into force;
- (b) if the court decides not to grant the main application or it is withdrawn, the time when the court so decides or the application is withdrawn.

(7) Section 60 applies in relation to the variation or discharge of an interim violent offences prevention order as it applies in relation to the variation or discharge of a violent offences prevention order, but with the omission of subsection (5).

### **Notice of applications**

**62.**—(1) This section applies to—

- (a) any application under section 57 for a violent offences prevention order in respect of D,
- (b) any application under section 61 for an interim violent offences prevention order in respect of D, and
- (c) any application under section 60 for the variation, discharge or renewal of a violent offences prevention order made in respect of D, or for the variation or discharge of an interim violent offences prevention order so made.

(2) A court may not begin hearing such an application unless it is satisfied that D has been given notice of—

- (a) the application, and
- (b) the time and place of the hearing,

a reasonable time before the hearing.

### **Appeals**

**63.**—(1) D may appeal against the making of a violent offences prevention order under section 56—

- (a) where subsection (2) of that section applied to D, as if the order were a sentence passed on D for the offence;
- (b) where subsection (3) (but not subsection (2)) of that section applied to D, as if D had been convicted of the offence and the order were a sentence passed on D for that offence.

(2) D may appeal to the county court against—

- (a) the making of a violent offences prevention order under section 57;

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- (b) the making of an interim violent offences prevention order.
- (3) D may appeal against the making of an order under section 60 or the refusal to make such an order—
  - (a) where the application for such an order was made to the Crown Court, to the Court of Appeal;
  - (b) in any other case to the county court.
- (4) On an appeal under subsection (2) or (3)(b), the county court—
  - (a) may make such orders as may be necessary to give effect to its determination of the appeal; and
  - (b) may also make such incidental or consequential orders as appear to it to be just.

#### *Notification requirements*

VALID FROM 01/12/2016

#### **Offenders subject to notification requirements**

**64.**—(1) References in the following provisions of this Part to an offender subject to notification requirements are references to an offender who is for the time being subject to a violent offences prevention order or an interim violent offences prevention order which is in force under this Part.

(2) Subsection (1) has effect subject to section 67(7) (which excludes from section 67 an offender subject to an interim violent offences prevention order).

#### **Notification requirements: initial notification**

**65.**—(1) An offender subject to notification requirements must notify the required information to the police within the period of 3 days beginning with the date on which the violent offences prevention order or the interim violent offences prevention order comes into force in relation to the offender (“the relevant date”).

(2) The “required information” is the following information about the offender—

- (a) date of birth;
- (b) national insurance number;
- (c) name on the relevant date or, if the offender used two or more names on that date, each of those names;
- (d) home address on the relevant date;

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- (e) name on the date on which the notification is given or, if the offender used two or more names on that date, each of those names;
  - (f) home address on the date on which the notification is given;
  - (g) the address of any other premises in the United Kingdom at which on that date the offender regularly resides or stays;
  - (h) any information prescribed by regulations made by the Department.
- (3) When determining the period of 3 days mentioned in subsection (1), there is to be disregarded any time when the offender is—
- (a) remanded in or committed to custody by an order of a court;
  - (b) serving a custodial sentence;
  - (c) detained in a hospital; or
  - (d) outside the United Kingdom.
- (4) In this Part “home address” means in relation to the offender—
- (a) the address of the offender's sole or main residence in the United Kingdom, or
  - (b) if the offender has no such residence, the address or location of a place in the United Kingdom where the offender can regularly be found or, if there is more than one such place, such one of them as the offender selects.

#### Commencement Information

I19 S. 65(2)(h) in operation at 1.9.2015 by S.R. 2015/324, art. 2(a)

#### Notification requirements: changes

**66.—(1)** An offender subject to notification requirements must, within the period of 3 days beginning with the date on which any notifiable event occurs, notify to the police—

- (a) the required new information, and
  - (b) the information mentioned in section 65(2).
- (2) A “notifiable event” means—
- (a) the use by the offender of a name which has not been notified to the police under section 65 or this section;
  - (b) any change of the offender's home address;
  - (c) the expiry of any qualifying period during which the offender has resided or stayed at any premises in the United Kingdom the address of which has not been notified to the police under section 65 or this section;
  - (d) any prescribed change of circumstances; or

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(e) the release of the offender from custody pursuant to an order of a court or from a custodial sentence or detention in a hospital.

(3) The “required new information” is—

- (a) the name referred to in subsection (2)(a),
- (b) the new home address (see subsection (2)(b)),
- (c) the address of the premises referred to in subsection (2)(c),
- (d) the prescribed details, or
- (e) the fact that the offender has been released as mentioned in subsection (2)(e),

as the case may be.

(4) A notification under subsection (1) may be given before the notifiable event occurs, but in that case the offender must also specify the date when the event is expected to occur.

(5) If a notification is given in accordance with subsection (4) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).

(6) If a notification is given in accordance with subsection (4) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—

- (a) the notification does not affect the duty imposed by subsection (1), and
- (b) the offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.

(7) Section 65(3) applies to the determination of—

- (a) any period of 3 days for the purposes of subsection (1), or
- (b) any period of 6 days for the purposes of subsection (6),

as it applies to the determination of the period of 3 days mentioned in section 65(1).

(8) In this section—

- (a) “prescribed change of circumstances” means any change—
  - (i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 65(2)(h), and
  - (ii) of a description prescribed by regulations made by the Department;
- (b) “the prescribed details”, in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed.

(9) In this section “qualifying period” means—

- (a) a period of 7 days, or

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- (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

#### Commencement Information

**I20** S. 66(2)(d) in operation at 2.11.2015 for specified purposes by S.R. 2015/358, art. 2(j)

**I21** S. 66(3)(d) in operation at 2.11.2015 for specified purposes by S.R. 2015/358, art. 2(j)

#### Notification requirements: periodic notification

**67.—(1)** An offender subject to notification requirements must, within the applicable period after each notification date, notify to the police the information mentioned in section 65(2), unless the offender has already given a notification under section 66(1) within that period.

(2) A “notification date” means, in relation to the offender, the date of any notification given by the offender under section 65(1) or 66(1) or subsection (1).

(3) Where the applicable period would (apart from this subsection) end while subsection (4) applies, that period is to be treated as continuing until the end of the period of 3 days beginning with the date on which subsection (4) first ceases to apply.

(4) This subsection applies if the offender is—

- (a) remanded in or committed to custody by an order of a court,
- (b) serving a custodial sentence,
- (c) detained in a hospital, or
- (d) outside the United Kingdom.

(5) In this section “the applicable period” means—

- (a) in any case where subsection (6) applies, such period as may be prescribed by regulations made by the Department, and
- (b) in any other case, the period of one year.

(6) This subsection applies if the last home address notified by the offender under section 65(1) or 66(1) or subsection (1) was the address or location of such a place as is mentioned in section 65(4)(b).

(7) Nothing in this section applies to an offender who is subject to an interim violent offences prevention order.

#### Commencement Information

**I22** S. 67(5)(a) in operation at 2.11.2015 for specified purposes by S.R. 2015/358, art. 2(k)

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### **Notification requirements: absence from notified residence**

**68.—(1)** This section applies to an offender subject to notification requirements at any time if the last home address notified by the offender under section 65(1), 66(1) or 67(1) was an address in Northern Ireland such as is mentioned in section 65(4)(a) (sole or main residence).

(2) If the offender intends to be absent from that home address for a period of more than 3 days (“the relevant period”), the offender must, not less than 12 hours before leaving that home address, notify to the police the information set out in subsection (3).

(3) The information is—

- (a) the date on which the offender will leave that home address;
- (b) such details as the offender holds about—
  - (i) the offender's travel arrangements during the relevant period;
  - (ii) the offender's accommodation arrangements during that period;
  - (iii) the offender's date of return to that address.

(4) In this section—

“travel arrangements” include, in particular, the means of transport to be used and the dates of travel,

“accommodation arrangements” include, in particular, the address of any accommodation at which the relevant offender will spend the night during the relevant period and the nature of that accommodation.

(5) Where—

- (a) an offender has given a notification under subsection (2), and
- (b) at any time before that mentioned in that subsection, the information notified becomes inaccurate or incomplete,

the offender must give a further notification under subsection (2).

(6) Where an offender—

- (a) has notified a date of return to the offender's home address, but
- (b) returns to that home address on a date other than that notified,

the offender must notify the date of the offender's actual return to the police within 3 days of the actual return.

(7) Nothing in this section requires an offender to notify any information which falls to be notified in accordance with a requirement imposed by regulations under section 69.

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(8) In calculating the relevant period for the purposes of this section there is to be disregarded—

- (a) any period or periods which the offender intends to spend at, or travelling directly to or from, an address of the kind mentioned in section 65(2)(g) notified to the police under section 65(1), 66(1) or 67(1);
- (b) any period or periods which the offender intends to spend at, or travelling directly to or from, any premises, if his stay at those premises would give rise to a requirement to notify the address of those premises under section 66(2)(c).

### Notification requirements: travel outside the United Kingdom

**69.—(1)** The Department may by regulations make provision with respect to offenders subject to notification requirements, or any description of such offenders—

- (a) requiring such persons, before they leave the United Kingdom, to give in accordance with the regulations a notification under subsection (2);
  - (b) requiring such persons, if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3).
- (2) A notification under this subsection must disclose—
- (a) the date on which the offender proposes to leave the United Kingdom;
  - (b) the country (or, if there is more than one, the first country) to which the offender proposes to travel and the proposed point of arrival (determined in accordance with the regulations) in that country;
  - (c) any other information prescribed by the regulations which the offender holds about the offender's departure from or return to the United Kingdom, or about the offender's movements while outside the United Kingdom.
- (3) A notification under this subsection must disclose any information prescribed by the regulations about the offender's return to the United Kingdom.

#### Commencement Information

**I23** S. 69(1) in operation at 1.9.2015 by S.R. 2015/324, art. 2(b)

**I24** S. 69(2) in operation at 2.11.2015 for specified purposes by S.R. 2015/358, art. 2(l)

**I25** S. 69(3) in operation at 2.11.2015 for specified purposes by S.R. 2015/358, art. 2(l)



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### **Method of notification and related matters**

**70.**—(1) An offender gives a notification to the police under section 65(1), 66(1), 67(1) or 68(2) or (6) by—

- (a) attending at any police station in Northern Ireland prescribed by regulations under section 87(1)(a) of the Sexual Offences Act 2003, and
- (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.

(2) Any notification given in accordance with this section must be acknowledged; and the acknowledgement must be—

- (a) in writing, and
- (b) in such form as the Department may direct.

(3) Where a notification is given under section 65(1), 66(1), 67(1) or 68(2) or (6), the offender must, if requested to do so by the police officer or other person mentioned in subsection (1)(b), allow that officer or person to—

- (a) take the offender's fingerprints,
- (b) photograph any part of the offender, or
- (c) do both of those things.

(4) Fingerprints and photographs taken from an offender under this section—

- (a) are to be used for verifying the identity of the offender at any time while the offender is subject to notification requirements; and
- (b) may also, subject to the following provisions of this section, be used for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.

(5) Fingerprints taken from an offender under this section must be destroyed no later than the date on which the offender ceases to be subject to notification requirements, unless they are retained under the power conferred by subsection (7).

(6) Subsection (7) applies where—

- (a) fingerprints have been taken from a person under any power conferred by the Police and Criminal Evidence (Northern Ireland) Order 1989;
- (b) fingerprints have also subsequently been taken from that person under this section; and
- (c) the fingerprints taken as mentioned in paragraph (a) do not constitute a complete and up to date set of the person's fingerprints or some or all

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of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(7) Where this subsection applies—

- (a) the fingerprints taken as mentioned in subsection (6)(b) may be retained as if taken from the person under the power mentioned in subsection (6)(a); and
- (b) the fingerprints taken as mentioned in subsection (6)(a) must be destroyed.

(8) Photographs taken of any part of the offender under this section must be destroyed no later than the date on which the offender ceases to be subject to notification requirements unless they are retained by virtue of an order under subsection (9).

(9) The Chief Constable may apply to a District Judge (Magistrates' Courts) for an order extending the period for which photographs taken under this section may be retained.

(10) An application for an order under subsection (9) must be made within the period of 3 months ending on the last day on which the offender will be subject to notification requirements.

(11) An order under subsection (9) may extend the period for which photographs may be retained by a period of 2 years beginning when the offender ceases to be subject to notification requirements.

(12) The following persons may appeal to the county court against an order under subsection (9), or a refusal to make such an order—

- (a) the Chief Constable;
- (b) the person in relation to whom the order was sought.

(13) In this section—

- (a) “photograph” includes any process by means of which an image may be produced; and
- (b) references to the destruction or retention of photographs or fingerprints include references to the destruction or retention of copies of those photographs or fingerprints.

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## Supplementary

### Offences

**71.—**(1) If a person fails, without reasonable excuse, to comply with any prohibition or requirement contained in—

- (a) a violent offences prevention order, or
- (b) an interim violent offences prevention order,

the person commits an offence.

(2) If a person fails, without reasonable excuse, to comply with—

- (a) section 65(1), 66(1) or (6)(b), 67(1), 68(2) or (6) or 70(3), or
- (b) any requirement imposed by regulations made under section 69(1),

the person commits an offence.

(3) If a person notifies to the police, in purported compliance with—

- (a) section 65(1), 66(1), 67(1) or 68(2) or (6), or
- (b) any requirement imposed by regulations made under section 69(1),

any information which the person knows to be false, the person commits an offence.

(4) As regards an offence under subsection (2), so far as it relates to non-compliance with—

- (a) section 65(1), 66(1), 67(1) or 68(2) or (6), or
- (b) any requirement imposed by regulations made under section 69(1),

a person commits such an offence on the first day on which the person first fails, without reasonable excuse, to comply with the provision mentioned in paragraph (a) or (as the case may be) the requirement mentioned in paragraph (b), and continues to commit it throughout any period during which the failure continues.

(5) But a person must not be prosecuted under subsection (2) more than once in respect of the same failure.

(6) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

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### **Supply of information to relevant Northern Ireland departments or Secretary of State**

**72.—**(1) This section applies to information notified to the police under section 65(1), 66(1) or 67(1).

(2) The Chief Constable may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to—

- (a) a relevant Northern Ireland department,
- (b) the Secretary of State, or
- (c) a person providing services to a relevant Northern Ireland department or the Secretary of State in connection with a relevant function,

for use for the purpose of verifying the information.

(3) In relation to information supplied to any person under subsection (2), the reference to verifying the information is a reference to—

- (a) checking its accuracy by comparing it with information held—
  - (i) where the person is a relevant Northern Ireland department or the Secretary of State, by that department or the Secretary of State in connection with the exercise of a relevant function, or
  - (ii) where the person is within subsection (2)(c), by that person in connection with the provision of services as mentioned there, and
- (b) compiling a report of that comparison.

(4) Subject to subsection (5), the supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising).

(5) This section does not authorise the doing of anything that contravenes the Data Protection Act 1998.

(6) This section does not affect any power to supply information that exists apart from this section.

(7) In this section—

“relevant Northern Ireland department” means the Department for Employment and Learning, the Department of the Environment or the Department for Social Development;

“relevant function” means—

- (a) in relation to the Department for Employment and Learning, a function relating to employment or training;
- (b) in relation to the Department of the Environment, a function under Part 2 of the Road Traffic (Northern Ireland) Order 1981;

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- (c) in relation to the Department for Social Development, a function relating to social security or child support;
- (d) in relation to the Secretary of State, a function relating to passports.

### **Supply of information by relevant Northern Ireland departments or Secretary of State**

**73.**—(1) A report compiled under section 72 may be supplied to the Chief Constable by—

- (a) the relevant Northern Ireland department,
- (b) the Secretary of State, or
- (c) a person within section 72(2)(c).

(2) Such a report may contain any information held—

- (a) by the relevant Northern Ireland department or the Secretary of State in connection with the exercise of a relevant function, or
- (b) by a person within section 72(2)(c) in connection with the provision of services as mentioned there.

(3) Where such a report contains information within subsection (2), the Chief Constable—

- (a) may, subject to subsections (4) to (8), retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, and
- (b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.

(4) The information must be destroyed no later than the date on which the offender ceases to be subject to notification requirements unless it is retained by virtue of an order under subsection (5).

(5) The Chief Constable may apply to a District Judge (Magistrates' Court) for an order extending the period for which the information may be retained.

(6) An application for an order under subsection (5) must be made within the period of 3 months ending on the last day on which the offender will be subject to notification requirements.

(7) An order under subsection (5) may extend the period for which the information may be retained by a period of 2 years beginning when the offender ceases to be subject to notification requirements.

(8) The following persons may appeal to the county court against an order under subsection (5), or a refusal to make such an order—

- (a) the Chief Constable;

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(b) the person in relation to whom the order was sought.

(9) Subsections (4) to (7) of section 72 apply in relation to this section as they apply in relation to section 72.

#### **Information about release or transfer**

**74.—**(1) This section applies to an offender subject to notification requirements who is—

- (a) serving a custodial sentence; or
- (b) detained in a hospital.

(2) The Department may by regulations make provision requiring the person who is responsible for such an offender to give notice to specified persons—

- (a) of the fact that that person has become responsible for the offender; and
- (b) of any occasion when—
  - (i) the offender is released, or
  - (ii) a different person is to become responsible for the offender.

(3) In subsection (2) “specified persons” means persons specified, or of a description specified, in the regulations.

(4) The regulations may make provision for determining who is to be taken for the purposes of this section as being responsible for an offender.

#### **Power of entry and search of offender's home address**

**75.—**(1) If, on an application made by a police officer of the rank of superintendent or above, a lay magistrate is satisfied that the requirements in subsection (2) are met in relation to any premises, the lay magistrate may issue a warrant authorising a constable—

- (a) to enter the premises for the purpose of assessing the risks posed by the offender subject to notification requirements to whom the warrant relates; and
- (b) to search the premises for that purpose.

(2) The requirements are—

- (a) that the address of each set of premises specified in the application is an address falling within subsection (3);
- (b) that the offender is not one to whom subsection (4) applies;
- (c) that it is necessary for a constable to enter and search the premises for the purpose mentioned in subsection (1)(a);

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- (d) that, in a case where a person other than the offender resides there, it is proportionate in all the circumstances for a constable to enter and search the premises for that purpose; and
  - (e) that on at least two occasions a constable has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.
- (3) An address falls within this subsection if—
- (a) it is the address which was last notified in accordance with this Part by the offender to the police as the offender's home address; or
  - (b) there are reasonable grounds to believe that the offender resides there or may regularly be found there.
- (4) This subsection applies to an offender if the offender is—
- (a) remanded in or committed to custody by order of a court;
  - (b) serving a custodial sentence;
  - (c) detained in a hospital; or
  - (d) outside the United Kingdom.
- (5) A warrant issued under this section must specify the one or more sets of premises to which it relates.
- (6) The warrant may authorise the constable executing it to use reasonable force if necessary to enter and search the premises.
- (7) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the lay magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).
- (8) Where a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.
- (9) In this section a reference to the offender subject to notification requirements to whom the warrant relates is a reference to the offender—
- (a) who has in accordance with this Part notified the police that the premises specified in the warrant are the offender's home address; or
  - (b) in respect of whom there are reasonable grounds to believe that the offender resides there or may regularly be found there.

### **Interpretation of this Part**

**76.—**(1) In this Part—

“country” includes territory;

“custodial sentence” means—

- (a) a sentence of imprisonment;



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- (b) a sentence of detention in a young offenders centre;
  - (c) a sentence of detention under Article 13(4)(b) or 14(5) of the Criminal Justice (Northern Ireland) Order 2008;
  - (d) a sentence of detention under Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998;
  - (e) an order under Article 39 of that Order sending the offender to a juvenile justice centre;
  - (f) an order under Article 44A of that Order sending the offender to secure accommodation;
  - (g) any other sentence under which a person is detained in custody;
- “detained in a hospital” means detained in a hospital under Part 3 of the Mental Health (Northern Ireland) Order 1986;
- “home address” has the meaning given by section 65(4);
- “interim violent offences prevention order” means an order made under section 61;
- “qualifying offender” has the meaning given by section 58(1);
- “specified offence” has the meaning given by section 55(3) and (4);
- “violent offences prevention order” has the meaning given by section 55(1).

(2) References in this Part to “D” in relation to a violent offences prevention order, or an application for such an order, are references to the person in relation to whom the order has effect or is sought.

(3) References in this Part to protecting the public from the risk of serious violent harm caused by a person are to be read in accordance with section 55(2).

(4) References in this Part to a finding of the kind mentioned in section 58(2)(b) or (c) or (3)(b) or (c) include references to a case where a decision on appeal is to the effect that there should have been such a finding in the proceedings concerned.

(5) References in this Part to an offender subject to notification requirements are to be read in accordance with section 64.

(6) Reference in this Part to a conviction include references to a finding of a court in summary proceedings, where the court makes an order under Article 44(4) of the Mental Health (Northern Ireland) Order 1986 that the accused did the act charged.



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## PART 9

### MISCELLANEOUS

VALID FROM 01/07/2016

#### *Jury service*

##### **Removal of maximum age for jury service**

**77** In Article 3(1) of the Juries (Northern Ireland) Order 1996 (persons qualified and liable for jury service) for “aged between 18 and 70 years” substitute “aged over 18 years”.

##### **Preparation of jury lists**

**78** In Article 4(2) of the Juries (Northern Ireland) Order 1996 (selection from register of electors) omit sub-paragraph (b)(i).

##### **Persons disqualified for jury service**

**79** In Schedule 1 to the Juries (Northern Ireland) Order 1996 (persons disqualified for jury service) after paragraph 1 insert—

“**1A** Any person who has at any time been convicted of an offence and had imposed on him an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008”.

##### **Persons ineligible for jury service**

**80.**—(1) Schedule 2 to the Juries (Northern Ireland) Order 1996 (persons ineligible for jury service) is amended as follows.

(2) After the entry relating to the Policing Board insert— “Members of the National Crime Agency and National Crime Agency officers.”.

(3) Omit the following entries— “A person appointed for the purposes of Article 7(6) of the Treatment of Offenders (Northern Ireland) Order 1976.” “Members of the Royal Irish Regiment.”.

##### **Persons excusable as of right from jury service**

**81.**—(1) Schedule 3 to the Juries (Northern Ireland) Order 1996 (persons excusable from jury service as of right) is amended as follows.

(2) For the entry relating to Representatives to the European Parliament substitute— “Members of the European Parliament”.

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(3) For the entry relating to the Secretary and any Director of the Northern Ireland Audit Office substitute— “ The Deputy Comptroller and Auditor General for Northern Ireland and any Assistant Auditor General for Northern Ireland ”.

(4) For the entry relating to persons aged between 65 and 70 years and the heading immediately before it substitute—

**“Persons aged over 70 years**

Persons aged over 70 years”.

PROSPECTIVE

*Unpaid community service after early release*

**Unpaid community service after early release**

**82** In Article 19 of the Criminal Justice (Northern Ireland) Order 2008 after paragraph (1) insert—

“(1A) The Department may by regulations, having consulted the Probation Board, provide for a community service scheme, under which a person released under paragraph (1) may be required to engage in unpaid community service for the remaining period of the fixed term they would have served but for their early release.”.

PROSPECTIVE

*Personal samples, DNA profiles and fingerprints*

**Power to take further fingerprints or non-intimate samples**

**83.**—(1) In Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (fingerprinting)—

(a) in paragraphs (5A) and (5B) for the words after “investigation” in subparagraph (b) substitute “but—

(i) paragraph (4A)(a) or (b) applies, or

(ii) paragraph (5C) applies.”;

(b) after paragraph (5B) insert—

“(5C) This paragraph applies where—

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- (a) the investigation was discontinued but subsequently resumed, and
  - (b) before the resumption of the investigation the fingerprints were destroyed pursuant to Article 63B(2).””.
- (2) In Article 63 of that Order (non-intimate samples)—
  - (a) at the end of paragraph (3ZA)(b) insert “, or
    - (iii) paragraph (3AA) applies.”;
  - (b) in paragraph (3A)(b) for “insufficient; or” substitute “insufficient, or “(iii) paragraph (3AA) applies; or”;
  - (c) after paragraph (3A) insert—
    - “(3AA) This paragraph applies where the investigation was discontinued but subsequently resumed, and before the resumption of the investigation—
      - (a) any DNA profile derived from the sample was destroyed pursuant to Article 63B(2), and
      - (b) the sample itself was destroyed pursuant to Article 63P(2), (3) or (10).”.
- (3) In Schedule 2A to that Order (fingerprinting and samples: power to require attendance at police station)—
  - (a) in paragraph 1 (fingerprinting: persons arrested and released)—
    - (i) in sub-paragraph (2) for “Article 61(5A)(b)” substitute “ Article 61(5A)(b)(i) ”;
    - (ii) after sub-paragraph (3) insert—
      - “(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 61(5A)(b)(ii) (fingerprints destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.”;
  - (b) in paragraph 2 (fingerprinting: persons charged, etc.)—
    - (i) in sub-paragraph (2)(b) for “Article 61(5B)(b)” substitute “ Article 61(5B)(b)(i) ”;
    - (ii) at the end of sub-paragraph (2) insert “, or
      - “(c) in a case falling within Article 61(5B)(b)(ii) (fingerprints destroyed where investigation interrupted), the day on which the investigation was resumed.”;
  - (c) in paragraph 9 (non-intimate samples: persons arrested and released)—
    - (i) in sub-paragraph (2) for “within Article 63(3ZA)(b)” substitute “ within Article 63(3ZA)(b)(i) or (ii) ”;

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(ii) after sub-paragraph (3) insert—

“(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3ZA)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.”;

(d) in paragraph 10 (non-intimate samples: person charged etc.)—

(i) in sub-paragraph (3) for “within Article 63(3A)(b)” substitute “within Article 63(3A)(b)(i) or (ii)”;

(ii) after sub-paragraph (4) insert—

“(5) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3A)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.”.

#### **Retention of material: persons convicted of an offence in England and Wales or Scotland**

**84** After Article 63G of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

##### **“Retention of material: effect of convictions in England and Wales or Scotland**

**63GA.**—(1) This Article applies to Article 63B material which does not fall within Article 63G (2).

(2) If the material relates to a person who has been convicted under the law in force in England and Wales of a recordable offence within the meaning of section 118(1) of PACE (“an EW recordable offence”) Articles 63D, 63E, 63H and 63L apply as if—

(a) references in Article 63D(2) and (14), 63E(2) 63H(1)(a)(ii) and (5) and 63L(3)(b) to a person being convicted of a recordable offence included references to a person being convicted of an EW recordable offence (and section 65B(1) of PACE (meaning of “convicted”) applies for that purpose);

(b) references in Article 63D(14) to a qualifying offence included references to a qualifying offence within the meaning of section 65A of PACE;

(c) references in Article 63D(14) and 63H(2) to (4) to a custodial sentence included references to a relevant custodial sentence within the meaning of section 63K(6) of PACE.

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(3) If the material relates to a person who has been convicted under the law in force in Scotland of an offence which is punishable by imprisonment (“a relevant Scottish offence”) Article 63D, 63E, 63H and 63L apply as if—

- (a) references in Article 63D(2) and (14), 63E(2) 63H(1)(a)(ii) and (5) and 63L(3)(b) to a person being convicted of a recordable offence included references to a person being convicted of a relevant Scottish offence;
- (b) references in Article 63D(14) to a qualifying offence included references to—
  - (i) a relevant sexual offence and a relevant violent offence within the meaning of section 19A of the Criminal Procedure (Scotland Act) 1995; and
  - (ii) an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008;
- (c) references in Article 63D(14) and 63H(2) to (4) to a custodial sentence included references to a sentence of imprisonment or detention.

(4) In this Article “PACE” means the Police and Criminal Evidence Act 1984.”.

### **Retention of DNA profiles or fingerprints: persons given a prosecutorial fine**

**85** After Article 63K of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

#### **“Retention of Article 63B material: persons given a prosecutorial fine notice**

**63KA.**—(1) This Article applies to Article 63B material which—

- (a) relates to a person who is given a prosecutorial fine notice under section 18 of the Justice Act (Northern Ireland) 2015, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence (or one of the offences) to which the notice relates.
- (2) The material may be retained—
- (a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,
  - (b) in the case of a DNA profile, for a period of 2 years beginning with—

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- (i) the date on which the DNA sample from which the profile was derived was taken, or
- (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.”.

### **Power to retain DNA profile or fingerprints in connection with different offence**

**86** For Article 63N of the Police and Criminal Evidence (Northern Ireland) Order 1989 (Article 63B material obtained for one purpose and used for another) substitute—

#### **“Retention of Article 63B material in connection with different offence**

**63N.**—(1) Paragraph (2) applies if—

- (a) Article 63B material is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence, and
- (b) the person subsequently—
  - (i) is arrested for or charged with a different offence,
  - (ii) is convicted of a different offence,
  - (iii) is given a penalty notice or a prosecutorial fine notice in respect of a different offence;
  - (iv) is given a caution in respect of a different offence committed when the person is under the age of 18; or
  - (v) completes a diversionary youth conference process with respect to a different offence.

(2) Articles 63C to 63M and Articles 63O and 63Q have effect in relation to the material as if the material were also taken (or, in the case of a DNA profile, derived from a sample taken)—

- (a) in connection with the investigation of the offence mentioned in paragraph (1)(b),
- (b) on the date on which the person was arrested for that offence or, if the person was not arrested, on the date on which the person—
  - (i) was charged with the offence or given a penalty notice or prosecutorial fine in respect of the offence, or
  - (ii) was cautioned in respect of the offence; or
  - (iii) completed the diversionary youth conference process with respect to the offence.

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(3) Paragraph (3) of Article 63J applies for the purposes of this Article as it applies for the purposes of Article 63J.”

### **Retention of personal samples that are or may be disclosable**

**87** In Article 63R of the Police and Criminal Evidence (Northern Ireland) Order 1989 (exclusions for other regimes)—

- (a) in paragraph (5) (material that is or may become disclosable to the defence) for “Articles 63B to 63O and 63Q” substitute “ Articles 63B to 63Q ”;
- (b) after that paragraph insert—
  - “(5A) A sample that—
    - (a) falls within paragraph (5), and
    - (b) but for that paragraph would be required to be destroyed under Article 63P,

must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(5B) A sample that once fell within paragraph (5) but no longer does, and so becomes a sample to which Article 63P applies, must be destroyed immediately if the time specified for its destruction under that Article has already passed.”

VALID FROM 01/04/2016

### *Early guilty pleas*

#### **Sentencing court to indicate sentence which would have been imposed if guilty plea entered at earliest reasonable opportunity**

**88.**—(1) Subsection (2) applies where in any criminal proceedings a person (“D”) is convicted of an offence and—

- (a) D did not at any stage of the proceedings plead guilty to the offence; or
- (b) D's plea of guilty to the offence (or D's indication of intention to plead guilty) was not, in the opinion of the court, entered (or given) at the earliest reasonable opportunity.

(2) The court in sentencing D for the offence must indicate the sentence which the court would have imposed for the offence if D had pleaded guilty to the offence (or indicated D's intention to do so) at the earliest reasonable opportunity in the proceedings.

(3) For the purposes of this section—

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- (a) a plea of guilty which is changed to a plea of not guilty is to be disregarded;
- (b) an indication of intention to plead guilty is to be disregarded if a plea of not guilty is actually entered.

### *Sexual offences against children*

#### **Meeting a child following sexual grooming etc.**

**89** In Article 22(1)(a) of the Sexual Offences (Northern Ireland) Order 2008 (meeting a child following sexual grooming etc.) for “on at least two occasions” substitute “on one or more occasions”.

#### **Sexual communication with a child**

**90.**—(1) In the Sexual Offences (Northern Ireland) Order 2008 after Article 22 insert—

##### **“Sexual communication with a child**

**22A.**—(1) A person aged 18 or over (A) commits an offence if—

- (a) for the purpose of obtaining sexual gratification, A intentionally communicates with another person (B),
- (b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual, and
- (c) B is under 16 and A does not reasonably believe that B is 16 or over.

(2) For the purposes of this Article, a communication is sexual if—

- (a) any part of it relates to sexual activity, or
- (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual;

and in sub-paragraph (a) “sexual activity” means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.

(3) A person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.”.

(2) In Article 4 of that Order (meaning of “sexual”) after “except” insert “Article 22A (sexual communication with a child) or”.



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(3) In Article 76(10)(a) of that Order (offences outside the United Kingdom) after “children)” insert “ except Article 22A ”.

(4) In the Sexual Offences Act 2003 in Schedule 3 (sexual offences for purposes of Part 2 of that Act) after paragraph 92H insert—

“**92HA** An offence under Article 22A of that Order (sexual communication with a child)”.

(5) In the Criminal Justice (Northern Ireland) Order 2008 in Part 2 of Schedule 2 (specified sexual offences) in paragraph 14A after the entry relating to Article 22 of the Sexual Offences (Northern Ireland) Order 2008 insert— “ Article 22A (sexual communication with a child), ”.

VALID FROM 31/10/2016

*Avoiding delay in criminal proceedings*

PROSPECTIVE

**General duty to progress criminal proceedings**

**91** In relation to criminal proceedings in the Crown Court or a magistrates' court, it is the duty of the court, the prosecution and the defence to reach a just outcome as swiftly as possible.

**Case management regulations**

**92.—(1)** The Department may make regulations in relation to the management and conduct of criminal proceedings in the Crown Court or a magistrates' court.

(2) The regulations may impose duties on—

- (a) the court;
- (b) the prosecution; and
- (c) the defence.

(3) The regulations may confer functions on the court in relation to the active case management of criminal cases.

(4) Active case management includes in particular—

- (a) the early identification of the real issues;
- (b) the early identification of the needs of witnesses;

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- (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
  - (d) monitoring the progress of the case and compliance with directions;
  - (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
  - (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
  - (g) encouraging the participants to co-operate in the progression of the case;
  - (h) making use of technology; and
  - (i) giving any direction appropriate to the needs of that case as early as possible.
- (5) The regulations must in particular take account of the need to identify and respect the needs of—
- (a) victims,
  - (b) witnesses, particularly those to whom Article 4(2) of the Criminal Evidence (Northern Ireland) Order 1999 may apply; and
  - (c) persons under the age of 18.
- (6) Before making any regulations under this section the Department must consult—
- (a) the Lord Chief Justice;
  - (b) the Director of Public Prosecutions;
  - (c) the General Council of the Bar of Northern Ireland; and
  - (d) the Law Society of Northern Ireland.

VALID FROM 01/04/2016

### *Public Prosecutor's summons*

#### **Public Prosecutor's summons**

**93.**—(1) Where a complaint has been made by a Public Prosecutor to a lay magistrate for any county court division that a person has, or is suspected of having, committed a summary offence in respect of which a magistrates' court for that county court division has jurisdiction to hear a charge, the Public Prosecutor may issue a summons directed to that person requiring that person to appear before that court to answer to the complaint.

(2) Where—

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- (a) a Public Prosecutor issues a summons under subsection (1) directed to a person requiring that person to appear before a magistrates' court for a county court division, and
- (b) a complaint has been made to a lay magistrate that the person in respect of whom the summons has been issued has, or is suspected of having, committed a summary offence in another county court division,

the Public Prosecutor may issue a summons directed to that person requiring that person to appear before that court to answer to the complaint.

(3) Where a Public Prosecutor has made a complaint to a lay magistrate for any county court division that a person has, or is suspected of having, committed an indictable offence into which a magistrates' court for that county court division has jurisdiction to conduct a preliminary investigation or a preliminary inquiry the Public Prosecutor may issue a summons requiring that person to appear before that magistrates' court.

(4) Where a Public Prosecutor is satisfied that a summons issued under subsection (1) has not been served, the Public Prosecutor may, without a complaint being made to a lay magistrate, re-issue the summons extending the time for the appearance of the person summoned.

(5) Any existing statutory provision which applies to a complaint made or summons issued under paragraph (1), (2), (3) or (4A) of Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 shall apply (with appropriate modifications) to a complaint made or summons issued by a Public Prosecutor under the corresponding subsection of this section.

(6) In this section "Public Prosecutor" has the meaning given in section 29(5) of the Justice (Northern Ireland) Act 2002.

VALID FROM 29/01/2016

### *Defence access to premises*

#### **Defence access to premises**

**94.**—(1) Where a person charged with an offence appears or is brought before a court in connection with that offence, the court may, on the application of that person, make an order under this section for access by or on behalf of that person to any premises specified in the order.

(2) Where a person convicted of an offence appeals against that conviction, the court to which the appeal lies may, on the application of that person, make an order under this section for access by or on behalf of that person to any premises specified in the order.

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(3) In this section—

- (a) in relation to an order made under subsection (1), “D” and “the court” mean, respectively, the person and the court referred to in that subsection;
- (b) in relation to an order made under subsection (2), “D” and “the court” mean, respectively, the person and the court referred to in that subsection;
- (c) “premises” means any place and, in particular, includes a vehicle, vessel or moveable object;
- (d) “specified”, in relation to an order under this section, means specified in the order.

(4) The court shall not make an order under this section in relation to any premises unless it is satisfied that—

- (a) access to the premises is required to ensure compliance with Article 6 of the European Convention on Human Rights; and
- (b) the order is an appropriate means of securing such access.

(5) An order under this section for access to any premises authorises the specified persons—

- (a) to enter those premises;
- (b) to inspect those premises and anything on those premises;
- (c) to carry out any other specified activity on those premises or in relation to anything on those premises.

(6) An order under this section does not of itself authorise the release of D from custody.

(7) An order under this section may include conditions in connection with the access granted by the order to any premises including conditions—

- (a) requiring the specified persons to be accompanied by a police officer at all times while on the premises;
- (b) as to the date and time of day when access to the premises is to take place;
- (c) as to the conduct of any activity specified under subsection (5)(c);
- (d) as to such other matters as the court thinks fit.

(8) An order under this section authorises entry to the specified premises on one occasion only; but nothing in this section prevents a court from making more than one order in relation to any premises.

(9) An application to a court for an order under this section in relation to any premises is to be made in accordance with the rules governing the practice and procedure of that court; and such rules may in particular provide for—

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- (a) notice of the making of the application to be served on the occupier of the premises and any other persons appearing to the court to have an interest in the matter; and
- (b) for such persons to have an opportunity to make representations to the court as to the conditions to be imposed in relation to any order made under this section.

### *Court security officers*

#### **Powers of court security officers**

**95** At the end of Schedule 3 to the Justice (Northern Ireland) Act 2004 (court security officers) add—

#### **“Powers of court security officers to extend to land on which relevant building stands**

**8** Any power of a court security officer exercisable in, or in relation to, the relevant building, is also exercisable in, or in relation to, any place within the boundary of the land on which the building stands; and references in this Schedule to a relevant building are to be construed accordingly”.

#### **Commencement Information**

**I26** S. 95 in operation at 30.9.2015 by S.R. 2015/324, art. 3(b)

VALID FROM 29/01/2016

*Causing or allowing child or vulnerable adult to suffer serious physical harm*

#### **Causing or allowing child or vulnerable adult to suffer serious physical harm**

**96.**—(1) Section 5 of the Domestic Violence, Crime and Victims Act 2004 (offence of causing or allowing the death of a child or vulnerable adult) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a) after “dies” insert “ or suffers serious physical harm ”;
- (b) in paragraph (d) for “V’s death” substitute “ the death or serious physical harm ”.

**Status:** Point in time view as at 02/11/2015. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Justice Act (Northern Ireland) 2015 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(3) In subsection (3)(a) for “V’s death” substitute “ the death or serious physical harm ”.

(4) In subsection (4)(b) for “V’s death” substitute “ the death or serious physical harm ”.

(5) In subsection (7) after “this section” insert “ of causing or allowing a person’s death ”.

(6) After that subsection insert—

“(8) A person guilty of an offence under this section of causing or allowing a person to suffer serious physical harm is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine, or to both.”.

(7) For the cross-heading before section 5 substitute “ Causing or allowing a child or vulnerable adult to die or suffer serious physical harm ”.

(8) Schedule 6 (which contains amendments consequential on this section) has effect.

### *Domestic violence protection notices and orders*

#### **Domestic violence protection notices and orders**

**97** Schedule 7 (which makes provision about domestic violence protection notices and orders) has effect.

#### **Commencement Information**

**I27** [S. 97](#) partly in operation; [s. 97](#) in operation for certain purposes at 25.7.2015 see [s. 106\(1\)\(f\)](#)

### *Youth justice*

#### **Aims of youth justice system**

**98** In section 53 of the Justice (Northern Ireland) Act 2002 (Aims of youth justice system) for subsection (3) substitute—

“(3) But all such persons and bodies must also—

- (a) have the best interests of children as a primary consideration; and
- (b) have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.”.

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### **Amendment to section 10 of the Criminal Justice Act (Northern Ireland) 2013**

**99.**—(1) Section 10 of the Criminal Justice Act (Northern Ireland) 2013 (release on licence of child convicted of serious offence) is amended as follows.

(2) Omit subsection (5).

(3) For subsection (6) substitute—

“(6) Subsection (7) applies where—

(a) on commencement a person is detained in pursuance of a sentence under Article 45(2) of the 1998 Order, and

(b) that person is a person whose licence has been revoked under Article 46(2) of the 1998 Order.”.

#### *Salary of Lands Tribunal members*

### **Salary of Lands Tribunal members**

**100.**—(1) Section 2 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 is amended as follows.

(2) For subsections (5) and (5A) substitute—

“(5) There shall be paid to the members of the Lands Tribunal appointed under section 1(2) such remuneration as the Department of Justice may determine.”.

#### *Amendment to Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*

### **Amendment to Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015**

**101.**—(1) Section 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (independent guardian) is amended as follows.

(2) In subsection (4) for paragraph (a) (which requires arrangements to be made with a charity registered under the Charities Act (Northern Ireland) 2008) substitute—

“(a) be made with a charity;”.

(3) In subsection (11) (definitions) after the definition of “administrative decision” insert—

““charity” means an institution which is—

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- (a) a charity within the meaning of section 1 of the Charities Act (Northern Ireland) 2008 or treated as such a charity by virtue of the Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2013;
- (b) a charity within the meaning of section 1 of the Charities Act 2011; or
- (c) a charity within the definition set out in section 106 of the Charities and Trustee Investment (Scotland) Act 2005;”.

## PART 10

### SUPPLEMENTARY PROVISIONS

#### Regulations, orders and directions

**102.**—(1) Except as provided by subsection (2), regulations made by the Department under this Act are subject to negative resolution.

(2) Regulations under sections 65 to 69 shall not be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

(3) Except as provided by subsections (4) to (6), orders made by the Department under this Act are subject to negative resolution.

(4) Subsection (3) does not apply to an order under section 106(2).

(5) An order under section 31(3) is subject to negative resolution only if it is made without a draft of the order having been laid before and approved by a resolution of the Assembly.

(6) No order to which this subsection applies may be made unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(7) Subsection (6) applies to—

- (a) an order under section 4(7), 11(4), 50(11), 51(12) or paragraph 10 of Schedule 7;
- (b) an order under section 6(2) containing provision which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation.

(8) Regulations and orders made by the Department under this Act may contain such incidental, supplementary, transitional and saving provisions as appear to the Department to be necessary or expedient.

(9) A power to give directions under this Act includes power—

- (a) to amend or revoke the directions;
- (b) to include in the directions such incidental, supplementary, transitional and saving provisions as appear to the person giving the directions to be necessary or expedient.



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## Interpretation

**103.**—(1) In this Act—

“the Department” means the Department of Justice;

“Northern Ireland” has the meaning given by the Northern Ireland Act 1998;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954; and “existing statutory provision”, in any provision of this Act, means a statutory provision passed or made before the coming into operation of that provision.

(2) In any provision of this Act “commencement” means the date on which that provision comes into operation.

## Transitional provisions, etc.

**104** Schedule 8 (which contains transitional provisions and savings) has effect.

## Repeals

**105** The statutory provisions set out in Schedule 9 are repealed to the extent specified in the second column of that Schedule.

### Commencement Information

**I28** [S. 105](#) partly in operation; [s. 105](#) in operation for certain purposes at 25.7.2015 see [s. 106\(1\)\(g\)](#)

## Commencement

**106.**—(1) The following provisions of this Act come into operation on the day after this Act receives Royal Assent—

- (a) section 36 and Schedule 3;
- (b) sections 89 and 90;
- (c) sections 98 to 103;
- (d) section 104 and Schedule 8;
- (e) this section;
- (f) paragraph 10 of Schedule 7 and section 97 so far as relating to that paragraph;
- (g) in Schedule 9, Part 6 (and section 105 so far as relating to that Part).

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

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(3) Without prejudice to section 102(8), an order under subsection (2) may contain such transitional or transitory modifications of this Act as appear to the Department to be necessary or expedient in connection with any provision brought into operation by the order.

PROSPECTIVE

**Short title**

**107** This Act may be cited as the Justice Act (Northern Ireland) 2015.

**Status:**

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**Changes to legislation:**

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