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## STATUTORY INSTRUMENTS

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# 1981 No. 1675

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

### PART I

#### INTRODUCTORY

##### **Title, citation and commencement**

- 1.—(1) This Order may be cited as the Magistrates' Courts (Northern Ireland) Order 1981.
- (2) This Order shall be included among the Acts which may be cited together as the Summary Jurisdiction Acts (Northern Ireland).
- (3) This Order shall come into operation on 25th December 1981.

##### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F1</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

- (a) subject to paragraph 6 of Schedule 5, references to a “court of summary jurisdiction” shall be construed as referring to a resident magistrate sitting in petty sessions;
- (b) “magistrates' court” includes a court of summary jurisdiction and a resident magistrate or<sup>F2</sup> lay magistrate] sitting out of petty sessions.

(3) In this Order—

“accused” includes an accused person who has been convicted of an offence;

“attachment of earnings order” means an order under Article 101;

“chief clerk”, in relation to a county court division, means the chief clerk for that division;

[<sup>F3</sup>“child” has the same meaning as in Article 2(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998;]

[<sup>F4</sup>“commit to custody” means commit to prison or, where any statutory provision authorises or requires committal to some other place of detention instead of committal to prison, to that other place;]

“complaint” includes information;

“complainant” includes informant;

“county court division” means a division specified under Article 3 of the County Courts (Northern Ireland) Order 1980<sup>F5</sup>;

“debt proceedings” means proceedings under Article 62;

“decree” includes a dismiss, a decree on a counterclaim and an order under Article 107 of the Judgments Enforcement (Northern Ireland) Order 1981<sup>F6</sup>;

*Status: Point in time view as at 06/03/2015.*

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- “domestic proceedings” has the meaning assigned to it by Article 88;
- “ejectment proceedings” means proceedings under Article 67;
- “enactment” includes a Measure of the Assembly;
- “impose imprisonment” means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money or for want of distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone;
- “magistrates' courts rules” means rules made under Article 13;
- “order” includes a decree or refusal to make an order;
- “petty sessions” means petty sessions held pursuant to Article 11;
- “plaintiff” means a person on whose behalf a process is issued under Article 62(5) or Article 67(3) to commence debt proceedings or, as the case may be, ejectment proceedings;
- “prescribed” means prescribed by magistrates' court rules;
- “resident magistrate” means a resident magistrate or a deputy resident magistrate appointed under Part II of the Magistrates' Courts Act (Northern Ireland) 1964<sup>F7F8</sup> . . . ;
- “Rules Committee” means the Rules Committee appointed under Article 13(2);
- “statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;
- “summary offence” means an offence which is punishable upon summary conviction, whether or not it is also triable upon indictment, except an offence which may be dealt with summarily in accordance with Articles 45 and 46 of this Order or section 5 of the Newspaper Libel and Registration Act 1881<sup>F9</sup> or, in the case of a child<sup>F3</sup> under Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998] with the consent of the accused;
- “summary proceeding” means any proceeding before a magistrates' court other than a preliminary investigation or a preliminary inquiry or, except where an indictable offence is being tried summarily, connected with such an investigation or inquiry.

(4) References in this Order to clerks of petty sessions are references to the persons appointed as such by the Lord Chancellor<sup>F10</sup> . . . and include references to persons appointed <sup>F11</sup>by the Department of Justice] as assistant or deputy clerks of petty sessions.

(5) Any reference in this Order to a sum adjudged to be paid by a conviction or order of a magistrates' court shall be construed as including a reference to any costs, damages<sup>F12</sup>, compensation or other sums] adjudged to be paid by a conviction or order of which the amount is ascertained by the conviction or order.

(6) For the purposes of section 42 of the Northern Ireland Constitution Act 1973<sup>F13</sup> (validity of Acts of the Parliament of Northern Ireland), provisions of this Order which re-enact provisions of an Act of the Parliament of Northern Ireland shall be deemed to be provisions of such an Act.

**F1** 1954 c. 33 (NI)

**F2** 2002 c. 26

**F3** 1998 NI 9

**F4** 1989 NI 15

**F5** 1980 NI 3

**F6** 1981 NI 6

**F7** 1964 c. 21 (NI)

**F8** Words in art. 2(3) in definition of "resident magistrate" repealed (3.4.2006) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 86, 87, **Sch. 13** (with s. 89); S.R. 2006/124, **art. 2**, Sch.

**F9** 1881 c. 60

- F10** Words in art. 2(4) omitted (12.4.2010) by virtue of Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010 (S.R. 2010/133), art. 4, **Sch. para. 15(2)(a)** (with arts. 5-7)
- F11** Words in art. 2(4) substituted (12.4.2010) by Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010 (S.R. 2010/133), art. 4, **Sch. para. 15(2)(b)** (with arts. 5-7)
- F12** 1990 NI 17
- F13** 1973 c. 36

## PART II

### FUNCTIONS OF RESIDENT MAGISTRATES AND JUSTICES OF THE PEACE

#### *Functions of resident magistrates and justices of the peace other than resident magistrates*

#### **Functions of resident magistrates and justices of the peace other than resident magistrates**

3.—(1) A resident magistrate sitting alone may, as well as exercising any function which is conferred by any enactment upon a resident magistrate or upon a<sup>F14</sup> lay magistrate], exercise any function which under any enactment may be exercised by—

- (a) two or more<sup>F14</sup> lay magistrates]; or
- (b) two or more resident magistrates.

(2) A<sup>F14</sup> lay magistrate] may not sit in petty sessions and may exercise only such functions as are conferred upon a<sup>F14</sup> lay magistrate] under—

- (a) any enactment (including this Order) commencing on or after 1st January 1936; or
- (b) any enactment commencing before that day included in Part I of Schedule 1.

**F14** 2002 c. 26

#### **Local jurisdiction of justices of the peace**

4. A<sup>F15</sup> lay magistrate] for any county court division may act as such in relation to all matters arising within that division and may so act notwithstanding that at the time of acting he is in some other area of Northern Ireland.

**F15** 2002 c. 26

#### *Protection from legal proceedings*

#### **<sup>F16</sup>Immunity of resident magistrates etc. for acts within jurisdiction.**

5. No action shall lie against any resident magistrate,<sup>F17</sup> lay magistrate] or clerk of petty sessions in respect of any act or omission of his—

- (a) in the execution of his duty—
  - (i) as<sup>F17</sup> a resident magistrate or a lay magistrate]; or

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- (ii) as such a clerk exercising, by virtue of any statutory provision, any function of a magistrates' court; and
- (b) with respect to any matter within his jurisdiction.]

**F16** 1990 c. 41

**F17** 2002 c. 26

### **Immunity for certain acts beyond jurisdiction.**

**6.** An action shall lie against any resident magistrate,<sup>[F18]</sup> lay magistrate] or clerk of petty sessions in respect of any act or omission of his—

- (a) in the purported exercise of his duty—
  - (i) as<sup>[F18]</sup> a resident magistrate or a lay magistrate]; or
  - (ii) as such a clerk exercising, by virtue of any statutory provision, any function of a magistrates' court; but
- (b) with respect to a matter which is not within his jurisdiction,

if, but only if, it is proved that he acted in bad faith.

**F18** 2002 c. 26

### **<sup>[F19]</sup>Costs in legal proceedings**

**6A.—**(1) A court may not order any resident magistrate,<sup>[F20]</sup> lay magistrate] or clerk of petty sessions to pay costs in any proceedings in respect of any act or omission of his in the execution (or purported execution) of his duty—

- (a) as<sup>[F20]</sup> a resident magistrate or a lay magistrate]; or
- (b) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a magistrates' court.

(2) Paragraph (1) does not apply in relation to—

- (a) any proceedings in which a resident magistrate,<sup>[F20]</sup> lay magistrate] or clerk of petty sessions is being tried for an offence or is appealing against a conviction; or
- (b) any proceedings in which it is proved that a resident magistrate,<sup>[F20]</sup> lay magistrate] or clerk of petty sessions acted in bad faith in respect of the matters giving rise to the proceedings.

(3) Where a court is prevented by paragraph (1) from ordering a resident magistrate,<sup>[F20]</sup> lay magistrate] or clerk of petty sessions to pay costs in any proceedings, the court may instead order the making by the Lord Chancellor of a payment in respect of the costs of a person in the proceedings.

(4) The Lord Chancellor may<sup>[F21]</sup>, after consultation with the Lord Chief Justice,] by regulations specify—

- (a) circumstances when a court shall or shall not exercise the power conferred on it by paragraph (3); and
- (b) how the amount of any payment ordered under that paragraph is to be determined.

**[**  
<sup>F22</sup>(4A) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (4)—

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- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]
- (5) Regulations under paragraph (4) shall be subject to [F23negative resolution].]

**F19** 1999 c. 22  
**F20** 2002 c. 26  
**F21** Words in art. 6A(4) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 62(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1  
**F22** Art. 6A(4A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 62(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1  
**F23** Words in art. 6A(5) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 132** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

#### Where warrant on conviction is issued by clerk or another justice

7. Where a conviction or order is made by a[F24 magistrates' court] and a warrant to enforce it is signed by[F25 . . . a clerk of petty sessions, no action shall be brought against the[F25 . . . clerk who signed the warrant by reason of any lack of jurisdiction in the magistrates' court which made the conviction or order.

**F24** 2002 c. 26  
**F25** 1990 c. 41

#### Acts performed pursuant to decision of High Court or on appeal

*Para. (1) rep. by 1990 c. 41*

(2) Where a warrant or other document signed by a[F26 . . . clerk of petty sessions is issued upon any conviction or order which is confirmed upon appeal no action shall be brought against that[F26 . . . clerk in respect of anything done pursuant to the warrant or document.

**F26** 1990 c. 41

#### Where action is prohibited proceedings may be set aside

9. Where any action which is prohibited by this Part is commenced, the judge may, upon an application by the defendant supported by an affidavit of facts, order that the proceedings in such action be set aside with or without costs.

#### Defrayal by Lord Chancellor of expenses in connection with proceedings

10.—(1) The Lord Chancellor, with the approval of the Treasury, may defray the whole or part of any expenses incurred by a resident magistrate[F27, by a lay magistrate] or by a clerk of petty sessions in, or in connection with, any proceedings or claim brought as a result of the execution, or purported execution of the office of that[F27 resident magistrate, lay magistrate] or clerk[F28 in relation to any matter other than a criminal matter] if and in so far as it appears to the Lord Chancellor to be reasonable, having regard to the circumstances, that such expenses, or part of them should not be borne by that magistrate, justice or clerk personally.

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[<sup>F28</sup>(1A) The Lord Chancellor shall defray any expenses reasonably incurred by a resident magistrate[<sup>F27</sup>, by a lay magistrate] or by a clerk of petty sessions in, or in connection with, any proceedings or claim brought as a result of the execution, or purported execution, of the office of that[<sup>F27</sup> resident magistrate, lay magistrate] or clerk in relation to any criminal matter, unless it is proved, in respect of the matters giving rise to the proceedings or claim, that he acted in bad faith.]

(2) In this Article “expenses” includes damages or costs and any sums payable in connection with a settlement of proceedings or of a claim.

**F27** 2002 c. 26

**F28** 1996 c. 25

**Modifications etc. (not altering text)**

**C1** Art. 10(1): functions of Treasury or Minister for the Civil Service transferred to Department of Finance and Personnel (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), **15(4)(f)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

## PART III

### THE HOLDING OF PETTY SESSIONS FOR A COUNTY COURT DIVISION

#### Petty sessions and petty sessions districts

**11.**—(1) Sessions for the holding of courts of summary jurisdiction and districts for which such sessions are held shall continue to be known as petty sessions and petty sessions districts respectively and are so referred to in this Order.

(2) The Lord Chancellor may[<sup>F29</sup>, after consultation with the Lord Chief Justice,] by order specify the petty sessions districts into which Northern Ireland shall be divided.

(3) The[<sup>F30</sup>Lord Chief Justice] may give directions as to

- (a) the places at which petty sessions are to be held;
- (b) the days on which petty sessions are to be held regularly for a petty sessions district;
- (c) the ordinary hours of sitting of courts of summary jurisdiction;
- (d) the nature of the business to be transacted by any court of summary jurisdiction;
- (e) notwithstanding anything in Article 144, the place of hearing of appeals to the county court from any petty sessions;
- (f) such other incidental, consequential, transitional or supplementary matters as appear to the[<sup>F30</sup>Lord Chief Justice] to be necessary or proper.

**F29** Words in art. 11(2) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 63(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1

**F30** Words in art. 11(3) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 63(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1

## Holding of petty sessions in courthouse

12. Where a courthouse is provided or maintained under the Administration of Justice Act (Northern Ireland) 1954<sup>F31</sup> at any place fixed for the holding of petty sessions, the petty sessions shall be held in that courthouse unless either—

- (a) the<sup>F32</sup>Lord Chief Justice] otherwise directs; or
- (b) the resident magistrate presiding or who is to preside otherwise adjourns the sitting of the court pursuant to the powers conferred on him by section 13 of that Act.

**F31** 1954 c. 9 (NI)

**F32** Words in art. 12(a) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 64; S.I. 2006/1014, art. 2(a), Sch. 1

## PART IV

### MAGISTRATES' COURTS RULES

#### Magistrates' courts rules

13.—(1) For the purposes of or in relation to any jurisdiction exercisable by magistrates' courts, any such rules as may be made with respect to such courts by virtue of section 21 (1) of the Interpretation Act (Northern Ireland) 1954<sup>F33</sup>. . . may be made in accordance with the provisions of this Article.

(2) There shall be a Rules Committee appointed by the<sup>F34</sup>Lord Chief Justice] (which may be styled “The Magistrates' Courts Rules Committee”) which shall consist of such number of persons not exceeding nine as may be appointed and shall include at least two resident magistrates, one practising barrister and one practising solicitor.

<sup>F35</sup>(3) It is for the Rules Committee to make such rules as are referred to in paragraph (1) (which may be known as “magistrates' courts rules”).

<sup>F36</sup>(3ZA) For the purposes of paragraphs (3A) to (3D), “relevant authority” means—

- (a) in relation to magistrates' courts rules which deal (or would deal) with an excepted matter, the Lord Chancellor; and
- (b) otherwise, the Department of Justice;

and for the purposes of this paragraph “deal with” and “excepted matter” have the same meanings as in the Northern Ireland Act 1998.]

<sup>F37</sup>(3A) After making magistrates' courts rules the Rules Committee must submit them to the relevant authority.

(3AA) The relevant authority must, after consultation with the Lord Chief Justice, allow or disallow rules submitted to it.

(3AB) Magistrates' courts rules have effect only if the relevant authority allows them.

(3AC) If the relevant authority disallows rules submitted to it, it must give the Rules Committee written reasons why it has disallowed them.]

(3B) Paragraph (3C) applies if the <sup>F38</sup>relevant authority] gives the Rules Committee written notice that <sup>F39</sup>it] thinks it is expedient for magistrates' courts rules to include provision that would achieve a purpose specified in the notice.



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(3C) The Rules Committee must make such magistrates' courts rules as it considers necessary to achieve the specified purpose.

(3D) Those rules must be—

- (a) made within a reasonable period after the [<sup>F40</sup>relevant authority] gives notice under paragraph (3B);
- (b) made in accordance with this Article.]

(4) The Rules Committee may regulate their own quorum and procedure and appoint such sub-committee as they think fit.

(5) The chairman of the Rules Committee shall be such member of the committee [<sup>F41</sup> as the Lord Chief Justice shall designate] and the secretary to such committee shall be such person as the Lord Chancellor shall designate.

(6) Where any enactment—

- (a) in force on 16th August 1964 (other than an enactment referred to in Article 15 (1)); or
- (b) passed after 6th July 1964 and which does not expressly provide otherwise;

requires or authorises the making of rules (including rules prescribing forms and costs) in relation to any proceeding or matter whatsoever in magistrates' courts, such rules shall be made in accordance with the provisions of this Article and the provisions of any such enactment shall have effect accordingly.

- |            |  |
|------------|--|
| <b>F33</b> | Words in art. 13(1) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 146, 148(1), Sch. 5 para. 65(2), Sch. 18 Pt. 3; S.I. 2006/1014, <b>art. 2(a)</b> , Sch. 1   |
| <b>F34</b> | Words in art. 13(2) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 65(3); S.I. 2006/1014, <b>art. 2(a)</b> , Sch. 1  |
| <b>F35</b> | Art. 13(3)-(3D) substituted (3.4.2006) for art. 13(3) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 65(4); S.I. 2006/1014, <b>art. 2(a)</b> , Sch. 1   |
| <b>F36</b> | Art. 13(3ZA) inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), <b>Sch. 18 para. 133(a)</b> (with arts. 28-31); S.I. 2010/977, <b>art. 1(2)</b>               |
| <b>F37</b> | Art. 13(3A)-(3AC) substituted for art. 13(3A) (13.5.2014) by Northern Ireland (Miscellaneous Provisions) Act 2014 (c. 13), s. 28, <b>Sch. para. 4(1)</b>   |
| <b>F38</b> | Words in art. 13(3B) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), <b>Sch. 18 para. 133(c)(i)</b> (with arts. 28-31); S.I. 2010/977, <b>art. 1(2)</b> |
| <b>F39</b> | Word in art. 13(3B) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), <b>Sch. 18 para. 133(c)(ii)</b> (with arts. 28-31); S.I. 2010/977, <b>art. 1(2)</b> |
| <b>F40</b> | Words in art. 13(3D) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), <b>Sch. 18 para. 133(b)</b> (with arts. 28-31); S.I. 2010/977, <b>art. 1(2)</b>    |
| <b>F41</b> | Words in art. 13(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 65(5); S.I. 2006/1014, <b>art. 2(a)</b> , Sch. 1   |

### <sup>F42</sup>*Control of magistrates' courts rules*

**13A.**—(1) Magistrates' courts rules that are required under Article 13 to be submitted to the Lord Chancellor are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 applies accordingly.



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(2) Magistrates' courts rules that are required under Article 13 to be submitted to the Department of Justice are subject to negative resolution.]

**F42** Art. 13A inserted (13.5.2014) by [Northern Ireland \(Miscellaneous Provisions\) Act 2014 \(c. 13\), s. 28, Sch. para. 4\(2\)](#)

### Rules Committee may make recommendations to Lord Chancellor

14. <sup>F43</sup> .....

**F43** Art. 14 repealed (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15\(2\), 146, 148\(1\), Sch. 5 para. 66, Sch. 18 Pt. 3; S.I. 2006/1014, art. 2\(a\), Sch. 1](#)

### Rules under or for the purpose of particular enactments

15.—(1) The power under<sup>F44</sup> section 32A(1) of the Treatment of Offenders Act (Northern Ireland) 1968] with respect to the making of rules under that Act regarding persons charged before magistrates' courts shall be exercised by the Secretary of State after consultation with the Rules Committee.

(2) Magistrates' courts rules may assign to juvenile courts the hearing of any applications for orders or licences relating to children<sup>F45</sup> . . . being applications cognizable by courts of summary jurisdiction, if in the opinion of the<sup>F46</sup>Lord Chief Justice] after consultation with the Rules Committee it is desirable in the interests of the children<sup>F45</sup> . . . concerned that such applications should be heard by juvenile courts.

(3) For the purposes of paragraph (2), any complaint under<sup>F47</sup> Schedule 13] to the Education and Libraries (Northern Ireland) Order<sup>F47</sup> 1986] (which relates to compulsory attendance at school), shall be deemed to be an application for an order relating to a child.

**F44** 1996 NI 24

**F45** 1998 NI 9

**F46** Words in art. 15(2) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15\(2\), 148\(1\), Sch. 5 para. 67; S.I. 2006/1014, art. 2\(a\), Sch. 1](#)

**F47** 1986 NI 3

### Modifications etc. (not altering text)

**C2** Art. 15: functions of Secretary of State transferred to Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\), arts. 1\(2\), 4\(1\)\(2\), Sch. 1 \(with arts. 28-31\); S.I. 2010/977, art. 1\(2\)](#)

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## PART V

### CRIMINAL JURISDICTION AND PROCEDURE

#### *Jurisdiction to deal with offences*

#### **General jurisdiction to deal with charges**

16.—(1) Subject to the provisions of this Part, a magistrates' court for a county court division may conduct a preliminary investigation or a preliminary inquiry into an indictable offence or hear and determine a complaint charging a summary offence, if in any such case—

- (a) the offence was committed in the county court division, or
- (b) the offence was committed elsewhere than in the county court division and the defendant is or is resident (or in the case of a body corporate has its registered office or principal place of business) within the county court division; or
- (c) it appears necessary or expedient with a view to the better administration of justice that the person charged with the offence should be tried or jointly tried with, or in the same place as, some other person who is charged with an offence and who is in custody or is being or is to be proceeded against within that county court division; or
- (d) the court under this or any other enactment or otherwise has jurisdiction to deal with the offence.

(2) A magistrates' court for a county court division having jurisdiction to hear a complaint charging a person with an offence may hear and determine a complaint charging that person with a summary offence committed in any other county court division.

(3) A resident magistrate exercising the powers conferred by Article 45 and 46 shall have jurisdiction to try summarily an indictable offence in any case in which under paragraph (1) he would have jurisdiction to conduct a preliminary investigation or a preliminary inquiry into the offence.

(4) Nothing in this Order shall deprive a court in Northern Ireland of any jurisdiction to deal with any offence, whether committed in the United Kingdom or elsewhere, as to which the court has jurisdiction at the making of this Order.

#### **Offences committed on boundaries or on journeys: offences begun in one jurisdiction and completed in another**

17.—(1) Where an offence has been committed on the boundary between two or more county court divisions, or within five hundred yards of such a boundary, or in any harbour, river, arm of the sea or other water lying between two or more county court divisions, the offence may be treated for the purposes of this Order as having been committed in either or any of those county court divisions.

(2) An offence begun in one county court division and completed in another may be treated for the purposes of this Order as having been committed in either.

(3) Where an offence has been committed on any person, or on or in respect of any property, in or on a vehicle or vessel engaged on any journey or voyage through two or more county court divisions, the offence may be treated for the purposes of this Order as having been committed in either or any of those county court divisions.

(4) Where the side or any part of a road or any water along which a vehicle or vessel passed in the course of the journey or voyage forms the boundary between two or more county court divisions, the offence may be treated for the purposes of this Order as having been committed in either or any of those county court divisions.

## <sup>F48</sup>Offences committed on ships and abroad

**17A.** Sections 280, 281 and 282 of the Merchant Shipping Act 1995 (offences on ships and abroad by British citizens and others) apply in relation to other offences under the law of Northern Ireland as they apply in relation to offences under that Act or instruments under that Act.]

**F48** 1995 c. 21

## Summary trial of charges in and out of petty sessions

**18.—**(1) Except as otherwise provided by this Article, a complaint charging a summary offence or an indictable offence with which the court has decided to deal summarily under this Order or any other enactment shall be heard and determined by a court of summary jurisdiction.

(2) A resident magistrate, if satisfied that a person charged with a summary offence or with an indictable offence which he has decided to deal with summarily in accordance with this Order or any other enactment is unable to give bail for his appearance before a court of summary jurisdiction, may hear and determine the complaint out of petty sessions.

*Para. (3) rep. by 2002 c. 26*

(4) Procedure before a resident magistrate or<sup>F49</sup> lay magistrate] sitting out of petty sessions shall be as before a court of summary jurisdiction and—

- (a) a resident magistrate<sup>F49</sup> . . . so sitting may in relation to any matter which he has jurisdiction to hear and determine under paragraph (2)<sup>F49</sup> . . . exercise all the powers of a court of summary jurisdiction; and
- (b) orders made by a resident magistrate or<sup>F49</sup> lay magistrate] so sitting shall have effect as orders made by a court of summary jurisdiction sitting for the petty sessions district for which the resident magistrate<sup>F49</sup> or lay magistrate] acted.

**F49** 2002 c. 26

## Time within which complaint charging offence must be made to give jurisdiction

<sup>F50F51</sup>**19.—**(1) Where no period of limitation is provided for by any other enactment—

- (a) a magistrates' court shall not have jurisdiction to hear and determine a complaint charging the commission of a summary offence other than an offence which is also triable upon indictment unless the complaint was made within six months from the time when the offence was committed or ceased to continue; and
- (b) a complaint charging the commission of an indictable offence may be made to a justice of the peace and dealt with at any time and, accordingly, a resident magistrate may at any time after an indictable offence was alleged to have been committed exercise any jurisdiction conferred on him by Articles 45 and 46 or by any other enactment to try that offence summarily.

(2) Subject to paragraph (4), a complaint charging the commission of an offence which is both punishable upon summary conviction or triable upon indictment may be made and dealt with at any time and, accordingly, nothing in any other enactment (however framed or worded) which, as regards any offence to which it applies, would but for this Article impose a time-limit on the power of a magistrates' court to hear and determine a complaint charging the commission of a summary offence or impose a limitation on the time for taking summary proceedings shall apply in relation to any offence which is both punishable upon summary conviction or triable upon indictment.

**Status:** Point in time view as at 06/03/2015.

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(3) Without prejudice to the generality of paragraph (2), that paragraph includes enactments which impose a time-limit that applies only in certain circumstances (for example where the proceedings are not instituted by or with the consent of the Director of Public Prosecutions for Northern Ireland or some other specified authority).

(4) Where as regards any indictable offence there is imposed by any enactment (however framed or worded and whether falling within paragraph (2) or not) a limitation on the time for taking proceedings on indictment for that offence no summary proceedings for that offence shall be taken after the latest time for taking proceedings on indictment.

**F50** mod. by SI 1994/1323, 2328

**F51** mod. by 1985 c. 49

#### Modifications etc. (not altering text)

- C3** Art. 19 excluded (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), **ss. 41(8)(b)**, 126(2)
- C4** Art. 19 excluded (10.4.2009) by Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886), **art. 12(8)**
- C5** Art. 19 excluded (13.2.2015 for specified purposes) by Planning Act (Northern-Ireland) 2011 (c. 25), **ss. 172(3)**, 254(1), (2) (with s. 211); S.R. 2015/49, art. 2
- C6** Art. 19(1) excluded (26.5.2008) by Business Protection from Misleading Marketing Regulations 2008 (S.I. 2008/1276), **reg. 10(6)**
- C7** Art. 19(1) excluded (26.5.2008) by Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), **reg. 14(6)** (with savings in reg. 28(2)(3))
- C8** Art. 19(1) excluded (13.9.2010) by Forestry Act (Northern Ireland) 2010 (c. 10), **ss. 34(1)**, 39(1) (with s. 37); S.R. 2010/309, **art. 2**, Sch.
- C9** Art. 19(1) excluded by S.R. 1996/558, reg. 26A(1) (as inserted (1.1.2012) by Welfare of Animals (Slaughter or Killing) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/407), **reg. 5**)
- C10** Art. 19(1) excluded by SR 1996/558 reg. 26A (as inserted (1.1.2012) by The Welfare of Animals (Slaughter or Killing) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/407), regs. 1, **5**)
- C11** Art. 19(1) excluded (30.4.2012) by The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (S.I. 2012/1017), regs. 1(2), **71(4)** (with regs. 73, 74)
- C12** Art. 19(1) excluded (8.5.2012) by The Textile Products (Labelling and Fibre Composition) Regulations 2012 (S.I. 2012/1102), regs. 1, **7(6)**
- C13** Art. 19(1)(a) excluded (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **299(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)
- C14** Art. 19(1)(a) modified (at 10.10 am. on 8.10.2008) by Landsbanki Freezing Order 2008 (S.I. 2008/2668), **art. 10(5)**
- C15** Art. 19(1)(a) excluded by Child Support (Northern Ireland) Order 1991 (S.I. 1991/2628 (N.I. 23)), art. 16A(6) (as added (13.8.2010) by Welfare Reform Act (Northern Ireland) 2010 (c. 13), **ss. 32(3)**, 36(1)(n))
- C16** Art. 19(1)(a) modified (6.6.2012) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 68(6)**, 111(3) (with Sch. 6 para. 7); S.R. 2012/214, art. 2(m)
- C17** Art. 19(1)(a) modified (6.6.2012) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 69(4)(b)**, 111(3) (with Sch. 6 para. 7); S.R. 2012/214, art. 2(m)
- C18** Art. 19(1)(a) excluded (7.8.2014) by The Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 (S.I. 2014/1615), regs. 1(2), **9(4)**
- C19** Art. 19(1)(a) excluded (13.2.2015 for specified purposes) by Planning Act (Northern-Ireland) 2011 (c. 25), **ss. 244**, 254(1), (2) (with s. 211); S.R. 2015/49, art. 2

### Summary trial

#### Issue of summons to accused or warrant for his arrest

**20.**—(1) Upon a complaint being made to a justice of the peace 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 justice may issue a summons directed to that person requiring him to appear before such court to answer to the complaint.

(2) Where a justice of the peace for any county court division issues a summons under paragraph (1) directed to a person requiring him to appear before a magistrates' court for that county court division, the justice may, upon a complaint being made to him that the person in respect of whom the summons has been issued has, or is suspected of having, committed in another county court division a summary offence, issue a summons directed to that person requiring him to appear before that court to answer to the complaint.

(3) Upon a complaint being made to a justice of the peace 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 justice may either issue a summons requiring him to appear before such magistrates' court or <sup>F52</sup>issue a warrant for the arrest of that person].

(4) Where the offence charged in the complaint is an indictable offence, a warrant under this Article may be issued by a justice of the peace at any time notwithstanding that a summons has previously been issued and whether before or after the time mentioned in such summons for the appearance of the person summoned.

<sup>F53</sup>(4A) Where a justice of the peace for any county court division is satisfied that a summons issued under paragraph (1) by him or another justice of the peace for the same county court division has not been served, he may, without a complaint being made to him, re-issue the summons extending the time for the appearance of the person summoned.]

(5) Where a resident magistrate is satisfied that a person suspected of having committed a summary offence cannot for any reason be serviced with a summons, he may issue a warrant for the arrest of that person notwithstanding that a summons has not been first issued.

(6) A warrant may be issued in respect of any offence to which Article 16(1) (b) applies, notwithstanding that the offence was committed outside Northern Ireland if an indictment for the offence may legally be preferred in Northern Ireland.

(7) A warrant shall not be issued under this Article unless the complaint is in writing and substantiated on oath.

**F52** Words in [art. 20\(3\)](#) substituted (26.2.2010) by [Criminal Justice \(Northern Ireland\) Order 2008 \(S.I. 2008/1216 \(N.I. 1\)\)](#), [arts. 1\(4\), 92\(7\)](#); [S.R. 2010/36](#), [art. 2](#) (with [art. 3](#))

**F53** [2003 NI 13](#)

#### Signing of summons by clerks of petty sessions

**21.**—(1) Notwithstanding anything in section 6(1) of the Magistrates' Courts Act (Northern Ireland) 1964 or any other statutory provision, a clerk of petty sessions may exercise the functions of a justice of the peace relating to the making of complaints, other than complaints on oath, under Article 20 or any other statutory provision providing for complaints to be made to a justice of the peace or authorising a justice of the peace to issue summonses; and Article 20 or by any other statutory provision or rule of law regulating, or relating to, the making of complaints, other than complaints on oath, to, or the issuing of summonses by, a justice of the peace shall apply by virtue

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of this paragraph in relation to the making of such complaints to, or the issuing of summonses by, a clerk of petty sessions as if he were a justice of the peace.

(2) Notwithstanding anything in Article 2 (4) or any other statutory provision, nothing in this Article shall enable an assistant or deputy clerk of petty sessions to exercise the functions of a justice of the peace under any statutory provision providing for complaints to be made to a justice of the peace or authorising a justice of the peace to issue summonses.

### Summary trial

22.—(1) Where the accused appears or is represented at the hearing of a complaint charging a summary offence, the court shall state the substance of the complaint and ask whether the accused pleads guilty or not guilty.

(2) The court may, after hearing the evidence and such representations, if any, as may be made to it by or on behalf of the parties, convict the accused or dismiss the complaint.

(3) If the accused or his representative on his behalf informs the court that he pleads guilty, the court may convict him without hearing the evidence.

### Non appearance of accused: general provisions

23.—(1) Where at the time and place appointed for the hearing or adjourned hearing of a complaint charging a summary offence the accused fails to appear, a magistrates' court may adjourn the hearing or, if satisfied that there are no sufficient grounds for adjournment or further adjournment, may, subject to this Article, proceed in his absence.

(2) Where the accused has failed to appear in answer to a summons, the court shall not proceed in his absence unless it is proved that the summons was duly served upon him or that he is evading service.

(3) A court of summary jurisdiction shall not in the absence of the accused sentence him to imprisonment or order his detention of a young offenders centre or make an order under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968<sup>F54</sup> that a suspended sentence or order for detention shall take effect.

**F54** 1968 c. 29 (NI)

### Non-appearance of accused: plea of guilty

24.—(1) Subject to paragraph (7), to this Article shall apply where a summons has been issued requiring a person to appear before a court of summary jurisdiction, other than a<sup>F55</sup> youth] court, to answer to a complaint charging a summary offence, not being—

- (a) an offence which is also triable on indictment; or
- (b) an offence for which the accused is liable to be sentenced to be imprisoned for a term exceeding six months,

and the clerk of petty sessions is notified by or on behalf of the complainant that the<sup>F56</sup> documents mentioned in paragraph (1A)] have been served upon the accused with the summons,<sup>F56</sup> . . .

<sup>F56</sup>(1A) The documents referred to in paragraph (1) are—

- (a) a notice containing such statement of the effect of this Article as may be prescribed; and
- (b) either of the following—

- (i) a concise statement in the prescribed form of such facts relating to the charge as will be placed before the court by or on behalf of the complainant if the accused pleads guilty without appearing before the court; or
- (ii) a copy of such written statement or statements complying with subsections (2)(a) and (b) and (4) of section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28) (proof by written statement) as will be so placed in those circumstances.]

(2) Subject to paragraphs (3) to (5), where the clerk of petty sessions receives a notification in writing purporting to be given by the accused or by a solicitor acting on his behalf that the accused desires to plead guilty without appearing before the court, the clerk shall inform the complainant of the receipt of the notification and if at the time and place appointed for the hearing or adjourned hearing of the complaint the accused does not appear it is proved to the satisfaction of the court, on oath or by affidavit or in the prescribed manner, that the<sup>[F56]</sup> documents mentioned in paragraph (1A)] have been served upon the accused with the summons, the—

- (a) subject to this Article and article 23 (3) the court may proceed to hear and dispose of the case in the absence of the accused, whether or not the complainant is also absent, in like manner as if both parties had appeared and the accused had pleaded guilty; or
- (b) if the court decides not to proceed as mentioned in sub-paragraph (a), the court shall adjourn or further adjourn the trial for the purpose of dealing with the complaint as if that notification had not been given.

(3) If at any time before the hearing the clerk of petty sessions receives an intimation in writing purporting to be given by or on behalf of the accused that he wishes to withdraw the notification given under paragraph (2) the clerk shall inform the complainant of that withdrawal and the court shall deal with the complaint as if this Article had not been made.

<sup>[F56]</sup>(4) Before accepting the plea of guilty and convicting the accused in his absence under paragraph (2), the court shall cause the following to be read out before the court—

- (a) in a case where a statement of facts as mentioned in paragraph (1A)(b)(i) was served on the accused with the summons, that statement;
- (b) in a case where a statement or statements as mentioned in paragraph (1A)(b)(ii) was served on the accused with the summons and the court does not otherwise direct, that statement or those statements;
- (c) the notification given under paragraph (2); and
- (d) any submission received with the notification which the accused wishes to be brought to the attention of the court with a view to mitigation of sentence.

(4A) Where the court gives a direction under paragraph (4)(b), the court shall read aloud the purport of so much of any statement as is not read out under that paragraph.

(4B) Whether or not a direction under sub-paragraph (b) of paragraph (4) is given in relation to any statement served as mentioned in that sub-paragraph, the court need not cause to be read out the declaration required by section 1(2)(b) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968.]

(5) If the court proceeds under paragraph (2)(a) to hear and dispose of the case in the absence of the accused, the court shall not—

- (a) except on a resumption of the hearing after an adjournment under Article 50, permit any statement to be made by or on behalf of the complainant with respect to any facts relating to the offence charged other than the<sup>[F56]</sup> statements referred to in paragraph (1A)(b)];
- (b) without adjourning under that Article order him to be subject to any disqualification.



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(6) Where the court adjourns in pursuance of this Article, notice of the adjournment shall be served on the accused and that notice shall specify the reason for the adjournment.

(7) The Lord Chancellor may by order provide that this Article shall not apply in relation to such offences in addition to those specified in paragraph (1) (a) and (b) as may be specified in the order, and an order under this paragraph shall be subject to [<sup>F57</sup>negative resolution].

**F55** 1998 NI 9

**F56** 2003 NI 13

**F57** Words in art. 24(7) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 134** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

### **Non-appearance of accused: issue of warrant**

**25.**—(1) Without prejudice to the power of a court of summary jurisdiction under Article 138 to estreat a recognizance to appear, where the accused has failed to appear at a hearing or adjourned hearing the court may, if the complaint has been substantiated on oath and the court considers it undesirable by reason of the gravity of the offence to proceed in the absence of the accused, issue a warrant for his arrest.

(2) Where an accused has been convicted in his absence by a court of summary jurisdiction of an offence punishable with imprisonment and the court—

(a) cannot proceed in his absence by virtue of Article 23(3); or

(b) considers it undesirable by reason of the gravity of the offence to proceed in his absence;

the court may issue a warrant for his arrest.

(3) Where the accused has failed to appear in answer to a summons, the court shall not issue a warrant for his arrest unless it is proved that the summons was duly served upon him or that he is evading service.

(4) Where the accused has failed to appear at an adjourned hearing the court shall not issue a warrant unless it is satisfied that reasonable steps have been taken to bring to the attention of the accused notice of the time and place of the adjourned hearing.

(5) Paragraph (1) shall not apply to an adjournment by reason of the requirements of Article 24(2)(b) and that paragraph and paragraph (2) shall not apply to an adjournment on the occasion of the accused's conviction in his absence under Article 24(2) except where the accused fails to appear at the time and place appointed for the adjourned hearing.

### **[<sup>F58</sup>Proceedings invalid where accused did not know of them**

**25A.**—(1) Where a summons has been issued under Article 20 and a magistrates' court has begun to hear the complaint to which the summons relates, then, if—

(a) the accused, at any time during or after the trial, makes a statutory declaration that he did not know of the summons or the proceedings until a date specified in the declaration, being a date after the court has begun to hear the complaint; and

(b) within 21 days of that date the declaration is served on the clerk of petty sessions,

without prejudice to the validity of the complaint, the summons and all subsequent proceedings shall be void.

(2) For the purposes of paragraph (1) a statutory declaration shall be deemed to be duly served on the clerk of petty sessions if it is delivered to him, or left at his office, or is sent in a registered letter or by the recorded delivery service addressed to him at his office.

(3) If on the application of the accused it appears to a court of summary jurisdiction that it was not reasonable to expect the accused to serve such a statutory declaration as is mentioned in paragraph (1) within the period allowed by that paragraph, the court may accept service of such a declaration by the accused after that period has expired; and a statutory declaration accepted under this paragraph shall be deemed to have been served as required by that paragraph.

(4) Where any proceedings have become void by virtue of paragraph (1), the complaint shall not be heard again by the same resident magistrate or justice of the peace or, where the complaint was heard by a juvenile court, any member of the court which heard the complaint.]

F58 1989 NI 12

### **Non-appearance of complainant**

26. Where an accused appears at the time and place appointed for the hearing or adjourned hearing of a complaint charging a summary offence the court may, if the complainant (having in the case of a warrant due notice of the accused's arrest) does not appear,—

- (a) dismiss the complaint; or
- (b) order it to be struck out; or
- (c) adjourn or further adjourn the hearing to a future day; or
- (d) if evidence has been received on a previous occasion, proceed in the absence of the complainant.

### **Non-appearance of both parties**

27. Where at the time and place appointed for the hearing or adjourned hearing of a complaint charging a summary offence neither the complainant nor the accused appears, the court may—

- (a) dismiss the complaint; or
- (b) order it to be struck out; or
- (c) adjourn or further adjourn; or
- (d) if evidence has been received on a previous occasion, proceed in their absence.

### **Power of court of summary jurisdiction to authorise taking deposition of person sick or unable to attend**

28.—(1) Where a court of summary jurisdiction is satisfied by the evidence of a duly qualified medical practitioner that a person, who is able and willing to give material information relating to a summary offence, or relating to any person accused of such offence, is so ill as to be unable to travel or where for any reason the attendance of a person before the court cannot conveniently be procured the court may adjourn the hearing in order that a deposition of that person may be taken in writing before a resident magistrate or other justice of the peace sitting out of petty sessions.

(2) Subject to paragraph (3), the deposition shall be admissible in evidence either for or against the accused without further proof thereof if it purports to be signed by the resident magistrate or justice of the peace by whom it purports to be taken.

(3) The deposition shall not be admissible in evidence either for or against the accused unless it is proved that reasonable notice of the intention to take the deposition had been served upon the person (whether complainant or accused) against whom it is proposed to be given in evidence and that he or his counsel or solicitor had or would have had if he had chosen to be present, an opportunity of cross-examining the person making the deposition.

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(4) The provisions of this section are in addition to and not in derogation of<sup>F59</sup> Articles 25 and 26 of the Criminal Justice (Children) (Northern Ireland) Order 1998].

**F59** 1998 NI 9

*Right to claim trial by jury for certain summary offences*

**Right to claim trial by jury for certain summary offences**

**29.**—(1) Where a person over the age of fourteen years is charged before a court of summary jurisdiction with a summary offence for which he is liable, or would if he were adult be liable, to be sentenced by the court to imprisonment for a term exceeding six months<sup>F60</sup>. . . , he may, subject to the provisions of this Article, claim to be tried by a jury, unless the offence is an offence under—

- (a) any provision of the Explosives Act 1875<sup>F61</sup>;
- (b) section 1 or 2 of the Protection of the Person and Property Act (Northern Ireland) 1969<sup>F62</sup>;
- (c) section 4 of the Explosives Act (Northern Ireland) 1970<sup>F63</sup>;
- (d) Article 3(1), 3(1) and (3), 4 or 5 of the Criminal Damage (Northern Ireland) Order 1977<sup>F64</sup> which is triable summarily by virtue of Article 9(1) of that Order;

*Sub#para. (e) rep. by 1991 NI 3*

- [<sup>F65</sup>(f) Article 3, 61(2) or 64 of the Firearms (Northern Ireland) Order 2004]
- [<sup>F66</sup>(g) Article 18(3) of the Public Order (Northern Ireland) Order 1987 (riotous behaviour)]
- [<sup>F67</sup>(h) Article 5(1) or (2) of the Criminal Justice (Northern Ireland) Order 2003 (absconding by person admitted to bail)]
- [<sup>F67</sup>(i) paragraph 1(1) or (2) of Schedule 2 to the Justice (Northern Ireland) Act 2004 (absconding by person admitted to bail in respect of a scheduled offence).]
- [<sup>F68</sup>(j) Article 22 of the Public Order (Northern Ireland) Order 1987;
- (k) the Crossbows (Northern Ireland) Order 1988;
- (l) section 139(1), 139A(1) [<sup>F69</sup>or (2)] or 141(1) of the Criminal Justice Act 1988;
- (m) Article 53 or 54(1) of the Criminal Justice (Northern Ireland) Order 1996;
- (n) section 1 or 2 of the Knives Act 1997.]
- [<sup>F70</sup>(o) section 93 of the Justice (Northern Ireland) Act 2010.]

(2) Where under paragraph (1) or any other enactment a person charged with a summary offence is entitled to claim to be tried by a jury, his claim shall be of no effect unless he appears in person and makes it before he pleads to the charge; and, where under any enactment the prosecution is entitled to claim that the accused shall be tried by a jury, the claim shall be of no effect unless it is made before the accused pleads to the charge.

(3) A magistrates' court before which a person is charged with a summary offence for which he may claim to be tried by a jury shall, before asking him whether he pleads guilty, inform him of his right and, if the court thinks it desirable for the information of the accused, tell him to which court he would be committed for trial and explain what is meant by being tried summarily; and shall then ask him whether he wishes, instead of being tried summarily, to be tried by a jury.

(4) Where the accused is charged with an offence for which he is entitled under paragraph (1) to be tried by a jury if he has been previously convicted of a like offence but not otherwise, the court shall explain to him that he may have a right to claim trial by a jury and, after giving him the same

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information as is provided by paragraph (3), shall ask him whether, if he has that right, he wishes, instead of being tried summarily, to be tried by a jury.

(5) If—

- (a) under this Article or under any other enactment a person charged with a summary offence is entitled to claim to be tried by a jury and claims to be so tried; or
- (b) the prosecution exercises any right conferred by any enactment to claim that the accused shall be tried by a jury;

the court shall deal with the complaint in all respects as if it were for an offence punishable on conviction on indictment only; and the offence, whether or not indictable otherwise than by virtue of any such claim, shall be deemed to be an indictable offence.

<b>F60</b>	2003 c. 42
<b>F61</b>	1875 c. 17
<b>F62</b>	1969 c. 29 (NI)
<b>F63</b>	1970 c. 10 (NI)
<b>F64</b>	1977 NI 4
<b>F65</b>	2004 NI 3
<b>F66</b>	2003 NI 13
<b>F67</b>	2004 c. 4
<b>F68</b>	Art. 29(1)(j)-(n) added (16.7.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), <b>90(10)</b> ; S.R. 2008/293, <b>art. 2</b> , Sch. para. 14
<b>F69</b>	Words in art. 29(1)(l) inserted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 110(1), 111(1)(h), <b>Sch. 7 para. 3(1)</b> (with s. 106(4))
<b>F70</b>	Art. 29(1)(o) inserted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 110(1), 111(1)(h), <b>Sch. 7 para. 3(2)</b> (with s. 106(4))

### *Preliminary investigation of indictable offences*

#### **Preliminary investigation**

**30.**—(1) Subject to<sup>F71</sup> Articles 28 and 29 of the Criminal Justice (Children) (Northern Ireland) Order 1998], the preliminary investigation of an indictable offence may be conducted by a magistrates' court.

(2) Subject to paragraph (3), the written depositions of witnesses and other evidence at a preliminary investigation shall be given or taken in the presence of the accused, and the accused shall be at liberty to cross-examine any witness for the prosecution.

(3) The court may allow evidence to be given before it in the absence of the accused if the court considers that by reason of his disorderly conduct before the court it is not practicable for the evidence to be given in the presence of the accused.

(4) After the evidence of witnesses for the prosecution has been taken, the accused may<sup>F72</sup> . . . , give evidence on his own behalf and call witnesses; and the prosecution shall be at liberty to cross-examine any witness for the accused and any accused giving evidence on his own behalf.

(5) Any such statement shall be taken down in writing and may be given in evidence at the trial of the accused without further proof thereof.

<b>F71</b>	1998 NI 9
<b>F72</b>	1989 NI 12

*Status: Point in time view as at 06/03/2015.*

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### *Preliminary inquiry into indictable offences*

#### **Power to conduct preliminary inquiry**

**31.**—(1) If the prosecution requests a magistrates' court to conduct a preliminary inquiry and the accused does not object to such an inquiry, a magistrates' court, instead of conducting a preliminary investigation, may conduct a preliminary inquiry into an indictable offence.

(2) If the prosecution does not request the court to conduct a preliminary inquiry<sup>F73</sup> or if] the accused objects to such an inquiry the court shall conduct a preliminary investigation.

(3) Where two or more persons are charged together with an indictable offence and—

- (a) one or more of those persons objects to the conducting of a preliminary inquiry, but
- (b) the other person or persons do not so object,

the court may proceed to conduct such an inquiry in respect of any such person not so objecting unless any person so objecting satisfies the court that his interests would be unduly or unreasonably prejudiced by the conduction of such inquiry.

**F73** 1986 NI 15

#### **Documents to be furnished to court and served on accused**

**32.**—(1) If the prosecution intends to request the court to conduct a preliminary inquiry the prosecution shall—

- (a) furnish a written notice of that intention together with copies of the documents mentioned in sub-paragraph (b) to the clerk of petty sessions for the district in which the preliminary inquiry is to be held; and
- (b) cause a copy of that notice together with the following documents, that is to say—
  - (i) a statement of the complaint made against him;
  - (ii) a statement of the evidence of each witness upon whose evidence the complaint is based;
  - (iii) a list of exhibits, if any, to be produced or referred to by the witness referred to in head (ii) together with—
    - [<sup>F74</sup>(aa) in the case of a written exhibit, a copy of that exhibit or a notice of the time and place when that exhibit may be examined by the accused or his solicitor or any witness whom the accused may wish to call at his trial to give evidence relating to it; and
    - (bb) in the case of any other exhibit, a notice of the time and place when that exhibit may be examined as mentioned in paragraph (aa);]

to be served on the accused, or if there is more than one accused person upon each such person, a reasonable time before the day fixed for the conduct of the preliminary inquiry.

(2) The accused shall have the right to inspect every exhibit, either by himself or in consultation with his solicitor or any witness whom the accused may wish to call at his trial.

(3) The prosecution may withdraw the request for, and the accused may object to, the conducting of a preliminary inquiry at any time up to the commencement of such inquiry.

(4) If, when the accused appears before the court and the charge is read to him according to law,—

- (a) the court is not satisfied that the accused understands the effect of proceeding by way of preliminary inquiry; or

- (b) the court is satisfied that in all the circumstances the accused has not had sufficient notice of any evidence to be tendered at the preliminary inquiry; or
  - (c) the documents mentioned in paragraph (1) (b) have not been served on the accused,
- the court shall remand the accused in accordance with Article 47.

F74 1991 NI 16

### Requirements as to written statements

**33.**—(1) A magistrates' court conducting a preliminary inquiry may admit the statement of the evidence to be given by a witness to the like extent as oral evidence to the like effect by that person if the following conditions are complied with, that is to say—

- (a) the statement shall be in writing,
- (b) the statement shall purport to be signed by the person who made it,
- (c) the statement shall contain a declaration by that person to the effect that—
  - (i) it is true to the best of his knowledge and belief, and
  - (ii) he made the statement knowing that, if it were tendered in evidence, whether at a preliminary inquiry or at the trial of the accused, he would be liable to prosecution if he wilfully said in it anything which he knew to be false or did not believe to be true,which declaration shall be endorsed with the signature of the person who recorded the statement, or to whom the statement was delivered by the maker of the statement for the purposes of the proceedings,
- (d) none of the parties objects to the statement being admitted in evidence upon a ground which would constitute a valid objection to oral evidence to the like effect as the contents of the statement,
- (e) if the statement is made by a person under the age of twenty-one, his age shall be set forth in the statement, and
- (f) if it is made by a person who cannot read, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read and that after it was so read the maker of the statement assented to it.

(2) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this Article shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(3) Nothing in this Article shall prevent the giving in evidence of any confession, or other statement, made at any time by the accused which is admissible in law against him.

### Preliminary inquiry

**34.**—(1) A magistrates' court conducting a preliminary inquiry shall—

- (a) consider the documents mentioned in Article 32 (1) (b) other than a statement which is not admitted in evidence by reason of an objection taken to it under Article 33 (1) (d), together with the exhibits admitted in evidence, and
- (b) read aloud so much of every written statement as is admitted in evidence, or the purport thereof, if requested to do so by either the prosecution or the accused, and
- (c) consider any submissions which may be made by or on behalf of the prosecution or the accused.



*Status: Point in time view as at 06/03/2015.*

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(2) The court, the prosecution and the accused may each require any person, whether his statement has been tendered in evidence or not, to attend and give evidence on oath which evidence shall be recorded as a written deposition and any such witness may be cross-examined and re-examined on his evidence; and where the evidence of a person is so recorded as a written deposition the court shall disregard any statement made by that person which has been furnished under Article 32.

(3) The court shall ask the accused if he has anything to say in answer to the charge and at the same time shall caution the accused that he is not obliged to say anything unless he wishes to do so and that whatever he does say may be taken down in writing and may be given in evidence at his trial; and whatever the accused says in answer after such caution shall be taken down in writing and read over to him and shall be signed by the resident magistrate<sup>F75</sup> . . . conducting the preliminary inquiry.

(4) The accused's statement made and appearing to be signed under paragraph (3) may be given in evidence at his trial without further proof unless it is proved that it was not signed by the resident magistrate<sup>F75</sup> . . . by whom it purports to have been signed.

(5) It shall be a sufficient compliance with this Article requiring the court to read aloud the contents of any written statement, or the purport of any such statement, or to address the accused, for the presiding resident magistrate<sup>F75</sup> . . . to cause the statement, or the purport of that statement, to be read or the accused to be addressed in the appropriate manner, by an official of the court.

**F75** 2002 c. 26

*Provisions applying to preliminary investigations and preliminary inquiries*

**Committal proceedings to be in open court**

**35.** The place in which a magistrates' court is sitting to conduct a preliminary investigation or a preliminary inquiry shall be deemed to be an open court except where—

- (a) any statutory provision contains an express provision to the contrary; or
- (b) it appears to the court that the ends of justice would not be served by sitting in open court for the whole or any part of the investigation or inquiry.

**Adjournment of committal proceedings to another petty sessions district**

**36.—(1)** A magistrates' court which adjourns a preliminary investigation or a preliminary inquiry and remands the accused in custody may, if satisfied that it is desirable in the interests of justice or security to do so and that the accused would not thereby suffer hardship, order that the adjourned investigation or, as the case may be, inquiry shall be held at a time and place specified in the order being a place within the same petty sessions district as the prison to which the person charged or any person with whom he is charged in the same proceedings is remanded.

(2) A magistrates' court before which any adjourned investigation or inquiry is held, if satisfied as mentioned in paragraph (1), may, without prejudice to any other power exercisable by it, order that such investigation or, as the case may be, inquiry shall be adjourned to—

- (a) a place within the same petty sessions district as that in which the investigation or inquiry was begun; or
- (b) a place within the same petty sessions district as the prison to which the person charged or any person with whom he is charged in the same proceedings is further remanded.

(3) Where an order is made under this Article the adjourned investigation or inquiry shall be held at the time and place specified in the order and may be so held before the magistrates' court by whom the investigation or inquiry is adjourned or before a court acting for the petty sessions



district in which the place to which the investigation or inquiry is adjourned is situated and where the adjourned investigation or inquiry takes place before such last-mentioned court, the complaint and any depositions and recognizances already taken in, or notices and documents furnished in respect of, the matter shall be deemed for all purposes to have been made or taken by or before, or furnished to the clerk of, such last-mentioned court.

(4) Without prejudice to paragraphs (1) to (3), a magistrates' court may, if satisfied as mentioned in paragraph (1), adjourn any preliminary investigation of, or preliminary inquiry into an indictable offence or any adjourned investigation or inquiry to another magistrates' court having jurisdiction to conduct a preliminary investigation of or, as the case may be, a preliminary inquiry into, such an offence and in the case of an adjourned investigation or inquiry, the complaint and any depositions and recognizances already taken in, or notices and documents furnished in respect of, the matter shall be deemed for all purposes to have been made or taken by or before, or furnished to the clerk of, the last-mentioned court.

(5) Where an investigation or inquiry has been adjourned under this Article, the place to which the investigation or, as the case may be, the inquiry has been adjourned shall, without prejudice to section 7 of the Criminal Justice Act (Northern Ireland) 1945<sup>F76</sup> be deemed, for all purposes incidental upon the prosecution, trial and punishment of the offender, to be the place in which the offence was committed.

**F76** 1945 c. 15 (NI)

### **Discharge or committal for trial**

**37.**—(1) Subject to this Order, and any other enactment relating to the summary trial of indictable offences, where the court conducting the preliminary investigation is of opinion after taking into account any statement of the accused and any evidence given by him or on his behalf that the evidence is sufficient to put the accused upon trial by jury for any indictable offence it shall commit him for trial; and, if it is not of that opinion, it shall, if he is in custody for no cause other than the offence which is the subject of the investigation, discharge him.

- (2) Where the court conducting a preliminary inquiry is of opinion, after considering—
- (a) the documents referred to in Article 32 (1) (b) (i) and (iii) and the statements admitted in evidence under Article 33 (1);
  - (b) any written depositions;
  - (c) the exhibits;
  - (d) any submissions made under Article 34 (1); and
  - (e) the statement of the accused made and signed under Article 34 (3),

that the evidence is sufficient to put the accused upon trial by jury for any indictable offence it shall commit him for trial; and if it is not of that opinion, it shall, if he is in custody for no cause other than the offence which is the subject of the inquiry, discharge him.

- (3) The court may commit the accused for trial—
- (a) in custody, that is to say, by committing him to<sup>[F77</sup> custody] there to be kept until delivered in due course of law; or
  - (b) subject to Article 38, on bail, that is to say, by taking from him a recognizance conditioned for his appearance at the time and place of trial;

and may, if the accused is remanded in custody, certify in the prescribed manner its consent to the accused being released on bail until his trial and in that event shall fix the amount of the recognizance with a view to its being taken subsequently.

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(4) Subject to Article 38, a magistrates' court upon an application by or on behalf of a person committed for trial, may release that person from prison, if he is in custody for no other cause, at any time before the first sitting of the court before which he is to be tried upon his entering into a recognizance pursuant to paragraph (3) (b).

(5) <sup>F78</sup> . . . magistrates' court rules may provide for the transmission to the court or trial of documents and exhibits connected with a preliminary investigation or inquiry.

(6) If the court conducting the preliminary inquiry discharges the accused the court shall read aloud the contents of every written statement admitted in evidence; and where the contents of the written statements are so read out an order made under Article 44 (2) shall not apply to the evidence contained in those statements.

**F77** 1989 NI 15

**F78** Words in art. 37(5) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 146, 148(1), Sch. 5 para. 68, Sch. 18 Pt. 3; S.I. 2006/1014, art. 2(a), Sch. 1

#### **Bail in treason, etc.**

**38.** A person charged with treason or with any offence under the Treason Felony Act 1848<sup>F79</sup> shall not be admitted to bail except by order of the High Court or of the Secretary of State.

**F79** 1848 c. 12

#### **Binding over complainant and witnesses to attend trial**

**39.—**(1) A magistrates' court conducting a preliminary investigation or inquiry shall bind each witness whose deposition it has taken, other than the accused and any witness merely as to his character, by a recognizance to attend and to give evidence at the trial of any indictment against the accused and, except where the complainant is a public or local authority or an officer of a public or local authority acting as such or is a constable acting as such, it shall bind the complainant by a recognizance to prosecute the accused at the trial.

(2) Where it appears to the court, after taking into account any representation made by or on behalf of the accused or the prosecution, that the attendance at the trial of any witness examined before the court is unnecessary by reason of any statement by the accused, or of the accused having admitted before the court the truth of the charge or of the evidence of the witness being merely of a formal nature, the court shall—

- (a) if the witness has not already been bound over, bind him over conditionally to attend the trial, that is to say, on notice being given to him and not otherwise;
- (b) if the witness has already been bound over, direct that he shall be treated as having been bound over to attend the trial conditionally as aforesaid.

(3) Where in pursuance of paragraph (2) a witness has been, or is treated as having been, bound over conditionally to attend the trial of a person committed for trial, then, at any time before the opening of the Crown Court at which the person is to be tried, if the prosecution or the person committed for trial gives notice to the chief clerk that he wishes the witness to attend at the trial, the chief clerk shall forthwith give notice in writing to the witness that he is required so to attend in pursuance of his recognizance.

(4) A magistrates' court on committing any person for trial shall inform him of his right to require the attendance at the trial of any witness bound over, or treated as bound over, conditionally as aforesaid and of the steps he must take for the purpose of enforcing such attendance.

(5) If any witness on being required to enter into a recognizance under this article refuses to do so, the court may commit him to prison until the trial of the accused or until he sooner enters into the recognizance, so, however, that if the court does not commit the accused for trial or if for any reason it appears to the court that the attendance of the witness will not be necessary it may release the witness.

### **Committal after non-appearance of accused**

**40.**—(1) Where an indictment has been presented at any court against a person who is then at large and who has not appeared and pleaded to such indictment, whether or not he has been bound by recognizance to appear, the clerk of the court may, subject to paragraph (2), at any time after the sitting of the court at which the indictment was presented upon the application of the prosecution grant him a certificate of such indictment having been presented.

(2) A certificate shall not be granted under paragraph (1) in respect of any indictment in respect of which the judge has, pursuant to section 2 (3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969<sup>F80</sup> directed the entry of “No Bill”.

(3) Upon production of the certificate to any justice of the peace, the justice may issue a warrant to arrest such person and for his appearance before a magistrates' court.

(4) Upon the arrest of a person for whom a warrant is issued under paragraph (3) and upon its being proved on oath that the person so arrested is the person who is charged and named in the indictment, the magistrates' court before whom such person has been brought shall, without further inquiry, commit him for trial remanding him to prison meanwhile or admitting him to bail in accordance with the provisions of Article 37.

(5) Nothing in this Article shall be deemed to prevent any judge, the chief clerk or other officer from issuing any warrant (which he might otherwise by law issue) in any such case for the arrest of any such person.

**F80** 1969 c. 15 (NI)

### **Power to take deposition of dying person**

**41.** Where a resident magistrate or other justice of the peace is satisfied by the evidence of a duly qualified medical practitioner that a person (in this Article referred to as the “dying person”) who is able and willing to give material information relating to any indictable offence or to any person accused of any such offence, is dangerously ill and not likely to recover from such illness, and it is not practicable to take the dying person's deposition in accordance with the preceding provisions of this Part he may take in writing the deposition of the dying person on oath, wherever that person may be, and shall sign the deposition.

### **Reading at court of trial deposition or statements taken at preliminary investigation or inquiry of a dying person**

**42.**—(1) The deposition of a witness whose attendance is stated to be unnecessary under Article 39 (2) or the deposition taken at the preliminary investigation or inquiry of a witness who is proved at the trial to be dead or insane, or so ill as to be unable to travel or to be kept out of the way by the procurement of the accused or on his behalf, may, subject to this Article, be read at the court of trial provided—

- (a) it is proved, either by the oath of a credible witness or by a certificate purporting to be signed by the resident magistrate or<sup>F81</sup> lay magistrate] before whom the deposition purports to have been taken or by the clerk of petty sessions, that the deposition was taken in the presence of the accused and that the accused or his counsel or solicitor (or in the case

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of a witness called by the accused, the prosecution) had an opportunity of cross-examining the witness;

- (b) the deposition purports to be signed by the resident magistrate or<sup>F81</sup> lay magistrate] before whom it purports to be taken; and
- (c) in the case of a witness conditionally bound over to attend the trial under Article 39 no notice has been served upon him requiring his attendance.

(2) Paragraph (1) shall not have effect if it is proved that the deposition, or, where the proof required by paragraph (1) (a) is given by means of a certificate, that the certificate, was not in fact signed by the magistrate or clerk of petty sessions by whom it purports to have been signed.

(3) The statement of a witness admitted in evidence at a preliminary inquiry (other than a statement which is to be disregarded under Article 34 (2)) which complies with the provisions of<sup>F82</sup> Article 33] may, with the leave of the court, be read as evidence at the trial—

- (a) by agreement between the prosecution and the defence, or
- (b) if the court is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or to secure his attendance have been made without success.

(4) Where notice is given requesting the attendance of a witness conditionally bound over under Article 39 at the court of trial and such notice is given so late as to make such attendance impracticable the judge of that court may, unless he is satisfied that such attendance is essential in the interests of justice, disallow the notice and authorise the reading of the deposition of that witness at the trial of an accused.

(5) The deposition of a dying person taken and purporting to be signed in accordance with Article 41 may be read at the court of trial if it is proved that—

- (a) the dying person has since died or is unable to travel or give evidence; and
- (b) reasonable notice of the intention to take the deposition was served upon the person (whether prosecution or defence) against whom it is proposed to be given in evidence and that the accused or his counsel or solicitor, or as the case may require, the prosecution had or might have had, if he or, as the case may be, the prosecution had chosen to be present, an opportunity of cross-examining the dying person making the deposition.

**F81** 2002 c. 26

**F82** 1986 NI 15

### **Facts to be stated on open court on plea of guilty**

**43.**—(1) Where an accused who has been committed for trial under the provisions of Article 37 (2) pleads guilty on arraignment to any count in the indictment preferred against him, the prosecution shall, unless the judge otherwise directs, before the accused is sentenced in respect of the offence charged in that count, state in open court sufficient of the facts upon which that count is based as will make known the identity of the accused, and the nature and gravity of the offence charged in that count.

(2) The failure of the prosecution to comply, or adequately to comply, with the provisions of paragraph (1) shall not affect the validity of any sentence passed upon the accused.

## Reports of preliminary proceedings

44.—(1) Where at a preliminary investigation or inquiry an opening statement is made on behalf of the prosecution, such statement shall not be printed<sup>[F83]</sup> published or included in a relevant programme].

(2) Subject to Article 37 (6), where at a preliminary investigation or inquiry objection is taken as to the admissibility of any evidence the court may, if satisfied that the objection is made in good faith, order that such evidence and any discussion relating thereto shall not be printed<sup>[F83]</sup> published or included in a relevant programme] and, if it appears to the court that publication of any part of the evidence adduced before it (whether or not any objection is made thereto) would prejudice the trial of the accused, it may order that such part of the evidence shall not be printed<sup>[F83]</sup> published or included in a relevant programme].

(3) Any person who acts in contravention of paragraph (1) or of any order made under paragraph (2) shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding<sup>[F84]</sup> level 5 on the standard scale], or to both.

(4) A prosecution for an offence under this Article shall not be instituted otherwise than by or with the consent of the Attorney General.

<sup>F85</sup>(5) For the purposes of Article 7 (2) of the Prosecution of Offences (Northern Ireland) Order 1972<sup>F86</sup>, paragraph (4) shall be deemed to be a relevant consent provision passed before 30th March 1972.

<sup>[F83]</sup>(6) In this Article “relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990) for reception in Northern Ireland.]

**F83** 1990 c. 42

**F84** 1984 NI 3

**F85** prosp. rep. by 2002 c. 26

**F86** 1972 NI 1

### *Summary trial of indictable offences*

## Summary trial of certain indictable offences

45.—(1) Where—

- (a) an adult is charged before a resident magistrate (whether sitting as a court of summary jurisdiction or out of petty sessions under Article 18 (2)) with an indictable offence specified in Schedule 2; and
- (b) the magistrate, at any time, having regard to—
  - (i) any statement or representation made in the presence of the accused by or on behalf of the prosecution or the accused;
  - (ii) the nature of the offence;
  - (iii) the absence of circumstances which would render the offence one of a serious character; and
  - (iv) all the other circumstances of the case (including the adequacy of the punishment which the court has power to impose);thinks it expedient to deal summarily with the charge; and

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(c) the accused, subject to paragraph (2) having been given at least twenty-four hours' notice in writing of his right to be tried by a jury, consents to be dealt with summarily; the magistrate may, subject to the provisions of this Article and Article 46, deal summarily with the charge and convict and sentence the accused whether upon the charge being read to him he pleads guilty or not guilty to the charge.

(2) The requirement of the notice mentioned in paragraph (1) (c) may be waived in writing by the accused.

(3) A resident magistrate shall not deal summarily under this Article with any offence without the consent of the prosecution.

(4) For the purpose of this Article and Article 46 “adult” means a person who is, in the opinion of the court, of the age of<sup>F87</sup> eighteen] years or upwards.

F87 2002 c. 26

### **Powers of court in dealing summarily with an indictable offence**

**46.**—(1) A resident magistrate may assume the power to deal with an offence summarily under Article 45 at any stage of the proceedings whether any evidence shall then have been given or not and, where such power is assumed, the provisions of any enactment (including this Order) for the time being in force relating to summary offences shall (subject to the succeeding provisions of this Article and to magistrates' courts rules) apply as if the offence were a summary offence and not an indictable offence.

(2) Notwithstanding that a magistrate has decided to deal summarily with an offence specified in Schedule 2 and that the accused has consented to be dealt with summarily the magistrate may reconsider his decision at any time prior to his determination to convict and sentence the accused, and, if satisfied that it is expedient to do so, he may decide, instead of dealing with the offence summarily, to commit the accused for trial and in such event depositions shall be taken or, as the case may require, a preliminary inquiry shall be conducted, and the offence dealt with in all respects as if the magistrate had not decided to deal with it summarily.

(3) Where a resident magistrate deals summarily with an offence specified in Schedule 2 and the offence is such that, had the accused been charged on indictment with that offence, he might lawfully have been convicted of an alternative offence, the magistrate may convict him of such alternative offence.

(4) Upon convicting the accused the magistrate may sentence him to be imprisoned for a term not exceeding twelve months or to a fine not exceeding<sup>F88</sup> the prescribed sum within the meaning of Article 4 of the Fines and Penalties (Northern Ireland) Order 1984] or to both, so, however, that the accused shall not be sentenced to imprisonment for any greater term or to a fine of any greater amount than the term or fine to which he would be liable if tried on indictment.

(5) If the magistrate dismisses a charge with which he has dealt summarily under the provisions of Article 45 and of this Article, the dismissal shall in all cases have effect as though it were an acquittal on a trial of the charge upon indictment.

F88 1984 NI 3

## Remands

### Period of remand in custody or in bail

47.—(1) Without prejudice to any other provision of this Order, in adjourning any proceedings for an offence a magistrates' court may remand the accused—

- (a) in custody, that is to say, commit him to custody to be brought at the end of the period of remand before that court or any other magistrates' court for the county court division for which the court is acting or before any other magistrates' court having jurisdiction to conduct the proceedings; or
- (b) on bail, that is to say, take from him a recognizance conditioned for his subsequent appearance before such court;

and may, if the accused is remanded in custody, certify in the prescribed manner its consent to the accused being remanded on bail in accordance with sub-paragraph (b) in which event the court shall fix the amount of the recognizance with a view to its being taken subsequently.

(2) Subject to<sup>F89</sup> . . . Article 49, the period for which the accused is remanded in custody shall not exceed—

[<sup>F89</sup>(a) in the case where—

- (i) the accused is before the court and he consents, or
- (ii) the court has previously remanded the accused in custody for the same offence; or
- (iii) the accused is already detained under a custodial sentence,

twenty-eight days;]

(b) in any other case, eight days;

commencing on the day following that on which the accused is remanded, so, however, that in a case to which [<sup>F89</sup> sub-paragraph (a)(iii)] applies, the court shall inquire as to the expected date of the accused's release from that detention, and if it appears that he will be released before twenty-eight days have expired, he shall not be remanded in custody for a period exceeding eight days or (if longer) a period ending with that date.

*Para. (3) rep. by 2003 NI 13*

(4) Where the accused is admitted to bail and he and prosecution consent, the period for which the accused is remanded may exceed the period referred to in paragraph (2),<sup>F89</sup> . . .

[<sup>F90</sup>(4A) In the exercise of its power under paragraph (1)(a) to remand in custody an accused to whom this paragraph applies, a magistrates' court may, on an application made under this paragraph by a member of the Royal Ulster Constabulary not below the rank of inspector, commit the accused to detention at a police station.

(4B) In the exercise of its power under paragraph (1)(a) to remand in custody an accused to whom this paragraph applies, a magistrates' court may, on an application made under this paragraph by a member of the Royal Ulster Constabulary not below the rank of inspector, commit the accused to the custody (otherwise than at a police station) of a constable.

(4C) The period for which an accused is remanded under paragraph (4A) or (4B) shall not exceed 3 days commencing on (and including) the day following that on which he is remanded.

(4D) Paragraphs (4A) and (4B) apply to an accused who—

- (a) is not under the age of 21 years; and
- (b) is not already detained under a custodial sentence.



*Status: Point in time view as at 06/03/2015.*

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(4E) An accused shall not be committed to detention at a police station under paragraph (4A) unless there is a need for him to be so detained for the purposes of inquiries into other offences; and, if a person is committed to such detention—

- (a) he shall, as soon as that need ceases, be brought back before the magistrates' court which committed him or any other magistrates' court for the county court division for which that court was acting or before any other magistrates' court having jurisdiction to conduct the proceedings;
- (b) he shall be treated as a person in police detention to whom the duties under Article 40 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (responsibilities in relation to persons detained) relate; and
- (c) his detention shall be subject to periodic review at the times set out in Article 41 of that Order (review of police detention).

(4F) An accused shall not be committed to the custody (otherwise than at a police station) of a constable under paragraph (4B) unless there is a need for him to be kept in such custody for the purposes of inquiries into other offences; and if a person is committed to such custody, he shall, as soon as that need ceases, be brought back before the magistrates' court which committed him or any other magistrates' court for the county court division for which that court was acting or before any other magistrates' court having jurisdiction to conduct the proceedings.]

(5) The court may order the accused to be brought before it at any time before the expiration of the period for which he has been remanded.

(6) In this Article, “custodial sentence” includes—

- (a) an order for detention in a young offenders centre within the meaning of the Treatment of Offenders Act (Northern Ireland) 1968;
- [<sup>F91</sup>(b) a juvenile justice centre order within the meaning of the Criminal Justice (Children) (Northern Ireland) Order 1998<sup>F92</sup>.]

*Sub#para. (c) rep. by 1998 NI 9*

- F89** 2003 NI 13
- F90** 1991 NI 16
- F91** 1998 NI 9
- F92** prosp. insertion by 2002 c. 26

#### **Modifications etc. (not altering text)**

- C20** Art. 47 applied (with modifications) (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **110(8)** (with reg. 110(12))
- C21** Art. 47(2) modified by Extradition Act 2003 (c. 41), ss. 23(3)(b), 89(3)(b) (as inserted (15.1.2007) by Police and Justice Act 2006 (c. 48), ss. 42, 53, **Sch. 13 para. 7**); S.I. 2006/3364, **art. 2**
- C22** Art. 47(2) modified by Extradition Act 2003 (c. 41), s. 76B(3)(b) (as inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 70, 116(1)**); S.I. 2009/3096, **art. 3(m)** (with art. 4(1)(d))

#### **Continuous bail**

**48.** Where a person is remanded on bail<sup>F93</sup> any recognizance or condition of bail may provide] for his appearance at every time and place to which during the course of proceedings the hearing may be adjourned, without prejudice, however, to the power of the court to vary the order at any subsequent hearing.

**F93** Words in art. 48 substituted (12.3.2007) by [Criminal Justice \(Northern Ireland\) Order 2005 \(S.I. 2005/1965 \(N.I. 15\)\)](#), arts. 1(2)(c), 21(1); S.R. 2007/55, [art. 2](#)

### **Remand in case of illness or accident**

**49.** A magistrates' court, on being satisfied that a person accused of an offence who has been remanded on bail or in custody is by reason of illness or accident unable at the expiration of the period for which he is remanded to appear personally before the court, may in the absence of the accused, order him to be further remanded for such time as may be deemed reasonable and any recognizance requiring or conditioned for the appearance of the accused before the court shall be deemed to be varied so as to require the appearance of the accused at every time and place to which he is so remanded.

### **Remand to enable inquiries to be made after conviction**

**50.** The powers of a magistrates' court to adjourn the hearing of a case shall include power, after a person has been convicted and before he has been sentenced or otherwise dealt with, to adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case, but such adjournment shall not in any single period exceed twenty-eight days commencing on the day after the adjournment or extend beyond the next sitting of the court, whichever is the longer, or if the person convicted is in custody, the period specified in paragraph (2) or, as the case may be, paragraph (3) of Article 47.

### **Remand for inquiry into physical or mental condition**

**51.—(1)** Without prejudice to the powers of the court under Article 50, where a person is charged before a magistrates' court with an offence punishable on summary conviction with imprisonment or an indictable offence which is tried summarily, and the court is satisfied that the person charged did the act or made the omission charged but is of opinion that an inquiry ought to be made into his physical or mental condition, the court may remand him for such period as the court thinks necessary to enable a medical examination and report to be made so, however, that no single period shall, where the person remanded is on bail, exceed twenty-eight days commencing on the day after that on which the person is remanded or extend beyond the next sitting of the court whichever is the longer or, where the person remanded is in custody, exceed the period specified in paragraph (2) or, as the case may be, paragraph (3) of Article 47.

(2) Where a person is remanded on bail under this Article, it shall be a condition of the recognizance that he shall—

- (a) undergo medical examination by a duly qualified medical practitioner and for the purpose attend at a hospital or place, or upon any such practitioner, specified in the recognizance; or
- (b) where the inquiry is into his mental condition (and the recognizance so specifies), undergo medical examination by two duly qualified practitioners (one of whom shall be a practitioner<sup>F94</sup> appointed by [<sup>F95</sup>the Health and Social Care Regulation and Quality Improvement Authority] for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986]) and for the purpose attend at a hospital or place, or upon any duly qualified medical practitioner, specified in the recognizance, and comply with any directions which may be given to him by any practitioner so specified;

and if arrangements have been made for his reception, it may be a condition of the recognizance that the person shall, for the purpose of the examination, reside until the expiration of such period as may be specified in the recognizance or he is discharged therefrom, whichever occurs first, in a hospital or place so specified.

**Status:** Point in time view as at 06/03/2015.

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(3) Where a person charged before a magistrates' court with an indictable offence is remanded in custody or committed for trial in custody and the court is of opinion that an inquiry ought to be made into his physical or mental condition, the court may order such inquiry to be made.

(4) Where a person charged before a magistrates' court with an indictable offence is admitted to bail on his entering a recognizance conditioned for his appearance at the Crown Court and the magistrates' court is of opinion that an inquiry ought to be made as aforesaid, the conditions of the recognizance may, in addition to the condition for his appearance, include the like conditions as could be included in the conditions of the recognizance with respect to the like inquiry by virtue of paragraph (2).

**F94** 1986 NI 4

**F95** Words in art. 51(2)(b) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 7](#); S.R. 2009/114, [art. 2](#)

### **Power of court to sentence person convicted by another court in same county court division**

**52.** Where a person has been convicted of an offence by a court of summary jurisdiction and the case has been adjourned or where a person has been remanded under Article 51 he may be sentenced or otherwise dealt with for that offence by any court of summary jurisdiction acting for the same petty sessions district or any other petty sessions district of the same county court division as the court by which he was convicted or remanded.

*Sums adjudged to be paid by a conviction*

### **Fixing sum adjudged to be paid by a conviction with regard to means of offender**

**53.**—<sup>F96</sup>(1) A magistrates' court, in fixing the amount of a sum adjudged to be paid by a conviction (other than a fine which falls to be fixed under Article 29 of the Criminal Justice (Northern Ireland) Order 1996)]shall, amongst other things, take into consideration the means of the offender so far as they appear or are known to the court, the expedience of allowing such amount to be paid by instalments and the amount and frequency of any such instalments.

<sup>F96</sup>(2) Paragraph (1) applies whether taking into consideration the means of the offender has the effect of increasing or reducing the amount of the sum.]

**F96** 1996 NI 24

### **Power to impose fine in lieu of imprisonment**

**54.**—(1) Without prejudice to any other enactment, where a magistrates' court has power to impose imprisonment for<sup>F97</sup> an offence] and, apart from this Article, has not authority to impose a fine for that offence, the court may, subject to paragraph (2), instead of imposing a sentence of imprisonment impose a fine<sup>F97</sup> which—

- (a) for an offence punishable on conviction on indictment or on summary conviction, shall not exceed the prescribed sum within the meaning of Article 4 of the Fines and Penalties (Northern Ireland) Order 1984; and
- (b) for an offence punishable on summary conviction only, shall—
  - (i) not exceed<sup>F98</sup> level 3 on the standard scale], and

- (ii) not be of such an amount as would subject the offender, in default of payment of the fine, to a longer term of imprisonment or detention than the term to which he is liable on conviction of the offence.]

*Para. (2) rep. by 1984 NI 3*

**F97** 1984 NI 3  
**F98** 1994 NI 15

### **Power to reduce fine or pecuniary penalty under certain enactments**

**55.**—(1) A magistrates' court may reduce the amount of any fine or other pecuniary penalty which it may impose for an offence under any enactment to which this Article applies, notwithstanding that the amount of the fine or other pecuniary penalty is prescribed under any such enactment.

(2) This Article applies to any enactment in force upon 1st January 1946, other than an enactment relating to Her Majesty's revenue under the control of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise except in so far as that enactment has been adapted and applied in relation to duties and taxes in respect of the imposing, charging, levying and collection of which the Parliament of Northern Ireland had under section 21 of the Government of Ireland Act 1920<sup>F99</sup> power to make laws.

(3) Nothing in this Article shall prejudice or affect the operation of section 34 (2) of the Finance Act 1935<sup>F100</sup> or section 150 (2) of the Customs and Excise Management Act 1979<sup>F101</sup>, (which relate to the enactments excluded by paragraph (2)).

**F99** 1920 c. 67  
**F100** 1935 c. 24  
**F101** 1979 c. 2

## *Imprisonment*

### **Consecutive terms of imprisonment**

**56.**—(1) Where a magistrates' court imposes imprisonment on any person, it may order that the term of that imprisonment shall commence on the expiration of any other term of imprisonment imposed by that or any other court; but where a magistrates' court imposes two or more terms of imprisonment to run consecutively the aggregate of those terms shall not, except as provided by this Article or any other enactment, exceed twelve months.

(2) Where two or more terms of imprisonment in respect of indictable offences tried summarily are imposed to run consecutively the aggregate of those terms shall not exceed eighteen months.

(3) Without prejudice to section 149 (3) of the Customs and Excise Management Act 1979 or section 63 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972<sup>F102</sup>, where a person has been sentenced by a magistrates' court to imprisonment in default of payment of, or in default of sufficient distress to satisfy, a sum adjudged to be paid by a conviction the court may order that the sentence shall begin at the expiration of any term of imprisonment imposed for that offence on that person in addition to such sum, but so that the aggregate term of sentences of imprisonment to which this paragraph applies shall not where a person is convicted of a summary offence exceed twelve months or where a person is convicted of an indictable offence tried summarily exceed eighteen months.

**Status:** Point in time view as at 06/03/2015.

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**F102** 1972 c. 11 (NI)

**Power to order detention for one day in precincts of the court in lieu of imprisonment**

57.—(1) Without prejudice to any other enactment, where a magistrates' court has power to impose imprisonment, the court in lieu of imposing imprisonment may, subject to paragraph (2), order the offender to be detained within the precincts of the court, or at any police station, till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct.

(2) The court shall, in making an order under this Article, take into consideration the distance between the place of detention and the offender's abode (if his abode is known to, or ascertainable by, the court) and shall not make any such order of detention under this Article as will deprive the offender of a reasonable opportunity of returning to his abode on the day on which the order of detention is made.

*Supplemental matters in connection with criminal procedure*

**Disposal of non-pecuniary forfeitures**

58. Subject to any other enactment governing forfeiture or the disposal of things forfeited, anything other than money forfeited on a conviction by a magistrates' court or the forfeiture of which may be enforced by such court shall be sold or otherwise disposed of in such manner as the court may direct; and the proceeds may be applied as if they were a fine imposed under the enactment on which the proceedings for the forfeiture are founded.

**Modifications etc. (not altering text)**  
C23 Art. 58 excluded (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), ss. 103, 126(2), [Sch. 5 para. 6](#)

**Aiders and abettors**

59. Without prejudice to any other enactment, a person who aids, abets, counsels or procures the commission by another person<sup>F103</sup> of] a summary offence shall himself be guilty of that offence and may be tried and convicted (whether or not he is charged as a principal) either by a court having jurisdiction to try that other person or by a court having by virtue of his own offence jurisdiction to try him and may be tried either together with that other person or before or after that other person has been tried.

**F103** 1986 NI 15

**Attempt or incitement, etc., to commit summary offences**

60.—(1) <sup>F104</sup> .....

(2) Where a person is charged before a magistrates' court with a summary offence, and it appears to the court that the person charged did not commit the offence charged but that he was guilty of attempting to commit that offence, the court may convict him of attempting to commit that offence and may punish him in the same manner as if he has been charged with attempting to commit that offence.

**F104** Art. 60(1) repealed (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(2), 92, 94(1), Sch. 6 para. 56, Sch. 14 (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)(i)

Art. 61 rep. by 1989 NI 12

## PART VI

### DEBT AND EJECTMENT PROCEEDINGS

#### *Debt proceedings*

#### **Debt proceedings**

**62.**—(1) A court of summary jurisdiction may exercise jurisdiction in proceedings for the recovery of any liquidated sum due on foot of any debt, account, contract or covenant where—

- (a) the amount or balance claimed does not exceed £100; and
- (b) if the claim is for the balance due on foot of an account, the whole account does not exceed £250.

(2) Where any sum is declared under any enactment whether passed before or after the commencement of this Part to be a debt or civil debt recoverable summarily, that sum, whether it exceeds £100 or not, may be recovered in proceedings under this Article.

(3) A minor may proceed in his own name in a court of summary jurisdiction as if he were of full age for any sum, not exceeding £100, due to him for wages or for work or services.

(4) A cause of action shall not be divided into two or more causes of action for the purpose of bringing proceedings before a court of summary jurisdiction.

(5) Proceedings under this Article shall be commenced by the issue of a process.

#### **Modifications etc. (not altering text)**

**C24** Art. 62 applied (2.1.2013) by The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (S.I. 2012/3032), reg. 1, Sch. 3 para. 5(3)(b) (with regs. 5, 8)

#### **Time within which debt proceedings may be commenced**

**63.**—(1) Subject to [<sup>F105</sup>this Article and Article 63A], debt proceedings shall not be commenced after the expiration of six years from the time when the cause of action arose.

(2) Nothing in paragraph (1) shall affect a period of limitation prescribed by any enactment for proceedings to recover a sum which is declared by that or any other enactment to be a debt or civil debt recoverable summarily.

**F105** Words in art. 63(1) substituted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), reg. 9(2) (with reg. 1(2))

#### **[<sup>F106</sup>Extension of time limit: mediation**

**63A.**—(1) Paragraph (2) applies where—

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- (a) there is mediation in relation to a relevant cross border dispute giving rise to debt proceedings; and
  - (b) the period of 6 years referred to in Article 63(1) (“the limitation period”) would, apart from this Article, expire—
    - (i) in the period of 8 weeks after the date on which the mediation ends;
    - (ii) on the date on which the mediation ends; or
    - (iii) after the date on which all of the parties to the dispute agree to participate in the mediation but before the date on which the mediation ends.
- (2) Where this paragraph applies, the limitation period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.
- (3) For the purposes of paragraph (1) and (2), a mediation in relation to a relevant cross-border dispute ends on the date of the first of these to occur—
- (a) all of the parties reach an agreement in resolution of the dispute;
  - (b) all of the parties agree to end the mediation;
  - (c) a party notifies all of the other parties of that party's withdrawal,
  - (d) a period of 14 days expires after a request made by one party to another party for confirmation of whether the other party has withdrawn and the other party does not respond in that period, or
  - (e) a period of 14 days expires after the date on which the mediator's tenure ends (by reason of death, resignation or otherwise) and a replacement mediator has not been appointed in that period.
- (4) In this Article—
- “the Directive” means Directive [2008/52/EC](#) of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;
- “mediation” and “mediator” have the meanings given by Article 3 of the Directive; and
- “relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive.]

**F106** [Art. 63A](#) inserted (18.4.2011) by [Cross-Border Mediation Regulations \(Northern Ireland\) 2011 \(S.R. 2011/157\)](#), [reg. 9\(3\)](#) (with [reg. 1\(2\)](#))

### **Abandonment of so much of claim as is in excess of jurisdiction**

**64.**—(1) A plaintiff whose cause of action is for a liquidated sum the amount of which is beyond the jurisdiction of a court of summary jurisdiction may abandon the excess and proceed for the balance of the claim and in such case the plaintiff shall forfeit the excess and shall not be entitled to recover it by any other proceedings whatsoever,

(2) A defendant shall have the like right in respect of his set-off or counterclaim.

### **Counterclaims**

**65.**—(1) Where a counterclaim is beyond the jurisdiction of a court of summary jurisdiction, the court may try the claim and may, if it thinks fit and upon such terms as to security or otherwise as it thinks fit, stay execution until the counterclaim has been disposed of.

(2) Where a counterclaim or any part of it is admitted, the court of summary jurisdiction may direct the amount admitted to be set off pro tanto without prejudice to any proceedings to recover the balance.



## Decree for recovery of sum claimed to be full discharge

66.—(1) Where a claim is for the payment of the balance of an account, or for part of a sum alleged to be due and the remainder of it has been abandoned in order to bring the claim within the jurisdiction of a court of summary jurisdiction, a decree for recovery of the sum claimed or part of it or of dismissal shall, subject to the right of any party to appeal under Part XII, be a full discharge of all demands in respect of the account for the balance of which proceedings were brought or for the whole of the claim as the case may be.

(2) In this Article “claim” includes a set-off or counterclaim.

## *Ejectment proceedings*

### Ejectment proceedings

67.—(1) This Article and Articles 68 to 72 shall apply to—

- (a) any lands or premises which are let by any landlord from quarter to quarter or for any lesser period of time, at a rent not exceeding the rate of £110 a year;
- (b) any lands or premises into which any person has been put by permission of the owner as servant, herdsman or caretaker;
- (c) any lands or premises the possession of which under the provisions of any enactment in force on 30th November 1965 was recoverable summarily under or in accordance with Part IV of the Summary Jurisdiction Act (Northern Ireland) 1935 or under and in accordance with sections 84, 85 and 89 of the Landlord and Tenant Law Amendment Act, Ireland, 1860<sup>F107</sup>;

and any such lands or premises are in this Article and those Articles referred to as “premises”.

(2) For the purposes of this Article and any other enactment conferring jurisdiction in ejectment on a court of summary jurisdiction, any attempted letting to which section 1 (1) of the Rent Restriction (Defective Tenancies) Act (Northern Ireland) 1944<sup>F108</sup> or section 9 (1) of the Rents Tribunals (Extension of Jurisdiction) Act (Northern Ireland) 1954<sup>F109</sup> applied shall be deemed to be a valid letting.

(3) Where—

- (a) the term or interest of the tenant in any premises is ended or has been determined by a notice to quit, and the tenant, or (if the tenant does not himself occupy the premises or occupies only part of them) the person by whom the premises or any part of them are occupied, neglects or refuses to deliver up possession of the same; or
- (b) any person is put into possession of any premises by permission of the owner as servant, herdsman or caretaker and that person (or any other person claiming through or under him) refuses or omits to quit and deliver up possession of the premises on demand made by the owner of them or his known agent or receiver; or
- (c) the landlord or owner of the premises is entitled to recover or take possession of the premises under or in accordance with any of the provisions referred to in paragraph (1) (c);

the landlord or owner of the premises may proceed for their recovery before a court of summary jurisdiction by issuing a process requiring the tenant or occupier to appear before the court to show cause why the landlord or owner should not be put into possession of the premises.

(4) If the tenant or occupier does not appear before the court of summary jurisdiction or appears, but does not show to the satisfaction of the court cause why possession should not be given, the court may order the issue of a decree directing that the landlord or owner be put into possession of the premises.

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**F107** 1860 c. 154

**F108** 1944 c. 6 (NI)

**F109** 1954 c. 16 (NI)

### **Time within which ejectment proceedings may be commenced**

**68.** Ejectment proceedings before a court of summary jurisdiction shall not be brought after the expiration of six years from the time when the cause of action arose.

### **Liability of overholding tenant or occupier**

**69.—**(1) Where the tenant or occupier of any premises overholds the premises after the tenancy or occupation has been lawfully determined and the possession has been lawfully demanded of him by the landlord or owner, such tenant or occupier shall be liable to pay the landlord or owner in respect of the period during which he has so overheld an amount equal to the rent or other sum, if any, which would have otherwise accrued due for that period if the tenancy or occupation had not been determined.

(2) The provisions of section 76 of the Landlord and Tenant Law Amendment Act, Ireland, 1860 shall not apply to ejectment proceedings before a court of summary jurisdiction.

### **Recognizance upon appeal against order for possession of premises**

**70.—**(1) Where an appeal is made under Part XII by the tenant or occupier against an order made in ejectment proceedings, he shall upon entering the recognizance referred to in Article 149 further undertake according to the condition in the recognizance not to do, or suffer others to do, any waste, injury or dilapidation to the premises pending the appeal and to satisfy all rent, mesne profits or any sum accruing due to the landlord or owner under Article 69 (1) while the tenant or occupier continues in possession.

(2) Where the tenant or occupier fails to observe such undertaking or any other condition of the recognizance, the court of summary jurisdiction which made the order against which the appeal was to be made, may, without prejudice to Article 151, in ordering the estreat of the recognizance order that the landlord or owner may receive out of the sum due under the recognizance, an amount sufficient to cover any loss which the landlord or owner appears to the court to have sustained by the failure of the tenant or occupier to observe any condition of the recognizance.

### **References to landlord or owner**

**71.** References in Article 67 to 70 to the landlord or owner of premises shall include the executors or administrators or assigns of such landlord or owner and his or their agent duly authorised in writing, or the receiver of the rents of his estate and, in relation to premises subject to the enactments referred to in Article 67 (1) (c), shall include any person entitled under those enactments to recover possession of the premises.

## *Procedure in debt and ejectment proceedings*

### **Issue of process**

**72.—**(1) A process issued in debt proceeding shall require the defendant to appear before a court of summary jurisdiction acting for the petty sessions district in which the defendant resides or in which any business premises used or occupied by him are situated.

(2) A process issued in ejectment proceedings shall require the defendant to appear before a court of summary jurisdiction acting for the petty sessions district in which the premises, the subject of the proceedings, or any part of those premises are situated.

(3) A claim for the recovery of arrears of rent or sums due under Article 69 not exceeding £100 due in respect of lands or premises may be joined together with a claim in ejectment proceedings and commenced by the issue of the same process.

### **Hearing, etc., of proceedings commenced by process**

**73.**—(1) Subject to this Article, in debt or ejectment proceedings, the court shall hear the parties, and evidence in support of the claim or defence or counterclaim, if any.

(2) Where the plaintiff appears but the defendant does not appear, the court may, after proof of service of the process upon the defendant, proceed in his absence or adjourn the proceedings.

(3) Where neither the plaintiff nor defendant appears, or where the plaintiff does not appear and the defendant though appearing does not apply for a dismissal of the claim, the court may strike out the proceedings.

(4) Where the plaintiff informs the court that he does not wish to apply for an order and the defendant does not appear, or if appearing, does not object, the court may allow the proceedings to be withdrawn.

(5) The court may, without hearing the parties or any evidence, upon such conditions as may be prescribed, make an order against a defendant upon his consent to the making of such order.

(6) The court may dismiss a claim in debt or ejectment proceedings either upon the merits or without prejudice to a further claim in respect of the same matter.

### *Powers exercisable by court in debt or ejectment proceedings*

### **Order that decree shall issue either absolutely or conditionally**

**74.**—(1) Where an order is made in debt or ejectment proceedings, the court may order that a decree shall issue to give effect to its order (including any order as to costs made in such proceedings).

(2) A court of summary jurisdiction in debt or ejectment proceedings may order that a decree shall issue either absolutely or conditionally in as full and ample a manner as might be done in like cases by a county court having jurisdiction but a court of summary jurisdiction shall not grant an injunction.

### **Transfer of proceedings to county court**

**75.**—(1) Where it appears at any stage of debt or ejectment proceedings that a court of summary jurisdiction has not jurisdiction in the proceedings because the matters involved are beyond the jurisdiction of the court or that for any other reason the matter is more fit to be tried by the county court, the proceedings need not on that account be dismissed but the court of summary jurisdiction may order the proceedings to be transferred to the county court upon such terms as appear to it to be proper and after the proceedings are transferred they shall continue in the county court as if they had been commenced in that court and as if the defendant had entered a defence.

(2) Where proceedings are transferred under this Article to the county court, the county court judge may give such directions as to procedure and as to costs in the court of summary jurisdiction as he may deem proper and the parties shall comply with the directions.

(3) In this Article “the county court” means the county court for the county court division in which the proceedings would have been tried if originally commenced in the county court.

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## PART VII

### APPEALS AND APPLICATIONS TO COURTS OF SUMMARY JURISDICTION

#### Modifications etc. (not altering text)

- C25** Pt. VII (art. 76) applied (31.12.2009) by Safety of Sports Grounds (Northern Ireland) Order 2006 (S.I. 2006/313 (N.I. 2)), arts. 1(2), **8(4)(a)** (with art. 26); S.R. 2009/287, **art. 2(e)**
- C26** Pt. VII (art. 76) applied (15.3.2006) by Safety of Sports Grounds (Northern Ireland) Order 2006 (S.I. 2006/313 (N.I. 2)), arts. 1(3)(c), **10(3)(a)** (with art. 26)
- C27** Pt. VII (art. 76) applied (31.12.2009) by Safety of Sports Grounds (Northern Ireland) Order 2006 (S.I. 2006/313 (N.I. 2)), arts. 1(2), **17(5)(a)** (with art. 26); S.R. 2009/287, **art. 2(j)**
- C28** Pt. VII (art. 76) applied (24.7.2006) by Products of Animal Origin (Third Country Imports) Regulations (Northern Ireland) 2006 (S.R. 2006/291), **art. 21(6)**
- C29** Pt. VII (art. 76) applied (with modifications) by Foyle Fisheries Act (Northern Ireland) 1952 (c. 5), s. 55(3) (as substituted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **20(1)** (with art. 32)); S.R. 2008/232, **art. 2**, Sch.
- C30** Pt. VII (art. 76) applied (with modifications) by Foyle Fisheries Act (Northern Ireland) 1952 (c. 5), s. 55B(4) (as inserted (1.6.2008) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **20(2)** (with art. 32)); S.R. 2008/232, **art. 2**, Sch.
- C31** Pt. VII (art. 76) applied (2.8.2010) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), **60(11)** (with art. 77); S.R. 2010/226, **art. 2**, Sch.
- C32** Pt. VII (art. 76) applied (prosp.) by Taxis Act (Northern Ireland) 2008 (c. 4), **ss. 34(2)**, 59
- C33** Pt. VII (art. 76) applied (prosp.) by Taxis Act (Northern Ireland) 2008 (c. 4), **ss. 37(10)**, 59
- C34** Pt. VII (art. 76) applied (2.2.2009) by Beef and Veal Labelling Regulations (Northern Ireland) 2009 (S.R. 2009/2), **reg. 11(1)**
- C35** Pt. VII (art. 76) applied (6.4.2010) by Detergents Regulations 2010 (S.I. 2010/740), regs. 1(2), **29(3)**
- C36** Pt. VII (art. 76) applied (17.5.2010) by Beef and Veal Labelling Regulations (Northern Ireland) 2010 (S.R. 2010/155), **reg. 6(3)**
- C37** Pt. VII applied (18.1.2012 for specified purposes, 1.4.2012 in so far as not already in operation) by Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c. 23), s. 78, **Sch. 2 para. 1(2)**; S.R. 2012/13, art. 2(1)(2), Sch. 1, Sch. 2
- C38** Pt. VII applied (1.9.2012) by Taxis Act (Northern Ireland) 2008 (c. 4), **ss. 37(10)**, 59; S.R. 2012/313, art. 2(2), Sch. Pt. 2
- C39** Pt. VII applied (1.9.2012) by Taxis Act (Northern Ireland) 2008 (c. 4), **ss. 34(2)**, 59; S.R. 2012/313, art. 2(2), Sch. Pt. 2

#### Proceedings to be commenced by notice

**76.**—(1) Where an enactment—

- (a) provides for an appeal to be made to a court of summary jurisdiction and neither that enactment nor magistrates' courts rules provide for the procedure to be adopted on such appeal; or
- (b) authorises an application for a licence, permit, certificate or other authorisation or for the removal of a disqualification or disability to be made to a magistrates' court and either that enactment or magistrates' courts rules direct that the provisions of this Part shall apply; or
- (c) authorises an application to a magistrates' court for the disposal, destruction or forfeiture of property;

such appeal or application shall be initiated by notice under this Part.

(2) A notice under this Part shall be served at such time as may be prescribed before the date upon which the appeal or application is to be made upon—

- (a) the clerk of the petty sessions acting for the court to which the appeal or application is to be made;
- (b) in the case of an appeal from any decision or determination of a public or local authority, that authority, and any other party to the appeal and any person by whom or on whose behalf representations were made to the authority in respect of the subject-matter of the decision or determination;
- (c) any such person as may be prescribed.

(3) The court shall hear—

- (a) the appellant or applicant;
- (b) any evidence relevant to the appeal or application;
- (c) any person (other than the clerk of petty sessions) served with notice under this Part or entitled to be heard on the appeal or application who opposes it and asks to be heard on it; and
- (d) any relevant evidence that person may adduce.

(4) Without prejudice to the foregoing provisions of this Article the court may direct that a copy of the notice be served upon any person whom the court may consider a proper person to be served.

(5) A magistrates' court may in any case where the public interest requires an immediate order for the destruction of property dispense with the service of a notice under paragraph (2) and order immediate destruction of the property in accordance with the enactment under which the order is made.

## PART VIII

### CIVIL PROCEEDINGS UPON COMPLAINT

#### **Modifications etc. (not altering text)**

**C40** Pt. VIII (arts. 77-90) applied (1.10.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 58, 100(5), **Sch. 5 paras. 5(3), 10(2)** (with s. 101(2)); S.I. 2009/1493, **art. 2(a)(c)**

**C41** Pt. VIII (arts. 77-90) applied (prosp.) by Charities Act (Northern Ireland) 2008 (c. 12), **ss. 147(4), 185(1)**

#### *Jurisdiction exercisable upon civil complaint*

#### **Nature of jurisdiction upon civil complaint**

**77.**—(1) For the purposes of this Part “civil matters” means a matter in which proceedings, other than proceedings under Parts V to VII, may be brought before a court of summary jurisdiction.

(2) Proceedings in a civil matter shall be upon complaint and in accordance with this Part.

(3) Without prejudice to section 42 (2) of the Interpretation Act (Northern Ireland) 1954, where there is no express provision as to which court of summary jurisdiction shall have jurisdiction to hear and determine a complaint in a civil matter a court of summary jurisdiction shall have jurisdiction to hear the complaint if it relates to—

- (a) anything done within the county court division for which the court sits;

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- (b) anything left undone that ought to have been done within that county court division;
- (c) anything done or which ought to have been done either within that county court division or elsewhere by a person residing or carrying on a business within that county court division;
- (d) any lands or premises situated within that county court division; or
- (e) any matters arising within that county court division.

### **Time within which civil complaint must be made to give jurisdiction**

**78.**—(1) Subject to this Article and Article 98(1) and to Article 35 of the Domestic Proceedings (Northern Ireland) Order 1980<sup>F110</sup> and without prejudice to the provisions of any other enactment as to the time within which proceedings may be commenced, a court of summary jurisdiction shall not have jurisdiction to hear and determine a complaint in a civil matter unless the complaint is made within six months from the time when the cause of complaint arose, or, where the cause of complaint is a continuing one, from the time such cause last ceased to continue.

(2) Nothing in this Article shall prevent a court of summary jurisdiction from exercising the powers referred to in Article 86 at any time after an order for the periodical payment of money has been made.

**F110** 1980 NI 5

### *Procedure upon complaint*

#### **Issue of summons upon civil complaint**

**79.** Where a complaint in a civil matter is made to a justice of the peace for a county court division upon which a court of summary jurisdiction sitting for that county court division has power to make an order against any person, the justice may issue a summons directed to that person requiring him to appear before that court to answer to the complaint.

#### **Hearing of proceedings upon civil complaint**

**80.**—(1) On the hearing of a complaint in a civil matter the court shall, if the defendant appears or is represented, state the substance of the complaint.

(2) The court, after hearing the evidence and any such representations as may be made by or on behalf of the parties, may make any order which it has jurisdiction to make upon the complaint or may dismiss the complaint.

(3) If the defendant or his representative on his behalf admits the truth of the complaint or consents, the court may, subject to any enactment to the contrary, make the order without hearing evidence.

#### **Non-appearance of defendant**

**81.**—(1) Where at the time and place appointed for the hearing or adjourned hearing of a complaint in a civil matter, the complainant appears but the defendant does not, the court may, without prejudice to its powers under this Order or any other enactment, adjourn or further adjourn or, subject to paragraph (2), proceed in his absence.

(2) The court shall not begin to hear the complaint or proceed in the absence of the defendant, unless either it is proved to the satisfaction of the court, upon oath or by affidavit or in such other manner as may be prescribed, that the summons was served on him within what appears to the court

to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer to the complaint.

### **Non-appearance of complainant**

**82.** Where at the time and place appointed for the hearing or adjourned hearing of a complaint in a civil matter the defendant appears but the complainant does not, the court may dismiss the complaint, order it to be struck out, adjourn, further adjourn, or, if sufficient evidence has been received on a previous occasion, proceed in the absence of the complainant.

### **Non-appearance of both parties**

**83.** Where at the time and place appointed for the hearing or adjourned hearing of a complaint in a civil matter neither the complainant nor the defendant appears the court may dismiss the complaint, order it to be struck out or adjourn or further adjourn the hearing, or, if evidence has been received on a previous occasion, proceed in their absence.

### **Dismissal without prejudice to further complaint as to same matter**

**84.—(1)** Where it has been unable for any reason to adjudicate upon the merits of a complaint in a civil matter, the court may order that the complaint be dismissed without prejudice to a further complaint alleging the same cause of complaint.

(2) Where the court, having adjudicated upon the merits of a complaint in a civil matter, dismisses the complaint the dismissal shall be expressed to be on the merits.

### *Powers exercisable upon civil complaint*

### **[<sup>F111</sup>Orders for periodical payment: means of payment**

**85.—(1)** In any case where a court of summary jurisdiction orders money to be paid periodically by one person (“the debtor”) to another (“the creditor”), then—

- (a) if the order is a qualifying maintenance order, the court shall at the same time exercise one of its powers under sub-paragraphs (a) to (d) of paragraph (3);
- (b) if the order is not a maintenance order, the court shall at the same time exercise one of its powers under sub-paragraphs (a) and (b) of that paragraph.

(2) For the purposes of this Article a maintenance order is a “qualifying maintenance order” if, at the time it is made, the debtor is ordinarily resident in Northern Ireland.

(3) The powers of the court are—

- (a) the power to order that payments under the order be made directly by the debtor to the creditor;
- (b) the power to order that payments under the order be made to the collecting officer;
- (c) the power to order that payments under the order be made by the debtor to the creditor by such method of payment falling within paragraph (7) as may be specified;
- (d) the power to make an attachment of earnings order under Part IX to secure payments under the order.

(4) The collecting officer shall be the clerk of petty sessions or such other person as may be appointed by the Lord Chancellor as collecting officer of the petty sessions district for which the court of summary jurisdiction making the order acts or the collecting officer of some other petty sessions district.



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(5) In any case where—

- (a) the court proposes to exercise its power under sub-paragraph (c) of paragraph (3), and
- (b) having given the debtor an opportunity of opening an account from which payments under the order may be made in accordance with the method of payment proposed to be ordered under that paragraph, the court is satisfied that the debtor has failed, without reasonable excuse, to open such an account,

the court in exercising its power under that paragraph may order that the debtor open such an account.

(6) In deciding, in the case of a maintenance order, which of the powers under sub-paragraphs (a) to (d) of paragraph (3) it is to exercise, the court having (if practicable) given them an opportunity to make representations shall have regard to any representations made—

- (a) by the debtor,
- (b) by the creditor, and
- (c) if the person who applied for the maintenance order is a person other than the creditor, by that other person.

(7) The methods of payment referred to in paragraph (3)(c) are the following, this is to say—

- (a) payment by standing order; or
- (b) payment by any other method which requires one person to give his authority for payments of a specific amount to be made from an account of his to an account of another's on specific dates during the period for which the authority is in force and without the need for any further authority from him.

(8) Where—

- (a) in the case of an order which is a qualifying maintenance order under—  
*Head (i) rep. by 1995 NI 2*

(ii) the Domestic Proceedings (Northern Ireland) Order 1980<sup>F112</sup>, the Civil Partnership Act 2004<sup>F113</sup>; or under, or having effect as if made under, Schedule 1 to the Children (Northern Ireland) Order 1995],

the court does not propose to exercise its power under sub-paragraph (c) or (d) of paragraph (3); or

- (b) in the case of an order which is not a maintenance order under that Act or<sup>F113</sup> those Orders], the court does not propose to exercise its powers under sub-paragraph (a) of that paragraph,

the court shall, unless upon representations expressly made in that behalf by the person who applied for the order that it is satisfied that it is undesirable to do so, exercise its power under sub-paragraph (b) of that paragraph.

(9) The Lord Chancellor may by regulations confer on courts of summary jurisdiction, in addition to their powers under sub-paragraphs (a) to (d) of paragraph (3), the power (the “additional power”) to order that payments under a qualifying maintenance order be made by the debtor to the creditor or the collecting officer (as the regulations may provide) by such method of payment as may be specified in the regulations.

(10) Any reference in any statutory provision to sub-paragraphs (a) to (d) of paragraph (3) (but not a reference to any specific sub-paragraph of that paragraph) shall be taken to include a reference to the additional power, and the reference in paragraph (11) to the additional power shall be construed accordingly.

(11) Regulations under paragraph (9) may make provision for any statutory provision concerning, or connected with, payments under maintenance orders to apply, with or without modifications, in relation to the additional power.

(12) Regulations under paragraph (9) made by the Lord Chancellor shall be subject to [F114negative resolution].

(13) Where a court of summary jurisdiction makes an order under paragraph (3)(b) there may be paid to the collecting officer (other than [F115a civil servant in the Department of Justice]) by the Lord Chancellor a sum in respect of his remuneration and expenses not exceeding such percentage of the money actually paid through him as may be fixed by the Lord Chancellor.

(14) The person against whom an order referred to in paragraph (3)(b) has been made shall give notice to the collecting officer of any change of his address; and any person who fails to give such notice without reasonable excuse shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(15) For the purposes of this Article—

“debtor” and “creditor” shall be construed in accordance with paragraph (1);

“maintenance order” means any order specified in Article 98(11) and includes any such order which has been rescinded, revoked or discharged if any arrears are recoverable under it;

and the reference in paragraph (1) to money paid periodically by one person to another includes, in the case of a maintenance order, a reference to a lump sum paid by instalments by one person to another.]

**F111** 1993 NI 6

**F112** 2004 c. 33

**F113** 1995 NI 2

**F114** Words in art. 85(12) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 135** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

**F115** Words in art. 85(13) substituted (12.4.2010) by Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010 (S.R. 2010/133), art. 4, **Sch. para. 15(3)** (with arts. 5-7)

### Orders for periodical payment: proceedings by collecting officer

**85A.**—(1) Where payments under a relevant UK order are required to be made periodically—

(a) to or through the collecting officer, or

(b) by any method of payment falling within Article 85(7),

and any sums payable under the order are in arrear, the collecting officer of the relevant court shall, if the person for whose benefit the payments are required to be made so requests in writing, and unless it appears to the collecting officer that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of those sums.

(2) Where payments under a relevant UK order are required to be made periodically to or through the collecting officer, the person for whose benefit the payments are required to be made may, at any time during the period in which the payments are required to be so made, give authority in writing to the collecting officer of the relevant court for the collecting officer to proceed as mentioned in paragraph (3).

(3) Where authority under paragraph (2) is given to the collecting officer of the relevant court, the collecting officer shall, unless it appears to him that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of any sums payable to or through him under the order in question which, on or after the date of the giving of the authority, fall into arrear.

(4) In any case where—

(a) authority under paragraph (2) has been given to the collecting officer of a relevant court, and

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- (b) the person for whose benefit the payments are required to be made gives notice in writing to the collecting officer cancelling the authority,

the authority shall cease to have effect and, accordingly, the collecting officer shall not continue any proceedings already commenced by virtue of the authority.

(5) The person for whose benefit the payments are required to be made shall have the same liability for all the costs properly incurred in or about proceedings taken under paragraph (1) at his request or under paragraph (3) by virtue of his authority (including any costs incurred as a result of any proceedings commenced not being continued) as if the proceedings had been taken by him.

(6) Nothing in paragraph (1) or (3) shall affect any right of a person to proceed in his own name for the recovery of sums payable on his behalf under an order of any court.

(7) In this Article—

“maintenance order” has the same meaning as it has in Article 85;

“the relevant court”, in relation to an order, means—

- (a) in a case where payments under the order are required to be made to or through the collecting officer, a court of summary jurisdiction acting for the petty sessions district for which the collecting officer to or through whom the payments were required to be made acts; and
- (b) in a case where such payments are required to be made by any method of payment falling within Article 85(7), a court of summary jurisdiction acting for the petty sessions district for which the court of summary jurisdiction which made the order sat; or, if the order is not an order made by a court of summary jurisdiction but is an order registered in such a court under, or in accordance with, any statutory provision, the court of summary jurisdiction in which the order is registered;

“relevant UK order” means—

- (a) an order made by a court of summary jurisdiction, other than an order made under Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972;
- (b) an order made by the High Court or a county court and registered under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 in a court of summary jurisdiction; or
- (c) an order made by the High Court in England and Wales or by the Court of Session in Scotland registered in accordance with section 36 of the Civil Jurisdiction and Judgments Act 1982 in a court of summary jurisdiction; and
- (d) an order made by a county court or a magistrates' court in England and Wales or a sheriff court in Scotland and registered under Part II of the Maintenance Orders Act 1950 in a court of summary jurisdiction;

and any reference to payments required to be made periodically includes, in the case of a maintenance order, a reference to instalments required to be paid in respect of a lump sum payable by instalments.

### **Maintenance orders: penalty for breach**

**85B.**—(1) In any case where—

- (a) payments under a relevant Northern Ireland maintenance order are required to be made periodically in the manner mentioned in sub-paragraph (a) or (b) of Article 85A(1), and
- (b) the debtor fails, on or after the date of coming into operation of this Article, to comply with the order in so far as the order relates to the manner of payment concerned,

the person for whose benefit the payments are required to be made may make a complaint to a justice of the peace for the county court division which includes the petty sessions district for which the relevant court is acting giving details of the failure to comply.

(2) If the justice of peace is satisfied that the nature of the alleged failure to comply may be such as to justify the relevant court in exercising its power under paragraph (3), he shall issue a summons directed to the debtor requiring him to appear before the relevant court to answer the complaint.

(3) On the hearing of the complaint, the relevant court may order the debtor to pay a sum not exceeding £1000.

(4) Any sum ordered to be paid under paragraph (3) shall for the purposes of this Order be treated as adjudged to be paid by a conviction of a magistrates' court.

(5) In this Article—

“debtor” has the same meaning as it has in Article 85;

“maintenance order” has the same meaning as it has in Article 85;

“the relevant court” has the same meaning as it has in Article 85A;

“relevant Northern Ireland maintenance order” means—

- (a) a maintenance order made by a court of summary jurisdiction, other than an order made under Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972; or
- (b) an order made by the High Court or a county court and registered under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 in a court of summary jurisdiction;

and any reference to payments required to be made periodically includes a reference to instalments required to be paid in respect of a lump sum payable by instalments.

### **Revocation, variation, etc., of orders for periodical payment**

**86.**—(1) Without prejudice to the provisions of any enactment specified in Article 98(11) and subject to Article 25(2) of the Domestic Proceedings (Northern Ireland) Order 1980<sup>[F116]</sup> and paragraph 42 of Schedule 16 to the Civil Partnership Act 2004], where a court of summary jurisdiction has made an order for money to be paid periodically by one person to another, the court may, by order on complaint, revoke, revive, discharge or vary the order.

<sup>[F117]</sup>(1A) The power under paragraph (1) is not exercisable in relation to a maintenance order which falls to be enforced by a court of summary jurisdiction by virtue of—

- (a) Council Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark and the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011;
- (b) Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.]

<sup>[F118]</sup>(c) the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007;

(d) Part 1 of the Civil Jurisdiction and Judgments Act 1982.]

(2) The power under paragraph (1) to vary an order shall include power to suspend the operation of any provision of the order temporarily and to revive the operation of any provision so suspended.

(3) Where the order mentioned in paragraph (1) is a maintenance order, the power under that paragraph to vary the order shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under sub-paragraphs (a) to (d) of Article 85(3).

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(4) In any case where—

- (a) a court of summary jurisdiction has made a maintenance order, and
- (b) payments under the order are required to be made by any method of payment falling within Article 85(7),

an interested party may apply in writing to the clerk of petty sessions for the order to be varied as mentioned in paragraph (5).

(5) Subject to paragraph (8), where an application has been made under paragraph (4), the clerk, after serving written notice of the application on any other interested party and allowing that party, within the period of 14 days from the date of the serving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the collecting officer.

(6) The clerk may proceed with an application under paragraph (4) notwithstanding that any such interested party as is referred to in paragraph (5) has not received written notice of the application.

(7) In paragraphs (4) to (6) “interested party”, in relation to a maintenance order, means—

- (a) the debtor;
- (b) the creditor; and
- (c) if the person who applied for the maintenance order is a person other than the creditor, that other person.

(8) Where an application has been made under paragraph (4), the clerk may, if he considers it inappropriate to exercise his power under paragraph (5), refer the matter to the court which may vary the order by exercising one of its powers under sub-paragraphs (a) to (d) of Article 85(3).

(9) Paragraphs (5), (6) and (8) of Article 85 shall apply for the purposes of paragraphs (3) and (8) as they apply for the purposes of that Article.

(10) None of the powers of the court, or of the clerk of petty sessions, conferred by paragraphs (3) to (9) shall be exercisable in relation to a maintenance order which is not a qualifying maintenance order (within the meaning of Article 85).

(11) For the purposes of this Article—

“creditor” and “debtor” have the same meaning as they have in Article 85;

“maintenance order” has the same meaning as it has in Article 85; and

the reference in paragraph (1) to money paid periodically by one person to another includes, in the case of a maintenance order, a reference to a lump sum paid by instalments by one person to another.

**F116** 2004 c. 33

**F117** Art. 86(1A) inserted (18.6.2011) by [Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011](#) (S.I. 2011/1484), reg. 9, **Sch. 7 para. 20(2)**

**F118** Art. 86(1A)(c)(d) inserted (1.8.2014) by [The International Recovery of Maintenance \(Hague Convention 2007 etc.\) Regulations \(Northern Ireland\) 2012](#) (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(2)**

#### **[<sup>F119</sup>Interest on arrears**

**86A.**—(1) The Lord Chancellor may by order provide that a court of summary jurisdiction, on the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a Northern Ireland maintenance order, may order that interest of an amount calculated at the prescribed rate be paid on so much of the sum due under the order as the court may determine.

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(2) In paragraph (1) “the prescribed rate” means such rate of interest as the Lord Chancellor may by order prescribe.

(3) An order under this Article may make provision for the manner in which and the periods by reference to which interest is to be calculated.

(4) Where, by virtue of paragraph (1), a court of summary jurisdiction orders the payment of interest on any sum due under a maintenance order—

- (a) then if it orders that the whole or any part of the interest be paid by instalments that order shall be regarded as an instalments order for the purposes of Article 87 and that Article shall accordingly apply in relation to it; and
- (b) the whole of the interest shall be enforceable as a sum adjudged to be paid by the maintenance order.

(5) In this Article—

“Northern Ireland maintenance order” means—

- (a) a qualifying maintenance order made by a court of summary jurisdiction, other than an order made by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972; or
- (b) an order made by the High Court or a county court and registered under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 in a court of summary jurisdiction;

“qualifying maintenance order” has the same meaning as it has in Article 85.

(6) An order under this Article made by the Lord Chancellor shall be made with the concurrence of the Treasury and shall be subject to [<sup>F120</sup>negative resolution].]

**F119** 1993 NI 6

**F120** Words in art. 86A(6) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 136** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

**Modifications etc. (not altering text)**

**C42** Art. 86A(6): functions of Treasury or Minister for the Civil Service transferred to Department of Finance and Personnel (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), **15(4)(f)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

[<sup>F121</sup>**Remission of arrears and manner in which arrears to be paid**

**87.**—(1) On the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a maintenance order made by a court of summary jurisdiction, a court of summary jurisdiction may remit the whole or any part of the sum due under the order.

[<sup>F122</sup>(1A) The power under paragraph (1) is not exercisable in relation to a maintenance order which falls to be enforced by a court of summary jurisdiction by virtue of—

- (a) Council Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark and the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011;

*Status: Point in time view as at 06/03/2015.*

*Changes to legislation: The Magistrates' Courts (Northern Ireland) Order 1981 is up to date with all changes known to be in force on or before 20 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)*

(b) Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.]

[ the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007;

(d) Part 1 of the Civil Jurisdiction and Judgments Act 1982.]

(2) If, on the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a maintenance order made by a court of summary jurisdiction, a court of summary jurisdiction orders that the whole or any part of the sum due under the order be paid by instalments (an “instalments order”), then—

(a) if the maintenance order is a Northern Ireland maintenance order, the court shall at the same time exercise one of its powers under sub-paragraphs (a) to (d) of Article 85(3) in relation to the instalments order;

(b) if the maintenance order is a non-Northern Ireland maintenance order, the court shall at the same time exercise one of its powers under paragraph (3) in relation to the instalments order.

(3) The powers of the court referred to in paragraph (2)(b) are—

(a) the power to order that payments under the order be made directly to the collecting officer;

(b) the power to order that payments under the order be made to the collecting officer, by such method of payment falling within Article 85(7) as may be specified;

(c) the power to make an attachment of earnings order under Part IX to secure payments under the order.

(4) The court may in the course of any proceedings concerning an instalments order or the maintenance order made by a court of summary jurisdiction to which it relates vary the instalments order by exercising—

(a) in respect of a Northern Ireland maintenance order, one of the powers referred to in paragraph (2)(a);

(b) in respect of a non-Northern Ireland maintenance order, one of its powers under paragraph (3).

(5) In respect of a Northern Ireland maintenance order, paragraphs (5), (6) and (8) of Article 85 shall apply for the purposes of paragraphs (2)(a) and (4)(a) as they apply for the purposes of that Article.

(6) In respect of a non-Northern Ireland maintenance order—

(a) paragraph (5) of Article 85 shall apply for the purposes of paragraphs (2)(b) and (4)(b) as they apply for the purposes of that Article but as if for sub-paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under sub-paragraph (b) of Article 87(3);” ; and

(b) in deciding which of the powers under paragraph (3) it is to exercise the court shall have regard to any representations made by the debtor (within the meaning of Article 85).

(7) In this Article—

“maintenance order” has the same meaning as it has in Article 85;

“Northern Ireland maintenance order” has the same meaning as it has in Article 86A;

“non-Northern Ireland maintenance order” means—

(a) a maintenance order registered in, or confirmed by, a court of summary jurisdiction—

(i) under the Maintenance Orders (Facilities for Enforcement) Act 1920;



- (ii) under Part II of the Maintenance Orders Act 1950;
- (iii) under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972;<sup>F124</sup> . . .
- (iv) under Part I of the Civil Jurisdiction and Judgments Act 1982;<sup>[F124F125</sup> . . .]
- (v) <sup>[F124</sup>under Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters <sup>[F126</sup>, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters];<sup>[F127</sup>or
- (vi) under the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007;]
- (b) an order made by the High Court in England and Wales or by the Court of Session in Scotland and registered in accordance with section 36 of the Civil Jurisdiction and Judgments Act 1982 in a court of summary jurisdiction; <sup>F128</sup> . . .
- (c) a maintenance order made by a magistrates' court by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972.  
<sup>[F129</sup>or
- (d) a maintenance order which falls to be enforced by a magistrates' court by virtue of Council Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark and the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011.]]

**F121** 1993 NI 6

**F122** Art. 87(1A) inserted (18.6.2011) by Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484), reg. 9, **Sch. 7 para. 20(4)**

**F123** Art. 87(1A)(c)(d) inserted (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(3)(a)**

**F124** SI 2001/3929

**F125** Word in art. 87(7) repealed (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(3)(b)(i)**

**F126** Words in art. 87(7) inserted (1.7.2007) by Civil Jurisdiction and Judgments Regulations 2007 (S.I. 2007/1655), reg. 5, **Sch. para. 23**

**F127** Words in art. 87(7) inserted (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(3)(b)(ii)**

**F128** Word in art. 87(7) repealed (18.6.2011) by Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484), reg. 9, **Sch. 7 para. 20(5)(a)**

**F129** Words in art. 87(7) inserted (18.6.2011) by Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484), reg. 9, **Sch. 7 para. 20(5)(b)**

### *Domestic proceedings*

#### **Nature of domestic proceedings**

**88.** In this Order the expression “domestic proceedings” means proceedings—

**Status:** Point in time view as at 06/03/2015.

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- (a) under the Maintenance Orders (Facilities for Enforcement) Act 1920<sup>F130F131</sup> . . . or Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972<sup>F132</sup> [<sup>F131</sup> or under Part I of the Civil Jurisdiction and Judgments Act 1982 so far as that Part relates to the recognition and enforcement of maintenance orders] [<sup>F133</sup> or under [<sup>F134</sup> Council Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark<sup>F135</sup> or under the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007];]
- [<sup>F131</sup>(aa) in relation to maintenance orders registered in a court of summary jurisdiction under the Maintenance Orders Act 1950 or Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 or section 36 of the Civil Jurisdiction and Judgments Act 1982, under that Act of 1950 or Part II of that Act of 1966]
- (b) under the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924;
- (c) under Article 101 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>F136</sup> [<sup>F137</sup> or section 101 of the Social Security Administration (Northern Ireland) Act 1992];
- [<sup>F138</sup>(cc) under Article 37 of the Matrimonial Causes (Northern Ireland) Order 1978;]
- (d) under the Domestic Proceedings (Northern Ireland) Order 1980;
- [<sup>F139</sup>(dd) under Article 22 of the Child Support (Northern Ireland) Order 1991 (so far as appeals under that Article are, by virtue of Article 2 of the Child Support Appeals (Jurisdiction of Courts) Order (Northern Ireland) 1993, to be made to a court of summary jurisdiction) or under Article 28 of the Child Support (Northern Ireland) Order 1991;
- (de) under the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992;]
- [<sup>F140</sup>(df) under the Children (Northern Ireland) Order 1995;]
- [<sup>F141</sup>(dg) under the Family Homes and Domestic Violence (Northern Ireland) Order 1998;]
- [<sup>F142</sup>(dh) under Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;]
- [<sup>F143</sup>(di) under paragraph 54 of Schedule 15 to the Civil Partnership Act 2004 or under Schedule 16 to that Act;]
- [<sup>F144</sup>(dj) under Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters;]
- (e) under Article 87 or Article 98 in relation to orders made under any of the enactments referred to in the foregoing paragraphs; or
- (f) under any enactment specified in the preceding paragraphs as applied or extended by or for the purposes of any other enactment.

**F130** 1920 c. 33

**F131** 1982 c. 27

**F132** 1972 c. 18

**F133** SI 2001/3929

**F134** Words in art. 88(a) substituted (18.6.2011) by [Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 9, **Sch. 7 para. 20(6)**

**F135** Words in art. 88(a) inserted (1.8.2014) by [The International Recovery of Maintenance \(Hague Convention 2007 etc.\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/413\)](#), reg. 1(1), **Sch. 4 para. 2(4)**

**F136** 1972 NI 14

- F137** 1992 c. 9
- F138** 1989 NI 4
- F139** SR 1993/98
- F140** 1995 NI 2
- F141** 1998 NI 6
- F142** 2000 c. 4 (NI)
- F143** 2004 c. 33
- F144** Art. 88(dj) inserted (11.1.2015) by [The Civil Jurisdiction and Judgments \(Protection Measures\) Regulations 2014 \(S.I. 2014/3298\)](#), regs. 1(4), 6

### Sitting of court for domestic proceedings

**89.**—(1) The business of courts of summary jurisdiction shall, so far as is consistent with the due despatch of business, be arranged in such manner as may be requisite for separating the hearing or determination of domestic proceedings from other business.

(2) No person shall be present during the hearing or determination by a court of summary jurisdiction of any domestic proceedings except—

- (a) members and officers of the court;
- (b) parties to the proceedings before the court, their solicitors and counsel, witnesses and other persons directly concerned in those proceedings;
- (c) solicitors and counsel in attendance for other proceedings;
- (d) representatives of newspapers or news agencies; and
- (e) any other person who appears to the court to have adequate grounds for attendance.

(3) For the purposes of taking any evidence of an indecent character in any domestic proceedings, the court may, if it thinks necessary in the interest of the administration of justice or of public decency, direct that all or any persons not being members or officers of the court or parties to the proceedings, their solicitors or counsel, or other persons directly concerned in the proceedings, be excluded from the court during the taking of that evidence.

(4) The powers conferred on a court of summary jurisdiction by this Article shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera or to exclude a witness until his evidence is required.

### Newspaper reports of domestic proceedings

**90.**—<sup>F145</sup>(1) A person to whom this paragraph applies shall not—

- (a) print or publish, or cause or procure to be printed or published, in a newspaper or periodical, or
- (b) include, or cause or procure to be included, in a programme included in a programme service (within the meaning of the Broadcasting Act 1990) for reception in Northern Ireland,

any particulars of any domestic proceedings other than such particulars as are mentioned in paragraph (1A) below.

(1A) The particulars referred to in paragraph (1) above are—

- (a) the names, addresses and occupations of the parties and witnesses;
- (b) the grounds of the application, and a concise statement of the charges, defences and counter-charges in support of which evidence has been given;

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- (c) submissions on any point of law arising in the course of the proceedings, and decisions of the court on the submissions; and
- (d) the decisions of the court, and any observations made by the court in giving its decision.
- (1B) Paragraph (1) above applies—
- (a) in relation to sub-paragraph (a) of that paragraph, to the proprietor, editor or publisher of the newspaper or periodical, and
- (b) in relation to sub-paragraph (b) of that paragraph, to any body corporate which provides the service in which the programme is included and to any person having functions in relation to the programme corresponding to those of an editor of a newspaper.]
- (2) If any person acts in contravention of the provisions of this Article he shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding four months or to a fine not exceeding<sup>F146</sup> level 3 on the standard scale], or to both.
- (3) A prosecution for an offence under this Article shall not be instituted otherwise than by or with the consent of the Attorney General.
- <sup>F147</sup>(4) For the purposes of Article 7(2) of the Prosecution of Offences (Northern Ireland) Order 1972, paragraph (3) shall be deemed to be a relevant consent provision passed before 30th March 1972.
- (5) Nothing in this Article shall apply to the printing or publishing of any matter in any newspaper or periodical of a technical character bona fide intended for circulation among members of the legal or medical profession.

**F145** 1990 c. 42

**F146** 1984 NI 3

**F147** prosp. rep. by 2002 c. 26

## PART IX

### SATISFACTION AND ENFORCEMENT OF ORDERS

#### **Modifications etc. (not altering text)**

**C43** Pt. IX (arts. 91-117) applied (1.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. [88\(6\)\(7\)](#), [153\(4\)\(d\)](#); S.I. 2009/2606, [art. 2\(i\)](#)

*Sums adjudged to be paid by a conviction*

#### **Payment of sums adjudged to be paid by a conviction**

**91.**—(1) Where a person has been adjudged to pay a sum by a conviction of a magistrates' court, the court may, subject to Article 93, order that person to pay that sum forthwith, allow time for payment or order payment by instalments.

(2) The court shall consider any representations made by such person as to the time to be allowed under paragraph (1) but that time shall not be less than twenty-eight days commencing with the day on which the sum is adjudged to be paid.

(3) Where the person ordered to pay the sum makes an application for permission to pay the sum by instalments the court shall allow such payment unless the court is satisfied that it would not be reasonable in all the circumstances to do so.

(4) The court may, on the application of the person ordered to pay the sum, allow further time for payment or vary an order for payment by instalments.

(5) Subject to paragraph (7), the court may in determining an application under paragraph (4) remit the whole or any part of the sum if the court thinks it just to do so having regard to any change in the circumstances of that person since the conviction, and where the court remits part of the sum after a period of imprisonment has been imposed in default of payment, the court shall also reduce that period by an amount which bears the same proportion to that period as the amount remitted bears to that sum.

(6) In calculating the reduction required under paragraph (5) any fraction of a day shall be left out of account.

(7) In considering whether to remit under paragraph (5) the whole or any part of—

- (a) a sum to which section 143(3) of the Social Security (Northern Ireland) Act 1975<sup>F148</sup> applies; or
- (b) any compensation awarded to any person;

a magistrates' court shall take into account the representations (if any) made to it—

- (i) in the case of a sum mentioned in sub-paragraph (a), by the Department of Health and Social Services;
- (ii) in the case of any compensation, by the person to whom the compensation was awarded.

(8) Where before the expiration of the time allowed or of the period during which payment by instalments is allowed the person ordered to pay the sum indicates that he prefers immediate committal to awaiting the expiration of the time allowed for payment of the sum or of the remaining instalments, a warrant may be issued committing him to prison forthwith.

**F148** 1975 c. 15

### **Enforcing payment of a sum adjudged to be paid by a conviction**

**92.**—(1) Subject to this Article and Article 93, where default is made by a person in paying a sum adjudged to be paid by a conviction or any instalment of or part of such sum the order of the court may be enforced by the issue of—

- (a) a warrant of distress for the purpose of levying so much of the sum as remains unpaid; or
- (b) a warrant committing that person to prison; or
- (c) a warrant committing him to prison in default of sufficient distress.

(2) Where it appears on the return to a warrant of distress that the money and goods of the defaulter are insufficient to satisfy the sum together with the cost of levying the sum, the court may issue a warrant of commitment.

(3) Where the court has issued a warrant of commitment in the first instance in default of payment of the sum and it is found impossible to execute the warrant, a warrant of distress may be issued.

(4) Where a court has allowed payment of the sum by instalments and default is made in the payment of any one instalment, a warrant may be issued as if the default had been made in the payment of all the instalments then unpaid.

(5) The period for which a person may be committed to prison under this Article in default of payment or levy of any sum or part of such sum shall not exceed the period specified in Schedule 3.

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**Modifications etc. (not altering text)**

**C44** Art. 92 modified (1.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 89\(1\)-\(4\), 153\(4\)\(d\); S.I. 2009/2606, art. 2\(j\)](#)

**[<sup>F149</sup>Fines imposed on companies**

**92A.—(1)** Where—

- (a) a magistrates' court has, or is treated by any statutory provision as having, adjudged a company by a conviction to pay a sum; and
- (b) the court has issued a warrant of distress under Article 92(1)(a) for the purpose of levying the sum; and
- (c) it appears on the return to the warrant that the money and goods of the company are insufficient to satisfy the sum with the costs and charges of levying the same,

the clerk of petty sessions may make an application in relation to the company under<sup>F150</sup> Article 104 of, or paragraph 13 of Schedule B1 to, the Insolvency (Northern Ireland) Order 1989 (winding up or administration)].]

**F149** 1994 NI 15

**F150** Words in art. 92A(1) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\), arts. 1\(3\), 3\(3\), Sch. 2 para. 11; S.R. 2006/21, art. 2 \(with S.R. 2006/22, arts. 2-7\)](#)

**Modifications etc. (not altering text)**

**C45** Art. 92A applied (with modifications) (8.2.2011) by [Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\), regs. 1, 8\(7\), 9, 15, 16-21, 24-26, Schs. 1-5](#)

**Restrictions on power to order immediate committal in default of payment of a sum adjudged to be paid by a conviction**

**93.** A warrant committing a person to prison in respect of non-payment of a sum adjudged to be paid by a conviction of a magistrates' court shall not be issued at the time of his conviction unless—

- (a) he appears to the court to have sufficient means to pay the sum forthwith; or
- (b) on being asked by the court whether he wishes to have time for payment he does not ask for time; or
- (c) the court is satisfied that he has no fixed abode in Northern Ireland; or
- (d) there is some other special circumstance appearing to the court to justify immediate committal;

and if the court does issue a warrant of commitment, the court shall state in the warrant the reasons for not allowing the person committed time to pay.

**Supervision of person under twenty-one until payment of sum adjudged to be paid by a conviction**

**94.—(1)** Where a person is allowed time for payment of a sum adjudged to be paid by a conviction or to pay such sum by instalments, the court may order that until the sum is paid he be placed under the supervision of such person as may be appointed by the court.



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(2) Before issuing a warrant to commit a person placed under supervision to prison in respect of non-payment of the sum the court shall consider any report as to his conduct and means which may be made by the person under whose supervision he has been placed.

### Power to order transfer of fines

**95.**—(1) Where a magistrates' court has, or is treated by any statutory provision as having, adjudged a person by a conviction to pay a sum and it appears to the court that he is residing—

- (a) in any petty sessions area in England and Wales, or
- (b) within the jurisdiction of a court of summary jurisdiction in Scotland,

the court may order that payment of the sum shall be enforceable in that petty sessions area or, as the case may be, by that court of summary jurisdiction.

(2) An order under this Article shall specify the petty sessions area in which or the court by which payment of the sum in question is to be enforceable; and if—

- (a) that sum is more than £100 or is a fine originally imposed by the Crown Court or the sheriff court, and
- (b) payment is to be enforceable in Scotland,

the court to be so specified shall be the sheriff court.

(3) Where an order is made under this Article with respect to any sum, any functions under any statutory provision relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order or by the clerk of that court shall cease to be so exercisable.

#### Modifications etc. (not altering text)

- C46** Art. 95 modified (1.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 89\(1\)\(5\), 153\(4\)\(d\)](#) (as amended (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(5), [Sch. 18 para. 89](#) (with arts. 28-31); S.I. 2010/977, [art. 1\(2\)](#)); S.I. 2009/2606, [art. 2\(j\)](#)
- C47** Art. 95 applied (6.3.2015) by [The Sea Fishing \(Enforcement and Miscellaneous Provisions\) Order 2015 \(S.I. 2015/191\)](#), arts. 1(1), [3\(4\)](#)

### Transfer of fines elsewhere in United Kingdom

**96.**—(1) Where a transfer of fine order under section 403 of the Criminal Procedure (Scotland) Act 1975<sup>F151</sup> or section 90 of the Magistrates' Courts Act 1980<sup>F152</sup> provides that payment of a sum shall be enforceable in a petty sessions district in Northern Ireland, a court of summary jurisdiction acting for that district and the clerk of that court shall, subject to paragraph (2), have all the like functions under any statutory provision in respect of the sum (including power to make an order under Article 95) as if the sum were a sum adjudged to be paid by a conviction of that court and as if any order made under the said Act of 1975 or, as the case may be, 1980 in respect of the sum before the making of the transfer of fine order had been made by that court.

(2) Where a transfer of fine order under section 403 of the Criminal Procedure (Scotland) Act 1975 or section 90 of the Magistrates' Courts Act 1980 provides for the enforcement of a fine originally imposed by the Crown Court, the term of imprisonment which may be imposed under this Order shall be—

- (a) the term fixed in pursuance of section 31 of the Powers of Criminal Courts Act 1973 by the Crown Court, or



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(b) a term which bears the same proportion to the term so fixed as the amount of the fine remaining due bears to the amount imposed by that court, notwithstanding that the term exceeds the period applicable to the case under Schedule 3.

**F151** 1975 c. 21

**F152** 1980 c. 43

*Orders for the payment of sums made in proceedings upon complaint otherwise than on conviction*

### **Payment of sums recovered upon complaint**

**97.**—<sup>[F153]</sup>(1) A person ordered to pay any sum in proceedings upon complaint otherwise than on conviction may be ordered to pay that sum forthwith or may be allowed time to pay, or where necessary, further time and either in addition to or in lieu of being allowed such time, may be ordered to pay the sum by instalments.

<sup>[F153]</sup>(2) An order under this Article that a lump sum required to be paid under a maintenance order shall be paid by instalments (a “maintenance instalments order”) shall be treated for the purposes of Articles 85, 85B and 86 as a maintenance order.

(3) Paragraphs (6) and (8) of Article 85 (including those paragraphs as they apply for the purposes of Article 86) shall have effect in relation to a maintenance instalments order—

- (a) as if in paragraph (6), sub-paragraph (c) and the word “and” immediately preceding it were omitted; and
- (b) as if in paragraph (8)—
  - (i) the reference to the qualifying maintenance order were a reference to the maintenance order in respect of which the maintenance instalments order in question is made;
  - (ii) for the words “the person who applied for the maintenance order” there were substituted “the debtor”.

(4) Article 86 shall have effect in relation to a maintenance instalments order as if in paragraph (7) sub-paragraph (c) and the word “and” immediately preceding it were omitted.]

**F153** 1993 NI 6

### **Enforcement of orders for periodical payment of money**

**98.**—(1) Where an order to which this Article applies is made by a court of summary jurisdiction directing the periodical payment of money and default is made in such payment or part of it or in payment of any costs awarded on the making of such order, a resident magistrate or other justice of the peace may upon complaint made to him at any time after the expiration of fourteen days from the date of such default and before the expiration of three years from that date—

- (a) issue a summons for the appearance of the person by whom such payments are to be made before a court of summary jurisdiction acting for the same petty sessions district as the court which made the order; or
- (b) by warrant cause such person to be brought before a resident magistrate acting for the same petty sessions district as the court which made the order or for any other petty sessions district in the same county court division.

[<sup>F154</sup>(1A) The power in paragraph (1) is exercisable at any time after the expiration of 14 days, and before the expiration of 3 years, from the date of default, or the expiration of any longer limitation period under the law of the State of origin in relation to a maintenance order which falls to be enforced by a court of summary jurisdiction [<sup>F155</sup>by virtue of

- (a) Council] Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark and the Civil Jurisdiction and Judgments (Maintenance) [<sup>F156</sup>Regulations 2011; ]
- (b) the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007; or
- (c) Part 1 of the Civil Jurisdiction and Judgments Act 1982.]

(2) A warrant shall not be issued under paragraph (1) unless the complaint is in writing and substantiated on oath.

(3) Where a person has been taken into custody in pursuance of a warrant issued under paragraph (1) for the purpose of causing him to be brought before a resident magistrate he shall, if it will not be practicable to bring him before a resident magistrate within twenty-four hours after he was so taken into custody, be brought, as soon as practicable, before a justice of the peace who may, if he thinks fit, discharge such person upon his entering into a recognizance for a reasonable amount to appear before a resident magistrate at the time and place named in the recognizance; but where such person is not so discharged the justice of the peace shall commit him to prison and direct that he shall be brought before a resident magistrate as soon as practicable thereafter and in any case not later than eight days from the date of such commitment.

(4) Without prejudice to paragraph (5), upon the appearance of a person summoned before a court of summary jurisdiction or on proof that the summons was duly served on him, the court, or where a person is brought before a resident magistrate pursuant to a warrant issued under paragraph (1), the resident magistrate—

- (a) may by order direct that any sum appearing to be due by reason of such default, together with the costs attending the issue and service of the summons, or the warrant, apprehension and bringing up of such person, as the case may be, and the making of the order and all reasonable charges of the distress shall be recovered by distress; and, in addition;
- (b) may order that such person be detained and kept in custody, or, if he is not present that he be arrested and kept in custody until the day appointed for the return of the warrant of distress (not being later than a period of eight days commencing with the day after than on which the warrant is issued) unless he enters into a recognizance to the satisfaction of the court or magistrate for his appearance before the court or magistrate on that day.

(5) Upon the appearance of a person or proof of service of the summons on him as mentioned in paragraph (4), the court or residence magistrate may—

- (a) instead of making an order under sub-paragraph (a) of that paragraph make an order committing the person to prison until the sum and costs in question are paid; or
- (b) as well as making an order under that sub-paragraph make an order committing him to prison in default of sufficient distress until so much of the sum and costs as is not defrayed by the distress, and all reasonable charges of the distress, are paid;

and may issue a warrant to enforce the order of commitment.

(6) For the purpose of this Article—

- (a) where it appears on the return to a warrant of distress that the money and goods of the person are insufficient to satisfy the sum and costs in question together with the costs of levying the sum, the court or resident magistrate may issue a warrant of commitment;

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- (b) where the court or resident magistrate has issued a warrant of commitment in the first instance in default of payment of the sum and costs in question and it is found impossible to execute the warrant, a warrant of distress may be issued.

(7) The court or a resident magistrate<sup>[F157]</sup> shall not] make an order of commitment under paragraph (5), or issue a warrant of commitment under paragraph (6)(a), unless it or he is satisfied that the default<sup>[F157]</sup> is due] to the wilful refusal or culpable neglect of the person who is liable to pay the sum and costs in question and the charges of distress, if any<sup>[F157]</sup> and without prejudice to the preceding provisions of this paragraph, the court shall not make such an order or issue such a warrant—

- (a) in a case where the court has power to do so, if it is of the opinion that it is appropriate—
- (i) to make an attachment of earnings order; or
  - (ii) to order that payments under the order be made by any method of payment falling within Article 85(7); or
- (b) where the sum in question comprises only interest which that person has been ordered to pay under Article 86A(1).]

(8) The term for which a person is committed to prison on any occasion by an order under paragraph (5), or a warrant issued under paragraph (6)(a), in default of payment of a sum (including any costs and charges) shall not exceed the period mentioned in Schedule 3 in relation to that sum and, in any event, shall not exceed six weeks.

<sup>[F157]</sup>(8A) The commitment to prison of a person under paragraph (5) or (6)(a) shall not operate to discharge him from liability to pay the sum in respect of which the order or commitment was made or the warrant of commitment was issued; but where a person has been imprisoned under an order of commitment made in respect of his failure to pay any sum, then, notwithstanding anything in this Order, no such order shall be made in respect of that sum or any part of it.]

<sup>[F157]</sup>(8B) Upon the appearance of a person or proof of service of the summons on him as mentioned in paragraph (4) for the enforcement of an order to which this Article applies, the court or resident magistrate may vary the order by exercising one of the powers under sub-paragraphs (a) to (d) of Article 85(3).

(8C) Paragraphs (5), (6) and (8) of Article 85 shall apply for the purposes of paragraph (8) as they apply for the purposes of that Article.

(8D) Paragraphs (8B) and (8C) shall not have effect in relation to an order which is not a qualifying maintenance order (within the meaning of Article 85).]

(9) Where a person is committed to prison under this Article for failure to pay a sum due under an order to which this Article applies, then, unless the court or resident magistrate who commits him otherwise directs, no arrears shall accrue under the order while he is in custody.

(10) Where on an application to enforce the payment of any sum due under an order for periodical payment to which this Article applies, no order of commitment is made, the application may be renewed at any time on the ground that the circumstances of the person from whom the payment is due have changed.

(11) This Article shall apply to the following orders for the periodical payment of money—

- (a) maintenance orders made outside the United Kingdom and registered in a court of summary jurisdiction in Northern Ireland under the Maintenance Orders (Facilities for Enforcement) Act 1920 or confirmed by such a court under that Act;
- (b) maintenance orders made outside the United Kingdom and registered in a court of summary jurisdiction in <sup>[F158]</sup>Northern Ireland under
  - (i) Part I of the Maintenance Orders (Reciprocal Enforcement) <sup>[F159]</sup>Act 1972,

- (ii) [<sup>F160</sup>Part I of the Civil Jurisdiction and Judgments][<sup>F161</sup>Act 1982,
  - (iii) [<sup>F162</sup>Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [<sup>F163</sup>, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters];][<sup>F164</sup>or
  - (iv) the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007;]
- [<sup>F165</sup>(bb) maintenance orders which fall to be enforced by a court of summary jurisdiction by virtue of Council Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark, and the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011;]
- (c) affiliation orders under the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924 whether as originally enacted or as applied or extended by or for the purposes of any other enactment;
  - (d) maintenance orders made in another part of the United Kingdom and registered in a court of summary jurisdiction in Northern Ireland under Part II of the Maintenance Orders Act 1950[<sup>F160</sup> or under section 36 of the Civil Jurisdiction and Judgments Act 1982];
  - (e) orders registered in a court of summary jurisdiction under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966<sup>F166</sup>;
  - (f) contribution orders under Part X of the Children and Young Persons Act (Northern Ireland) 1968;
- [<sup>F167</sup>(ff) orders registered in a court of summary jurisdiction under Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972;]
- (g) orders under Article 101 of the Health and Personal Social Services (Northern Ireland) Order 1972;
  - (h) orders under Article 23 of the Supplementary Benefits (Northern Ireland) Order 1977[<sup>F168</sup> or section 101 of the Social Security Administration (Northern Ireland) Act 1992];
  - (i) orders for the periodical payment of money under the Domestic Proceedings (Northern Ireland) Order 1980[<sup>F169</sup> or Schedule 16 to the Civil Partnership Act 2004].
- [<sup>F167</sup>(j) contribution orders under Article 41(2) of the Children (Northern Ireland) Order 1995,]
- [<sup>F170</sup>(k) section 113 of the Immigration and Asylum Act 1999.]
- [<sup>F157</sup>so, however, that in the case of orders mentioned in sub-paragraph[<sup>F167</sup> (a), (b), (d) or (ff)], this Article shall apply subject to any modifications specified in the statutory provision mentioned in that sub-paragraph.]

(12) The provisions of this Article shall have effect in lieu of any other provision for the enforcement before a court of summary jurisdiction of orders to which this Article applies.

[<sup>F171</sup>(13) Paragraph (12) is subject to—

- (a) Council Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October between the European Community and the Kingdom of Denmark, <sup>F172</sup>...
- (b) Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.]

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- [<sup>F173</sup>(c) the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007; and  
(d) Part 1 of the Civil Jurisdiction and Judgments Act 1982.]

**F154** Art. 98(1A) inserted (18.6.2011) by Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484), reg. 9, **Sch. 7 para. 20(8)**

**F155** Words in art. 98(1A) substituted (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(5)(a)(i)**

**F156** Words in art. 98(1A) substituted (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(5)(a)(ii)**

**F157** 1993 NI 6

**F158** Words in art. 98(11)(b) substituted (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(5)(b)(i)**

**F159** Words in art. 98(11)(b) substituted (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(5)(b)(ii)**

**F160** 1982 c. 27

**F161** Words in art. 98(11)(b) substituted (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(5)(b)(iii)**

**F162** SI 2001/3929

**F163** Words in art. 98(11)(b) inserted (1.7.2007) by Civil Jurisdiction and Judgments Regulations 2007 (S.I. 2007/1655), reg. 5, **Sch. para. 25**

**F164** Art. 98(11)(b)(iv) and preceding word inserted (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(5)(b)(iv)**

**F165** Art. 98(11)(bb) inserted (18.6.2011) by Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484), reg. 9, **Sch. 7 para. 20(9)**

**F166** 1966 c. 35 (NI)

**F167** 1995 NI 2

**F168** 1992 c. 9

**F169** 2004 c. 33

**F170** 1999 c. 33

**F171** Art. 98(13) inserted (18.6.2011) by Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484), reg. 9, **Sch. 7 para. 20(10)**

**F172** Word in art. 98(13)(a) repealed (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(5)(c)(i)**

**F173** Art. 98(13)(c)(d) inserted (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 4 para. 2(5)(c)(ii)**

#### Modifications etc. (not altering text)

**C48** Art. 98 applied (with modifications) (18.6.2011) by Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484), reg. 3, **Sch. 1 para. 4(7), Sch. 1 para. 6(8)**

**C49** Art. 98 applied (with modifications) (1.8.2014) by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (S.R. 2012/413), reg. 1(1), **Sch. 1 para. 2(8)**

## **Enforcement of orders for payment of money other than periodical payments**

**99.**—(1) Where a court of summary jurisdiction in proceedings upon complaint otherwise than on conviction has ordered the payment of a sum of money (not being a sum to which Article 98 applies) and a person defaults in paying that sum within the time specified or (if no time is so specified) forthwith a resident magistrate or other justice of the peace may upon complaint made to him at any time after the expiration of fourteen days from the date of such default and before expiration of three years from that date—

- (a) issue a summons for the appearance of the person by whom such payment is to be made before a court of summary jurisdiction acting for the same petty sessions district as the court which made the order; or
- (b) by warrant cause such person to be brought before a resident magistrate acting for the same petty sessions district as the court which made the order or for any other petty sessions district in the same county court division.

(2) A warrant shall not be issued under paragraph (1) unless the complaint is in writing and substantiated on oath.

(3) Where a person has been taken into custody in pursuance of a warrant issued under paragraph (1) for the purpose of causing him to be brought before a resident magistrate he shall, if it will not be practicable to bring him before a resident magistrate within twenty-four hours after he was so taken into custody, be brought, as soon as practicable, before a justice of the peace who may, if he thinks fit, discharge such person upon his entering into a recognizance for a reasonable amount to appear before a resident magistrate at the time and place named in the recognizance; but where such person is not so discharged the justice of the peace shall commit him to prison and direct that he shall be brought before a resident magistrate as soon as practicable thereafter and in any case not later than eight days from the date of such commitment.

(4) Without prejudice to paragraph (5), upon the appearance of a person summoned before a court of summary jurisdiction or on proof that the summons was duly served on him, the court, or where a person is brought before a resident magistrate pursuant to a warrant issued under paragraph (1), the resident magistrate—

- (a) may by order direct that any sum appearing to be due by reason of such default, together with the costs attending the issue and service of the summons, or the warrant, apprehension and bringing up of such person, as the case may be, and the making of the order and all reasonable charges of the distress shall be recovered by distress; and, in addition;
- (b) may order that such person be detained and kept in custody, or, if he is not present that he be arrested and kept in custody until the day appointed for the return of the warrant of distress (not being later than a period of eight days commencing with the day after that on which the warrant is issued) unless he enters into a recognizance to the satisfaction of the court or magistrate for his appearance before the court or magistrate on that day.

(5) Upon the appearance of a person or proof of service of the summons on him as mentioned in paragraph (4), the court or resident magistrate may—

- (a) instead of making an order under sub-paragraph (a) of that paragraph make an order committing the person to prison until the sum and costs in question are paid; or
- (b) as well as making an order under that sub-paragraph make an order committing him to prison in default of sufficient distress until so much of the sum and costs as is not defrayed by the distress, and all reasonable charges of the distress, are paid;

and may issue a warrant to enforce the order of commitment.

(6) For the purposes of this Article—

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- (a) where it appears on the return to a warrant of distress that the money and goods of the person are insufficient to satisfy the sum and costs in question together with the costs of levying the sum, the court or resident magistrate may issue a warrant of commitment;
- (b) where the court or resident magistrate has issued a warrant of commitment in the first instance in default of payment of the sum and costs in question and it is found impossible to execute the warrant, a warrant of distress may be issued.

(7) The court or a resident magistrate<sup>[F174]</sup> shall not] make an order of commitment under paragraph (5), or issue a warrant of commitment under paragraph (6)(a), unless it or he is satisfied that the default<sup>[F174]</sup> is due] to the wilful refusal or culpable neglect of the person who is liable to pay the sum and costs in question and the charges of distress, if any.

(8) The term for which a person is committed to prison on any occasion by an order under paragraph (5); or a warrant issued under paragraph (6)(a), in default of payment of a sum (including any costs and charges shall not exceed the period mentioned in Schedule 3 in relation to that sum and, in any event, shall not exceed six weeks.

(9) The commitment to prison of a person under paragraph (5) or (6)(a) shall not operate to discharge him from liability to pay the sum in respect of which the order or commitment was made or the warrant of commitment was issued; but where a person has been imprisoned under an order of commitment made in respect of his failure to pay any sum, then, notwithstanding anything in this Order, no such order shall be made in respect of that sum or any part of it.

(10) Where a sum such as is mentioned in paragraph (1) has been ordered by the court to be paid by instalments and default is made in the payment of any one instalment, this Article shall apply as if the default had been made in the payment of all the instalments then unpaid.

(11) Where proceedings have been taken in the Enforcement of Judgments Office for the payment of a lump sum ordered to be paid under Article 4(1)(b) or (d), 8(5), 13(2)(b) or (3)(b) or 22(2) or (8) of the Domestic Proceedings (Northern Ireland) Order 1980<sup>[F175]</sup> or Part 1, 2 or 6 of Schedule 16 to the Civil Partnership Act 2004], no order shall be made under this Article to enforce such payment.

**F174** 1993 NI 6

**F175** 2004 c. 33

### *Attachment of earnings for enforcement of orders for the periodical payment of money*

#### **Power of court to make attachment of earnings order**

**100.**—(1) An attachment of earnings may be made by a court of summary jurisdiction in accordance with Articles 101 to 108 for the enforcement of an order for the periodical payment of money such as is mentioned in Article 98(11) or of an order which is enforceable as if it were such an order including any such order which has been rescinded, revoked or discharged, if any arrears are recoverable under it.

(2) In Articles 101 to 108—

“collecting officer” means that officer as defined by<sup>[F176]</sup> Article 85(4)] or, as the case requires, as described in section 15(2) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966;

“debtor” and “creditor” include respectively, in relation to an attachment of earnings order which is, or is to be, made to secure payments under an order (the original order) such as is referred to in paragraph (1), the person liable to make the payments under the original order and the person entitled to receive those payments;



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“the employer” means the person who is required by an attachment of earnings order to make deductions from earnings paid by him to the debtor;

*Definition rep. by 1995 NI 2*

(3) For the purposes of those Articles the relationship of employer and employee shall be treated as subsisting between two persons if one of them, as a principal and not as a servant or agent, pays to the other any sums defined as earnings by paragraphs (4) and (5).

(4) For the purposes of those Articles, subject to paragraph (5), “earnings” are any sums payable to a person—

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service);
- (b) by way of pension (including an annuity in respect of past services, whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment).

(5) The following shall not be treated as earnings—

- (a) sums payable by any public department of a territory outside the United Kingdom;
- (b) pay or allowances payable to the debtor as a member of Her Majesty's forces;

[<sup>F177</sup>(ba) a tax credit (within the meaning of the Tax Credits Act 2002);]

- (c) pension, allowances or benefit payable under any of the following statutory provisions relating to social security—
  - (i) the Family Income Supplements Act (Northern Ireland) 1971<sup>F178</sup>;
  - (ii) the Social Security (Northern Ireland) Acts 1975 to 1977<sup>F179</sup>;
  - (iii) the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975<sup>F180</sup>;
  - (iv) the Child Benefit (Northern Ireland) Order 1975<sup>F181</sup>;
  - (v) the Supplementary Benefits (Northern Ireland) Order 1977;
- (d) guarantees minimum pension within the meaning of the Social Security Pensions (Northern Ireland) Order 1975<sup>F182</sup> provided by an occupational pension scheme;
- (e) pension or allowances payable in respect of disablement or disability.

**F176** 1993 NI 6

**F177** 2002 c. 21

**F178** 1971 c. 8 (NI)

**F179** 1975 c. 15, 1975 NI 15, 1977 NI 11

**F180** 1975 c. 17

**F181** 1975 NI 16

**F182** 1975 NI 15

### **Making of attachment of earnings order**

**101.**—(1) Where it appears to a court of summary jurisdiction that a debtor is a person to whom earnings fall to be paid, the court may make an attachment of earnings order requiring the person to whom the order is directed to make out of those earnings, or part thereof, such payments as may be specified in the order.

(2) An attachment of earnings order may be [<sup>F183</sup> made] [<sup>F184</sup> in accordance with Article 85(1)]

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(3) The person to whom an attachment of earnings order is directed shall be a person who appears to the court to have the debtor in his employment; and the order shall operate as an instruction to that person—

- (a) to make periodical deductions from the debtor's earnings in accordance with Article 102; and
- (b) at such times as the order may require, or as the court may allow, to pay the amounts deducted to—
  - (i) where the attachment of earnings order is made by a court of summary jurisdiction to enforce an order for the periodical payment of money through a collecting officer, the collecting officer;  
*Head (ii) rep. by 1995 NI 2*
  - (iii) in any other case, the person entitled to the payments for which the order to be enforced provides;
 as specified in the order.

(4) An attachment of earnings order shall contain particulars prescribed by magistrates' courts rules enabling the debtor to be identified by the employer.

(5) The order shall specify—

- (a) the normal deduction rate, that is to say, the rate (expressed as a sum of money per week, month or other period) at which the court thinks it reasonable for the debtor's earnings to be applied to meeting his liability under the relevant judgment; and
- (b) the protected earnings rate, that is to say the rate (so expressed) below which, having regard to the debtor's resources and needs (including the needs of any person for which he must, or reasonably may, provide), the court thinks it reasonable that the earnings actually paid to him should not be reduced.

(6) The normal deduction rate for the purposes of paragraph (5)(a)—

- (a) shall be determined after taking account of any right or liability of the debtor to deduct income tax when making the payments, and
- (b) shall not exceed the rate which appears to the court necessary for the purposes of securing payment of the sums falling due from time to time under the order which is to be enforced and securing payment within a reasonable period of any sums already due and unpaid under that order.

(7) Where an attachment of earnings order has been made by a court of summary jurisdiction to secure the payment of any money no proceedings for committal or distress by reason of failure to pay that money which were begun before the making of the order shall be continued.

**F183** 1995 NI 2

**F184** 1993 NI 6

### Compliance with order by employer

**102.**—(1) Where an attachment of earnings order has been made by a court of summary jurisdiction the employer shall, if he has been served with the order, comply with it; but he shall be under no liability for non-compliance before seven days have elapsed since the service.

(2) If on a pay-day the attachable earnings exceed the sum of—

- (a) the protected earnings; and

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- (b) so much of any amount by which the attachable earnings on any previous pay-day fell short of the protected earnings as has not been made good by virtue of this paragraph on another previous pay-day,

then, in so far as the excess allows, the employer shall deduct from the attachable earnings the amount specified in paragraph (3).

- (3) That amount is the sum of—

- (a) the normal deduction; and

- (b) so much of the normal deduction on any previous pay-day as was not deducted on that day and has not been paid by virtue of this paragraph on any other previous pay-day.

- (4) No deduction shall be made on any pay-day when the attachable earnings are equal to, or less than, the protected earnings.

- (5) Where a person is served with an attachment of earnings order directed to him and he has not the debtor in his employment, or the debtor subsequently ceases to be in his employment, he shall (in either case), within ten days from the date of service or, as the case may be, the cesser, give notice of that fact to such officer of the court as may be prescribed by magistrates' courts rules.

- (6) Part II of Schedule 1 to the Judgments Enforcement (Northern Ireland) Order 1981 has effect with respect to the priority to be accorded as between two or more attachment of earnings orders directed to a person either by the Enforcement of Judgments Office and a court, or by a court, in respect of the same debtor.

- (7) Any sums paid by the employer under an attachment of earnings order shall be treated as sums paid by the debtor.

- (8) On any occasion when the employer makes, in compliance with the order, a deduction from the debtor's earnings—

- (a) he shall be entitled to deduct, in addition, £0.50 or such other sum as may be prescribed by judgment enforcement rules towards his clerical and administrative costs; and

- (b) he shall give to the payer a statement in writing of the total amount of the deduction.

- (9) Any sum deducted by the employer from the debtor's earnings in compliance with the order, but not yet paid to the person mentioned in Article 101(3)(b), shall in the bankruptcy or winding up of the employer be treated as money held by the employer on trust for that person.

- (10) In this Article—

- “attachable earnings”, in relation to a pay-day, are the earnings which remain payable to the debtor on that day after deduction by the employer of—

- (a) income tax;

- (b) primary Class 1 contributions under Part I of the Social Security (Northern Ireland) Act 1975;

- (c) amounts deductible under any statutory provision, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme within the meaning of<sup>F185</sup> paragraph 3(c) of Schedule 1 to the Judgments Enforcement (Northern Ireland) Order 1981];

- “the normal deduction”, in relation to any pay-day, means the deduction arrived at by applying the normal deduction rate (as specified in the attachment of earnings order) with respect to the period since the last pay-day or, if it is the first pay-day of the debtor's employment with the employer, since the employment began;

- “pay-day”, in relation to earnings paid to a debtor, means an occasion on which they are paid;

- “the protected earnings”, in relation to any pay-day, means the amount arrived at by applying the protected earnings rate (as specified in the attachment of earnings order) with respect to

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the period since the last pay-day or, if it is the first pay-day of the debtor's employment with the employer, since the employment began.

**F185** 1988 NI 7

### **Persons employed under the Crown**

**103.**—(1) The fact that an attachment of earnings order is made at the suit of the Crown shall not prevent its operation at any time when the debtor is in the employment of the Crown.

(2) Where a debtor is in the employment of the Crown and an attachment of earnings order is made in respect of him, then for the purposes of Articles 101, 102 and 104 to 108—

- (a) the chief officer for the time being of the government department, office or other body in which the debtor is employed shall be treated as having the debtor in his employment (any transfer of the payer 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, shall be treated as paid by the said chief officer.

(3) In accordance with Article 100(3), the reference in paragraph (2)(a) to the department, office or other body in which the debtor is employed shall, in the case of a debtor who is not employed for the purposes of, but whose earnings are paid in the capacity of principal by, such a body, be construed as a reference to the department, office or other body by which any earnings of his are paid in that capacity.

(4) If any question arises, in proceedings for or arising out of an attachment of earnings order, as to what department, office or other body is concerned for the purposes of this Article, or as to who for those purposes is the chief officer thereof, the question shall be referred to and determined by the Department of the Civil Service or, as the case may require, the Minister for the Civil Service; but the Department or Minister shall not be under any obligation to consider a reference under this paragraph unless it is made by the court.

(5) A document purporting to set out a determination of the Department of the Civil Service under paragraph (4) and to be signed by an officer of that Department, or to set out a determination of the Minister for the Civil Service under that paragraph and to be signed on behalf of the Minister shall, in any such proceedings as are mentioned in that paragraph, be admissible in evidence and be deemed to contain an accurate statement of such a determination unless the contrary is shown.

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

### **Variation, lapse, discharge and termination of orders**

**104.**—(1) A court of summary jurisdiction may make an order varying (including suspending or reviving) or discharging an attachment of earnings order.

(2) Where an order is varied, the employer shall, if he has been served with notice of the variation, comply with the order as varied; but he shall be under no liability for non-compliance before seven days have elapsed since the service.

(3) Where an order is discharged, the employer shall be under no liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date on which notice of the discharging order is served on him.

(4) Magistrates' courts rules may make provision as to circumstances in which an attachment of earnings order may be varied or discharged by a court of summary jurisdiction of its own motion.

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(5) Where an attachment of earnings order has been made and the person to whom it is directed ceases to have the debtor in his employment, the order shall lapse (except as respects deduction from earnings paid after the cesser and payment to the creditor, the collecting officer or the prescribed person (as the case requires) of amounts deducted at any time) and be of no effect unless and until a court of summary jurisdiction revives it by again directing it to a person (whether the same as before or another) who appears to the court to have the debtor in his employment.

(6) The lapse of an order under paragraph (5) shall not prevent its being treated as remaining in force for other purposes.

(7) An attachment of earnings order made by a court of summary jurisdiction to secure the payment of any money shall cease to have effect upon the making of an order of committal or the issue of a warrant of distress in respect of that money.

(8) An attachment of earnings order shall cease to have effect—

- (a) upon the grant of an application for registration in the High Court under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 of the order which is to be enforced;
- (b) where the order which is to be enforced is registered under the said Part II, upon the giving of notice with respect of it under section 14 of that Act of 1966 with a view to cancellation of its registration;
- (c) upon the rescission or revocation of the order which is to be enforced or upon its being discharged while it is not registered under the said Part II, unless a court of summary jurisdiction otherwise orders with a view to recovering arrears under that order;
- (d) upon the order which is to be enforced ceasing to be registered in a court in Northern Ireland, or becoming registered in a court in another part of the United Kingdom, under Part II of the Maintenance Orders Act 1950.

(9) Where an attachment of earnings order ceases to have effect under paragraph (7) or (8), such officer of such court as may be prescribed by magistrates' courts rules shall give notice of the cesser to the employer.

(10) Where an attachment of earnings order ceases to have effect under paragraph (7) or (8), paragraph (3) shall apply as it applies in a case where such an order is discharged.

### **Statement of earnings, etc.**

**105.**—(1) Where an attachment of earnings order is about to be made or revived a court of summary jurisdiction may at any time before making or reviving the order—

- (a) direct the debtor to furnish within a specified period a statement signed by him of—
  - (i) the name and address of any person by whom earnings are paid to him;
  - (ii) specified particulars of his earnings and anticipated earnings, and of his resources and needs (including the needs of any person for whom he must, or reasonably may, provide);
  - (iii) specified particulars of any matters which are, or may be, relevant under Article 101(5) to the determination of the normal deduction rate and the protected earnings rate to be specified in the order;
  - (iv) specified particulars for the purposes of enabling the debtor to be identified by any employer of his;
- (b) direct any person appearing to the court to be an employer of the debtor to furnish within a specified period a statement signed by him or on his behalf of specified particulars of the debtor's earnings and anticipated earnings.

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(2) Where an attachment of earnings order has been made, a court of summary jurisdiction may at any time while the order is in force give any direction it is authorised by paragraph (1)(a) or (b) to give.

(3) A document purporting to be a statement such as is mentioned in paragraph (1)(a) or (b) shall, in proceedings before a court of summary jurisdiction, be received in evidence and be deemed to be such a statement without further proof, unless the contrary is shown.

### **Obligation of debtor and his employers to notify changes of employment and earnings**

**106.**—(1) While an attachment of earnings order is in force—

- (a) the debtor shall notify the prescribed officer in writing of every occasion on which he leaves any employment, or becomes employed or re-employed, not later (in each case) than seven days from the date on which he did so;
- (b) the debtor shall, on any occasion when he becomes employed or re-employed, include in his notification under sub-paragraph (a) particulars of his earnings and anticipated earnings from the relevant employment; and
- (c) any person who becomes the debtor's employer and knows that the order is in force and that it was made by a court of summary jurisdiction shall, within seven days of his becoming the debtor's employer or of acquiring that knowledge (whichever is the later) notify the prescribed officer in writing that he is the debtor's employer, and include in his notification a statement of the debtor's earnings and anticipated earnings.

(2) In paragraph (1)(a) and (c) “the prescribed officer” means such officer of the courts as may be prescribed by magistrates' courts rules.

### **Power of court to determine whether particular payments are earnings**

**107.**—(1) Where an attachment of earnings order is in force a court of summary jurisdiction shall, on the application of either the employer or the debtor, determine whether payments to the debtor of a particular class or description specified by the application are earnings for the purposes of the order; and the employer shall give effect to any determination for the time being in force under this Article.

(2) Where an application under this Article is made by the employer, he shall not incur any liability for non-compliance with the order as respects any payments of the class or description specified by the application which are made by him to the debtor while the application is pending; but this paragraph shall not unless a court of summary jurisdiction otherwise orders, apply as respects such payments if the employer subsequently withdraws the application.

### **Offences in relation to attachment of earnings orders**

**108.**—(1) Subject to paragraphs (4) and (5), a person commits an offence if—

- (a) being required by Article 102(1) or 104(2) to comply with an attachment of earnings order, he fails to do so; or
- (b) being required by Article 102(5) to give a notice for the purposes of that paragraph, he fails to give it, or fails to give it within the period required by that paragraph; or
- (c) he fails to comply with a direction under Article 105(1) or (2); or
- (d) he fails to comply with Article 106; or
- (e) he gives a notice for the purposes of Article 102(5), or a notification for the purposes of Article 106, which he knows to be false in a material particular, or recklessly gives such a notice or notification which is false in a material particular; or

- (f) in purported compliance with Article 102(5), or (8)(b) or 106, or with a direction under Article 105(1) or (2), he makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular.
- (2) Where a person commits an offence under paragraph (1) he shall be liable on summary conviction to a fine not exceeding<sup>F186</sup> level 3 on the standard scale].
- (3) Where a person who has been convicted under paragraph (2) commits a second or subsequent offence under the same provision of paragraph (1) in relation to the same provision of this Order (and in the case of an offence under paragraph (1)(a) in relation to the same attachment of earnings order) paragraph (2) shall have effect as if the reference therein to £100 were to £400.
- (4) It shall be a defence—
- (a) for a person charged with an offence under paragraph (1)(a) to prove that he took all reasonable steps to comply with the attachment of earnings order in question;
- (b) for a person charged with an offence under paragraph (1)(b) to prove that he did not know, and could not reasonably be expected to know,—
- (i) that the debtor was not in his employment, or (as the case may be)
- (ii) that the debtor had ceased to be in his employment,
- and that he gave the required notice as soon as reasonably practicable after the fact came to his knowledge.
- (5) It shall also be a defence for a person charged with an offence under paragraph (1)(b) of failing to give notice that the debtor had ceased to be in his employment to prove that he had had reasonable cause to believe that the court had knowledge of the cesser.
- (6) Where a person is convicted of an offence under paragraph (1)(a) a court of summary jurisdiction may order him to pay to the collecting officer<sup>F187</sup> . . . or the creditor (as the case requires) any sums deducted by that person from debtor's earnings and not already so paid.
- (7) Any sum ordered by the court to be paid under paragraph (6) shall be recoverable as a sum adjudged to be paid by a conviction.

**F186** 1984 NI 3

**F187** 1995 NI 2

#### *Orders made in proceedings commenced by notice*

#### **Recovery of sums awarded in proceedings commenced by notice**

**109.** Any sum (including costs) recoverable in proceedings before a magistrates' court commenced by notice under Part VII or under any other enactment shall, except where that other enactment provides to the contrary, be recoverable in the same manner as a sum recoverable in proceedings upon complaint otherwise than on conviction.

#### *Other matters in relation to enforcement of orders*

#### **Application of sums found upon defaulter**

**110.—**(1) Where a person has been adjudged to pay a sum by a conviction of a magistrates' court or in proceedings under Article 98, the court may order him to be searched.

(2) Subject to paragraph (3), any money found on such person on apprehension, or on such search as aforesaid, or on his being taken to prison or other place of detention in default of payment of



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the sum, may, unless the court otherwise directs, be applied towards payment of the sum and the balance, if any, shall be returned to him.

(3) The money found on such person shall not be so applied if the court is satisfied that the money does not belong to him or that such application of the money would be more injurious to his family than his detention.

### **Release from custody and reduction of period of imprisonment on payment**

**111.**—(1) Where imprisonment has been imposed on any person by the conviction or order of a magistrates' court in default of payment of any sum or for want of sufficient distress to satisfy such sum, then, on the payment of the sum to a person authorised to receive it, together with the costs and charges, if any, of the commitment and distress, the order shall cease to have effect; and if the person has been committed to custody he shall be released unless he is in custody for some other cause.

(2) Where, after a period of imprisonment has been imposed on any person in default of payment of any sum adjudged to be paid by the conviction or order of a magistrates' court or for want of sufficient distress to satisfy such a sum, payment of part of the sum is made to a person authorised to receive it, the period of imprisonment shall, subject to paragraph (3), be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid bears to so much of the said sum, and the costs of any distress levied to satisfy that sum, as was due at the time the period of imprisonment was imposed.

(3) In calculating the reduction required under paragraph (2) any fraction of a day shall be left out of account.

### **Enforcement of orders other than for the payment of money**

**112.**—(1) Where power is conferred under any enactment upon a magistrates' court to require any person to do or to abstain from doing anything other than the payment of money and no mode is provided for the exercise of such power, the court may, subject to the provisions of this Order, exercise such power by order.

(2) The court may annex to any order requiring any person to do or abstain from doing anything other than the payment of money any condition as to time or mode of action and may by order on complaint suspend or rescind such order on any undertaking being given or upon the condition being performed.

(3) Where a person fails to comply with an order such as is mentioned in paragraph (2) by either failing to do, within the time specified in the order or (if no time is so specified) forthwith, the thing he is required to do or, as the case may be, doing the thing he is required to abstain from doing and the enactment under which the order was made prescribes no punishment for such failure, a resident magistrate or other justice of the peace may upon complaint made to him at any time—

- (a) issue a summons for the appearance of the person by whom that thing is required to be done or not done before a court of summary jurisdiction acting for the same petty sessions district as the court which made the order; or
- (b) by warrant cause such person to be brought before a resident magistrate acting for the same petty sessions district as the court which made the order or for any other petty sessions district in the same county court division.

(4) A warrant shall not be issued under paragraph (3) unless the complaint is in writing and substantiated on oath.

(5) Where a person has been taken into custody in pursuance of a warrant issued under paragraph (3) for the purpose of causing him to be brought before a resident magistrate he shall, if it will not be practicable to bring him before a resident magistrate within twenty-four hours after he was so taken into custody, be brought, as soon as practicable, before a justice of the peace who may,

if he thinks fit, discharge such person upon his entering into a recognizance for a reasonable amount to appear before a resident magistrate at the time and place named in the recognizance; but where such person is not so discharged the justice of the peace shall commit him to prison and direct that he shall be brought before a resident magistrate as soon as practicable thereafter and in any case not later than eight days from the date of such commitment.

(6) Upon the appearance of a person summoned before a court of summary jurisdiction under paragraph (3) or on proof that the summons was duly served on him the court or, where a person is brought before a resident magistrate pursuant to a warrant issued under that paragraph, the resident magistrate—

- (a) may order that person to pay a sum not exceeding £50 for every day during which he fails to comply with the order or a sum not exceeding<sup>F188</sup> £5000]; or
- (b) may commit him to prison for a fixed period not exceeding two months or until he either complies with the order or satisfies a court of summary jurisdiction that he intends to comply with it (and the court may issue a warrant to enforce the order of commitment);

but a person who is ordered to pay a sum for every day during which he fails to comply with the order or who is committed to prison until he complies or satisfactorily indicates his intention to comply with the order shall not by virtue of this Article be ordered to pay more than £1,000 or be committed for more than two months in all for doing or abstaining from doing the same thing contrary to the order (without prejudice to the operation of this Article in relation to any subsequent failure to comply with the order).

(7) In relation to an order made by a resident magistrate or justice of the peace sitting out of petty sessions, the references in paragraph (3)(a) and (b) to the same petty sessions district as the court which made the order acted for shall be construed as references to the petty sessions district in which the order was made.

(8) Payment of any sum ordered to be paid under paragraph (7) shall be enforceable in the same manner as payment of a sum adjudged to be paid by a conviction.

**F188** 1994 NI 15

## Review of commitment under Article 112

**113.**—(1) A person imprisoned under a warrant of commitment issued under Article 112 who is not detained otherwise than under that Article may make an application in the prescribed manner requesting that the warrant be cancelled and stating the grounds of the application.

(2) An application under paragraph (1) shall be made to a resident magistrate who shall, after considering the statements contained in the application,—

- (a) if he is of opinion that the application should be further considered, refer it to the court; or
- (b) if he is not of that opinion, refuse the application.

(3) When an application is referred to the court under paragraph (2), the clerk of the court shall serve on the person in charge of the place in which the applicant is detained and the person in whose favour the order which is being enforced under Article 112 was made notice of the time and place appointed for the consideration of the application by the court and shall also serve on the second-mentioned person a copy of the application.

(4) On considering an application referred to it under paragraph (2)(a) the court may—

- (a) refuse the application; or
- (b) if the applicant satisfies the court that he has complied with the order in question or intends to comply with it, order that the warrant shall cease to have effect when the person in

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charge of the place in which the applicant is detained is served by the clerk of the court with a copy of the order.

- (5) Where the court makes an order under paragraph (4)(b) it may—
- (a) fix a term of imprisonment in respect of any continued or future failure to comply with the order in relation to which the warrant was issued, being a term not exceeding so much of the term of the previous warrant as remained to be served at the date of the order; and
  - (b) postpone the issue of the warrant for the commitment of the applicant for that term until such time and on such conditions, if any, as the court thinks just.

(6) Where under paragraph (3) notice of the time and place appointed for the consideration of the application by the court is served by post on the person in whose favour the order which is being enforced under Article 112 was made—

- (a) the notice shall be deemed to have been served on him notwithstanding that it is returned as undelivered or is for any other reason not received by that person; and
- (b) if that person does not appear at that time and place, the court may proceed with the consideration of the application in his absence.

(7) In this Article “the court” means a court of summary jurisdiction sitting for the same petty sessions district as the court which issued the warrant of commitment or for any other petty sessions district in the same county court division.

(8) This Article does not prejudice section 44 of the Judicature (Northern Ireland) Act 1978 (appeal to Court of Appeal from order or decision of a magistrates' court under Article 112).

### **Issue, postponement and stay of execution of warrants**

**114.**—(1) Subject to this Order or any other enactment, where a magistrates' court makes an order upon conviction which is to have immediate effect it shall issue the proper warrant for executing the order forthwith or, if for any reason and subject to any enactment, the order is not to have immediate effect the court may postpone the issue or stay the execution of the warrant.

(2) A magistrates' court may postpone the issue of any other warrant or stay the execution of it until such time and on such conditions as it thinks just<sup>F189</sup>; but a lay magistrate sitting out of petty sessions may postpone the issue of a warrant, or stay the execution of it, only if it was issued by him or another lay magistrate.]

**F189** 2002 c. 26

#### **Modifications etc. (not altering text)**

**C50** Art. 114(2) applied (31.10.2007) by [Sea Fishing \(Restriction on Days at Sea\) Order \(Northern Ireland\) 2007 \(S.R. 2007/407\)](#), **art. 17(2)**

**C51** Art. 114(2) applied (31.12.2008) by [Sea Fishing \(Marking and Identification of Passive Fishing Gear and Beam Trawls\) Order \(Northern Ireland\) 2008 \(S.R. 2008/484\)](#), **art. 5(3)**

### **Duties of Constabulary and others with respect to warrants**

**115.**—(1) The provisions of any enactments regulating the duties of the Royal Ulster Constabulary with respect to warrants and the execution of warrants shall apply in relation to warrants issued under this Order to members of the Royal Ulster Constabulary.

(2) Without prejudice to paragraph (1), where for any reason the person to whom a warrant is addressed is unable to execute it within the time fixed by the warrant (or if no time has been so fixed, within a reasonable time), he shall return the warrant to the resident magistrate or other justice of

the peace who issued it or who made the conviction or order upon which it was issued together with a certificate in the prescribed form of the reasons why the warrant has not been executed.

(3) The resident magistrate or other justice of the peace by whom a warrant has been issued or who made the conviction or order upon which it was issued may examine on oath the person to whom a warrant has been addressed concerning the reasons why it has not been executed and may re-issue the warrant or may issue any other warrant for the same purpose.

(4) Without prejudice to Articles 156 and 158, where the resident magistrate or other justice of the peace who issued the warrant or made the conviction or order upon which it was issued is unable to exercise his functions under paragraph (3) by reason of his having died, ceased to hold office or become disqualified for holding office, or is for any other reason unable to perform the functions of his office, his functions under that paragraph shall be exercisable by any resident magistrate.

### **Issue, postponement or stay of execution of decrees in debt and ejectment proceedings**

**116.** Unless the court for any special reason otherwise orders, a decree in debt or ejectment proceedings shall not issue until after the expiration of fourteen days from the order under which it was issued, but the court may, subject to any terms it may see fit to impose, postpone the issue of a decree for such further period or periods as it thinks fit so, however, that (except as provided by Article 117) the court shall not postpone for more than four weeks the issue of a decree in ejectment proceedings for possession of premises which are required for the purposes of the execution of the statutory powers and duties of a local or other public authority.

### **Postponement of issue of warrants or decrees until appeal determined**

**117.—**(1) Subject to paragraph (2) where a person has given notice of appeal to the county court or has applied for a case to be stated for the opinion of the Court of Appeal and where he is required to enter into a recognizance under Article 149 he has entered into that recognizance, a decree or warrant for the purpose of enforcing the order shall not be issued until—

- (a) the order has been affirmed, amended or varied on appeal; or
- (b) it appears to the court that the appellant has failed to perform the conditions of a recognizance entered into under Article 149; or
- (c) the appellant has abandoned the appeal in accordance with Article 150.

(2) Nothing in this Article shall apply to a person sentenced to imprisonment or other form of detention in custody or prejudice the operation of any enactment which expressly authorises or directs the levy of any sum notwithstanding the appeal or of Article 148 respecting persons in custody.

## **PART X**

### **WITNESSES AND EVIDENCE**

*[<sup>F190</sup>Witnesses: proceedings other than criminal proceedings]*

**F190** Art. 118-118E and cross-headings substituted (1.1.2012) for art. 118 and preceding cross-heading by Justice Act (Northern Ireland) 2011 c. 24 (NI), ss. 100(1), 111(3) (with s. 106(4), Sch. 6 para. 8); S.R. 2011/370, art. 3(f)

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### Summons to witness in proceedings (other than criminal proceedings) or warrant for arrest

[<sup>F191</sup>118.—(1) Where in any proceedings other than criminal proceedings a magistrates' court is satisfied that any person is able to give material evidence or produce any document or thing before the court, the court may issue a summons directed to that person requiring him to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) Where a person fails to attend before a magistrates' court in answer to a summons under paragraph (1), if—

- (a) the court is satisfied by evidence on oath that he is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings; and
- (b) it is proved on oath or by affidavit or in such other manner as may be prescribed that the summons was duly served on that person or that he is evading service and that he is able to give material evidence; and
- (c) no just excuse has been shown for the failure to attend,

the court may issue a warrant to arrest that person and bring him before the court to testify and to produce such documents or things as may be required.

(3) Where a person is arrested on a warrant issued under this Article he shall be brought, as soon as practicable, before a magistrates' court which may, if desirable, discharge that person on his entering a recognizance to appear before that or any other magistrates' court at the time and place specified in the recognizance and, if necessary, to appear at every time and place to which during the proceedings the hearing may be adjourned.]

**F191** Art. 118-118E and cross-headings substituted (1.1.2012) for art. 118 and preceding cross-heading by Justice Act (Northern Ireland) 2011 c. 24 (NI), ss. 100(1), 111(3) (with s. 106(4), Sch. 6 para. 8); S.R. 2011/370, art. 3(f)

#### Modifications etc. (not altering text)

- C52** Art. 118(1) applied by 1972 c. 18, s. 38(4) (as amended) (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 11 para. 54; S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- C53** Art. 118(1) applied (with modifications) by 1972 c. 18, s. 14(3) (as amended) (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 11 para. 37(1); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- C54** Art. 118(3)(4) applied by 1972 c. 18, s. 38(4) (as amended) (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 11 para. 54; S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- C55** Art. 118(3)(4) applied (with modifications) by 1972 c. 18, s. 14(3) (as amended) (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 11 para. 37(1); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

#### [<sup>F192</sup>Witnesses: criminal proceedings

**F192** Art. 118-118E and cross-headings substituted (1.1.2012) for art. 118 and preceding cross-heading by Justice Act (Northern Ireland) 2011 c. 24 (NI), ss. 100(1), 111(3) (with s. 106(4), Sch. 6 para. 8); S.R. 2011/370, art. 3(f)

### **Issue of witness summons on application to magistrates' court**

- 118A.**—(1) This Article applies where a magistrates' court is satisfied that—
- (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any criminal proceedings before the court, and
  - (b) it is in the interests of justice to issue a summons under this Article to secure the attendance of that person to give evidence or to produce the document or thing.
- (2) In such a case the magistrates' court shall, subject to the following provisions of this Article, issue a summons (a witness summons) directed to the person concerned and requiring him to—
- (a) attend before the magistrates' court at the time and place stated in the summons, and
  - (b) give the evidence or produce the document or thing.
- (3) A witness summons may only be issued under this Article on an application; and the magistrates' court may refuse to issue the summons if any requirement relating to the application is not fulfilled.
- (4) An application must be made as soon as is reasonably practicable.
- (5) An application must be made in accordance with magistrates' courts rules.
- (6) Magistrates' courts rules—
- (a) may, in such cases as the rules may specify, require an application to be made by a party to the case;
  - (b) may, in such cases as the rules may specify, require the service of notice of an application on the person to whom the witness summons is proposed to be directed;
  - (c) may, in such cases as the rules may specify, require an application to be supported by an affidavit containing such matters as the rules may stipulate;
  - (d) may, in such cases as the rules may specify, make provision for enabling the person to whom the witness summons is proposed to be directed to be present or represented at the hearing of the application for the witness summons.
- (7) Provision contained in magistrates' courts rules by virtue of paragraph (6)(c) may in particular require an affidavit to—
- (a) set out any charge on which the proceedings concerned are based;
  - (b) specify any stipulated evidence, document or thing in such a way as to enable the directed person to identify it;
  - (c) specify grounds for believing that the directed person is likely to be able to give any stipulated evidence or produce any stipulated document or thing;
  - (d) specify grounds for believing that any stipulated evidence is likely to be material evidence;
  - (e) specify grounds for believing that any stipulated document or thing is likely to be material evidence.
- (8) In paragraph (7)—
- (a) references to any stipulated evidence, document or thing are to any evidence, document or thing whose giving or production is proposed to be required by the witness summons;
  - (b) references to the directed person are to the person to whom the witness summons is proposed to be directed.

*Status: Point in time view as at 06/03/2015.*

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### **Power to require advance production**

**118B.**—(1) A witness summons which is issued under Article 118A and which requires a person to produce a document or thing as mentioned in Article 118A(2) may also require him to produce the document or thing—

- (a) at a place stated in the summons, and
- (b) at a time which is so stated and precedes that stated under Article 118A(2),

for inspection by the person applying for the summons.

(2) If—

- (a) a document or thing is produced in pursuance of a requirement imposed by a witness summons under paragraph (1),
- (b) the person applying for the summons concludes that a requirement imposed by the summons under Article 118A(2) is no longer needed, and
- (c) he accordingly applies to the magistrates' court for a direction that the summons shall be of no further effect,

the court may direct accordingly.

(3) An application under paragraph (2) must be made in accordance with magistrates' courts rules.

(4) Magistrates' courts rules may, in such cases as the rules may specify, require the effect of a direction under paragraph (2) to be notified to the person to whom the summons is directed.

### **Application to make summons ineffective**

**118C.**—(1) If a witness summons issued under Article 118A is directed to a person who—

- (a) applies to the magistrates' court,
- (b) satisfies the court that he was not served with notice of the application to issue the summons and that he was neither present nor represented at the hearing of the application, and
- (c) satisfies the court that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence,

the court may direct that the summons shall be of no effect.

(2) For the purposes of paragraph (1) it is immaterial—

- (a) whether or not magistrates' courts rules require the person to be served with notice of the application to issue the summons;
- (b) whether or not magistrates' courts rules enable the person to be present or represented at the hearing of the application.

(3) In paragraph (1)(b) “served” means—

- (a) served in accordance with magistrates' courts rules, in a case where such rules require the person to be served with notice of the application to issue the summons;
- (b) served in such way as appears reasonable to the magistrates' court, in any other case.

(4) The magistrates' court may refuse to make a direction under this Article if any requirement relating to the application under this Article is not fulfilled.

(5) An application under this Article must be made in accordance with magistrates' courts rules.

(6) Magistrates' courts rules may, in such cases as the rules may specify, require the service of notice of an application under this Article on the person on whose application the witness summons was issued.



(7) Magistrates' courts rules may, in such cases as the rules may specify, require that where—

- (a) a person applying under this Article can produce a particular document or thing, but
- (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence,

he must arrange for the document or thing to be available at the hearing of the application.

(8) Where a direction is made under this Article that a witness summons shall be of no effect, the person on whose application the summons was issued may be ordered to pay the whole or any part of the costs of the application under this Article.

#### **Issue of witness summons of court's own motion**

**118D.**—(1) For the purpose of any criminal proceedings before it, a magistrates' court may of its own motion issue a summons (a witness summons) directed to a person and requiring him to—

- (a) attend before the court at the time and place stated in the summons; and
- (b) give evidence or produce any document or thing specified in the summons.

(2) If a witness summons issued under this Article is directed to a person who—

- (a) applies to the magistrates' court, and
- (b) satisfies the court that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence,

the court may direct that the summons shall be of no effect.

(3) The magistrates' court may refuse to make a direction under paragraph (2) if any requirement relating to the application under that paragraph is not fulfilled.

(4) An application under paragraph (2) must be made in accordance with magistrates' courts rules.

(5) Magistrates' courts rules may, in such cases as the rules may specify, require that where—

- (a) a person applying under paragraph (2) can produce a particular document or thing, but
- (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence,

he must arrange for the document or thing to be available at the hearing of the application.

#### **Further process to secure attendance of witnesses**

**118E.**—(1) If a magistrates' court is satisfied by evidence on oath that—

- (a) a witness in respect of whom a witness summons is in force is unlikely to comply with the summons; and
- (b) the witness is likely to be able to give evidence likely to be material evidence or produce any document or thing likely to be material evidence in the proceedings,

the magistrates' court may issue a warrant to arrest the witness and bring him before the court.

(2) Where a witness who is required to attend before a magistrates' court by virtue of a witness summons fails to attend in compliance with the summons, the magistrates' court may—

- (a) in any case, cause to be served on him a notice requiring him to attend the court forthwith or at such time as may be specified in the notice;
- (b) if the court is satisfied that there are reasonable grounds for believing that he has failed to attend without just excuse, or if he has failed to comply with a notice under subparagraph (a), issue a warrant to arrest him and bring him before the court.

(3) A witness brought before a magistrates' court in pursuance of a warrant under this Article may be remanded by that court in custody or on bail (with or without sureties) until such time as the court may appoint for receiving his evidence.

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(4) Where a witness attends a magistrates' court in pursuance of a notice under this Article, the court may direct that the notice shall have effect as if it required him to attend at any later time appointed by the court for receiving his evidence.

### Penalty for witness failing to appear or obey direction of court excluding him

**119.**—(1) Any person who—

(a) was duly served with a summons under Article 118 [<sup>F193</sup>, 118A or 118D] and who fails, without reasonable excuse, to appear at the time and place appointed by the summons; or

[ disobeys a requirement made by a magistrates' court under Article 118B(1); or]  
<sup>F194</sup>(aa)

(b) fails to comply with the provisions of paragraph (2) or with any direction given under it;

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F195</sup> level 4 on the standard scale.

(2) Where in any proceeding before a magistrates' court it appears to the court desirable in the interests of justice so to do, the court may direct that any witness in that proceeding be excluded from the court during the proceeding until he is required for the purpose of giving evidence in that proceeding; and where such direction is given, the witness shall attend on the court and give his evidence when so required.]

**F193** Words in art. 119(1)(a) inserted (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 100(2)(a), 111(3) (with s. 106(4), Sch. 6 para. 8); S.R. 2011/370, art. 3(f)

**F194** Art. 119(1)(aa) inserted (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 100(2)(b), 111(3) (with s. 106(4), Sch. 6 para. 8); S.R. 2011/370, art. 3(f)

**F195** 1994 NI 15

#### Modifications etc. (not altering text)

**C56** Art. 119 applied by 1972 c. 18, s. 38(4) (as amended) (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 11 para. 54; S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

**C57** Art. 119 applied (with modifications) by 1972 c. 18, s. 14(3) (as amended) (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 11 para. 37(1); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

### Refusal of witness to testify

**120.**—(1) If any person attending or brought before a magistrates' court refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may commit him to custody until the expiration of such period not exceeding one month as may be specified in the warrant or until he sooner gives evidence or produces the document or thing or impose on him a fine not exceeding<sup>F196</sup> £2,500, or both.

(2) Nothing in this Article shall prevent the court from disposing of a case in any manner in which it has power to do so.

[  
<sup>F197</sup>(3) An order under paragraph (1) for the payment of a fine may be enforced as though the fine were a sum adjudged to be paid by a conviction.]]

**F196** 1994 NI 15

**F197** 1996 NI 24

**Modifications etc. (not altering text)**

- C58** Art. 120 applied (with modifications) by 1972 c. 18, s. 14(3) (as amended) (22.4.2014) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), [Sch. 11 para. 37\(1\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- C59** Art. 120 applied by 1972 c. 18, s. 38(4) (as amended) (22.4.2014) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), [Sch. 11 para. 54](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

*Evidence*

**Evidence on oath**

**121.** Subject to this Part and to the provisions of any enactment or rule of law authorising the reception of unsworn evidence, evidence given before a magistrates' court shall be given on oath.

**Statement of wages to be evidence**

**122.** A statement in writing that wages of any amount have been paid to a person during any period, purporting to be signed by or on behalf of his employer, shall, without further proof, be evidence of the facts alleged in the statement—

- (a) for the purpose of ascertaining the means of such person where a magistrates' court is determining the amount of a sum adjudged to be paid by a conviction or order of a magistrates' court;
- (b) on any application made by or against such person for the making of an order for the periodical payment of money such as is specified in Article 98(11) or for the variation, revocation, discharge, suspension or revival of such an order or in any proceedings under that Article for its enforcement.

**Proof of non-payment of sum adjudged**

**123.** In any summary proceedings to enforce the payment of a sum of money ordered to be paid by one person to another, then—

- (a) if the sum was payable under the order to the clerk of petty sessions or collecting officer, the production of a certificate purporting to be signed by the clerk or collecting officer that the sum has not been paid to him; and
- (b) in any other case, the production of a statutory declaration to a like effect purporting to be made by the person to whom the sum is payable under the order or, where the person to whom the sum is payable is a public or local authority or board, any authorised officer of the authority or board;

shall be evidence of the facts stated in the certificate or, as the case may be, the declaration, unless the court requires such clerk, officer or other person to be called as a witness.

**Onus of proving exceptions in proceedings upon complaint**

**124.—(1)** When the defendant to a complaint relies for his defence on any exception, exemption, proviso, excuse or qualification, the burden of proving such exception, exemption, proviso, excuse or qualification shall be on him.

**(2)** This Article shall have effect whether the exception, exemption, proviso, excuse or qualification relied on—

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- (a) accompanies or does not accompany the description of the offence or matter of complaint in the enactment creating the offence or on which the complaint is founded; or
- (b) is or is not expressly specified or negated in the complaint.

### Proof of previous convictions

**125.** Where a person is convicted of an offence by a court of summary jurisdiction<sup>F198</sup> . . . , and it is proved to the satisfaction of the court, on oath or by affidavit or in the prescribed manner, that not less than seven days previously a notice was served on the accused in the prescribed form and manner specifying any alleged previous conviction of the accused of an offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged, and the accused is not present in person before the court, the court may take account of any such previous conviction so specified as if the accused had appeared and admitted it.

**F198** 1989 NI 12

### Proof by affidavit of service of summons, handwriting, etc.

**126.**—(1) Without prejudice to any other mode of proof, service on a person of any summons, notice, process or document required or authorised to be served in any proceedings before a magistrates' court and the handwriting or seal of any resident magistrate or<sup>F199</sup> lay magistrate], clerk of petty sessions or other officer or person on any warrant, summons, notice, process recognizance or other document, may be proved by affidavit<sup>F200</sup> or by such other document as may be prescribed].

(2) Any affidavit purporting to be made and attested in the prescribed form shall be received in evidence and shall be deemed to be duly made and attested until the contrary is shown.

[  
<sup>F200</sup>(3) Magistrates' courts rules may provide that any document purporting to be given as a document prescribed under paragraph (1) shall be received in evidence and shall be deemed to be duly given unless the contrary is shown.

(4) Without prejudice to Article 10 of the Perjury (Northern Ireland) Order 1979, if, in a document purporting to be given as a document prescribed under paragraph (1), a person—

- (a) makes a statement that he knows to be false in a material particular, or
- (b) recklessly makes any statement that is false in a material particular,

he shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 3 on the standard scale, or both.]]

**F199** 2002 c. 26

**F200** 1989 NI 12

## PART XI

### RECOGNIZANCES AND BAIL

#### *Recognizances to keep the peace or to be of good behaviour*

#### **Power to bind over**

**127.**—(1) Subject to this Article, a magistrates' court may order a person to enter into a recognizance to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour—

- (a) upon a complaint that such person should be called upon to show cause why he should not be ordered to be so bound; or
- (b) upon convicting a person of an offence and in lieu of or in addition to any sentence which the court may lawfully impose; or
- (c) in the case of a person present before such court without any formal application to the court to make such order.

(2) The period during which a person may be ordered to be bound by a recognizance under paragraph (1) shall not exceed two years.

(3) A complaint under paragraph (1)(a) may be laid before a justice of the peace where the person against whom the complaint is made resides or is found or is believed to be within the jurisdiction of such justice or where the conduct to which the complaint relates has occurred or is expected to occur within that jurisdiction.

(4) Subject to paragraph (3), a summons to the person against whom such complaint is made or a warrant for his arrest (whether in the first instance or in default of appearance) may in all respects be issued as if the complaint were one alleging the commission of a summary offence.

(5) Without prejudice to Article 18(4)—

- (a) proceedings upon the hearing of a complaint under this Article shall be conducted, and
- (b) the person against whom the complaint is made and such witnesses as he may call may give evidence and be cross-examined,

in the same manner as in proceedings for a summary offence and the court may remand such person, whether in custody or on bail, for the same period and subject to the same conditions as in such last-mentioned proceedings.

(6) Any order against such person for the payment of costs made in proceedings under this Article shall be enforceable in the same manner as an order for the payment of a sum adjudged to be paid by a conviction of a magistrates' court.

(7) If any person ordered to enter into a recognizance by a magistrates' court under this Article fails to comply with the order, the court may commit him to prison for a period not exceeding six months or until he complies with the order, whichever is the shorter.

(8) Nothing in this Article shall derogate from the provisions of [F201 Article 36(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998] or section 7(1) of the Probation Act (Northern Ireland) 1950 or any other enactment authorising a magistrates' court to require a person to give security for good behaviour or for keeping the peace.

**F201** 1998 NI 9

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### **Discharge of recognizances to be of good behaviour, etc., on application by surety**

**128.**—(1) Where a surety to a recognizance to keep the peace or to be of good behaviour, or to keep the peace and to be of good behaviour, has reason to suspect that the person bound as principal has been or is about to be guilty of conduct which was or would be a breach of the conditions of the recognizance, he may make a complaint to any justice of the peace having jurisdiction either—

- (a) in the place in which the said person resides or is believed by the complainant to be; or
- (b) in the petty sessions district in which the recognizance was ordered to be entered into;

and that justice may, either issue a warrant against the said person to bring him before a resident magistrate out of petty sessions, or issue a summons to him to appear before a court of summary jurisdiction.

(2) The resident magistrate before whom the said person is brought under any such warrant or the court of summary jurisdiction before which he appears in answer to any such summons may order him—

- (a) to enter into a new recognizance; or
- (b) deal with him as if he were a person who had failed to comply with an order to enter into a recognizance;

and may in any case order that the first-mentioned recognizance shall be discharged.

(3) A warrant shall not be issued under this Article unless the complaint is in writing and substantiated on oath.

### *Bail on arrest*

#### **Endorsement on warrant as to release on bail**

**129.**—(1) A justice of the peace on issuing a warrant for the arrest of any person may by endorsement on the warrant, direct that the person named, described or otherwise identified in the warrant shall on arrest be released on his entering into such recognizance as may be specified in the endorsement; and the endorsement shall fix the amounts in which the principal and the sureties, if any, are to be bound or the amount of any security permitted to be deposited in lieu of sureties.

[<sup>F202</sup>(2) Where a warrant has been endorsed for bail under paragraph (1)—

- (a) where the person arrested is to be released on bail on his entering into a recognizance without sureties, it shall not be necessary to take him to a police station, but if he is so taken, he shall be released from custody on his entering into the recognizance; and
- (b) where he is to be released on his entering into a recognizance with sureties, he shall be taken to a police station on his arrest, and the custody officer there shall (subject to his approving any surety tendered in compliance with the endorsement) release him from custody as directed in the endorsement.]

**F202** 1989 NI 12

*Arts. 130, 131 rep. by 1989 NI 12*

#### **Powers of resident magistrate or other justice in relation to persons not released on bail**

**132.** Without prejudice to any other provision of this Order, any resident magistrate or other justice of the peace before whom a person arrested for any offence is brought, where he is satisfied that the offence is not of a serious nature, may, without prejudice to further proceedings being brought

against such person by way of summons or otherwise, release such person from custody without requiring him to enter into any recognizance.

### **[<sup>F203</sup>Power to grant bail where police bail has been granted**

**132A.**—(1) Where a custody officer—

(a) grants bail to any person under Part V of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) [<sup>F204</sup>(other than under Article 38(2) or (7)(b))] and imposes conditions; or

(b) varies, in relation to any person, conditions of bail under Article 48(3E) of that Order, a magistrates' court may, on application by or on behalf of that person, grant bail or vary the conditions.

(2) On an application under paragraph (1), the court, if it grants bail and imposes conditions or if it varies the conditions, may impose more onerous conditions.

(3) On determining an application under paragraph (1), the court shall remand the applicant in custody or on bail in accordance with the determination and, where the court withholds bail or grants bail, the grant of bail by the custody officer shall lapse.]

**F203** Art. 132A inserted (12.3.2007) by Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)), arts. 1(3), 9; S.R. 2007/56, art. 2(a)

**F204** Words in art. 132A(1)(a) inserted (8.12.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 87(4); S.R. 2008/472, art. 2(1), Sch. Pt. 1 para. 2

### **Conditions on admission to bail**

**133.** Without prejudice to any other power to impose conditions on admission to bail, a magistrates' court may impose such conditions on admitting a person to bail as appear to the court to be likely to result in that person's appearance at the time and place required or to be necessary in the interests of justice or for the prevention of crime.

### **[<sup>F205</sup>Reconsideration of decisions granting bail**

**133A.**—(1) Where a magistrates' court has granted bail in connection with an offence, or proceedings for an offence, to which this Article applies, or a custody officer has granted bail in connection with proceedings for an offence, a magistrates' court may, on an application by the prosecution for the decision to be reconsidered—

(a) vary or rescind the conditions of bail or impose further conditions;

(b) impose conditions in respect of bail which has been granted unconditionally, or

(c) withhold bail.

(2) This Article applies to offences which are punishable on conviction on indictment (whether or not punishable only on conviction on indictment).

(3) No application for the reconsideration of a decision under this Article shall be made unless it is based on information which was not available to the court or custody officer when the decision was taken.

(4) Where the decision of the court on a reconsideration under this Article is to withhold bail from the person to whom it was originally granted, the court shall—

(a) if that person is before the court, remand him in custody; or



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- (b) if that person is not before the court, order him to surrender himself forthwith into the custody of the court.
- (5) Where a person surrenders himself into the custody of the court in compliance with an order under paragraph (4), the court shall remand him in custody.
- (6) A person who has been ordered to surrender to custody under paragraph (4) may be arrested without warrant by a constable if he fails without reasonable cause to surrender to custody in accordance with the order.
- (7) A person arrested in pursuance of paragraph (6) shall be brought before a magistrates' court as soon as practicable after the arrest and in any event not later than the day next following the day on which he is arrested and the court shall remand him in custody.
- (8) Where the day next following the day on which that person is arrested is Christmas Day, Good Friday or a Sunday, he shall be brought before a magistrates' court not later than the next following day which is not one of those days.
- (9) Magistrates' courts rules shall include provision—
- (a) requiring notice of an application under this Article and of the grounds for it to be given to the person affected, including notice of the powers available to the court under it; and
  - (b) for securing that any representations made by the person affected (whether in writing or orally) are considered by the court before making its decision.
- (10) In this Article custody officer includes an officer who is performing the functions of a custody officer by virtue of Article 37(4) or (7) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12).]

**F205** Art. 133A inserted (12.3.2007) by [Criminal Justice \(Northern Ireland\) Order 2003 \(S.I. 2003/1247 \(N.I. 13\)\)](#), arts. 1(3), 10; S.R. 2007/56, **art. 2(a)**

### *Discharge of recognizance of surety where person committed for trial*

#### **Provision where person committed for trial about to abscond**

**134.**—(1) Where a person has entered into a recognizance to appear before a magistrates' court or been committed for trial on bail, a surety for such person may make a complaint in writing and upon oath before a justice of the peace that he suspects that such person is about to abscond for the purpose of evading that appearance or trial and the justice may issue a warrant for the arrest of that person and requiring him to be brought before a resident magistrate.

(2) The resident magistrate before whom a person is brought under paragraph (1) may commit such person to prison until his next appearance before a magistrates' court or his trial or until he finds another surety and the recognizance entered into by the original surety shall be discharged.

### *General provisions with regard to recognizances*

#### **Amount of recognizance**

**135.** A recognizance shall be in such amount as appears sufficient to ensure the performance of its conditions.

#### **General power to order sureties to any recognizance**

**136.** Any power of a magistrates' court or of a member of the Royal Ulster Constabulary to require or authorise a recognizance of any kind to be entered into or to fix the amount of any recognizance

shall include the power to require or, as the case may be, authorise the recognizance to be entered into with a surety or sureties.

### **Acceptance of deposit of money or valuable security in lieu of sureties to a recognizance**

**137.**—(1) Any magistrates' court or member of the Royal Ulster Constabulary may accept or authorise the acceptance of the deposit of a sum of money or other valuable security in lieu of sureties for the due performance of the conditions of a recognizance.

(2) Where a court of summary jurisdiction estreats the recognizance, it may order the forfeiture of the whole or any part of any sum of money or other valuable security deposited under paragraph (1).

(3) The amount of the sum deposited or the valuable security shall be specified in the recognizance.

(4) Where the condition of the recognizance is duly performed the sum or security shall be repaid or returned to the person who deposited it.

### **Estreating of recognizances**

**138.**—(1) Without prejudice to Article 151, where the condition of a recognizance is to appear at the Crown Court or county court the recognizance shall be liable upon breach of that condition to be estreated by that court; otherwise recognizances entered into before, or in connection with, proceedings pending in or before a magistrates' court may, without prejudice to any other mode of enforcement, be enforced by a court of summary jurisdiction.

[<sup>F206</sup>(2) Paragraphs (2A) and (2B) apply where—

- (a) a recognizance to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour has been entered into before a magistrates' court; or
- (b) it is a condition of any recognizance that a person appears before a magistrates' court or at a police station; or
- (c) any other recognizance may be enforced by a court of summary jurisdiction.

(2A) If, in the case of a recognizance a condition of which is that an accused appears before a magistrates' court, the accused fails to appear in accordance with the condition, the court shall—

- (a) order the estreat of the recognizance; and
- (b) direct the issue of a summons to any surety for that person requiring the surety to appear before a court of summary jurisdiction on a date specified in the summons to show cause why he should not pay the sum in which he is bound;

and on that date the court may proceed in the absence of any surety if it is satisfied that he has been served with the summons.

(2B) If, in any other case falling within paragraph (2), the recognizance appears to the magistrates' court to be forfeited, the court may order the estreat of the recognizance on each person bound by it, whether as principal or surety, but, in a case falling within paragraph (2)(a), the court shall not order the estreat of the recognizance except on complaint.

(3) The power of the court under paragraph (2A) or (2B) to order the estreat of the recognizance includes power to order the estreat of the recognizance to such lesser amount as the court thinks fit and power to remit payment of the amount due under the recognizance.]

(4) Upon ordering the estreat of a recognizance the court may issue a warrant—

- (a) to levy the amount forfeited by distress and sale of the property of any person bound by the recognizance, and
- (b) in default of distress to commit such person to prison as if for default in the payment of a sum adjudged to be paid by a conviction;

*Status: Point in time view as at 06/03/2015.*

*Changes to legislation: The Magistrates' Courts (Northern Ireland) Order 1981 is up to date with all changes known to be in force on or before 20 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)*

and accordingly the period for which such person may be committed shall not exceed that specified in Schedule 3.

(5) Nothing in this Article shall prejudice the power of a magistrates' court to issue a warrant for the arrest of a person who, in breach of his recognizance, has failed to appear before the court.

**F206** 2003 NI 13

### Disposal of deposits in lieu of sureties in certain cases

**139.**—(1) Where, under any enactment, any sum or security has been deposited with a magistrates' court, or with a member of the Royal Ulster Constabulary, in lieu of sureties for the due performance of the conditions of a recognizance and—

- (a) the conditions of the recognizance have been duly performed but it has not been possible to repay or return the deposit to the person who deposited it; or
- (b) a condition of the recognizance has been broken but it has not been possible to serve a notice of application to estreat the recognizance on the person who made the deposit or to ascertain his usual place of abode;

the clerk of petty sessions for the court or a member of the Royal Ulster Constabulary, as the case may require, shall, after the expiration of twelve months from the date when the deposit has become repayable or returnable or, as the case may be, the condition of the recognizance has been broken, or so soon thereafter as is practicable, apply to a court of summary jurisdiction under Part VII for an order for the disposal of the deposit; and that court may, if in all the circumstances of the case it considers it just to do so, by order, direct the deposit—

- (i) in the case of money, to be transferred to the [<sup>F207</sup>Consolidated Fund of Northern Ireland]; or
- (ii) in the case of any other security, to be sold and the proceeds of the sale transferred to the [<sup>F207</sup>Consolidated Fund of Northern Ireland].

(2) Notice of any such application, containing particulars of the deposit and of the party who deposited it, shall be exhibited at the police station nearest to the place where the deposit was made for a period of not less than one month before the hearing of the application by the court.

(3) Where a court which has made an order under paragraph (1) is satisfied, at any time after the making of the order, upon an application made in accordance with the said Part VII, that any person claiming to be entitled to the whole or part of any sum transferred to the [<sup>F208</sup>Consolidated Fund of Northern Ireland] in pursuance of that order is so entitled, that court may, by order, so declare; and the Treasury shall issue out of the [<sup>F208</sup>Consolidated Fund of Northern Ireland] such sums as may appear to it to be necessary to provide for payment of that person accordingly.

**F207** Words in art. 139(1) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 137** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

**F208** Words in art. 139(3) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 137** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

### Modifications etc. (not altering text)

**C60** Art. 139(3): functions of Treasury or Minister for the Civil Service transferred to Department of Finance and Personnel (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), **15(4)(f)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

## PART XII

### APPEAL AND CASE STATED

#### *Appeals to county court*

#### **Appeals against conviction or sentence, etc.**

**140.**—(1) Subject to this Article, a person convicted by a magistrates' court may appeal to a county court,—

- (a) whether or not he pleaded guilty, against his sentence;
- (b) if he did not plead guilty, against the conviction.

[<sup>F209</sup>(1A) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 (under which a conviction of an offence for which an order for conditional or absolute discharge is made is deemed not to be a conviction except for certain purposes) shall not prevent an appeal under this Article, whether against conviction or otherwise.]

(2) In paragraph (1) “sentence” includes any order [<sup>F210</sup> passed on the person for the offence, whether on conviction or in subsequent proceedings,] not being—

*Sub#para. (a) rep. by 1996 NI 24*

- (b) an order for the payment of costs; or
- (c) any other order subject to a restriction referred to in paragraph 9(1)(b) of Schedule 5.

[<sup>F210</sup>(2A) A person may appeal to a county court against—

- (a) a fine imposed under paragraph (a), or an order made under paragraph (b) or (c), of paragraph 3(1) of Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996 (N.I. 24);
- (b) the dismissal of an application under Part 3 or 4 of that Schedule;
- (c) a fine imposed, or an order made, under Article 41(2) or <sup>F211</sup> of the Criminal Justice (Children) (Northern Ireland) Order 1998 (N.I. 9);
- (d) an order made under Article <sup>F211</sup> or 54(3)(a) of that Order;
- (e) an order made under paragraph 3 of Schedule 1A to that Order; or
- (f) the dismissal of an application under paragraph 5 of that Schedule (otherwise than to the Crown Court) to make an order under sub-paragraph (1) of that paragraph.]

*Para. (3) rep. by 1996 NI 24*

(4) A person ordered under [<sup>F209</sup> Article 7(1) of the Criminal Justice (Northern Ireland) Order 1996] to give good security for the good behaviour of an offender may appeal to the county court.

**F209** 1996 NI 24

**F210** 2002 c. 26

**F211** prosp. insertion by 2002 c. 26 - see SR 2003 No.488 (C.37)

#### **Modifications etc. (not altering text)**

**C61** Art. 140(1)(b) extended (15.12.2011) by [Terrorism Prevention and Investigation Measures Act 2011](#) (c. 23), ss. 15(3), 31(2), **Sch. 3 para. 4(5)(d)** (with Sch. 8)

**C62** Art. 140(1)(b) applied (12.2.2015) by [Counter-Terrorism and Security Act 2015](#) (c. 6), s. 52(5), **Sch. 4 para. 4(5)(d)**

*Status: Point in time view as at 06/03/2015.*

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### Appeals from orders as to recognizances

**141.**—(1) A person ordered by a magistrates' court to enter into a recognizance to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour may appeal to the county court and the order appealed against shall not be suspended pending the determination of the appeal but shall, pending such determination, have full force and effect.

(2) A party bound by a recognizance which is estreated by a court of summary jurisdiction may appeal to the county court.

### Appeals against imprisonment or fine for misbehaviour in court or against an order under Article 112(6)

**142.**—(1) A person committed to prison or upon whom a fine is imposed under Article 160 may appeal to the county court.

(2) Nothing in this Part shall affect section 44 of the Judicature (Northern Ireland) Act 1978 in so far as it confers a right of appeal to the Court of Appeal from an order under Article 112(6).

### Appeals in other cases

**143.**—(1) Subject to paragraph (2) and to Articles 29 and 31(1) of the Domestic Proceedings (Northern Ireland) Order 1980, an appeal shall lie to the county court from any order of a magistrates' court in proceedings to which this Article applies, by any party to the proceedings.

(2) No appeal shall lie from an order under Article 98(4) or (5).

(3) This Article applies to the following proceedings—

- (a) debt proceedings;
- (b) ejectment proceedings;
- (c) proceedings commenced by notice of application or appeal (whether under Part VII or otherwise);
- (d) proceedings upon a complaint to which Part VIII applies.

[<sup>F212</sup>(4) Paragraph (1) is also subject to paragraph 8(2) of Schedule 16 to the Civil Partnership Act 2004 and Article 31(1) of the Domestic Proceedings (Northern Ireland) Order 1980 as applied by paragraph 46 of that Schedule.]

**F212** 2004 c. 33

#### Modifications etc. (not altering text)

**C63** Art. 143 applied (11.7.2011) by Welfare of Animals Act (Northern Ireland) 2011 (c. 16), ss. **17(14)**, 59 (with ss. 1(2), 52(1), 53, 54);

S.R. 2011/245, art. 2, Sch. 1

**C64** Art. 143 applied (11.7.2011) by Welfare of Animals Act (Northern Ireland) 2011 (c. 16), ss. **20(1)**, 59 (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, art. 2, Sch. 1

**C65** Art. 143 applied (11.7.2011) by Welfare of Animals Act (Northern Ireland) 2011 (c. 16), ss. **20(6)**, 59 (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, art. 2, Sch. 1

### Procedure on appeal

**144.**—(1) Where an appeal is made to the county court under this Part, the appellant shall, in addition to complying with the provisions of this Part as to recognizances, within fourteen days commencing on the day on which the decision of the magistrates' court was made, give to the other

party notice in writing of his appeal and shall within the said period lodge a copy of such notice so given with the clerk of petty sessions.

(2) For the purposes of paragraph (1) the day on which the decision of the magistrates' court is given shall, where the court has adjourned the hearing of a complaint after conviction or under Article 51, be the day on which the court sentences or otherwise deals with the offender.

[<sup>F213</sup>(2A) The period within which notice of appeal must be given and lodged under paragraph (1) may be extended, either before or after it expires, by the county court having jurisdiction in the county court division in which the magistrates' court sat, on an application made in accordance with county court rules.]

(3) An appeal from the decision of a magistrates' court shall, without prejudice to any power to adjourn proceedings in the county court and subject to paragraph (4), be heard at the sitting of the county court having jurisdiction in the county court division in which the magistrates' court sat which commences next after the expiration of seven days from the day on which the copy of the notice is lodged with the clerk of petty sessions under paragraph (1).

(4) Where the appellant remains in custody pending the hearing of his appeal, the appeal may be heard at the sitting of the county court which commences next after the day on which the copy of the notice is lodged with the clerk of petty sessions under paragraph (1).

(5) Without prejudice to Article 14, magistrates' courts rules may provide for the transmission of documents to and from the county court.

F213 SR 1994/472

### **Powers exercisable by county court on appeal**

145.—(1) On an appeal made to it under this Part the county court may exercise all or any of the powers specified in Article 28 of the County Courts (Northern Ireland) Order 1980 and where an appellant who has not given due notice of abandonment in accordance with Article 150 does not appear to prosecute his appeal the county court may without rehearing any evidence affirm the order appealed from or may otherwise deal with the appeal in the absence of the appellant and in either case may, subject to county court rules, order the payment of costs by the appellant.

(2) This Article shall not apply to costs in criminal appeals.

### **[<sup>F214</sup>Immunity of county court judges hearing appeals under this Part.**

145A. Articles 5, 6[<sup>F215</sup>,6A] and 10 shall apply in relation to a county court judge sitting in connection with an appeal under this Part as they apply in relation to a resident magistrate.]

F214 1990 c. 41

F215 1999 c. 22

*Case stated*

### **Cases stated by magistrates' courts**

146.—(1) Any party of a summary proceeding dissatisfied with any decision of the court upon any point of law involved in the determination of the proceeding or of any issue as to its jurisdiction may apply to the court to state a case setting forth the relevant facts and the grounds of such determination for the opinion of the Court of Appeal.

**Status:** Point in time view as at 06/03/2015.

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(2) An application under paragraph (1) shall be made in writing by delivering it to the clerk of petty sessions within fourteen days commencing with the day on which the decision of the magistrates' court was given and a copy shall be served on the other party within the same period.

(3) For the purpose of paragraph (2) the day on which the decision of the magistrates' court is given shall, where the hearing of the charge has been adjourned after conviction or under Article 51, be the day on which the court sentences or otherwise deals with the offender.

(4) If the magistrates' court is of opinion that an application under this Article is frivolous, but not otherwise, it may, subject to paragraph (5), refuse to state a case, and, if the applicant so requires, shall give him a certificate stating that the application has been refused.

(5) The court shall not refuse to state a case if the application is made by or under the direction of the Attorney General.

(6) Subject to the preceding provisions of this Article the magistrates' court, upon application made under paragraph (1), shall state a case within three months from the date of the application.

(7) Where the magistrates' court refuses or fails to state a case under paragraph (6), the applicant may apply to a Judge of the Court of Appeal for an order directing the magistrates' court to state a case within the time limited by the order and where the Judge of the Court of Appeal makes such order the magistrates' court shall state the case upon the applicant entering into any recognizance required by Article 149.

(8) Where an application for a case to be stated under this Article has been granted any other right of the applicant to appeal against the decision shall cease.

(9) Within fourteen days from the date on which the clerk of petty sessions dispatches the case stated to the applicant (such date to be stamped by the clerk of petty sessions on the front of the case stated), the applicant shall transmit the case stated to the Court of Appeal and serve on the other party a copy of the case stated with the date of transmission endorsed on it.

(10) Where two or more parties to the same proceedings apply under this Article to the court to state a case, the court shall, subject to paragraph (4), state a single case only.

#### **Modifications etc. (not altering text)**

**C66** Art. 146 applied (11.7.2011) by Welfare of Animals Act (Northern Ireland) 2011 (c. 16), ss. 17(14), 59 (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, art. 2, Sch. 1

**C67** Art. 146 applied (11.7.2011) by Welfare of Animals Act (Northern Ireland) 2011 (c. 16), ss. 20(1), 59 (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, art. 2, Sch. 1

**C68** Art. 146 applied (11.7.2011) by Welfare of Animals Act (Northern Ireland) 2011 (c. 16), ss. 20(6), 59 (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, art. 2, Sch. 1

#### **Powers of Court of Appeal**

**147.**—(1) Without prejudice to the generality of section 22 of the Interpretation Act (Northern Ireland) 1954, where a case is stated under Article 146 for the opinion of the Court of Appeal, that Court may exercise all the powers, authority and jurisdiction of the magistrates' court stating the case and, in addition may—

- (a) affirm, reverse or vary the decision of the magistrates' court;
- (b) remit the case stated, with such declarations or directions as the Court of Appeal may think proper, for hearing and determination by the magistrates' court or for re-statement or amendment or for a supplemental case to be stated thereon; or
- (c) make such order as to costs and expenses as the Court of Appeal may think proper;



and the magistrates' court shall have regard to all such declarations and obey all such directions, if any, as may be given by the Court of Appeal pursuant to sub-paragraph (b).

(2) Except as provided by section 41 of the Judicature (Northern Ireland) Act 1978, the decision of the Court of Appeal upon a case stated under this Part shall be final.

*Supplemental provisions as to appeal to the county court by way of case stated.*

### **Bail on appeal to county court or by way of case stated**

**148.**—(1) Where a person has given notice of appeal to the county court against the order of a magistrates' court or has applied to a magistrates' court to state a case for the opinion of the Court of Appeal, then, if he is in custody, the magistrates' court or any justice of the peace having jurisdiction in the petty sessions district for which the court acted may order him to be released on his entering into a recognizance conditioned—

- (a) if he has given notice of appeal, for his appearance at the hearing of the appeal;
- (b) if he has applied for the statement of a case, for his due appearance before the magistrates' court after the judgment of the Court of Appeal has been given, if and when he is so directed by the Court of Appeal;
- (c) and in either case for the due prosecution of the appeal in the same terms as the recognizance required by Article 149(1).

(2) Where the appellant in custody is unable to obtain his release because a magistrates' court has refused to release him from custody under paragraph (1) or fixed the amount of the recognizance to be entered by the appellant or of the recognizance of a surety under Article 136 or the amount of any security to be given under Article 137 in lieu of sureties at an excessive sum, the appellant may apply to the High Court to release him from custody, or to reduce the amount of the recognizance or security as the case may be.

(3) Any application under paragraph (2) shall be made in like manner as an application for bail by a person who has been returned for trial in custody in respect of an indictable offence and on any such application the Court may order the release of an appellant on such conditions, and fix the amount of the recognizance or other security as such sum, as the Court thinks fit.

### **Recognizance to prosecute appeal and fees on case stated**

**149.**—(1) Subject to paragraph (3), an appellant shall within three days commencing on the day on which a copy of the notice of appeal is lodged with the clerk of petty sessions or the application for a case stated is made enter into a recognizance in such amount as may be fixed by the court from whose decision the appeal is brought or by any justice of the peace having jurisdiction in the petty sessions district for which that court acted conditioned—

- (a) to prosecute the appeal or case without delay; and
- (b) to abide by the judgment of the county court or of the Court of Appeal, as the case may be; and
- (c) to pay such costs as the court may award.

(2) The clerk of petty sessions shall not be required to deliver a case stated to the appellant until the appellant has, where necessary, complied with paragraph (1) and has paid to him such fees payable for the case and for the recognizance as may be prescribed and if the appellant fails or neglects to pay the fees within fourteen days after being notified that the case stated is ready for delivery he shall be deemed to have abandoned his appeal.

(3) Paragraph (1) shall not apply to an appellant who—

- (a) pending the hearing of the appeal or case stated remains in custody; or

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- (b) has been released from custody upon his entering into a recognizance under Article 148; or
- (c) is a public or local authority or an officer of a public or local authority acting as such or is a constable acting as such; or
- (d) is appealing to the county court against an order made in debt proceedings; or
- (e) is a plaintiff appealing to the county court in ejectment proceedings.

### Abandonment of appeal to county court or by way of case stated

**150.**—(1) An appellant may at any time, not less than seven days before the date fixing for the hearing, abandon an appeal to the county court by giving notice in writing to such [<sup>F216</sup>civil servant in the Department of Justice] as [<sup>F217</sup>that Department] may designate and such person shall forthwith give notice to the other party to the appeal.

(2) Where an appeal is by way of case stated the applicant for the case may at any time before the date on which he is required to transmit the case to the Court of Appeal abandon the appeal by giving notice in writing to such [<sup>F216</sup>civil servant in the Department of Justice] as [<sup>F218</sup>that Department] may designate and such person shall forthwith give notice to the other party to the appeal.

**F216** Words in art. 150 substituted (12.4.2010) by Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010 (S.R. 2010/133), art. 4, **Sch. para. 15(4)** (with arts. 5-7)

**F217** Words in art. 150(1) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 138** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

**F218** Words in art. 150(2) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 138** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

### Estreat of recognizances and making of orders as to costs in connection with appeals

**151.**—(1) Where it appears that an appellant has failed to comply with the conditions of a recognizance entered into under Article 148 or Article 149, because—

- (a) a notice of abandonment has been duly served under Article 150; or
- (b) the appeal has not been duly prosecuted; or
- (c) being the applicant for a case stated, he has failed to take delivery of it or to transmit it as required by Article 146 (9);

a court of summary jurisdiction acting for the same petty sessions district as the magistrates' court from whose decision the appeal was made or by whom the case was stated, may, after such a notice as is referred to in Article 138 (3), has been served in accordance with that paragraph upon the party or parties bound by the recognizance, order the recognizance to be estreated.

(2) In addition, the court of summary jurisdiction may, on the application of the other party to the appeal, order to be paid to him out of the amount forfeited on the estreat of the recognizance such sum as appears to the court to be just and reasonable in respect of expenses properly incurred by such other party in connection with the appeal and the balance of the sum so forfeited, if any, shall be paid into the [<sup>F219</sup>Consolidated Fund of Northern Ireland] so, however, that where the appeal is abandoned pursuant to notice duly served under Article 150 the said balance shall be repaid to the party or parties from whom it was forfeited.

(3) Where an appeal has been abandoned by a public or local authority or by an officer of a public or local authority acting as such or by a constable acting as such by notice of abandonment under Article 150 or where such an appeal has not been duly prosecuted, a court of summary jurisdiction

such as is referred to in paragraph (1) may upon complaint order it or him to pay such costs as appear to the court to be just and reasonable in respect of expenses properly incurred by any other party in connection with the appeal.

(4) The provisions of this Article are in addition to and not in derogation of any provision made by rules of court for the enforcement of the recognizances referred to in paragraph (1).

**F219** Words in art. 151(2) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 137** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

### **Enforcement of orders made, affirmed or varied on appeal or of original order where appeal abandoned**

**152.** Without prejudice to Article 147, or, in the case of an appeal to the county court, to Article 28 of the County Courts (Northern Ireland) Order 1980, after an appeal has been decided by the Court of Appeal or county court or, where an appeal has been abandoned (including where an applicant for a case stated has failed to take delivery of it or to transmit it to the Court of Appeal), an order, decree or warrant to enforce the order made on appeal, affirming, reversing or varying the original order, or (as the case may be) to enforce the original order, may be issued by any resident magistrate<sup>F220</sup> . . . and, in the case of an appeal to the county court, by the chief clerk.

**F220** 2002 c. 26

### **Computation of sentence on appeal**

**153.—(1)** Where a person who has been sentenced to imprisonment by a magistrates' court appeals to the county court or, by way of case stated under this Part or under Article 61 of the County Courts (Northern Ireland) Order 1980 to the Court of Appeal—

- (a) the time during which the appellant, pending the determination of his appeal, is not detained in custody shall not count as part of any term of imprisonment under his sentence;
- (b) the time during which the appellant is in custody pending the determination of his appeal shall, subject to any direction which the county court or, as the case may be, the Court of Appeal may give to the contrary, be reckoned as part of any sentence to which he is for the time being subject.

(2) When the county court or the Court of Appeal gives a direction under paragraph (1) (b), it shall state its reasons for giving it.

(3) The term of any sentence passed by the county court or the Court of Appeal in exercise of its powers under this Part or under any other statutory provision shall, unless the county court or, as the case may be, the Court of Appeal otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

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## PART XIII GENERAL

### *Forms*

#### **Objections as to want of form or variance between complaint, etc., and evidence adduced**

**154.**—(1) No objection shall be allowed in any proceedings before a magistrates' court to any complaint, summons, warrant, process, notice of application or appeal or other document for any alleged defect in substance or in form or for variation between any complaint, summons, warrant, process notice or other document and the evidence adduced on the part of the complainant, plaintiff, applicant or appellant at the hearing, unless the defect or variance appears to have misled the other party to the proceeding.

(2) Without prejudice to the generality of Article 161 or 163, where a party to the proceeding has been misled by such defect or variance as is mentioned in paragraph (1) the court may, if necessary and upon such terms as it thinks fit, adjourn the proceedings.

#### **Modifications etc. (not altering text)**

**C69** Art. 154 applied (31.10.2007) by [Sea Fishing \(Restriction on Days at Sea\) Order \(Northern Ireland\) 2007 \(S.R. 2007/407\)](#), [art. 17\(2\)](#)

**C70** Art. 154 applied (31.12.2008) by [Sea Fishing \(Marking and Identification of Passive Fishing Gear and Beam Trawls\) Order \(Northern Ireland\) 2008 \(S.R. 2008/484\)](#), [art. 5\(3\)](#)

#### **Amendment of complaint or other documents**

**155.** A magistrates' court may during any proceeding upon such terms as it thinks fit, make any amendment in any complaint, summons, warrant, process, notice of application or appeal or other document which is necessary for the purpose of raising the real questions at issue and arriving at a just decision.

#### **Validity of documents issued in proceedings**

**156.** A summons, warrant, decree or other document issued by a resident magistrate or<sup>F221</sup> lay magistrate] shall not be void by reason of the<sup>F221</sup> person] who signed the document subsequently dying or ceasing to hold or becoming disqualified for holding office.

**F221** [2002 c. 26](#)

### *Service of summons and execution of warrants*

#### **Summons or process lawfully issued may be served anywhere in Northern Ireland**

**157.** Any summons, notice or other process lawfully issued in connection with any proceedings before a magistrates' court may be served in any part of Northern Ireland upon the person to whom it is addressed.

## Execution of warrants

**158.**—(1) A warrant issued in connection with proceedings before a magistrates' court by a resident magistrate or<sup>F222</sup> lay magistrate] shall remain in force until it is executed or until it is withdrawn by the person who issued it, or if he is unable to act, by any resident magistrate.

(2) Notwithstanding any other enactment, any warrant for arrest or search or of commitment or distress lawfully issued in connection with proceedings before a magistrates' court may be executed in any part of Northern Ireland and it may be executed either by any person to whom the warrant was originally directed or by any constable.

(3) Where the person against whom any such warrant or his property, as the case may be, is to be found in Northern Ireland, the provisions of the Petty Sessions (Ireland) Act 1851<sup>F223</sup> relating to the certifying and endorsing of warrants shall not apply.

(4) Any warrant for the arrest of any person or any warrant of commitment lawfully issued in connection with proceedings before a magistrates' court may be executed by any constable at any time notwithstanding that the warrant is not in his possession at that time, but the warrant shall, on demand of the person arrested or committed, be shown to him as soon as practicable.

(5) The issue or execution of any warrant for arrest or search or of commitment in connection with proceedings before a magistrates' court shall be as effectual on Sunday as on any other day.

**F222** 2002 c. 26

**F223** 1851 c. 98

<sup>F224</sup>Power to rectify mistakes etc.

**F224** 1995 c. 35

## Power of magistrates' court to re-open cases to rectify mistakes etc.

**158A.**—(1) A magistrates' court may vary or rescind a sentence or other order imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so; and it is hereby declared that this power extends to replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make.

(2) The power conferred on a magistrates' court by paragraph (1) shall not be exercisable in relation to any sentence or order imposed or made by it when dealing with an offender if—

- (a) the county court has determined an appeal against—
  - (i) that sentence or order;
  - (ii) the conviction in respect of which that sentence or order was imposed or made; or
  - (iii) any other sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of that conviction (including a sentence or order replaced by that sentence or order); or
- (b) the Court of Appeal has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the imposition or making of the sentence or order.

(3) Where a person is convicted by a magistrates' court and it subsequently appears to the court that it would be in the interests of justice that the case should be heard again by another resident magistrate<sup>F225</sup> . . . , the court may so direct.

*Status: Point in time view as at 06/03/2015.*

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(4) The power conferred on a magistrates' court by paragraph (3) shall not be exercisable in relation to a conviction if—

- (a) the county court has determined an appeal against—
  - (i) the conviction; or
  - (ii) any sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of the conviction; or
- (b) the Court of Appeal has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the conviction.

(5) Where a court gives a direction under paragraph (3)—

- (a) the conviction and any sentence or other order imposed or made in consequence of it shall be of no effect; and
- (b) Article 47 shall apply as if the trial of the person in question had been adjourned.

(6) Where a sentence or order is varied under paragraph (1), the sentence or other order, as so varied, shall take effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.]

**F225** 2002 c. 26

*Power of High Court to amend summary orders, etc.*

**Amendment of order of magistrates' court on application to quash it**

**159.** Without prejudice to section 25 of the Judicature (Northern Ireland) Act 1978, where—

- (a) on the hearing of any application to the High Court to quash the order (including a conviction) of a magistrates' court there appears to be an omission or mistake in the order; and
- (b) the High Court is satisfied that such omission or mistake is of an obvious or clerical nature and that the magistrates' court ought to have caused the order to be drawn up free from that omission or mistake,

the High Court may, upon such terms as to costs or otherwise as it thinks proper, amend the order and adjudicate thereon as if the omission or mistake had not happened.

*Miscellaneous orders*

**Misbehaviour in court**

**160.**—(1) A magistrates' court has jurisdiction under this Article to deal with any person who—

- (a) wilfully insults a resident magistrate or<sup>F226</sup> lay magistrate], any witness before or officer of the court or any solicitor or counsel having business in the court, during his sitting or attendance in court or in going to or returning from the court; or
- (b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court.

(2) In any such case the court may order any officer of the court, or any constable, to take the offender into custody and detain him until the rising of the court; and the court may commit the offender to prison for a specified period not exceeding one month or impose on him a fine not exceeding<sup>F227</sup> £2,500] or both.

(3) A magistrates' court may at any time revoke an order of committal made under paragraph (2) and, if the offender is in prison, order his discharge.

(4) An order under paragraph (2) for the payment of a fine may be enforced as though the fine were a sum adjudged to be paid by a conviction.

**F226** 2002 c. 26

**F227** 1994 NI 15

### **Adjournment**

**161.**—(1) A magistrates' court may at any time adjourn proceedings before it.

(2) Where a court of summary jurisdiction adjourns the hearing of a complaint any day on which a resident magistrate resumes the sitting to hear that complaint shall be deemed to be a day directed for the holding of petty sessions.

(3) The court may when adjourning either fix the time and place at which the proceedings are to be resumed or, unless it is remanding a person in custody or on bail, leave the time and place to be determined later by the court; but the proceedings shall not be resumed at that time and place unless the court is satisfied that the parties and witnesses had adequate notice thereof.

(4) Persons whose attendance has been required by summons shall, without the issue of further summons, attend on the day to which the hearing is adjourned.

(5) Where a magistrates' court is for any reason unable to sit at the time appointed for such sitting, the clerk of petty sessions may adjourn the sitting and any summons, process, notice or recognizance requiring or conditioned for the appearance of a person at such sitting shall be deemed to be varied so as to require the appearance of that person at the time and place to which the sitting is so adjourned.

### **Recovery and remission of fees**

**162.**—(1) Where any person fails to pay any court fee, a court of summary jurisdiction may, on complaint of the clerk of petty sessions to whom such payment is due, make an order requiring the payment to be made and such order shall be enforceable in the same manner as an order for the payment of a sum adjudged to be paid by a conviction.

(2) A magistrates' court may, if satisfied of the inability of a party in any proceedings or on whose behalf any proceedings are brought to pay any court fees, remit such fees wholly or in part.

### **Costs**

**163.**—(1) Subject to magistrates' court rules, a magistrates' court may order that a successful complainant, plaintiff, applicant or appellant in any summary proceeding shall recover costs from a defendant or respondent.

(2) Where a complaint, debt or ejectment proceeding, application, appeal or other summary proceeding is dismissed, withdrawn or ordered to be struck out or where an order in any such proceeding is refused, the court may order that a defendant or respondent shall recover costs from the complainant, plaintiff, applicant or appellant.

(3) The court when making an order for adjournment may order that one party shall recover from another the costs of the adjournment.

(4) Paragraphs (1) and (2) shall not apply to costs in criminal cases.



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## *Representation*

### **Appearance by counsel or solicitor**

**164.**—(1) A party to any proceedings before a magistrates' court may be represented by counsel or solicitor; and an absent party so represented shall, except where any provision in any enactment (including this Order) or any condition of a recognizance expressly requires his presence, be deemed not to be so absent.

(2) Where a magistrates' court is satisfied that a party to proceedings is unable through illness or other reasonable cause to appear, the court may grant special leave to the father, son, mother, daughter,<sup>F228</sup> spouse, civil partner], brother or sister of such party to appear and be heard.

(3) For the purposes of paragraph (1), counsel or solicitor shall be construed subject to Article 5 of the European Communities (Services of Lawyers) Order 1978<sup>F229</sup>.

**F228** 2004 c. 33 (amending legislation states to subst. these words in para. (3) not (2)).

**F229** SI 1978/1910

### **Conduct of proceedings by police officer**

**165.** Where in proceedings before a magistrates' court the complainant is a member of the Royal Ulster Constabulary, the court may allow a member of the Royal Ulster Constabulary not below the rank of Inspector to conduct proceedings on behalf of the complainant.

### **Corporations**

**166.** The provisions of Schedule 4 shall apply where a corporation is charged with an indictable offence before a magistrates' court.

#### **Modifications etc. (not altering text)**

**C71** Art. 166 applied (20.1.2007 for certain purposes, 6.4.2007 for certain purposes, 1.10.2007 for certain purposes, 6.4.2008 for certain purposes, 1.10.2008 for certain purposes, otherwise 1.10.2009) by Companies Act 2006 (c. 46), ss. **1130(2)(b)(iii)**, 1300(2) (with s. 1133); S.I. 2006/3428, art. **3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6,8, Sch. 5); S.I. 2007/1093, art. **2(2)(c)** (with art. 11(1)); S.I. 2007/2194, art. **2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, arts. **3(3)(g)**, **5(3)(a)** (with arts. 7, 12); S.I. 2008/2860, art. **3(s)** (with art. 8)

**C72** Art. 166 applied (6.4.2008) by Companies Act 2006 (c. 46), ss. **1257(4)**, 1300(2); S.I. 2007/3495, art. **3(1)(u)** (with arts. 7, 12)

**C73** Art. 166 applied (31.3.2010) by Horse Passports Regulations (Northern Ireland) 2010 (S.R. 2010/40), reg. **22(2)(b)**

## *Supplemental*

### **Expenses**

**167.**—(1) Any expenses incurred by the Lord Chancellor in performing his functions under this Order or any increase in the expenses of the Lord Chancellor in defraying any sums authorised by this Order to be paid, or which are attributable to the performance or any function conferred by this Order, shall be defrayed out of moneys provided by the Parliament of the United Kingdom.

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(2) Any expenses incurred by or in connection with the Rules Committee shall be defrayed as part of the expenses incurred by the [<sup>F230</sup>Department of Justice in performing its functions] under this Order.

**F230** Words in art. 167(2) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 139** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

## Directions

**168.** Any power conferred by this Order<sup>F231</sup> . . . to give directions includes power to vary or revoke any directions so given.

**F231** Words in art. 168 repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 146, 148(1), Sch. 5 para. 69, Sch. 18 Pt. 3; S.I. 2006/1014, **art. 2(a)**, Sch. 1

## Application to the Crown

**169.** Without prejudice to any Order in Council made under section 53 of the Crown Proceedings Act 1947<sup>F232</sup> (extension of that Act to Northern Ireland), Articles 100 to 107 bind the Crown to the extent necessary to enable the enforcement of the duties imposed on chief officers by virtue of Article 103.

**F232** 1947 c. 44

## Transitional provisions, construction of references, savings, amendments and repeals

**170.—(1)** Schedule 5 (which contains transitional and saving provisions and provisions for the construction of references which were contained in provisions repealed by this Order) shall have effect.

*Para. (2)—Amendments*

*Para. (3)—Repeals*

**Status:**

Point in time view as at 06/03/2015.

**Changes to legislation:**

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