

*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

EXPLANATORY NOTES

SCHEDULES

Schedule 1

Attachment of earnings orders

Paragraph 1: Service of order

This paragraph sets out how an attachment of earnings order may be served on the employer, as well as time limits for notifications which must be made in certain circumstances and the offence of failing to comply with a notification requirement.

Paragraph 2: Compliance with order

This paragraph stipulates that the employer must comply with the order and commits an offence where he fails to do so. The paragraph states that non-compliance within 7 days of service of the order will not constitute an offence.

Paragraph 3: Power to determine whether payments are earnings

This paragraph provides for either an employer or an employee to apply to the court for a determination on what may constitute earnings. The employer must give effect to such a determination whilst it remains in force.

This paragraph provides for an employer who has made such an application to court, to be free of liability for not complying with the order whilst that application is being determined.

Paragraph 4: Administrative costs of the employer

This paragraph allows for regulations to specify what administrative costs an employer may charge for administering an attachment of earnings order and for the employer to inform the debtor in writing of the total amount of charges.

Paragraph 5: Change of circumstances

This paragraph outlines the process for notifying the collection officer of a change in the debtor's circumstances, both by the debtor himself and by his employer. This paragraph outlines what notifications must be made, as well as

their contents and time limits for doing so. This paragraph creates an offence for failing to comply with the notification requirements.

Paragraph 6: Variation of order

This paragraph provides that an attachment of earnings order may be varied either of the collection officer's own motion or on application by the debtor. The court may also vary the order on application of either of the aforementioned parties or of its own motion.

This paragraph also outlines the circumstances for variation to be considered appropriate, the requirements for service of the variation order and compliance with it, and offences for non-compliance.

Paragraph 7: Discharge of order

This paragraph provides for the circumstances where an attachment of earnings order may be discharged and by whom. The paragraph allows for regulations to specify when an attachment of earnings order fails, as well as when notice of the discharge of the order must be given and whom it should be served upon. If a person is served with such a notice and continues to enforce the order anyway, he is guilty of an offence under this paragraph, except if that action was taken within 7 days of the date of service of the order.

Paragraph 8: Prioritisation of orders

This paragraph amends Part 2 of Schedule 1 to the Judgments Enforcement (Northern Ireland) Order 1981 so that attachment of earnings orders within this Act will be included in the definition of attachment of earnings orders for the purpose of that Part. It also inserts a definition of "collection order". This paragraph places collection orders on a par, in priority terms, with maintenance orders.

Paragraph 9: Crown employment

This paragraph allows for an attachment of earnings order to be made against an employee of the Crown and sets out who is to be treated as the employer and what is to constitute earnings.

The paragraph stipulates who is to resolve any questions or issues arising from this, namely the Minister for the Department of Finance and Personnel; an application to whom can be made by the collection officer or court requesting a determination.

The Minister's determination is receivable in evidence in any proceedings that may arise.

Paragraph 10: Regulations

This paragraph allows for regulations to be made which make further provision as to attachment of earnings orders.

Schedule 2

Collection Orders: Minor and Consequential Amendments

Paragraph 1: Criminal Justice Act (Northern Ireland) 1945

This paragraph amends the 1945 Act to alter the court's powers of enforcement where a collection order is in force and to define what a collection order is.

Paragraph 2: Mines Act (Northern Ireland) 1969

This paragraph amends the 1969 Act to allow for payment of the costs of an inquiry under Schedule 3 to the Act to be subsumed into the collection order regime at the discretion of a district judge (magistrates' courts).

Paragraph 3: Magistrates' Courts (Northern Ireland) Order 1981

This paragraph amends the 1981 Order to include a definition of "collection order" at Article 2 (para. 3(1)), to prevent applications to the court for further time to pay or variation of an instalment order under Article 91 where a collection order has been made (para. 3(2)), to stop the grant of a warrant under Article 92 in a case of default where a collection order has been imposed (para. 3(3)), to allow the collection officer to make a winding up application under Article 92A, rather than the clerk of petty sessions, in a case where a collection order has been imposed (para. 3(4)) and to allow the transfer of fines from elsewhere in the United Kingdom under Article 96 to be subject to the imposition of a collection order (para. 3(5)).

Paragraph 4: Police and Criminal Evidence (Northern Ireland) Order 1989

This paragraph amends the 1989 Order to ensure that a warrant of commitment for default under the Act is treated the same as a similar warrant under the Magistrates' Courts (Northern Ireland) Order 1981.

Paragraph 5: Road Traffic Offender (Northern Ireland) Order 1996

This paragraph amends the 1996 Order in relation to fixed penalties. It inserts a definition of "collection order" (para. 4(1)), changes the time limit for registration of a sum payable in default (para.4(2)), allows for a referral to a district judge (magistrates' courts) to decide whether a collection order should be imposed (para. 4(3)), allows for a collection order to be included as a proceeding for enforcing payment of the sum (para. 4(4)) and allows for a collection order to be made with regards to a sum payable in default without the need for a court hearing (para. 4(5)).

Paragraph 6: Criminal Justice and Immigration Act 2008

This paragraph amends section 88 of the 2008 Act to allow fines from outside the UK to be considered for a collection order (para. 6(1)(b)) and to insert new subsection (6ZA) to refer to Part 9 of the Magistrates Courts (Northern Ireland)

Order 1981 and Chapter 1 of Part 1 of this Act as legislation which constructs mechanisms for enforcement of sums adjudged to be paid.

Paragraph 7: Justice Act (Northern Ireland) 2011

This paragraph amends the 2001 Act to change the time limits for registration of a fixed penalty (para. 7(1)), to provide for the clerk of petty sessions to refer the case to a district judge (magistrates' courts) to decide whether to impose a collection order when a fixed penalty is registered (para. 7(2)), to allow a collection order to be included as a method of enforcing payment of the sum (para. 7(3) & (4)) and to provide a definition of "collection order" within that Act (para. 7(5)).

Paragraph 8: Justice Act (Northern Ireland) 2015

This paragraph amends the 2015 Act to change the time limits for registration of prosecutorial fines (para. 8(1)), to provide for the clerk of petty sessions to refer the case to a district judge (magistrates' courts) to decide whether to impose a collection order when a prosecutorial fine is registered (para. 8(2)), to allow a collection order to be included as a method of enforcing payment of the sum (para. 8(3) & (4)) and to provide a definition of "collection order" within that Act (para. 8 (5)).

Schedule 3

The Prison Ombudsman

Paragraph 1: Appointment

This paragraph sets out that the Department appoints a person to be the Ombudsman. This will be achieved by way of a public appointment process.

Paragraph 2: Status

The Ombudsman is not the servant or an agent of the Crown.

Paragraph 3: Term of office

This paragraph sets out that the appointment will be for a single term of seven years. This term is in line with arrangements for comparable post-holders, and is considered to support the independence of the office, as there is no provision for a second term.

Paragraph 4: Resignation/Removal

This paragraph provides that a person holding office may resign by providing written notice (para 4(1)).

The Department may remove a person from office on certain specified grounds which are: ill-health, failure without reasonable excuse to discharge the functions of the office for a period of 3 months, bankruptcy, conviction of a

criminal offence or otherwise inability, unfitness or unwillingness to perform the functions of the office (para 4(2)).

Paragraphs 5 and 6: Remuneration and allowances

These paragraphs set out that the Department will determine the salary and allowances payable; rates will be set to attract appropriate candidates. The position will be pensionable.

Paragraph 7: Appointment of acting Ombudsman

This paragraph provides that if there is a vacancy the Department can make a short term appointment of an acting Ombudsman.

Paragraph 8: The Ombudsman's officers

This paragraph sets out that the Ombudsman can appoint staff with numbers and conditions of employment subject to the approval of the Department.

It is anticipated the office will be staffed by seconded civil servants, however the Ombudsman will also have the flexibility to second staff from other organisations. The Ombudsman may authorise staff to perform any of the functions of the office.

Paragraph 9: Advisers

This paragraph sets out that the Ombudsman may obtain advice from any person qualified to give it. This is likely to include legal, clinical and public relations advisers to assist in the exercise of the Ombudsman's functions.

Paragraph 10: Documents

This paragraph sets out that documents signed by or on behalf of the Ombudsman will be received in evidence and be taken to be so signed unless the contrary is proved.

Paragraph 11: Finance

This paragraph sets out that the Department will provide the Ombudsman with such sums as appear to it to be appropriate for meeting the expenses of the office, and determine the terms and conditions of that financing.

Paragraph 12: Annual report

This paragraph provides that the Ombudsman must prepare an annual report as soon as practicable after the end of the financial year on how the functions of the office have been carried out (para 12(1)).

The Department will lay a copy of the report before the Assembly and arrange for it to be published (para 12(2)).

Paragraph 13: Data protection

This paragraph adds the Prison Ombudsman to the list of bodies that are exempt from the subject information provisions in any case, to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of those functions.

Paragraph 14: Freedom of information

This paragraph adds the Prison Ombudsman to the list of ombudsmen that the Information Commissioner may disclose information to if it appears to the Commissioner that the information relates to a matter which could be the subject of an investigation by that ombudsman (para 14(1)).

It also adds the Prison Ombudsman to the list of Public Authorities detailed in the Freedom of Information Act (para 14(2)).

Paragraph 15: Public Services Ombudsperson

This paragraph adds the Prison Ombudsman to the list of bodies that can be investigated by the Public Services Ombudsperson.

Paragraph 16: Interpretation

This paragraph explains the meanings of words used within the Schedule.

Schedule 4

Private sexual photographs etc: Providers of Information Society Services

Paragraph 1: Exceptions for mere conduits

This paragraph sets out when a service provider is not capable of being guilty of an offence under Section 51.

The circumstances are where the information society service provided consists of the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service. In such circumstances the service provider is not capable of being guilty of an offence if it does not initiate the transmission, select the recipient of the transmission or select or modify the information contained in the transmission.

A service provider is, however, capable of being guilty of an offence if it stores the information for longer than is reasonably necessary for the transmission.

Paragraph 2: Exception for caching

This paragraph sets out the circumstances in which a service provider is not capable of being guilty of an offence under Section 51 in respect of the automatic, intermediate and temporary storing of information.

The circumstances are that the storage of information is solely for the purpose of making more efficient the onward transmission of information to other recipients of the service at their request; that the service provider does not modify the information; complies with any conditions attached to having access to the information; and expeditiously removes the information or disables access to it where it obtains actual knowledge that the information at the initial source of the transmission has been removed from the network, access to the information has been disabled or a court or administrative authority has ordered its removal or disablement.

Paragraph 3: Exception for hosting

This paragraph sets out the circumstances in which a service provider is not guilty of an offence under Section 51 where in the course of providing an information society service it stores information provided by a recipient of the service.

The circumstances include that the service provider must have no actual knowledge when the information was provided that it consisted of or included a private sexual photograph or film, that it was provided without the consent of an individual who appears in the photograph or film, or that the disclosure of the photograph or film was with the intention of causing distress to that individual.

The service provider must, on obtaining such knowledge, expeditiously remove the information or disable access to it.

Paragraph 4: Interpretation

This paragraph defines “photograph or film”, “information society services”, “recipient” and “service provider” for the purposes of the Schedule.

Schedule 5

Amendments of the Firearms (Northern Ireland) Order 2004

Paragraph 1: Definition of a Shotgun Club

This paragraph introduces a definition for a shotgun club to enable young shooters to learn clay target shooting. Paragraph 1(4) inserts Article 50A which enables the Chief Constable to authorise shotgun clubs to undertake clay target shooting with young people aged 12 to 15 while they are under appropriate supervision.

This will enable young people to have access to shotguns from a lower age, but in a controlled environment.

Paragraph 2: Grant of a Firearm Certificate to a person aged 16 or 17 for a shotgun or airgun

This paragraph provides that Article 7 of the 2004 Order should be amended so that the Chief Constable may grant a firearm certificate to a 16 or 17 old for the

acquisition and possession of a firearm (i.e. an airgun with a kinetic energy in excess of 1 joule or a shotgun) for sporting purposes or for pest control.

The extension to control is new. The current supervision requirement remains unchanged (i.e. by a person aged at least 21 years and who has held a firearm certificate for that type of firearm for at least 3 years).

In a further easing of current arrangements paragraph 2(2)(b) amends paragraph 11 of Schedule 1 to the 2004 Order to provide for 16 year olds and 17 year olds to have access to a shotgun in the same circumstances as an adult can at present although subject to supervision.

In other words even without a firearm certificate they may shoot for sporting or vermin uses while under appropriate supervision (i.e. by a person aged at least 21 years and who has held a firearm certificate for that type of firearm for at least 3 years). This access is not permitted at present.

Paragraph 3: Introduction of fees for variations (including banded exchanges) transacted by a firearms dealer

This paragraph deals with one on one off exchanges for shotguns and exchanges of firearms of the same type and calibre. Both of these options exist now but a fee is being introduced.

One off exchanges (this is where a dealer can carry out a one off transaction to remove a firearm from a certificate without it being replaced), and the exchange of rifles within bands (the banded system) are also provided for.

These are new provisions. Conditions for the banded system are included. These are covered in new Article 11(4)(c).

The fees concerned have been the subject of extensive stakeholder consultation.

Paragraph 3(2) inserts Schedule 1A in the 2004 Order to set out the new bands.

Paragraph 4: Introduces a fee for the variation of a firearms dealer's certificate

This paragraph amends Article 29(6) to introduce a fee for the variation of a firearms dealer's certificate. This is "nil" until further work has been carried out to cost it.

Paragraph 5: Updated certificates

This paragraph amends Article 5 to provide for a situation where an individual or a dealer wishes to have an updated certificate as opposed to a duplicate certificate (a duplicate is the certificate as originally issued whereas an updated one would take account of any changes up to the date of reissue).

Paragraph 6: Certificates granted in Great Britain

This paragraph amends Articles 17 and 18 to clarify the law so that firearm and shotgun certificates from Great Britain would be accepted here without the need for a Certificate of Approval from the Chief Constable.

Our certificates are recognised in GB (those firearms without a certificate in GB would still need a certificate of approval e.g. airguns in excess of 1 Joule but under 12 foot pounds).

Paragraph 7: Schedule of Fees

Paragraph 7 substitutes Schedule 6 to the 2004 Order which sets out the recent revisions of the existing fees as well as the new fees.