

*These notes refer to the Justice Act (Northern Ireland)  
2016 (c.21) which received Royal Assent on 12 May 2016*

# Justice Act (Northern Ireland) 2016

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## **EXPLANATORY NOTES**

### **OVERVIEW OF THE ACT**

7. The Act has 61 Sections, divided into 4 Parts, and 5 Schedules.
8. This section provides an overview description for each Part of the Act in sequential order and a more detailed Section by Section commentary then follows.

### ***The Collection and Enforcement of Financial Penalties***

9. Part 1 of the Act creates an entirely new regime for the collection and enforcement of financial penalties. It creates collection officers whose function it will be to operate and enforce collection orders as imposed by courts. Collection officers will be designated in law by the Department with a series of powers, provided by way of the collection order, which will be designed to, by and large, replace the current police role in collection and enforcement.
10. Collection officers will be able to allow the defaulter extra time to pay or to make payment by instalments. If that were to prove difficult or unsuccessful, collection officers would be able to consider a deductions order whereby payments to clear the outstanding penalty could be deducted from the debtor's earnings or, in appropriate circumstances, from certain welfare benefits. The debtor will be able to agree to this approach in the first instance though a compulsory approach could also be followed if appropriate.
11. Where payment continues to be difficult or there is more wilful refusal the collection officer will be able to refer the case back to court. Along with its various options for dealing with default, the Court may impose a bank account order whereby payment can be directed from a bank account or a vehicle seizure order whereby a vehicle may be seized pending payment.
12. Underpinning the package therefore is court retention of the core independent role in the sentencing process - it will be the Court that sets the collection order for collection officers to apply. Courts will at the same time retain their sentencing and default powers with any default following a collection order process leading to a further court hearing where the defaulter can have his/her case reviewed.

13. Other enforcement principles and procedures are created in the Act. Adjustments will be made to the community-based supervised activity order to increase the level of penalty to which it can apply and to allow it to apply to other financial penalties beyond the fine (as it is currently limited). Changes are made to prevent any child going into custody solely for non-payment of a penalty. For adults who nevertheless end up in prison for default – and there will have been a wide range of options and procedures applied before imprisonment can occur – remission of their prison sentence will be removed requiring them to serve the default period in full.

### ***The Prison Ombudsman for Northern Ireland***

14. Part 2 of the Act creates the office of Prison Ombudsman for Northern Ireland and sets out his main functions which are to deal with complaints, death in custody investigations and investigations requested by the Department, or on the Ombudsman's own initiative. These functions were previously carried out by the Prisoner Ombudsman on a non-statutory basis. Detailed in the Act are conditions for the eligibility of complaints, the circumstances in which an investigation may be initiated or deferred, reporting arrangements and provision for regulations to be made in relation to these matters.
15. The Ombudsman will have the power to enter any prison premises or Juvenile Justice Centre and have powers of access to documents needed for his investigation. It will be an offence to obstruct the Ombudsman in his investigations. Information provided to the Ombudsman in the course of his investigations will be protected information and the Act details arrangements for disclosure and sharing of information.
16. [Schedule 3](#) sets out that the Ombudsman will be appointed by the Department for a fixed term of seven years, and sets out arrangements for remuneration and allowances. It allows for the appointment of an acting Ombudsman in the case of a vacancy arising in the office, and for the Ombudsman to appoint officers to perform any function of the office. The Ombudsman may use advisers in the discharge of his functions. The Department of Justice will fund the Ombudsman's office. The Ombudsman will be required to prepare a report each year on how he has carried out his functions which will be laid in the Assembly.

### ***Miscellaneous***

20. Part 3 of the Act provides for a number of individual improvements to sentencing and procedural arrangements across several discrete policy areas. For *Animal welfare*, provisions amend the Welfare of Animals Act (Northern Ireland) 2011 to increase the maximum penalties; amend the mode of trial for certain offences; and extend the post-conviction powers available to courts.
21. For *Lay visiting*, statutory provisions for lay visiting arrangements at Northern Ireland's police stations are extended to include non-designated police stations, with the effect that all police stations will be subject to the statutory scheme.

22. For *Pornographic or other sexual images*, the scope of the existing offence of possession of extreme pornographic images is extended to include the possession of extreme images of rape or other non-consensual acts; and a new offence of disclosing private sexual photographs and films with intent to cause distress, also commonly known as ‘revenge pornography’, is created.
23. For *Assaulting ambulance workers etc*, a new offence of assaulting an ambulance worker in the execution of their duty or a person who is assisting an ambulance worker in the execution of that ambulance worker’s duty is created.
24. For *Early removal of prisoners*, an Early Removal Scheme is created that will apply to certain categories of Foreign National Prisoners (FNPs) in two circumstances: those whom the sentencing court has determined should be deported to their country of origin on completion of their sentence; and those whom the Home Office has determined to have breached the conditions of their leave to enter or remain in the UK because of their conviction. Removal from the United Kingdom will be the responsibility of Immigration Enforcement which is part of the Home Office
25. The scheme will allow the Department of Justice, with the prisoner’s permission, to facilitate removal from prison, for the purposes of removal from the United Kingdom at any time up to 135 days before the end of the custodial part of their sentence. For a prisoner to qualify they must be serving a determinate sentence of at least 6 months and they must have served at least one-half of the requisite custodial period. Those serving extended custodial sentences, indeterminate custodial sentences or life sentences are excluded from the terms of the scheme. Prisoners so removed will not be subject to any licence conditions or any other forms of management or control once removal has been effected.
26. If a prisoner so removed returns to Northern Ireland before their sentence expiry date they will be liable to arrest and return to custody. They will be detained in custody until either they have served a period equal in length to their outstanding custodial period (counted from the day they were removed) or until their sentence expiry date, whichever is earlier. At present Irish nationals do not qualify for any UK prisoner early removal schemes.
27. For *Direct committal for trial*, a provision closes a potential lacuna in Section 9 of the Justice Act (Northern Ireland) 2015 to ensure that those powers operate as intended.
28. For *Firearms*, a number of amendments are made to the Firearms (Northern Ireland) Order 2004 to introduce a reduction in the age at which young people can use a shotgun under supervision for clay target shooting; the introduction of a banded system for the exchange of rifles by a firearms dealer; and for the variation of a firearm certificate by a firearms dealer. The provisions also recognise the reciprocal acceptance of firearm certificates issued in Great Britain; and set out a number of new fees to accompany the range of changes.

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29. Finally, under *Costs*, a provision enables the Department, by order, to fix fees to be taken by the Accountant General for the recovery of the costs of administering funds in court.

***General***

30. Part 4 of the Act makes a number of general provisions dealing with regulation and order making, commencement and short title.