

*Status: Point in time view as at 01/06/2018.*

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## SCHEDULES

### SCHEDULE 1

Section 18.

#### ATTACHMENT OF EARNINGS ORDERS

##### *Service of order*

1.—(1) An attachment of earnings order must be served on the debtor's employer.

(2) Where a person is served with an attachment of earnings order that is directed to that person but the person does not employ the debtor, or subsequently ceases to employ the debtor, the person must, within 7 days of the date of service or of the person ceasing to employ the debtor (as the case may be), notify the collection officer in writing.

(3) A person commits an offence if the person fails, without reasonable excuse, to provide a notification required under sub-paragraph (2) (including as that sub-paragraph is applied by paragraph 6(4) or 7(7)).

(4) A person commits an offence if, in providing information in response to a requirement under sub-paragraph (2) (including as that sub-paragraph is applied by paragraph 6(4) or 7(7)), the person—

- (a) provides information which the person knows to be false in a material particular,
- (b) recklessly provides information which is false in a material particular, or
- (c) knowingly fails to disclose a material fact.

##### **Commencement Information**

**II** Sch. 1 para. 1 in operation at 1.6.2018 by S.R. 2018/99, art. 2(b)

##### *Compliance with order*

2.—(1) Where an attachment of earnings order is served on the debtor's employer, the employer must comply with the order.

(2) A person commits an offence if the person fails, without reasonable excuse, to comply with an attachment of earnings order served on that person.

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(3) But the person is not liable, whether under sub-paragraph (2) or otherwise, for a failure to comply with the order before the end of seven days beginning with the date of service.

**Commencement Information**

**I2** Sch. 1 para. 2 in operation at 1.6.2018 by S.R. 2018/99, art. 2(b)

*Power to determine whether payments are earnings*

**3.**—(1) Where an attachment of earnings order is made, the debtor or employer may apply to the responsible court for a determination as to whether payments to the debtor of the description specified in the application are earnings for the purposes of the order (as to which, see section 18(6)).

(2) The employer must give effect to any determination for the time being in force under sub-paragraph (1).

(3) Where the employer makes an application under this paragraph, the employer does not incur liability for failure to comply with the order in relation to payments of the description specified in the application before the application is determined or withdrawn.

**Commencement Information**

**I3** Sch. 1 para. 3 in operation at 1.6.2018 by S.R. 2018/99, art. 2(b)

*Administrative costs of employer*

**4** Regulations may provide that, on any occasion when the debtor's employer makes a deduction from the debtor's earnings in compliance with an attachment of earnings order, the employer—

- (a) may also deduct such sum as is specified towards clerical and administrative costs, and
- (b) where the employer does so, must give the debtor a statement in writing of the total amount of the deduction.

**Commencement Information**

**I4** Sch. 1 para. 4 in operation at 3.10.2016 for specified purposes by S.R. 2016/248, art. 4(I)(i)

**I5** Sch. 1 para. 4 in operation at 1.6.2018 in so far as not already in operation by S.R. 2018/99, art. 2(b)

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### *Change of circumstances*

5.—(1) If a debtor in relation to whom an attachment of earnings order is in force leaves an employment, or becomes employed or re-employed, the debtor must notify the collection officer in writing within seven days of doing so.

(2) If the debtor becomes employed or re-employed, the notification under sub-paragraph (1) must specify the earnings or expected earnings from the employment in question.

(3) A person who becomes an employer of the debtor and knows that an attachment of earnings order is in force in relation to the debtor must, within seven days of becoming the debtor's employer or of acquiring the knowledge (whichever is later), notify the collection officer that the person is employing the debtor.

(4) A notification under sub-paragraph (3) must state the debtor's earnings and expected earnings from the employment.

(5) A person commits an offence if the person fails, without reasonable excuse, to provide a notification required under sub-paragraph (1) or (3).

(6) A person commits an offence if, in providing a notification required under sub-paragraph (1) or (3), the person—

- (a) provides information which the person knows to be false in a material particular,
- (b) recklessly provides information which is false in a material particular, or
- (c) knowingly fails to disclose a material fact.

#### **Commencement Information**

**I6** Sch. 1 para. 5 in operation at 1.6.2018 by S.R. 2018/99, art. 2(b)

### *Variation of order*

6.—(1) Where the collection officer makes an attachment of earnings order, the collection officer may, whether on an application by the debtor or on the officer's own motion, vary the order.

(2) Where a court has made an attachment of earnings order, the court may, whether on an application by the debtor or the collection officer or on its own motion, vary the order.

(3) An attachment of earnings order may be varied under this paragraph only if—

- (a) there has been a change in the debtor's circumstances—
  - (i) which the collection officer or court (as the case may be) considers relevant, or
  - (ii) which is of a description such as may be specified in regulations, and

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(b) the collection officer or court considers the variation appropriate.

(4) Where an attachment of earnings order is varied under this paragraph, the order as varied must be served on the employer; and paragraph 1(2) applies to the order as varied.

(5) Where an attachment of earnings order as varied under this paragraph is served on the debtor's employer, the employer must comply with the order as varied.

(6) A person commits an offence if the person fails, without reasonable excuse, to comply with an attachment of earnings order as varied under this paragraph that is served on that person.

(7) But a person does not incur liability, whether under sub-paragraph (6) or otherwise, for a failure to comply with the order before the end of seven days beginning with the date of service.

#### Commencement Information

- I7** Sch. 1 para. 6(1)(2) in operation at 1.6.2018 by S.R. 2018/99, **art. 2(b)**
- I8** Sch. 1 para. 6(3)(a)(i)(b) in operation at 1.6.2018 by S.R. 2018/99, **art. 2(b)**
- I9** Sch. 1 para. 6(3)(a)(ii) in operation at 3.10.2016 for specified purposes by S.R. 2016/248, **art. 4(1)(ii)**
- I10** Sch. 1 para. 6(3)(a)(ii) in operation at 1.6.2018 in so far as not already in operation by S.R. 2018/99, **art. 2(b)**
- I11** Sch. 1 para. 6(4)-(7) in operation at 1.6.2018 by S.R. 2018/99, **art. 2(b)**

#### *Discharge of order*

7.—(1) Where the collection officer makes an attachment of earnings order, the collection officer may, whether on an application by the debtor or on the officer's own motion, discharge the order.

(2) Where a court makes an attachment of earnings order, the court may, whether on an application by the debtor or the collection officer or on its own motion, discharge the order.

(3) An attachment of earnings order is discharged if the outstanding amount is paid.

(4) An attachment of earnings order may be discharged under sub-paragraph (1) or (2) only if—

- (a) the order fails (see sub-paragraph (5)), or
- (b) the discharge is in accordance with sub-paragraph (6).

(5) An attachment of earnings order is to be regarded as failing in such circumstances as are specified in regulations.

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(6) A discharge on the collection officer's or the court's own motion may be made only in such circumstances as are specified in regulations.

(7) Where an attachment of earnings order is discharged under this paragraph, notice of the discharge must be served on the employer; and paragraph 1(2) applies to the notice as it applies to an order.

(8) A person on whom a notice is served under sub-paragraph (7) commits an offence if, in spite of the discharge of the order, the person acts as the person would have been required to act if the order had still been in force.

(9) Where notice of the discharge of an attachment of earnings order is served on the employer, that person does not incur liability, whether under sub-paragraph (8) or otherwise, if, at any time before the end of seven days beginning with the date of service of the notice, the person treats the order as still in force.

#### Commencement Information

**I12** Sch. 1 para. 7(1)-(4) in operation at 1.6.2018 by S.R. 2018/99, art. 2(b)

**I13** Sch. 1 para. 7(5)(6) in operation at 3.10.2016 for specified purposes by S.R. 2016/248, art. 4(1)(iii)

**I14** Sch. 1 para. 7(5)(6) in operation at 1.6.2018 in so far as not already in operation by S.R. 2018/99, art. 2(b)

**I15** Sch. 1 para. 7(7)-(9) in operation at 1.6.2018 by S.R. 2018/99, art. 2(b)

#### *Prioritisation of orders*

**8.—**(1) Part 2 of Schedule 1 to the Judgments Enforcement (Northern Ireland) Order 1981 is amended as follows.

(2) In paragraph 9—

(a) in the definition of “attachment of earnings order”—

(i) for “100(4)” substitute “ 100(1) ”, and

(ii) at the end insert “ and such an order under section 18 of the Justice Act (Northern Ireland) 2016 ”,

(b) after that definition insert—

“collection order” means an order under section 3 of the Justice Act (Northern Ireland) 2016;”, and

(c) in the definition of “maintenance order”, for “that paragraph” substitute “Article 100(1) of the Magistrates' Courts (Northern Ireland) Order 1981”.

(3) In paragraph 10—

(a) omit “by a court” in the first and third places it appears, and

(b) after “maintenance orders” insert “ or collection orders ”.

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(4) In paragraph 11—

- (a) omit “by a court” in the first, third and fourth places it appears,
- (b) after “maintenance orders” insert “ or collection orders ”,
- (c) in sub-paragraphs (a) and (b), after “a maintenance order” insert “ or a collection order ”.

**Commencement Information**

**116** Sch. 1 para. 8 in operation at 1.6.2018 by S.R. 2018/99, art. 2(b)

*Crown employment*

9.—(1) Where a debtor is employed by the Crown and an attachment of earnings order is made in relation to the debtor—

- (a) the chief officer for the time being of the government department, office or other body in which the debtor is employed is to be treated as employing the debtor (any transfer of the debtor from one department, office or body to another being treated as a change of employment), and
- (b) any earnings paid by the Crown, a Minister of the Crown or a government department, or out of the public revenue of the United Kingdom or Northern Ireland, are to be treated as paid by that chief officer.

(2) The reference in sub-paragraph (1)(a) to the department, office or other body in which the debtor is employed is, in the case of a debtor whose earnings are paid by the body as principal and who is accordingly treated by virtue of section 18(5) as being employed by the body, to be read as a reference to the body by which earnings are paid to the debtor in that capacity.

(3) If a question arises in proceedings for or arising out of an attachment of earnings order as to which department, office or other body is concerned for the purposes of this paragraph, or as to who for those purposes is the chief officer of the body concerned, the question is to be referred to and determined by the Department of Finance and Personnel or (as the case may require) the Minister for that Department.

(4) A reference under sub-paragraph (3) is to be made by the collection officer or court making, or proposing to make, the attachment of earnings order.

(5) A document purporting to set out a determination of the Department of Finance and Personnel under sub-paragraph (3) and to be signed by an officer of that Department, or a determination of the Minister of that Department under that sub-paragraph and to be signed on behalf of that Minister, is in any proceedings for or arising out of an attachment of earnings order to be admissible in evidence and deemed to contain an accurate statement of the determination unless the contrary is shown.

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(6) In this paragraph, “government department” includes a department of the government of the United Kingdom.

**Commencement Information**

**I17** Sch. 1 para. 9 in operation at 1.6.2018 by S.R. 2018/99, art. 2(b)

*Regulations*

**10** Regulations may make further provision relating to attachments of earnings orders.

**Commencement Information**

**I18** Sch. 1 para. 10 in operation at 3.10.2016 by S.R. 2016/248, art. 4(I)(iv)

SCHEDULE 2

Section 28.

COLLECTION ORDERS: MINOR AND CONSEQUENTIAL AMENDMENTS

*Criminal Justice Act (Northern Ireland) 1945*

1.—(1) In section 35 (powers of courts in relation to fines and forfeited recognizances), in subsection (1), in paragraph (e) at the end insert “, unless there is a collection order in relation to the amount concerned”.

(2) After section 35(4A) insert—

“(4B) In a case where there is a collection order, the power to make the application referred to in subsection (4A) is instead exercisable by the collection officer responsible for securing compliance with the order.”.

(3) In section 35(5) for “the last foregoing sub-section” substitute “ subsection (4) ”.

(4) After section 35(7) insert—

“(8) In this section, “collection order” means an order under section 3 of the Justice Act (Northern Ireland) 2016.”.

**Commencement Information**

**I19** Sch. 2 para. 1 in operation at 1.6.2018 by S.R. 2018/99, art. 2(c)

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### *Mines Act (Northern Ireland) 1969*

2 In Schedule 3 (inquiries into fitness of holders of certificates of competency), after paragraph 9 insert—

“9A The tribunal, having received an application under paragraph 9, must refer it to a district judge (magistrates' courts) for the judge to consider whether to make a collection order under section 3 of the Justice Act (Northern Ireland) 2016; and the order may be made without a court hearing.”

#### **Commencement Information**

**I20** Sch. 2 para. 2 in operation at 1.6.2018 by S.R. 2018/99, art. 2(c)

### *Magistrates' Courts (Northern Ireland) Order 1981*

3.—(1) In Article 2(3) (interpretation) at the appropriate place insert—

““collection order” means (except in Article 96(1B)) an order under section 3 of the Justice Act (Northern Ireland) 2016;”.

(2) In Article 91 (payment of sums adjudged to be paid by a conviction), in paragraph (4) at the end insert “ , unless there is a collection order in relation to the sum ”.

(3) In Article 92 (enforcing payment of a sum adjudged to be paid by a conviction), in paragraph (4) at the end insert “ ; but this does not apply where there is a collection order in relation to the sum ”.

(4) In Article 92A (fines imposed on companies), after paragraph (1) insert—

“(1A) In a case where there is a collection order, the power to make the application referred to in paragraph (1) is instead exercisable by the collection officer responsible for securing compliance with the order.”

(5) In Article 96 (transfer of fines elsewhere in the United Kingdom), after paragraph (1) insert—

“(1A) The clerk of a court of summary jurisdiction acting for the district in question must refer the transfer of fine order 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.

(1B) The duty under paragraph (1A) applies whether or not a collection order under Schedule 5 to the Courts Act 2003 or an enforcement order under section 226B of the Criminal Procedure (Scotland) Act 1995 has been made in relation to the sum to which the transfer of fine order relates.”



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#### Commencement Information

**I21** Sch. 2 para. 3 in operation at 1.6.2018 by S.R. 2018/99, art. 2(c)

#### *Police and Criminal Evidence (Northern Ireland) Order 1989*

**4** In Article 19(1) (power of constable to enter and search), in sub-paragraph (a), after paragraph (ii) insert “; or

(iii) a warrant of commitment issued under section 9(1)(i) of the Justice Act (Northern Ireland) 2016 (default by debtor);”.

#### Commencement Information

**I22** Sch. 2 para. 4 in operation at 1.6.2018 by S.R. 2018/99, art. 2(c)

#### *Road Traffic Offenders (Northern Ireland) Order 1996*

**5.—(1)** In Article 2(2) (interpretation) at the appropriate place insert—  
““collection order” means an order under section 3 of the Justice Act (Northern Ireland) 2016;”.

(2) In Article 76 (registration of sums payable in default), in paragraph (2)(a), for “21 days” substitute “ 28 days ”.

(3) After Article 76(3) insert—

“(3A) The clerk of petty sessions 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 paragraph (2)(a).”.

(4) In Article 79 (provisions supplementary to Articles 77 and 78 (which deal with cases where the registration of certain notices is invalidated)), in paragraph (5), after “enforcing payment of that sum” insert “ (including the making of a collection order) ”.

(5) In Part 2 of Schedule 2 (statutory statement of facts), in paragraph 3(3)(c), after “the person on whom the notice to owner is served” insert “ and a collection order may be made in that person's case without any court hearing ”.

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#### Commencement Information

**I23** Sch. 2 para. 5 in operation at 1.6.2018 by S.R. 2018/99, art. 2(c)

#### *Criminal Justice and Immigration Act 2008*

6.—(1) In section 88 (international co-operation in relation to criminal justice matters: procedure in Northern Ireland on receipt of certificate by clerk of petty sessions), in subsection (3)—

(a) after “must decide” insert “—

(a)”,  
and

(b) at the end insert “, and

(b) if it is satisfied that none of the grounds for refusal apply, whether to make a collection order under section 3 of the Justice Act (Northern Ireland) 2016.”

(2) In section 88(6) for the words from the beginning to “that Part,” substitute “The enactments specified in subsection (6ZA) ”.

(3) After section 88(6) insert—

“(6ZA) The enactments specified in this subsection are—

(a) Part 9 of the Magistrates' Courts (Northern Ireland) Order 1981 and any instrument made under that Part;

(b) Chapter 1 of Part 1 of the Justice Act (Northern Ireland) 2016 and any instrument made under that Chapter.”

#### Commencement Information

**I24** Sch. 2 para. 6 in operation at 1.6.2018 by S.R. 2018/99, art. 2(c)

#### *Justice Act (Northern Ireland) 2011*

7.—(1) In section 67 (registration of fixed penalty), in subsection (2)(a), for “21 days” substitute “ 28 days ”.

(2) After section 67(3) insert—

“(3A) The fixed penalty 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

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court directs otherwise, be the same as the date specified in the notice of registration under subsection (2)(a).”

(3) In section 68 (challenge to notice), in subsection (9), after “enforcing payment of that sum” insert “ (including the making of a collection order) ”.

(4) In section 69 (setting aside of sum enforceable under section 67), in subsection (5), after “enforcing payment of that sum” insert “ (including the making of a collection order) ”.

(5) In section 70 (interpretation) at the appropriate place insert—  
““collection order” means an order under section 3 of the Justice Act (Northern Ireland) 2016;”.

**Commencement Information**

**I25** Sch. 2 para. 7 in operation at 1.6.2018 by S.R. 2018/99, art. 2(c)

*Justice Act (Northern Ireland) 2015*

**8.—**(1) In section 24 (prosecutorial fines: registration of sum payable in default), in subsection (2)(a), for “21 days” substitute “ 28 days ”.

(2) After section 24(3) insert—

“(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).”

(3) In section 25 (challenge to notice), in subsection (7), after “enforcing payment of that sum” insert “ (including the making of a collection order) ”.

(4) In section 26 (setting aside of sum enforceable under section 24), in subsection (3), after “enforcing payment of that sum” insert “ (including the making of a collection order) ”.

(5) In section 27 (interpretation), at the appropriate place insert—  
““collection order” means an order under section 3 of the Justice Act (Northern Ireland) 2016;”.

**Commencement Information**

**I26** Sch. 2 para. 8 in operation at 1.6.2018 by S.R. 2018/99, art. 2(c)

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PROSPECTIVE

## SCHEDULE 3

Section 33.

## THE PRISON OMBUDSMAN

*Appointment, status and term of office*

- 1 The Department shall appoint a person to be the Ombudsman.
- 2 The Ombudsman is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- 3.—(1) A person appointed as Ombudsman holds office for such term, not exceeding 7 years, as may be specified in the terms of appointment.  
(2) At the end of that term the person concerned is not eligible for re-appointment.
- 4.—(1) A person holding office as Ombudsman may resign that office by notice in writing to the Department.  
(2) A person holding office as Ombudsman may be removed from office by the Department if the Department is satisfied that the person—
  - (a) is incapable for medical or other reasons of performing the functions of the office;
  - (b) has, without reasonable excuse, failed to discharge the functions of the office for a continuous period of 3 months;
  - (c) is the subject of a bankruptcy restrictions order or a debt relief restrictions order;
  - (d) has been convicted of a criminal offence; or
  - (e) is otherwise unable, unfit or unwilling to perform the functions of the office.

*Remuneration and allowances*

- 5 The Department shall pay the Ombudsman such remuneration and such travelling and other allowances as the Department may determine.
- 6 The Department shall pay to or in respect of a person who holds or has held office as Ombudsman such pension, allowances or gratuities as the Department may determine.

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### *Appointment of acting Ombudsman*

7.—(1) Where the office of Ombudsman becomes vacant, the Department may appoint a person as acting Ombudsman.

(2) Any person holding office as acting Ombudsman ceases to hold that office—

(a) on the appointment of a new Ombudsman; or

(b) at the end of the period of one year beginning with the day on which the vacancy arose,

whichever first occurs.

(3) Otherwise, a person appointed as acting Ombudsman holds office in accordance with the terms of appointment.

(4) A person holding office as acting Ombudsman is to be treated for all purposes (apart from those of paragraphs 1 to 6) as the Ombudsman.

### *The Ombudsman's officers*

8.—(1) The Ombudsman may, with the approval of the Department as to numbers and conditions of employment, appoint such officers as the Ombudsman may determine.

(2) Any function of the Ombudsman may be performed on behalf of the Ombudsman by any officer of the Ombudsman authorised for the purpose by the Ombudsman.

### *Advisers*

9 The Ombudsman may obtain advice from any person who, in the opinion of the Ombudsman, is qualified to give it, to assist the Ombudsman in the discharge of any function of the Ombudsman.

### *Documents*

10 A document purporting to be duly signed by, or on behalf of, the Ombudsman shall be received in evidence and, unless the contrary is proved, be taken to be so signed.

### *Finance*

11.—(1) The Department may make payments to the Ombudsman out of moneys appropriated by Act of the Assembly.

(2) Payments under this paragraph shall be made on such terms and conditions as the Department may determine.

(3) The Ombudsman may not borrow money.

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### *Annual report*

**12.—(1)** As soon as practicable after the end of each financial year, the Ombudsman shall send to the Department a report on the carrying out of the functions of the Ombudsman during that year.

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

### *Data protection*

**13** In section 31(4) of the Data Protection Act 1998 (regulatory activities) in paragraph (a) after sub-paragraph (v) insert—

“(va) the Prison Ombudsman for Northern Ireland;”

### *Freedom of information*

**14.—(1)** In section 76(1) of the Freedom of Information Act 2000 (disclosure of information) in the Table after the entry relating to the Assembly Ombudsman for Northern Ireland insert—

“The Prison Ombudsman for Northern Ireland	Part 2 of the Justice Act (Northern Ireland) 2016”.
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(2) In Part 7 of Schedule 1 to that Act (bodies, etc. which are public authorities for the purposes of the Act) for the entry relating to the Prisoner Ombudsman for Northern Ireland substitute— “ The Prison Ombudsman for Northern Ireland ”

### *Public Services Ombudsman*

**15** In Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 (listed authorities) after the entry relating to the Northern Ireland Police Fund insert— “ The Prison Ombudsman for Northern Ireland ”.

### *Interpretation*

**16** In this Schedule “financial year” means—

- (a) the period beginning with the day on which section 47(1) comes into operation and ending on 31st March 2017; and
- (b) any subsequent period of 12 months ending on 31st March.

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## SCHEDULE 4

Section 51.

### PRIVATE SEXUAL PHOTOGRAPHS ETC: PROVIDERS OF INFORMATION SOCIETY SERVICES

#### *Exceptions for mere conduits*

1.—(1) A service provider is not capable of committing an offence under section 51 in respect of anything done in the course of providing so much of an information society service as consists in—

- (a) the provision of access to a communication network, or
- (b) the transmission in a communication network of information provided by a recipient of the service,

if the condition in sub-paragraph (2) is satisfied.

(2) The condition is that the service provider does not—

- (a) initiate the transmission,
- (b) select the recipient of the transmission, or
- (c) select or modify the information contained in the transmission.

(3) For the purposes of sub-paragraph (1)—

- (a) the provision of access to a communication network, and
- (b) the transmission of information in a communication network,

includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

(4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

#### *Exception for caching*

2.—(1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.

(2) The service provider is not capable of committing an offence under section 51 in respect of the automatic, intermediate and temporary storage of information so provided, if—

- (a) the storage of information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
- (b) the condition in sub-paragraph (3) is satisfied.

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- (3) The condition is that the service provider—
  - (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) where sub-paragraph (4) applies, expeditiously removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
  - (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

#### *Exception for hosting*

**3.—(1)** A service provider is not capable of committing an offence under section 51 in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service if sub-paragraph (2) or (3) is satisfied.

(2) This sub-paragraph is satisfied if the service provider had no actual knowledge when the information was provided—

- (a) that it consisted of or included a private sexual photograph or film,
- (b) that it was provided without the consent of an individual who appears in the photograph or film, or
- (c) that the photograph or film was provided with the intention of causing distress to that individual.

(3) This sub-paragraph is satisfied if, on obtaining such knowledge, the service provider expeditiously removed the information or disabled access to it.

(4) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

#### *Interpretation*

**4.—(1)** This paragraph applies for the purposes of this Schedule.

(2) “Photograph or film” has the meaning given in section 51.

(3) “Information society service”—

- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of the European



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Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”, and “the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

(4) “Recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.

(5) “Service provider” means a person providing an information society service.

## SCHEDULE 5

Section 58.

### AMENDMENTS OF THE FIREARMS (NORTHERN IRELAND) ORDER 2004

#### **Part 1**

##### Firearms - Persons under 18

###### *Authorisation of shotgun clubs to allow use of shotguns by persons under the age of 16*

1.—(1) In Article 2(2) (interpretation), after the definition of “shotgun certificate” insert—

““shotgun club” means a club established for the purpose of promoting and practising skill in the use of shotguns;”.

(2) In the heading to Part 6, add at the end “ AND SHOTGUN CLUBS ”.

(3) After the heading to Part 6 add— “ Firearms clubs ”.

(4) After Article 50 insert—

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### *“Shotgun clubs*

#### **Authorisation of shotgun clubs to allow use of shotguns by minors for limited purposes**

**50A.**—(1) If the Chief Constable is satisfied that there will not be a danger to public safety or to the peace, the Chief Constable may, on payment of the appropriate fee, grant an authorisation for a shotgun club to allow persons under the age of 16 who have attained the age of 12 to use shotguns under appropriate supervision in accordance with the authorisation.

(2) An authorisation must state that it is limited to the use of shotguns for clay target shooting or for such other purposes as may be prescribed.

(3) The Chief Constable may at any time by notice in writing—

(a) attach conditions to an authorisation;

(b) vary or revoke conditions attached under this Article.

(4) An authorisation shall continue in force for a period of five years from the date on which it is granted but if the Chief Constable is satisfied that there is a danger to public safety or to the peace, the Chief Constable may revoke the authorisation.

(5) Any person who—

(a) operates a shotgun club which allows a person under the age of 16 to use a shotgun except in accordance with an authorisation, or

(b) contravenes any condition of an authorisation,

shall be guilty of an offence.

(6) In this Article—

“appropriate supervision” means under the supervision of a person who has attained the age of 21 and has held a firearm certificate for a shotgun for at least five years;

“authorisation” means an authorisation granted under this Article;

“prescribed” means prescribed by regulations made by the Department of Justice.

(7) The Department of Justice may make regulations substituting a different age for the lower age mentioned in paragraph (1) and paragraph 11(4) of Schedule 1.

(8) The Department of Justice shall not make regulations under this Article unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.”.

(5) Before the heading to Article 51 insert— “ Power of entry ”.

(6) In Article 51 (power of entry), in paragraph (1)—

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- (a) in sub-paragraph (a), after “club” insert “ or a shotgun club ”;
- (b) after “Article 49” insert “ or 50A ”.

(7) In Schedule 1 (firearm certificates - exemptions), in paragraph 11, after sub-paragraph (3) add—

“(4) A person who is under the age of 16 but has attained the age of 12 may, without holding a firearm certificate, use a shotgun in accordance with an authorisation under Article 50A.”.

(8) In Schedule 5 (table of punishments), after the entry relating to Article 49(5) (b) insert—

“Article 50A(5)(a)	Operating a shotgun club which allows unauthorised use of shotguns	(a) Summary	1 year or a fine of the statutory maximum or both
		(b) Indictment	3 years or a fine or both
Article 50A(5)(b)	Contravention of conditions of authorisation	(a) Summary	1 year or a fine of the statutory maximum or both
		(b) Indictment	3 years or a fine or both”.

(9) In Schedule 5, in the second column of the entry relating to Article 51(2), after “club” insert “ or shotgun club ”.

#### *Other amendments relating to persons under 18*

2.—(1) Article 7 (purposes for which a young person may acquire and have in possession certain firearms and ammunition), in paragraph (3)(b)(i), after “sporting purposes” insert “ or for the purpose of pest control ”.

(2) In Schedule 1 (firearm certificates—exemptions)—

- (a) in paragraph 9 (air guns and ammunition), in sub-paragraph (3)(b), (person under 18 may not purchase an air gun without a certificate unless the person has attained the age of 17), the words “unless he has attained the age of 17” are repealed;
- (b) in paragraph 11 (shotguns), in sub-paragraph (3), at the end add “ unless the person has attained the age of 16 and is under the supervision of a person who has attained the age of 21 and has held a firearm certificate for a shotgun for at least three years ”.

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## Part 2

### Firearm certificates and other certificates

#### *Variation of firearm certificate*

**3.—(1)** In Article 11 (variation of firearm certificate), for paragraphs (3) to (5) substitute—

“(3) If a person—

- (a) sells a firearm (“the first firearm”) to the holder of a firearms dealer's certificate (“the dealer”); and
- (b) as part of the same transaction purchases from the dealer another firearm (“the second firearm”); and
- (c) paragraph (4) applies,

the dealer may, on payment of the appropriate fee, vary that person's firearm certificate by substituting the second firearm for the first firearm.

(4) This paragraph applies—

- (a) if both the first firearm and the second firearm are shotguns; or
- (b) if—
  - (i) the second firearm is of the same type and calibre as the first firearm; and
  - (ii) neither firearm is a prohibited weapon or a shotgun; or

(c) if—

- (i) the first firearm is a rifle of a description mentioned in the first column of Schedule 1A; and
- (ii) the second firearm is a rifle of a calibre specified in relation to the same Band of Schedule 1A as the calibre of the first firearm; and
- (iii) neither firearm is a prohibited weapon, a muzzle-loading firearm as defined in Article 45(9) or a shotgun; and
- (iv) the second firearm will not be of the same calibre as any other firearm to which the firearm certificate relates; and
- (v) the firearm certificate is not held subject to a condition that the first firearm may be used only for the purposes of target shooting.

(5) If a person—

- (a) sells or transfers a firearm to the holder of a firearms dealer's certificate (“the dealer”); and

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(b) does not as part of the same transaction purchase or acquire from the dealer another firearm,

the dealer may, on payment of the appropriate fee (if any), vary that person's firearm certificate by deleting that firearm.

(6) Where the holder of a firearms dealer's certificate ("the dealer") varies a firearm certificate under this Article, the dealer shall—

(a) notify the Chief Constable of the variation within 72 hours of the variation being made; and

(b) where the dealer receives the fee for varying the certificate, pay it to the Chief Constable.

(7) A person who fails to comply with paragraph (6)(a) shall be guilty of an offence.

(8) Schedule 1A (relevant firearms for Article 11(4)(c)) shall have effect.

(9) The Department of Justice may make regulations amending Schedule 1A if a draft of the regulations has been laid before, and approved by resolution of, the Assembly.”.

(2) After Schedule 1 insert—

“SCHEDULE 1A

Article 11(8)

Relevant firearms for Article 11(4)(c)

<b>BAND</b>	<b>CALIBRE</b>
1. Small quarry air rifles	.177
	.20
	.22
	.25
2. Small quarry	.17 Mach 2
	.17 HMR (Hornady Magnum Rimfire)
	.22 LR (Long Rifle)
	.22 WMR (Winchester Magnum Rimfire)
3. Medium quarry	.17 Hornet
	.17 Remington
	.17 Remington Fireball
	.22 Hornet/5.6x36Rmm
	.222 Remington

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	.204 Ruger
	.223 Remington/5.56x45mm
	.220 Swift
	.22-250
4. Large quarry	.243 Winchester
	.25-06
	6.5mm x 55/.256
	7mm x 08 Remington
	.270
	7.62 x 51mm/.308 Winchester
	.30-06”.

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(3) In Schedule 5 (table of punishments), after the entry relating to Article 10(3) insert—

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“Article 11(7)	Failure of firearms dealer to notify Chief Constable of variation of firearm certificate	Summary	Level 3”.
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*Variation of firearms dealer's certificate*

4 In Article 29(6) (variation of firearms dealer's certificate), at the end add “ on payment of the appropriate fee ”.

*Updated certificates*

- 5.—(1) In Article 5 (grant of firearm certificate)—
- (a) in paragraph (5), after “duplicate certificate” insert “ or an updated certificate ”;
  - (b) after paragraph (5) add—
    - “(6) In paragraph (5)—
      - “duplicate certificate” means a copy of the firearm certificate as granted; and
      - “updated certificate” means the firearm certificate revised up to such date as may be specified on the certificate.”.

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- (2) In Article 26 (grant of firearms dealer's certificate)—
- (a) in paragraph (7)—
- (i) after “duplicate certificate” insert “ or an updated certificate ”;
- (ii) the words “(if any)” are repealed;
- (b) after paragraph (7) add—
- “(8) In paragraph (7)—
- “duplicate certificate” means a copy of the firearms dealer's certificate as granted;
- “updated certificate” means the firearms dealer's certificate revised up to such date as may be specified on the certificate.”.

*Certificates granted in Great Britain*

- 6.—**(1) The following provisions of Article 17 (firearm certificate or shotgun certificate granted in Great Britain has effect in Northern Ireland if Chief Constable grants certificate of approval) are repealed—
- (a) in paragraph (1), the words from “if” to the end;
- (b) paragraphs (2) and (3);
- (c) in paragraph (4)—
- (i) in the definition of “applicable conditions” the words from “, subject” to the end;
- (ii) the definitions of “certificate of approval” and “modifications”.
- (2) In Article 18 (air guns held without a firearm certificate in Great Britain)—
- (a) in paragraph (1)—
- (i) after “an air gun” insert “ to which paragraph (3) applies ”;
- (ii) in sub-paragraph (c) after “issued to him by the Chief Constable” add “ on payment of the appropriate fee ”;
- (b) after paragraph (2) add—
- “(3) This paragraph applies to an air gun which is capable of discharging a missile so that the missile has, on being discharged, a kinetic energy in excess of one joule.”.

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### Part 3

#### Supplementary

##### Fees

7.—(1) For Schedule 6 (fees) substitute—

#### “SCHEDULE 6

Article 75.

##### Fees

###### Firearm certificate

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1. Grant of firearm certificate	£98
2. Variation by Chief Constable	£30
3. Variation by firearms dealer under Article 11(3) to substitute firearm	£15
4. Variation by firearms dealer under Article 11(5) to delete firearm	No fee
5. Duplicate certificate	£14
6. Updated certificate	£14

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###### Museum firearms licence

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7. Grant of museum firearms licence by Department of Justice	£110
8. Extension to additional premises	£75

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###### Visitor's firearm permit

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9. Grant of visitor's firearm permit (except where paragraph 10 applies)	£16
10. Grant of six or more permits (taken together) on a group application	£80

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###### Certificate of approval for air gun for resident in Great Britain

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11. Certificate of approval for air gun for resident in Great Britain	£11
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###### Firearms dealer's certificate

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12. Grant of firearms dealer's certificate	£300
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13. Duplicate certificate	£14
14. Updated certificate	£14

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#### Firearms clubs and shotgun clubs

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15. Authorisation of firearms club	£71
16. Authorisation of shotgun club to allow use of shotgun by persons 12 or over but under 16, except where the shotgun club is also a firearms club and an authorisation under Article 49 is granted at the same time	£71.”.

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#### *Consequential amendment*

**8** In Article 80(5) (regulations and orders made by the Department of Justice), after “Order” insert “ , except regulations under Article 11(9) or 50A, ”.

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