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## STATUTORY INSTRUMENTS

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# 2008 No. 1216

## The Criminal Justice (Northern Ireland) Order 2008

### PART 1

#### INTRODUCTORY

##### Title and commencement

- 1.—(1) This Order may be cited as the Criminal Justice (Northern Ireland) Order 2008.
- (2) The following provisions come into operation one week after the day on which this Order is made—
- (a) this Part; and
  - (b) Articles 100 and 101.
- (3) The following provisions come into operation one month after the day on which this Order is made—
- (a) Articles 84 to 86, 88, 89 and 93 to 99; and
  - (b) Part 2 of Schedule 6, and Article 102(2) so far as relating thereto.
- (4) The other provisions of this Order come into operation on such day or days as the Secretary of State may by order appoint.
- (5) Any provision of Part 4 or 5 which alters any penalty for an offence has effect only in relation to offences committed after the coming into operation of that provision.

##### Subordinate Legislation Made

- P1** [Art. 1\(4\)](#) power partly exercised: 15.5.2008 appointed for specified provisions by [S.R. 2008/217, art. 2, Sch.](#) (with savings and transitory provision in [arts. 3, 4](#));
- 16.7.2008 appointed for specified provisions by [S.R. 2008/293, art. 2, Sch.](#);
- 6.10.2008 appointed for specified provisions by [S.R. 2008/383, art. 2, Sch.](#) (with transitional provisions in [art. 3](#));
- different dates appointed for specified provisions by [S.R. 2008/472, art. 2, Sch.](#);
- 1.4.2009 appointed for specified provisions by [S.R. 2009/120, art. 2, Sch. 1](#) (subject to savings in [Sch. 2](#));
- 26.2.2010 appointed for specified provision by [S.R. 2010/36, art. 2](#);
- 1.1.2012 appointed for specified provision by [S.R. 2011/371, art. 2](#)

##### General interpretation

2. The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

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## PART 2

### SENTENCING

#### CHAPTER 1

#### INTERPRETATION

##### Interpretation of this Part

3.—(1) In this Part—

“community sentence” has the meaning given by Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 (NI 24);

“curfew requirement” has the meaning given by Article 37(1);

“electronic monitoring requirement” has the meaning given by Article 40(1);

“extended custodial sentence” has the meaning given by Article 14;

“HSS Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14);

“<sup>F1</sup>HSC trust]” means a [<sup>F2</sup>Health and Social Care trust]established under Article 10(1) of the Health and Personal Social Services (Northern Ireland) Order 1991 (NI 1);

“indeterminate custodial sentence” has the meaning given by Article 13(4);

“the Parole Commissioners” means the Parole Commissioners for Northern Ireland;

“prison rules” means rules made under section 13 of the Prison Act (Northern Ireland) 1953 (c. 18);

“probation order” means an order under Article 10 of the Criminal Justice (Northern Ireland) Order 1996 (NI 24);

“sentence” does not include a committal for default, or the fixing of a term to be served in the event of default, or attachment for contempt of court; and for the purposes of this definition “default” means a failure to pay, or want of sufficient distress to satisfy, any fine or other sum of money or failure to do or abstain from doing anything required to be done or left undone;

“serious harm” means death or serious personal injury, whether physical or psychological;

“youth conference order” means an order under Article 36J of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9);

“young offenders centre” has the meaning given by section 2(a) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29).

(2) For the purposes of this Part, an offence is associated with another if—

(a) the offender is convicted of both offences in the same proceedings, or is sentenced for both offences at the same time; or

(b) the offender admits the commission of it in the sentencing proceedings for the other offence and requests the court to take it into consideration in the sentence for that offence.

(3) For the purposes of this Part, where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it shall be taken to have been committed on the last of those days

(4) Where the age of any person at any time is material for the purposes of any provision of this Part, his age at the material time shall be deemed to be or to have been that which appears to the court after considering any available evidence to be or to have been his age at that time.

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### Textual Amendments

- F1** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F2** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), **Sch. 6 para. 1(1)(c)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

## CHAPTER 2

### CUSTODIAL SENTENCES

#### Interpretation of this Chapter

4.—(1) In this Chapter—

“custodial sentence” means—

- (a) a sentence of imprisonment;
- (b) a sentence of detention in a young offenders centre;
- (c) a sentence of detention under Article 13(4)(b) or 14(5);
- (d) a sentence of detention under Article 45(1) or (2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9);
- (e) an order under Article 39 of that Order sending the offender to a juvenile justice centre;
- (f) an order under Article 44A of that Order sending the offender to secure accommodation;

“pre-sentence report” means a report in writing which—

- (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by a probation officer or a social worker of an HSS Board or authorised [<sup>F3</sup>HSC trust] ; and
- (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State;

and for the purposes of this definition an “authorised [<sup>F3</sup>HSC trust]” is an [<sup>F3</sup>HSC trust] by which functions relating to such reports are exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994 (NI 2).

(2) For the purposes of this Chapter—

- (a) a sentence falls to be imposed under Article 13 if, because the court is of the opinion mentioned in paragraph (1)(b) of that Article and considers that the case falls within paragraph (2) or (3) of that Article, the court is obliged to pass a sentence complying with that Article;
- (b) a sentence falls to be imposed under Article 14 if, because the court is of the opinion mentioned in paragraph (1)(b)(i) and (ii) of that Article, the court is obliged to pass a sentence complying with that Article;
- (c) a sentence falls to be imposed under paragraph (2) of Article 70 of the Firearms (Northern Ireland) Order 2004 (NI 3) if it is required by that paragraph and the court is not of the opinion there mentioned; and
- (d) a sentence falls to be imposed under paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38) if it is required by that provision and the court is not of the opinion there mentioned.

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### Textual Amendments

- F3** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

### Restrictions on imposing certain custodial sentences

**5.—(1)** This Article applies where a person is convicted of an offence punishable with a custodial sentence other than one—

- (a) fixed by law; or
- (b) falling to be imposed under—
  - (i) Article 13 or 14;
  - (ii) Article 70(2) of the Firearms (Northern Ireland) Order 2004 (NI 3); or
  - (iii) paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38).

(2) The court shall not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only a custodial sentence can be justified for the offence.

(3) Nothing in paragraph (2) shall prevent the court from passing a custodial sentence if the offender fails to express a willingness to comply with—

- (a) a requirement which is proposed by the court to be included in a community sentence and which requires an expression of such willingness; or
- (b) a requirement which is proposed by the court to be included in—
  - (i) an order under Article 8(5) of the Criminal Justice (Northern Ireland) Order 1998 (NI 20); or
  - (ii) a youth conference order.

(4) Where a court passes a custodial sentence, it shall—

- (a) in a case not falling within paragraph (3), state in open court that it is of the opinion referred to in paragraph (2) and why it is of that opinion; and
- (b) in any case, explain to the offender in open court and in ordinary language why it is passing a custodial sentence.

(5) A magistrates' court shall cause a reason stated by it under paragraph (4) to be specified in the warrant of commitment and to be entered in the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984 (No. 225).

### Commencement Information

- II** [Art. 5](#) wholly in operation at 1.4.2009, see [art. 1\(4\)](#) and S.R. 2009/120, [art. 2](#), [Sch. 1](#) (subject to [Sch. 2 paras. 1\(1\)\(2\)\(a\), 4](#))

### Restrictions on imposing custodial sentences on persons not legally represented

**6.—(1)** A magistrates' court on summary conviction or the Crown Court on conviction on indictment shall not pass a custodial sentence on a person if that person is not legally represented in that court.

(2) Paragraph (1) does not apply to a person if

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- (a) a custodial sentence has previously been passed on that person or a corresponding sentence has previously been passed on that person by a court in any other part of the United Kingdom;
  - (b) that person applied for legal aid and the application was refused on the ground that it did not appear the person's means were such that the person required assistance; or
  - (c) having been informed of the right to apply for legal aid and had the opportunity to do so, that person refused or failed to apply.
- (3) In paragraph (2) “legal aid” means legal aid for the purposes of proceedings in the court, whether the whole proceedings or the proceedings on or in relation to sentence.
- (4) In the case of a person committed to the Crown Court for trial, it is immaterial whether that person applied for legal aid in the Crown Court to, or was informed of the right to apply by, that Court, or the court which committed that person.
- (5) For the purposes of this Article—
- (a) a person is to be treated as legally represented in a court if, but only if, that person has the assistance of counsel or a solicitor to represent that person in the proceedings in that court at some time after that person is found guilty and before that person is sentenced;
  - (b) a previous sentence of imprisonment or order for detention which has been suspended and which has not taken effect shall be disregarded.

#### Commencement Information

**I2** Art. 6 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

#### Length of custodial sentences

- 7.—(1) This Article applies where a court passes a sentence—
- (a) of imprisonment for a determinate term;
  - (b) of detention in a young offenders centre;
  - (c) of detention under Article 14(5); or
  - (d) of detention under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9).
- (2) Subject to Article 14 and the statutory provisions mentioned in paragraph (3), the sentence shall be for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
- (3) The statutory provisions referred to in paragraph (2) are—
- (a) Article 70(2) of the Firearms (Northern Ireland) Order 2004 (NI 3);
  - (b) paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38).

#### Commencement Information

**I3** Art. 7 wholly in operation at 1.4.2009; art. 7 not in operation at date Order made see art. 1(4); art. 7 in operation for certain purposes at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with savings and transitory provision arts. 3, 4); art. 7 in operation at 1.4.2009 in so far as not already in operation by S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

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## Length of custodial period

8.—(1) This Article applies where a court passes—

- (a) a sentence of imprisonment for a determinate term, other than an extended custodial sentence, or
- (b) a sentence of detention in a young offenders centre

in respect of an offence committed after the commencement of this Article.

(2) The court shall specify a period (in this Article referred to as “the custodial period”) at the end of which the offender is to be released on licence under Article 17.

(3) The custodial period shall not exceed one half of the term of the sentence.

(4) Subject to paragraph (3), the custodial period shall be the term of the sentence less the licence period.

(5) In paragraph (4) “the licence period” means such period as the court thinks appropriate to take account of the effect of the offender's supervision by a probation officer on release from custody—

- (a) in protecting the public from harm from the offender; and
- (b) in preventing the commission by the offender of further offences.

(6) Remission shall not be granted under prison rules to the offender in respect of the sentence.

### Commencement Information

**I4** [Art. 8](#) wholly in operation at 1.4.2009, see [art. 1\(4\)](#) and [S.R. 2009/120](#), [art. 2](#), [Sch. 1](#) (subject to [Sch. 2](#) paras. 2(1)(5), 4)

## Procedural requirements for custodial sentences

9.—(1) In forming any such opinion as is mentioned in Article 5(2) or 7(2), a court shall take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it (including any aggravating or mitigating factors).

(2) Subject to paragraph (3), a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in Article 5(2), 7(2), 13(1)(b) or 14(1)(b)(i).

(3) Paragraph (2) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report; and where the court does not obtain and consider a pre-sentence report, it shall state in open court that it is of that opinion and what the circumstances are.

(4) In the case of an offender under the age of 18, except where the offence or any other offence associated with it is punishable only on conviction on indictment, the court shall not form such an opinion as is mentioned in paragraph (3) or (6) unless—

- (a) there exists a previous pre-sentence report obtained in respect of the offender; and
- (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(5) No custodial sentence shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in paragraph (2) but any court on an appeal against such a sentence—

- (a) shall, subject to paragraph (6), obtain a pre-sentence report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

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- (6) Paragraph (5)(a) does not apply if the court is of the opinion—
- (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report; or
  - (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

#### Commencement Information

**I5** Art. 9 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

#### Additional requirements in the case of mentally disordered offenders

**10.**—(1) Subject to paragraph (2), in any case where Article 9(2) applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Paragraph (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider—

- (a) any information before it which relates to the offender's mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
- (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which paragraph (1) applies shall be invalidated by the failure of a court to comply with that paragraph, but any court on an appeal against such a sentence—

- (a) shall obtain a medical report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

(5) In this Article—

“mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4);

“medical report” means a report as to an offender's mental condition made or submitted orally or in writing by a registered medical practitioner appointed by the Mental Health Commission for Northern Ireland for the purposes of Part 2 of the Mental Health (Northern Ireland) Order 1986 (NI 4).

(6) Nothing in this Article shall be taken as prejudicing the generality of Article 9.

#### Commencement Information

**I6** Art. 10 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

#### Disclosure of pre-sentence reports

**11.**—(1) This Article applies where a court obtains a pre-sentence report.

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- (2) Subject to paragraphs (3) and (4), the court shall give a copy of the report—
- (a) to the offender or the offender's counsel or solicitor; and
  - (b) to the prosecutor, that is to say, the person having conduct of the proceedings in respect of the offence.
- (3) If the offender is under the age of 18 and is not represented by counsel or a solicitor, a copy of the report need not be given to the offender but shall be given to the offender's parent or guardian if present in court
- (4) If the prosecutor is not of a description prescribed by order made by the Secretary of State, a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for the prosecutor to be given it.
- (5) No information obtained by virtue of paragraph (2)(b) shall be used or disclosed otherwise than for the purpose of—
- (a) determining whether representations as to matters contained in the report need to be made to the court; or
  - (b) making such representations to the court.

#### Commencement Information

- 17** Art. 11 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)

## CHAPTER 3

### DANGEROUS OFFENDERS

#### Meaning of “specified offence” etc.

**12.**—(1) An offence is a “specified offence” for the purposes of this Chapter if it is a specified violent offence or a specified sexual offence.

(2) A specified offence is a “serious offence” for the purposes of this Chapter if it is an offence specified in Schedule 1.

(3) In this Chapter—

“life sentence” means—

- (a) a sentence of imprisonment for life; or
- (b) a sentence of detention under Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9);

“specified violent offence” means an offence specified in Part 1 of Schedule 2;

“specified sexual offence” means an offence specified in Part 2 of that Schedule.

(4) References in this Chapter to conviction on indictment include references to a finding of guilt under Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9).

(5) The Secretary of State may by order amend Schedules 1 and 2.

#### Life sentence or indeterminate custodial sentence for serious offences

**13.**—(1) This Article applies where—

- (a) a person is convicted on indictment of a serious offence committed after the commencement of this Article; and



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- (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.
- (2) If—
- (a) the offence is one in respect of which the offender would apart from this Article be liable to a life sentence, an
- (b) the court is of the opinion that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of such a sentence,
- the court shall impose a life sentence.
- (3) If, in a case not falling within paragraph (2), the court considers that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court shall—
- (a) impose an indeterminate custodial sentence; and
- (b) specify a period of at least 2 years as the minimum period for the purposes of Article 18, being such period as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it.
- (4) An indeterminate custodial sentence is—
- (a) where the offender is aged 21 or over, a sentence of imprisonment for an indeterminate period,
- (b) where the offender is under the age of 21, a sentence of detention for an indeterminate period at such place and under such conditions as the Secretary of State may direct,
- subject (in either case) to the provisions of this Part as to the release of prisoners and duration of licences.
- (5) A person detained pursuant to the directions of the Secretary of State under paragraph (4)(b) shall while so detained be in legal custody.
- (6) An offence the sentence for which is imposed under this Article is not to be regarded as an offence the sentence for which is fixed by law.
- (7) Remission shall not be granted under prison rules to the offender in respect of a sentence imposed under this Article.

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

**C1** Art. 13 excluded by S.I. 1986/595 (N.I. 4), art. 44(1A)(c) (as inserted (15.5.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 102(1), Sch. 5 para. 5(1)); S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4)

**Extended custodial sentence for certain violent or sexual offences**

- 14.**—(1) This Article applies where—
- (a) a person is convicted on indictment of a specified offence committed after the commencement of this Article; and
- (b) the court is of the opinion—
- (i) that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences; and

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- (ii) where the specified offence is a serious offence, that the case is not one in which the court is required by Article 13 to impose a life sentence or an indeterminate custodial sentence.
- (2) The court shall impose on the offender an extended custodial sentence.
- (3) Where the offender is aged 21 or over, an extended custodial sentence is a sentence of imprisonment the term of which is equal to the aggregate of
- (a) the appropriate custodial term; and
  - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.
- (4) In paragraph (3)(a) “the appropriate custodial term” means a term (not exceeding the maximum term) which—
- (a) is the term that would (apart from this Article) be imposed in compliance with Article 7 (length of custodial sentences); or
  - (b) where the term that would be so imposed is a term of less than 12 months, is a term of 12 months.
- (5) Where the offender is under the age of 21, an extended custodial sentence is a sentence of detention at such place and under such conditions as the Secretary of State may direct for a term which is equal to the aggregate of—
- (a) the appropriate custodial term; and
  - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.
- (6) In paragraph (5)(a) “the appropriate custodial term” means such term (not exceeding the maximum term) as the court considers appropriate, not being a term of less than 12 months.
- (7) A person detained pursuant to the directions of the Secretary of State under paragraph (5) shall while so detained be in legal custody.
- (8) The extension period under paragraph (3)(b) or (5)(b) shall not exceed—
- (a) five years in the case of a specified violent offence; and
  - (b) eight years in the case of a specified sexual offence.
- (9) The term of an extended custodial sentence in respect of an offence shall not exceed the maximum term.
- (10) In this Article “maximum term” means the maximum term of imprisonment that is, apart from Article 13, permitted for the offence where the offender is aged 21 or over.
- (11) A court which imposes an extended custodial sentence shall not make an order under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (suspended sentences) in relation to that sentence.
- (12) Remission shall not be granted under prison rules to the offender in respect of a sentence imposed under this Article.

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

- C2** Art. 14 excluded by S.I. 1986/595 (N.I. 4), art. 44(1A)(c) (as inserted (15.5.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 102(1), Sch. 5 para. 5(1)); S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4)

**The assessment of dangerousness**

**15.—(1)** This Article applies where—

- (a) a person has been convicted on indictment of a specified offence; an
  - (b) it falls to a court to assess under Article 13 or 14 whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences.
- (2) The court in making the assessment referred to in paragraph (1)(b)—
- (a) shall take into account all such information as is available to it about the nature and circumstances of the offence;
  - (b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part; and
  - (c) may take into account any information about the offender which is before it.

CHAPTER 4

RELEASE ON LICENCE

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

- C3** Pt. 2 Ch. 4 applied (with modifications) by Repatriation of Prisoners Act 1984 (c. 47), Sch. para. 2A(4) (as inserted (15.5.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 102(1), Sch. 5 para. 4(2)); S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4)

*Preliminary*

**Interpretation of this Chapter**

**16.—(1)** In any provision of this Chapter “fixed-term prisoner” means a person serving a determinate custodial sentence for an offence committed after the commencement of that provision.

(2) In this Chapter—

“custodial sentence” means—

- (a) a sentence of imprisonment;
- (b) a sentence of detention in a young offenders centre;
- (c) a sentence of detention under Article 13(4)(b) or 14(5);

“determinate custodial sentence” means a custodial sentence for a determinate term.

(3) In this Chapter—

“prison” includes any place where a person serving a sentence falling within paragraph (b) or (c) of the definition of “custodial sentence” is liable to be detained;

“prisoner” includes a person serving a sentence falling within either of those paragraphs.

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### *Duty of Secretary of State to release on licence*

#### **Duty to release certain fixed-term prisoners**

**17.**—(1) As soon as a fixed-term prisoner, other than a prisoner serving an extended custodial sentence, has served the requisite custodial period, the Secretary of State shall release the prisoner on licence under this Article.

(2) In this Article “the requisite custodial period” means—

- (a) subject to sub-paragraph (b), the custodial period specified by the court under Article 8;
- (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under Article 32(2) or 33(2)

#### **Commencement Information**

**18** Art. 17 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 2(2)(5), 4)

#### **Duty to release prisoners serving indeterminate or extended custodial sentences**

**18.**—(1) This Article applies to a prisoner who is serving—

- (a) an indeterminate custodial sentence; or
- (b) an extended custodial sentence.

(2) In this Article—

“P” means a prisoner to whom this Article applies;

“relevant part of the sentence” means—

- (a) in relation to a indeterminate custodial sentence, the period specified by the court under Article 13(3) as the minimum period for the purposes of this Article;
- (b) in relation to an extended custodial sentence, one-half of the period determined by the court as the appropriate custodial term under Article 14.

(3) As soon as—

- (a) P has served the relevant part of the sentence, and
- (b) the Parole Commissioners have directed P's release under this Article,

the Secretary of State shall release P on licence under this Article.

(4) The Parole Commissioners shall not give a direction under paragraph (3) with respect to P unless—

- (a) the Secretary of State has referred P's case to them; and
- (b) they are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be confined.

(5) P may require the Secretary of State to refer P's case to the Parole Commissioners at any time—

- (a) after P has served the relevant part of the sentence; and
- (b) where there has been a previous reference of P's case to the Parole Commissioners, after the expiration of the period of 2 years beginning with the disposal of that reference or such shorter period as the Parole Commissioners may on the disposal of that reference determine;

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and in this paragraph “previous reference” means a reference under paragraph (4) or Article 28(4).

(6) Where the Parole Commissioners do not direct P's release under paragraph (3)(b), the Secretary of State shall refer the case to them again not later than the expiration of the period of 2 years beginning with the disposal of that reference.

(7) In determining for the purpose of this Article whether P has served the relevant part of a sentence, no account shall be taken of any time during which P was unlawfully at large, unless the Secretary of State otherwise directs.

(8) Where P is serving an extended custodial sentence, the Secretary of State shall release P on licence under this Article as soon as the period determined by the court as the appropriate custodial term under Article 14 ends unless P has previously been recalled under Article 28

(9) The Secretary of State may by order provide that the reference in paragraph (b) of the definition of “relevant part of the sentence” in paragraph (2) to a particular proportion of a prisoner's sentence is to be read as a reference to such other proportion of a prisoner's sentence as may be specified in the order.

VALID FROM 01/06/2015

*Power [<sup>F4</sup>...] to release on licence*

**Textual Amendments**

- F4** Words in [art. 19](#) cross-heading omitted (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 6(2), [Sch. 5 para. 12](#) (with arts. 28-31); [S.I. 2010/977](#), [art. 1\(2\)](#) (but this amendment cannot take effect until the commencement of [S.I. 2008/1216](#), [art. 19](#) cross-heading)

**Power to release prisoners on licence before required to do so**

**19.—(1)** The [<sup>F5</sup>Department of Justice] may release on licence under this Article a fixed-term prisoner at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period.

- (2) Paragraph (1) shall not apply in relation to a prisoner unless—
- (a) the length of the requisite custodial period is at least 6 weeks; and
  - (b) the prisoner has served—
    - (i) at least 4 weeks of the prisoner's sentence; and
    - (ii) at least one-half of the requisite custodial period.
- (3) Paragraph (1) shall not apply where—
- (a) the sentence is an extended custodial sentence;
  - (b) the prisoner is subject to a hospital order or transfer direction within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4);
  - (c) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42);
  - (d) the prisoner is liable to removal from the United Kingdom;

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- (e) the prisoner has been released on licence under this Article during the currency of the sentence, and has been recalled to prison under Article 30; or
  - (f) the prisoner has been released on licence under Article 20 during the currency of the sentence, and has been recalled to prison under Article 28.
- (4) The [<sup>F6</sup>Department of Justice] may by order—
- (a) amend the number of days specified in paragraph (1);
  - (b) amend the number of weeks specified in paragraph (2)(a) or (b)(i);
  - (c) amend the fraction specified in paragraph (2)(b)(ii).
- (5) In this Article “the requisite custodial period” has the same meaning as in Article 17.
- (6) In this Article—
- (a) “fixed-term prisoner” includes a person serving a determinate custodial sentence for an offence committed before the commencement of this Article; and
  - (b) in relation to such a prisoner, “the requisite custodial period” means one-half of the term of the sentence.
- (7) For the purposes of this Article a person is liable to removal from the United Kingdom if that person
- (a) is liable to deportation under section 3(5) of the Immigration Act 1971 (c. 77) and has been notified of a decision to make a deportation order against that person;
  - (b) is liable to deportation under section 3(6) of that Act;
  - (c) has been notified of a decision to refuse that person leave to enter the United Kingdom;
  - (d) is an illegal entrant within the meaning of section 33(1) of that Act; or
  - (e) is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c. 33).

#### Textual Amendments

- F5** Words in art. 19(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), 6(2), **Sch. 5 para. 15** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 19)
- F6** Words in art. 19(4) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 6(2), **Sch. 5 para. 15** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 19)

#### Power to release certain prisoners on compassionate grounds

**20.—(1)** The [<sup>F7</sup>Department of Justice] may, if satisfied that exceptional circumstances exist which justify the release of a prisoner to whom this Article applies on compassionate grounds, at any time release the prisoner on licence under this Article.

- (2) This Article applies to—
- (a) a fixed-term prisoner; and
  - (b) a prisoner serving an indeterminate custodial sentence.
- (3) The [<sup>F8</sup>Department of Justice] shall, before releasing a prisoner serving—
- (a) an indeterminate custodial sentence; or
  - (b) an extended custodial sentence,

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consult the Parole Commissioners unless the circumstances are such as to render such consultation impracticable.

(4) In this Article “fixed-term prisoner” includes a person serving a determinate custodial sentence for an offence committed before the commencement of this Article.

[<sup>F9</sup>(5) The Secretary of State may notify the Department of Justice that a prisoner is not to be released under this Article without the Secretary of State's agreement; and, if the Secretary of State gives such a notification in relation to a prisoner, the Department of Justice may not release the prisoner under this Article without the Secretary of State's agreement.

(6) But the Secretary of State may—

- (a) give a notification, or
- (b) refuse his agreement to a release,

only if his decision to do so is arrived at (wholly or partly) on the basis of protected information.]

#### Textual Amendments

- F7** Words in art. 20(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), 6(2), **Sch. 5 para. 16(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 20)
- F8** Words in art. 20(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), 6(2), **Sch. 5 para. 16(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 20)
- F9** Art. 20(5)(6) inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 6(2), **Sch. 5 para. 16(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 20)

### *Duration of licences*

#### **Duration of licences: fixed-term prisoners**

**21.**—(1) Where a fixed-term prisoner is released on licence under this Chapter, the licence shall, subject to any revocation under Article 28 or 30, remain in force for the remainder of the sentence.

(2) Paragraph (1) has effect subject to Articles 32(2) and 33(3) and (4).

#### Commencement Information

- I9** Art. 21 wholly in operation at 1.4.2009; art. 21 not in operation at date Order made see art. 1(4); art. 21 in operation for certain purposes at 15.5.2008 by S.R. 2008/217, **art. 2, Sch.** (with transitory provision in art. 4); art. 21 in operation at 1.4.2009 in so far as not already in operation by S.R. 2009/120, **art. 2, Sch. 1**

#### **Duration of licences: prisoners serving indeterminate custodial sentences**

**22.**—(1) This Article applies where a person who is serving an indeterminate custodial sentence is released on licence under Article 18 or 20.

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(2) The licence shall, subject to any revocation under Article 28 or order under this Article, remain in force for the remainder of the prisoner's life.

(3) In this Article “qualifying period” means the period of 10 years beginning with the date of the prisoner's release.

(4) Where

- (a) the qualifying period has expired, and
- (b) the Parole Commissioners direct the Secretary of State to do so,

the Secretary of State shall order that the licence is to cease to have effect.

(5) Where—

- (a) the qualifying period has expired; and
- (b) if the prisoner has made a previous application under this paragraph, a period of at least 2 years has expired since the disposal of that application, or such shorter period as the Parole Commissioners may have recommended on the disposal of the last previous such application,

the prisoner may make an application to the Parole Commissioners under this paragraph.

(6) Where an application is made under paragraph (5), the Parole Commissioners—

- (a) shall, if they are satisfied that it is no longer necessary for the protection of the public from serious harm that the licence should remain in force, direct the Secretary of State to make an order under paragraph (4) that the licence is to cease to have effect;
- (b) shall otherwise dismiss the application.

#### Commencement Information

**I10** Art. 22 partly in operation; art. 22 not in operation at date Order made see art. 1(4); art. 22 in operation for certain purposes at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4)

#### *Licence conditions*

#### **Power of court to recommend licence conditions for sentences of 12 months or more**

**23.**—(1) A court which sentences an offender to a determinate custodial sentence of 12 months or more in respect of any offence may, when passing sentence, recommend to the Secretary of State particular conditions which in its view should be included in any licence granted to the offender under Article 17 or 19 on release from prison.

(2) In exercising the powers under Article 24 in respect of an offender, the Secretary of State shall have regard to any recommendation under paragraph (1).

(3) A recommendation under paragraph (1) is not to be treated for any purpose as part of the sentence passed on the offender.

#### Commencement Information

**I11** Art. 23 wholly in operation at 1.4.2009, see art. 1(4) and S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(a), 4)



## Licence conditions

24.—(1) In this Article—

- (a) “the standard conditions” means such conditions as may be prescribed for the purposes of this Article as standard conditions; and
- (b) “prescribed” means prescribed by the Secretary of State by rules.

(2) Any licence under Article 17 or 19 in respect of any prisoner serving one or more determinate custodial sentences of less than 12 months and no determinate custodial sentence of 12 months or more shall include—

- (a) such conditions as may be required by the court in passing sentence; and
- (b) so far as not inconsistent with them, the standard conditions.

(3) Any other licence under this Chapter

- (a) shall include the standard conditions; and
- (b) may include such other conditions of a kind prescribed for the purposes of this paragraph as the Secretary of State may for the time being specify in the licence.

(4) The Secretary of State may vary or cancel any conditions specified in a licence under this Chapter and may subsequently include additional conditions.

(5) Where a prisoner is released on licence under Article 18, the Secretary of State shall not—

- (a) include a condition under paragraph (3)(b) on release, or
- (b) subsequently insert, vary or cancel a condition under paragraph (4),

except after consultation with the Parole Commissioners.

(6) For the purposes of paragraph (5), the Secretary of State is to be treated as having consulted the Parole Commissioners about a proposal to include, insert, vary or cancel a condition in any case if they have been consulted about the implementation of proposals of that description generally or in that class of case.

(7) Paragraphs (2) and (3) have effect subject to—

- (a) Articles 25 and 26;
- (b) Articles 32(2) and 33(3) and (4).

(8) In exercising the powers to prescribe standard conditions or other conditions referred to in paragraph (3), the Secretary of State shall have regard to the following purposes of the supervision of offenders while on licence under this Chapter—

- (a) the protection of the public;
- (b) the prevention of re-offending;
- (c) the rehabilitation of the offender.

### Commencement Information

- I12** Art. 24 partly in operation; art. 24 not in operation at date Order made see art. 1(4); art. 24(1)(3)-(6)(7)(b)(8) in operation at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4)

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## PROSPECTIVE

**Licence conditions on re-release of prisoners serving sentence of less than 12 months**

**25.—(1)** In relation to any licence under Article 17 or 19 which is granted to a prisoner serving one or more determinate custodial sentences of less than 12 months and no determinate custodial sentence of 12 months or more on release in pursuance of a direction or recommendation of the Parole Commissioners under Article 28 or 29, paragraphs (2) and (3) apply instead of Article 24(2).

(2) The licence—

(a) shall include the standard conditions; and

(b) may include such other conditions of a kind prescribed for the purposes of Article 24(3)

(b) as the [<sup>F10</sup>Department of Justice] may for the time being specify in the licence.

(3) In exercising the powers to include other conditions conferred by paragraph (2)(b), the [<sup>F11</sup>Department of Justice] shall have regard to any such conditions as are mentioned in Article 24(2)(a).

(4) In this Article “the standard conditions” and “prescribed” have the same meaning as in Article 24

**Textual Amendments**

**F10** Words in art. 25(2)(b) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 6(2), **Sch. 5 para. 20** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 25)

**F11** Words in art. 25(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), 6(2), **Sch. 5 para. 20** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 25)

## VALID FROM 01/06/2015

**Curfew condition to be included in licence under Article 19**

**26.—(1)** A licence under Article 19 shall include a curfew condition complying with this Article.

(2) Where—

(a) a licence under Article 19 is granted to a prisoner serving one or more determinate custodial sentences of less than 12 months and no determinate custodial sentence of 12 months or more, and

(b) the court in passing sentence requires the licence to be granted subject to a condition requiring compliance with a curfew requirement,

that condition shall not be included in the licence at any time while a curfew condition required by paragraph (1) is in force.

(3) For the purposes of this Chapter a curfew condition is a condition which requires the released person to remain for specified periods at a specified place; and in this Article “specified” means specified in the condition.

(4) Specified periods shall not amount to less than 9 hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).

(5) The curfew condition is to remain in force until the date when the released person would (but for being released) fall to be released on licence under Article 17.

(6) A curfew condition may (but need not) include an electronic monitoring requirement.

(7) The <sup>F12</sup>[Department of Justice] may by order amend paragraph (4) by substituting for a number of hours specified there such other number of hours as may be specified in the order.

#### Textual Amendments

**F12** Words in art. 26(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), 6(2), **Sch. 5 para. 21** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 26)

#### Duty to comply with licence conditions

27. A person subject to a licence under this Chapter shall comply with such conditions as may for the time being be included in the licence.

VALID FROM 12/04/2010

#### <sup>F13</sup>Licence conditions: national security

27A.—(1) The Secretary of State may exercise any power of the Department of Justice to include, insert, vary or cancel conditions in a licence but only if his decision to exercise the power is arrived at (wholly or partly) on the basis of protected information; and, in relation to the exercise of any such power by the Secretary of State, in this Chapter references to the Department of Justice are to be read as references to the Secretary of State.

(2) The Department of Justice must exercise its powers subject to anything done by the Secretary of State by virtue of paragraph (1).]

#### Textual Amendments

**F13** Art. 27A inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 6(2), **Sch. 5 para. 22** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

#### *Recall after release*

#### Recall of prisoners while on licence

28.—(1) In this Article “P” means a prisoner who has been released on licence under Article 17, 18 or 20.

(2) The Secretary of State may revoke P's licence and recall P to prison—

(a) if recommended to do so by the Parole Commissioners; or

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- (b) without such a recommendation if it appears to the Secretary of State that it is expedient in the public interest to recall P before such a recommendation is practicable.
- (3) P—
  - (a) shall, on returning to prison, be informed of the reasons for the recall and of the right conferred by sub-paragraph (b); and
  - (b) may make representations in writing with respect to the recall.
- (4) The Secretary of State shall refer P's recall under paragraph (2) to the Parole Commissioners.
- (5) Where on a reference under paragraph (4) the Parole Commissioners direct P's immediate release on licence under this Chapter, the Secretary of State shall give effect to the direction.
- (6) The Parole Commissioners shall not give a direction under paragraph (5) with respect to P unless they are satisfied that—
  - (a) where P is serving an indeterminate custodial sentence or an extended custodial sentence, it is no longer necessary for the protection of the public from serious harm that P should be confined;
  - (b) in any other case, it is no longer necessary for the protection of the public that P should be confined.
- (7) On the revocation of P's licence, P shall be—
  - (a) liable to be detained in pursuance of P's sentence; and
  - (b) if at large, treated as being unlawfully at large.

#### Commencement Information

**I13** Art. 28 partly in operation; art. 28 not in operation at date Order made see art. 1(4); art. 28 in operation for certain purposes at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4); art. 28 in operation for further certain purposes at 1.4.2009 by S.R. 2009/120, art. 2, Sch. 1

#### Further release after recall for certain fixed-term prisoners

- 29.**—(1) This Article applies where—
- (a) a fixed-term prisoner, other than a prisoner serving an extended custodial sentence, (“P”) is released on licence under Article 17 or 20; and
  - (b) on a reference under Article 28(4) the Parole Commissioners do not direct P's immediate release on licence under this Chapter.
- (2) Subject to paragraphs (3) and (4), the Parole Commissioners shall either—
- (a) recommend a date for P's release on licence; or
  - (b) fix a date as the date for the next review of P's case by them.
- (3) Any date recommended under paragraph (2)(a) or fixed under paragraph (2) (b) must not be later than the second anniversary of the date on which the decision is taken.
- (4) The Parole Commissioners need not make a recommendation under paragraph (2)(a) or fix a date under paragraph (2)(b) if P will fall to be released unconditionally at any time within the next 24 months.
- (5) Where the Parole Commissioners have recommended a date for P's release under paragraph (2)(a), the Secretary of State shall release P on licence on that date unless the Secretary of State has, before that date, referred P's case to the Parole Commissioners.

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(6) On a review required by paragraph (2)(b) or a reference under paragraph (5), the Parole Commissioners shall—

- (a) direct P's immediate release on licence;
- (b) make a recommendation under paragraph (2)(a); or
- (c) fix a date under paragraph (2)(b).

(7) The Parole Commissioners shall not give a direction under paragraph (6)(a) with respect to P unless they are satisfied that it is no longer necessary for the protection of the public that P should be confined

(8) The Secretary of State shall give effect to any direction under paragraph (6)(a).

#### Commencement Information

**I14** Art. 29 partly in operation; art. 29 not in operation at date Order made see art. 1(4); art. 29 in operation for certain purposes at 1.4.2009 by S.R. 2009/120, art. 2, Sch. 1

VALID FROM 01/06/2015

#### Recall of prisoners released early under Article 19

**30.**—(1) If it appears to the [F14Department of Justice], as regards a person released on licence under Article 19 (“P”)—

- (a) that P has failed to comply with any condition included in the licence, or
- (b) that P's whereabouts can no longer be electronically monitored at the place for the time being specified in the curfew condition included in the licence,

the [F14Department of Justice] may, if the curfew condition is still in force, revoke the licence and recall P to prison under this Article.

(2) P—

- (a) shall, on returning to prison, be informed of the reasons for the revocation and of the right conferred by sub-paragraph (b); and
- (b) may make representations in writing with respect to the revocation.

(3) The [F15Department of Justice], after considering any representations under paragraph (2) (b) or any other matters, may cancel the revocation of P's licence under this Article.

(4) Where the revocation of P's licence is cancelled under paragraph (3), P is to be treated for the purposes of Article 19 as not having been recalled to prison under this Article.

(5) On the revocation of P's licence, P shall be—

- (a) liable to be detained in pursuance of P's sentence; and
- (b) if at large, treated as being unlawfully at large.

#### Textual Amendments

**F14** Words in art. 30(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), 6(2), Sch. 5 para. 25 (with arts. 28-31); S.I. 2010/977, art. 1(2) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 30)

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**F15** Words in art. 30(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), 6(2), **Sch. 5 para. 25** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 30)

### Conviction while licence remains in force

- 31.** Where it appears to the court by or before which a person is convicted of an offence—
- (a) that the offence was committed while the person was on licence under this Chapter, and
  - (b) that the person has not been recalled to prison,

the court shall inform the Secretary of State of the conviction.

### *Concurrent or consecutive terms*

### Concurrent terms

**32.—(1)** This Article applies where—

- (a) a person (“the offender”) has been sentenced by any court to two or more custodial sentences the terms of which are wholly or partly concurrent; and
- (b) the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions

(2) Where this Article applies—

- (a) nothing in this Chapter requires the Secretary of State to release the offender in respect of any of the terms unless and until the Secretary of State is required to release the offender in respect of each of the others;
- (b) Article 17 does not authorise the Secretary of State to release the offender on licence under that Article in respect of any of the terms unless and until that Article authorises the Secretary of State to do so in respect of each of the others;
- (c) on and after release under this Chapter the offender is to be on licence for so long, and subject to such conditions, as is required by this Chapter in respect of any of the sentences.

(3) Where the sentences include one or more sentences of 12 months or more and one or more sentences of less than 12 months, the terms of the licence may be determined by the Secretary of State in accordance with Article 24(3)(b).

(4) Where a person has been sentenced to one or more custodial sentences and to one or more life sentences, nothing in this Chapter requires the Secretary of State to release the person in respect of any of the custodial sentences unless and until the Secretary of State is required to release him in respect of each of the life sentences.

### Commencement Information

**I15** Art. 32 partly in operation; art. 32 not in operation at date Order made see art. 1(4); art. 32(1)(2)(a)(c)(4) in operation for certain purposes at 15.5.2008 by S.R. 2008/217, **art. 2, Sch.** (with transitory provision in art. 4); art. 32(1)(2)(4) in operation at 1.4.2009 in so far as not already in operation by S.R. 2009/120, **art. 2, Sch. 1** (subject to **Sch. 2 paras. 3, 4**)

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## Consecutive terms

33.—(1) This Article applies where—

- (a) a person (“the offender”) has been sentenced to two or more determinate custodial sentences the terms of which are to be served consecutively on each other; and
- (b) the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.

(2) Nothing in this Chapter requires the Secretary of State to release the offender on licence until the offender has served a period equal in length to the aggregate of the length of the custodial periods in relation to each of the sentences.

(3) Where any of the sentences is a sentence of 12 months or more, the offender is, on and after release under this Chapter, to be on licence—

- (a) until the offender would, but for having been released, have served a sentence equal in length to the aggregate length of the sentences; and
- (b) subject to such conditions as are required by this Chapter in respect of each of those sentences.

(4) Where each of the sentences is a sentence of less than 12 months, the offender is, on and after release under this Chapter, to be on licence until the relevant time, and subject to such conditions as are required by this Chapter in respect of any of the sentences, and none of the sentences is to be regarded for any purpose as continuing after the relevant time

(5) In paragraph (4) “the relevant time” means the time when the offender would, but for having been released, have served a sentence equal in length to the aggregate of—

- (a) all the custodial periods in relation to the sentences; and
- (b) the longest of the licence periods in relation to those sentences.

(6) In this Article—

- (a) “custodial period”—
  - (i) in relation to an extended sentence, means the appropriate custodial term determined under Article 14;
  - (ii) in relation to any other custodial sentence, means the custodial period specified under Article 8(2);
- (b) “licence period” has the meaning given by Article 8(5).

### Commencement Information

**I16** Art. 33 partly in operation; art. 33 not in operation at date Order made see art. 1(4); art. 33(1)-(3)(6) (a)(i) in operation for certain purposes at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with transitory provision in art. 4); art. 33(1)-(3)(6) in operation at 1.4.2009 in so far as not already in operation by S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 3, 4)

## *Licences for sexual offenders*

### Breach of licensing for sexual offenders

34.—(1) In the Criminal Justice (Northern Ireland) Order 1996 (NI 24) for Article 27 substitute—

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### **“Breach of licence conditions**

**27.—**(1) If at any time while an offender is released on licence under Article 26 it appears, on complaint to a lay magistrate, that the offender has failed to comply with any of the conditions specified in the licence, the lay magistrate may—

- (a) issue a summons requiring the offender to appear before the appropriate court at a time specified in the summons; or
- (b) if the complaint is in writing and on oath, issue a warrant for the offender to be arrested and brought before the appropriate court.

(2) If—

- (a) a warrant is issued under sub-paragraph (1) requiring an offender to be brought before the Crown Court, and
- (b) the offender cannot forthwith be brought before the Crown Court because it is not being held,

the warrant shall have effect as if it directed the offender to be brought before a magistrates' court acting for the petty sessions district in which he resides.

(3) Where an offender is brought before a magistrates' court in pursuance of paragraph (2), that court shall commit the offender in custody or on bail to the Crown Court.

(4) Where the appropriate court before which an offender appears or is brought under this Article is the Crown Court and that Court is satisfied that the offender has failed without reasonable excuse to comply with any of the conditions specified in the licence, the Court may

- (a) impose on him a fine not exceeding £1000;
- (b) revoke the licence; or
- (c) suspend the licence for a specified period which is shorter than the remaining licence period.

(5) Where the appropriate court before which an offender appears or is brought under this Article is a court of summary jurisdiction and that court is satisfied that the offender has failed without reasonable excuse to comply with any of the conditions specified in the licence, that court may—

- (a) impose on him a fine not exceeding £1000;
- (b) if the remaining licence period is less than 6 months, revoke the licence; or
- (c) suspend the licence for a specified period which—
  - (i) is shorter than the remaining licence period; and
  - (ii) does not exceed 6 months.

(6) Where a court revokes the licence of an offender under paragraph (4) or (5)—

- (a) the court shall order the offender to be returned to prison or, as the case may be, a young offenders centre; and
- (b) the offender—
  - (i) shall be liable to be detained there in pursuance of his sentence until the date on which he would (but for his release) have served the whole of his sentence or order for detention; and
  - (ii) if at large shall be treated as being unlawfully at large.

(7) Where a court suspends the licence of an offender for a specified period under paragraph (4) or (5)—



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- (a) the court shall order the offender to be returned to prison or, as the case may be, a young offenders centre; and
- (b) the offender—
  - (i) shall be liable to be detained there for that period in pursuance of his sentence or order for detention; and
  - (ii) if at large shall be treated as being unlawfully at large.

(8) In this Article “the remaining licence period”, in relation to an offender released on licence under Article 26, means the period beginning with the date of the making of an order under this Article and ending with the date on which the offender would (but for his release) have served the whole of his sentence or order for detention.

(9) In this Article “the appropriate court”, in relation to an offender released on licence in pursuance of an order under Article 26(1)(b), means—

- (a) if the Crown Court made the order, the Crown Court; and
- (b) if a court of summary jurisdiction made the order, a court of summary jurisdiction acting for the petty sessions district in which the offender resides

and if the order has been made on appeal, it shall be treated for the purposes of this paragraph as if it had been made by the court from which the appeal was brought.”.

(2) Paragraph (1) does not apply in relation to a failure to comply with any of the conditions specified in a licence under Article 26 of the Criminal Justice (Northern Ireland) Order 1996 (NI 24) if that failure occurred before the coming into operation of this Article.

## CHAPTER 5

### CURFEWS AND ELECTRONIC MONITORING

#### *Powers to impose curfew or electronic monitoring requirements*

#### **Powers to impose curfew or electronic monitoring requirements**

**35.**—(1) Subject to the following provisions of this Chapter, a curfew requirement or an electronic monitoring requirement may be made—

- (a) a condition of bail granted by a court;
- (b) a condition of a licence under—
  - (i) this Part;
  - (ii) the Life Sentences (Northern Ireland) Order 2001 (NI 2);
  - (iii) Article 46 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) (discharge on licence of person sentenced to be detained under Article 45(2) of that Order);
  - (iv) [F16Article 26 of the Criminal Justice (Northern Ireland) Order 1996 (NI 24);]
- (c) a requirement of—
  - (i) a probation order;
  - (ii) the youth conference plan to which a youth conference order relates.

(2) Article 15(5) of the Criminal Justice (Northern Ireland) Order 1996 (NI 24) (combination order treated as probation order) applies for the purposes of this Article as it applies for the purposes of Part 2 of that Order.

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(3) [F17 Article 25(2)(b) of that Order (custody probation order treated as probation order) applies for the purposes of this Article as it applies for the purposes of Part 2 of that Order.]

#### Textual Amendments

- F16** Art. 35(1)(b)(iv) repealed (prosp.) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 102(2), **Sch. 6 Pt. 1**
- F17** Art. 35(3) repealed (prosp.) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 102(2), **Sch. 6 Pt. 1**

### Power of court to impose curfew or electronic monitoring requirement on making juvenile justice centre order

**36.**—(1) The Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) is amended as follows.

(2) In Article 39 (juvenile justice centre orders) at the end add—

“(8) Where a court makes a juvenile justice centre order in respect of a child, it may, subject to Chapter 5 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008, impose a curfew requirement or an electronic monitoring requirement (within the meaning of that Chapter) during all or part of the period of supervision to which the child is subject under the order.”

(3) In Article 40 (supervision under a juvenile justice order) in paragraph (2) for sub-paragraph (b) substitute—

“(b) the person under whose supervision he will be shall give him a notice specifying—  
(i) any requirements imposed by the court under Article 39(8); and  
(ii) any other requirements with which he must comply.”.

(4) In Article 40(3) for “or (b)” substitute “or (b)(ii)”.

(5) In Article 40(4) at the end add “, but such rules may not regulate any matter which may be regulated by rules under Article 44 of the Criminal Justice (Northern Ireland) Order 2008”.

(6) In Article 41(1) and (2) (breach of supervision requirements) after “requirements under” insert “Article 39(8) or”.

### Curfews

#### Curfew requirement

**37.**—(1) In this Part “curfew requirement” means a requirement that a person remain, for specified periods at a specified place; and in this Article “specified” means specified in the requirement.

(2) Specified periods shall not amount to—

- (a) less than 2 hours, or
- (b) more than 12 hours,

in any one day.

(3) A curfew requirement shall not be imposed without obtaining and considering information about the place proposed to be specified in the requirement (including information as to the attitude of persons likely to be affected by the enforced presence there of the person subject to the requirement).

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(4) The Secretary of State may by order amend paragraph (2) by substituting for a number of hours specified there such other number of hours as may be specified in the order.

#### **Requirement to avoid conflict with religious beliefs, etc.**

**38.**—(1) A curfew requirement shall, as far as practicable, be such as to avoid—

- (a) any conflict with a person's religious beliefs or with any other condition or requirement to which that person may be subject; and
- (b) any interference with the times, if any, at which the person normally works (or carries out voluntary work) or attends a school or other educational establishment.

(2) The Secretary of State may by order provide that paragraph (1) is to have effect with such additional restrictions as may be specified in the order

#### *Electronic monitoring*

#### **Arrangements for establishing systems of electronic monitoring**

**39.** The Secretary of State may make arrangements for establishing systems of electronic monitoring of persons subject to—

- (a) curfew requirements; or
- (b) other requirements relating to a person's whereabouts.

#### **Electronic monitoring requirement**

**40.**—(1) In this Part “electronic monitoring requirement” means a requirement for securing the electronic monitoring of a person's compliance with other conditions or requirements during a period of 14 days or more specified in the requirement or determined in accordance with the requirement by the person responsible for the monitoring.

(2) Where—

- (a) it is proposed to impose an electronic monitoring requirement, but
- (b) there is a person (other than the person who is to be subject to the requirement) without whose co-operation it will not be practicable to secure the monitoring,

the requirement shall not be imposed without that person's consent.

(3) An electronic monitoring requirement shall include provision for making a person responsible for the monitoring; and a person who is made so responsible shall be of a description specified in an order made by the Secretary of State.

(4) Where an electronic monitoring requirement is required to take effect during a period determined by the person responsible for the monitoring, that person shall, before the beginning of the period, notify—

- (a) the person subject to the requirement, and
- (b) any person falling within paragraph (2)(b),

of the time when the period is to begin.

#### **Availability of electronic monitoring arrangements**

**41.** A court shall not impose an electronic monitoring requirement unless the court—

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- (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the area in which the place proposed to be specified in the requirement is situated; and
- (b) is satisfied that the necessary provision can be made under those arrangements.

#### **Provision of copies of electronic monitoring requirement**

**42.** Where a court or the Secretary of State imposes an electronic monitoring requirement, the court or (as the case may be) the Secretary of State shall forthwith provide copies of the requirement—

- (a) to the person who by virtue of Article 40(3) will be responsible for the electronic monitoring; and
- (b) to any person to whom Article 40(2)(b) applies.

#### *Release of children on bail*

#### **Release of child on bail: curfew and electronic monitoring requirements**

**43.—**(1) This Article applies where a court proposes to release a child on bail under Article 12 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9).

(2) The court shall not impose—

- (a) a curfew requirement, or
- (b) an electronic monitoring requirement,

as a condition of bail unless the court considers that, if it did not do so, it would be necessary to remand the child in custody to protect the public.

#### *Rules*

#### **Rules**

**44.** The Secretary of State may make rules for regulating—

- (a) electronic monitoring in pursuance of an electronic monitoring requirement;
- (b) without prejudice to paragraph (a), the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement; and
- (c) the supervision of persons who are subject to curfew requirements.

VALID FROM 01/01/2012

### CHAPTER 6

#### SUPERVISED ACTIVITY ORDERS

#### **Supervised activity order for default in payment of certain fines**

**45.—**(1) Where—

- (a) an individual over the age of 18 (“the offender”) has been convicted of an offence in respect of which the court has imposed a fine not exceeding £500 on the offender,

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- (b) the court would, but for this Article, make an order or issue a warrant for the committal of that person for default in paying that fine or any instalment of that fine by the due date, and
- (c) the court considers a supervised activity order more appropriate than such committal, the court may, instead of making that order or issuing that warrant, make a supervised activity order in respect of that person
- (2) A supervised activity order is an order requiring an offender to—
- (a) attend at a place of supervision for a period specified in the order, and
- (b) engage, during that period, in activities in accordance with instructions given by the supervising officer.
- (3) The period specified under paragraph (2)(a) shall not be—
- (a) less than 10 hours; or
- (b) more than—
- (i) 50 hours if the amount of the fine does not exceed £200; or
- (ii) 100 hours in any other case.
- (4) The Secretary of State may by order—
- (a) amend paragraphs (1)(a) and (3)(b)(i) by substituting for a sum of money specified there such other sum of money as is specified in the order;
- (b) amend paragraph (3)(b)(i) and (ii) by substituting for a number of hours specified there such other number of hours as may be specified in the order.
- (5) A supervised activity order in respect of a person comes into force if (and only if) that person fails to pay the fine or any instalment of it before the due date; and in that event the order comes into operation on the day after the due date.
- (6) If the person pays part of the fine before the supervised activity order comes into force, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this paragraph shall not operate to reduce the period to less than 10 hours.
- (7) The coming into force of a supervised activity order shall have the effect of discharging the fine mentioned in paragraph (1)(a).
- (8) Schedule 3 shall have effect in relation to supervised activity orders.
- (9) In this Article and Schedule 3—
- “place of supervision” means such place as may be determined for the purposes of a supervised activity order by the supervising officer;
- “supervising officer”, in relation to a supervised activity order, means a probation officer assigned in accordance with rules made by the Secretary of State under paragraph 7 of Schedule 3.

## CHAPTER 7

### PAROLE COMMISSIONERS

#### The Parole Commissioners

**46.**—(1) The Life Sentence Review Commissioners shall be renamed the Parole Commissioners for Northern Ireland.

(2) In discharging their functions the Parole Commissioners shall—

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- (a) have due regard to the need to protect the public from serious harm; and
- (b) have regard to the desirability of
  - (i) securing the rehabilitation of prisoners; and
  - (ii) preventing the commission of further offences by prisoners.
- (3) The Parole Commissioners shall advise the Secretary of State with respect to any matter connected with the release or recall of prisoners referred to them under this Part or the Life Sentences (Northern Ireland) Order 2001 (NI 2).
- (4) Schedule 4 shall have effect in relation to the Parole Commissioners.

## CHAPTER 8

### ENFORCEMENT OF CERTAIN ORDERS MADE ON CONVICTION

#### **Enforcement of certain community orders**

**47.**—(1) Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996 (NI 24) (enforcement of certain community orders) is amended as follows.

(2) In paragraph 2 for sub-paragraph (2) substitute—

“(2) Any summons or warrant issued under this paragraph shall direct the offender to appear or be brought—

- (a) in the case of a drug treatment and testing order, before the court responsible for the order;
- (b) in the case of any other order—
  - (i) if the order was made by the Crown Court, before that court;
  - (ii) if the order was made by a magistrates' court, before a court of summary jurisdiction acting for the petty sessions district concerned.

(3) If—

- (a) a warrant is issued under this paragraph requiring an offender to be brought before the Crown Court, and
- (b) the offender cannot forthwith be brought before the Crown Court because it is not being held,

the warrant shall have effect as if it directed the offender to be brought before a magistrates' court having jurisdiction in the place where he is arrested.

(4) Where an offender is brought before a magistrates' court in pursuance of sub-paragraph (3), that court shall commit the offender in custody or on bail to the Crown Court.”.

(3) In paragraph 3(1) for the words from the beginning to “paragraph 2” substitute “ Where under paragraph 2 an offender is brought or appears before a court of summary jurisdiction and it is proved to the satisfaction of the court ”

(4) In paragraph 3 omit—

- (a) in sub-paragraph (1)(d) the words “where the relevant order was made by a magistrates' court”; and
- (b) sub-paragraphs (3) and (4).

(5) In paragraph 4(1) omit “or by virtue of paragraph 3(3)”

(6) In paragraph 7(1) after “relevant order” insert “ made by a magistrates' court ”.

(7) In paragraph 7 for sub-paragraph (2) substitute—

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- “(2) The court may—
- (a) revoke the order; or
  - (b) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.”.

(8) In paragraph 7(3) for “sub-paragraph (2)(a)(i)” substitute “ sub-paragraph (2)(a) ”.

(9) In paragraph 7(4) for “sub-paragraph (2)(a)(ii)” substitute “ sub-paragraph (2)(b) ”.

(10) Omit paragraph 7(5).

(11) In paragraph 8 for sub-paragraphs (1) and (1A) substitute—

“(1) This paragraph applies where —

    - (a) a relevant order made by the Crown Court is in force in respect of an offender and the offender or the responsible officer applies to the Crown Court for the order to be revoked or for the offender to be dealt with in some other way for the offences in respect of which the order was made; or
    - (b) an offender in respect of whom a relevant order is in force is convicted of an offence before the Crown Court.”.

(12) In paragraph 8 at the end add—

“(5) Where this paragraph applies by virtue of sub-paragraph (1)(a) and the Crown Court proposes to exercise its powers under this paragraph otherwise than on the application of the offender, it shall summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

(6) No application may be made by the offender under sub-paragraph (1)(a) while an appeal against the relevant order is pending.”.

### **Enforcement of certain youth justice orders**

**48.**—(1) Schedule 1A to the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) (enforcement of reparation orders, community responsibility orders and youth conference orders) is amended as follows.

- (2) In paragraph 1 after sub-paragraph (2) insert—
- “(2A) In this Schedule “the relevant court”, in relation to a relevant order, means—
- (a) the appropriate court, if the relevant order was made by a magistrates' court; and
  - (b) the Crown Court, if the relevant order was made by the Crown Court.”

(3) In paragraph 2(1) and (2) for “appropriate court” substitute “ relevant court ”.

(4) In paragraph 3(1) and (2) for “court” substitute “ relevant court ”.

(5) In paragraph 3(3) and (4)(a) and (b) for “appropriate court” substitute “ relevant court ”.

(6) In paragraph 4 for sub-paragraphs (1) to (4) substitute—

“(1) The relevant court may (instead of making an order under paragraph 3)—

    - (a) revoke the order (if it is still in force); and
    - (b) deal with the offender, for the offence in respect of which it was made, in any way in which it could deal with him if he had just been found guilty of the offence by or before the court.”.

(7) In paragraph 4(5) for “sub-paragraph (4)” substitute “ this paragraph ”.

(8) In paragraph 4(6) for “the court may” substitute “ the relevant court may ”.

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(9) Omit paragraph 5(2).

## PART 3

### RISK ASSESSMENT AND MANAGEMENT

#### Interpretation of this Part

**49.**—(1) In this Part—

“agencies” means—

- (a) the Police Service of Northern Ireland;
- (b) the Probation Board for Northern Ireland;
- (c) the Department of Education;
- (d) the Department for Employment and Learning;
- (e) the Department of Health, Social Services and Public Safety;
- (f) the Department for Social Development;
- (g) HSS Boards and [F18HSC trusts] ;
- (h) Education and Library Boards;
- (i) the Northern Ireland Housing Executive;
- (j) the National Society for the Prevention of Cruelty to Children;

“serious harm” means death or serious personal injury, whether physical or psychological;

“specified” means specified in guidance under Article 50.

(2) The Secretary of State may by order amend the definition of “agencies” in paragraph (1).

#### Textual Amendments

**F18** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); [S.R. 2009/114, art. 2](#)

#### Guidance to agencies on assessing and managing certain risks to the public

**50.**—(1) The Secretary of State may issue guidance to agencies on the discharge of any of their functions which contribute to the more effective assessment and management of the risks posed by persons of a specified description

(2) Guidance under this Article may contain provisions for the purpose of facilitating co-operation between agencies, including—

- (a) provisions requiring agencies to maintain arrangements for that purpose and to draw up a memorandum of co-operation; and
- (b) provisions regarding the exchange of information among them.

(3) Paragraph (2) does not affect the generality of paragraph (1).

(4) Agencies shall give effect to guidance under this Article.

(5) The Secretary of State shall consult the agencies before issuing guidance under this Article.

(6) The Secretary of State shall not specify a description of persons in guidance under this Article unless, whether by reason of offences committed by them (in Northern Ireland or elsewhere) or



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otherwise, the Secretary of State has reason to believe that persons of that description may cause serious harm to the public.

### **Review of arrangements and report on functions**

**51.**—(1) The agencies shall, in consultation with the lay advisers appointed under paragraph (2), keep any arrangements mentioned in Article 50(2)(a) under review with a view to monitoring the effectiveness of the arrangements and making any changes which appear to be necessary or expedient.

(2) The Secretary of State shall appoint 2 lay advisers and pay to or in respect of them such allowances as the Secretary of State may determine.

(3) As soon as practicable after the end of each financial year, the agencies shall jointly prepare and publish a report on the discharge during that period of —

- (a) their functions connected with assessing and managing risks posed by persons of a specified description; and
- (b) their duty under paragraph (1).

(4) The report must include—

- (a) details of any arrangements mentioned in Article 50(2)(a); and
- (b) information of such descriptions as the Secretary of State may determine.

## **PART 4**

### **ROAD TRAFFIC OFFENCES**

#### *New offences*

#### **Causing death, or grievous bodily injury, by careless or inconsiderate driving**

**52.**—(1) In the Road Traffic (Northern Ireland) Order 1995 (NI 18) after Article 11 insert—

##### **“Causing death or grievous bodily injury by careless or inconsiderate driving**

**11A.** A person who causes the death of, or grievous bodily injury to, another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.”.

(2) In Article 26(1) of the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (alternative verdicts), in the Table—

- (a) in the entry relating to Article 9 of the Road Traffic (Northern Ireland) Order 1995 (causing death or grievous bodily injury by dangerous driving), in the second column, after “Article 10 (dangerous driving)” insert “ Article 11A (causing death or grievous bodily injury by careless or inconsiderate driving) ”,
- (b) after the entry relating to Article 10 of that Order insert—

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“Article 11A (causing death or grievous bodily injury by careless or inconsiderate driving) Article 12 (careless and inconsiderate driving).”.

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- (c) in the entry relating to Article 14 of that Order (causing death or grievous bodily injury by careless driving when under influence of drink or drugs), in the second column, before

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“Article 12 (careless, and inconsiderate, driving)” insert “ Article 11A (causing death or grievous bodily injury by careless or inconsiderate driving) ”.

(3) In Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (prosecution and punishment of offences under the Road Traffic Orders), after the entry relating to Article 10 of the Road Traffic (Northern Ireland) Order 1995 insert—

“Article 11A	Causing death or grievous bodily injury by careless or inconsiderate driving.	(a)	Summary.	6 months or the statutory maximum or both.	Obligatory.	Obligatory.	3–11”
		(b)	On indictment.	5 years or a fine or both.			

(4) Article 11A of the Road Traffic (Northern Ireland) Order 1995 (NI 18) has effect only in relation to driving occurring after the coming into operation of paragraph (1).

**Causing death or grievous bodily injury by driving: unlicensed, disqualified or uninsured drivers**

**53.**—(1) In the Road Traffic (Northern Ireland) Order 1995 (NI 18), after Article 12A (inserted by Article 62) insert—

**“Causing death or grievous bodily injury by driving: unlicensed, disqualified or uninsured driver**

**12B.** A person is guilty of an offence under this Article if he causes the death of, or grievous bodily injury to, another person by driving a motor vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing an offence under—

- (a) Article 3(1) of the Road Traffic (Northern Ireland) Order 1981 (driving otherwise than in accordance with a licence),
- (b) Article 90 of that Order (using motor vehicle while uninsured or unsecured against third party risks), or
- (c) Article 168A(1)(c) of that Order (driving while disqualified).”.

(2) In Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (prosecution and punishment of offences under the Road Traffic Orders), after the entry relating to Article 12 of the Road Traffic (Northern Ireland) Order 1995 insert—

“Article 12B	Causing death or grievous bodily injury	(a)	Summary.	6 months or	Obligatory.	Obligatory.	3–11”
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by driving:  
unlicensed,  
disqualified  
or uninsured  
drivers.

(b) On  
indictment.

the  
statutory  
maximum  
or  
both.

(b) 2  
years  
or a  
fine  
or  
both.

(3) Article 12B of the Road Traffic (Northern Ireland) Order 1995 has effect only in relation to driving occurring after the coming into operation of paragraph (1).

PROSPECTIVE

#### Speed assessment equipment detection devices

54.—(1) In Article 55 of the Road Traffic (Northern Ireland) Order 1995 (NI 18) (regulation of construction, weight, equipment and use of vehicles) in paragraph (2), at the end insert—

“(m) speed assessment equipment detection devices, that is to say devices the purpose, or one of the purposes, of which is to detect, or interfere with the operation of, equipment used to assess the speed of motor vehicles.”,

(2) After Article 57 of that Order (breach of requirement as to weight: goods and passenger vehicles) insert—

#### “Breach of requirement as to speed assessment equipment detection devices

57A. A person who—

(a) contravenes or fails to comply with a construction or use requirement as to speed assessment equipment detection devices, or

(b) uses on a road a motor vehicle or trailer which does not comply with such a requirement, or causes or permits a motor vehicle or trailer to be so used

is guilty of an offence.”,

(3) In Article 58(a) of that Order (breach of other construction and use requirements), for “or 57(1)(a)” substitute “, 57(1)(a) or 57A(a) ”.

(4) In Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (prosecution and punishment of offences under the Road Traffic Orders), after the entry relating to Article 57 of the Road Traffic (Northern Ireland) Order 1995 insert—

“Article 57A	Breach of requirement as to speed assessment equipment	Summarily.	(a)Level 4 on the standard scale	Discretionary.	Obligatory.	3–6”
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<p>detection devices.</p>	<p>if committed on a special road (within the meaning of the Roads (Northern Ireland) Order 1993).</p> <p>(b) Level 3 on the standard scale in any other case.</p>
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*Increase in penalties*

**Driving without insurance**

**55.** In Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (prosecution and punishment of offences: offences under the Road Traffic Orders), in the entry relating to Article 90 of the Road Traffic (Northern Ireland) Order 1981, in column (4) after “Level 5 on the standard scale” insert “ or 6 months or both ”.

**Driving while disqualified**

**56.** In Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (prosecution and punishment of offences: offences under the Road Traffic Orders), for the entry relating to Article 168A(1)(c) of the Road Traffic (Northern Ireland) Order 1981 substitute—

<p>“Article 168A(1)(c)</p>	<p>Driving while disqualified.</p>	<p>(a)</p> <p>(b) On indictment</p>	<p>Summary Discretionary. 6”</p> <p>statutory maximum or 6 months</p>
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or  
both.

(b) A  
fine  
or  
2  
years  
or  
both.

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### Failure to stop vehicle

57. In Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (prosecution and punishment of offences under the Road Traffic Orders), for the entry relating to Article 180 of the Road Traffic (Northern Ireland) Order 1981 substitute—

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“Article 180(1)	Failure to stop when so required by constable in uniform.	Summarily.	(a) Level 5 on the standard scale if committed by a person driving a mechanically propelled vehicle.  (b) Level 3 on the standard scale if committed by a person riding a cycle.
Article 180(4) to (7)	Failure to produce licence, etc for examination or to state date of birth, failing to provide Department with evidence of date of birth etc, or obstructing, etc police.	Summarily.	Level 3 on the standard scale.”.

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## Furious driving

58. In Part 2 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (prosecution and punishment of offences: offences otherwise than under the Road Traffic Orders), after the entry relating to manslaughter insert—

“An offence under section 35 of the Offences against the Person Act 1861 (furious driving).	Discretionary.	Obligatory if committed in respect of a mechanically propelled vehicle.	3–9”
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*Drink-driving, etc.*

## Power to require specimens of breath at roadside or at hospital

59.—(1) The Road Traffic (Northern Ireland) Order 1995 (NI 18) is amended as follows.

(2) After Article 17D(1) (preliminary tests for drink and drugs: arrest) insert—

“(1A) The fact that specimens of breath have been provided under Article 18 by the person concerned does not prevent paragraph (1) having effect if the constable who imposed on him the requirement to provide the specimens has reasonable cause to believe that the device used to analyse the specimens has not produced a reliable indication of the proportion of alcohol in the breath of the person.”.

(3) After Article 17D(2) insert—

“(2A) A person arrested under this Article may, instead of being taken to a police station, be detained at or near the place where the preliminary test was, or would have been, administered, with a view to imposing on him there a requirement under Article 18.”.

(4) In Article 18 (provision of specimens for analysis) for paragraph (2) substitute—

“(2) A requirement under this Article to provide specimens of breath can only be made—

- at a police station,
- at a hospital, or
- at or near a place where a relevant breath test has been administered to the person concerned or would have been so administered but for his failure to co-operate with it.

(2A) For the purposes of this Article “a relevant breath test” is a procedure involving the provision by the person concerned of a specimen of breath to be used for the purpose of obtaining an indication whether the proportion of alcohol in his breath or blood is likely to exceed the prescribed limit.

(2B) A requirement under this Article to provide specimens of breath may not be made at or near a place mentioned in paragraph (2)(c) unless the constable making it—

- is in uniform, or
- has imposed a requirement on the person concerned to cooperate with a relevant breath test in circumstances in which Article 17(5) applies.

(2C) Where a constable has imposed a requirement on the person concerned to co-operate with a relevant breath test at any place, he is entitled to remain at or near that place in order to impose on him there a requirement under this Article.

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(2D) If a requirement under paragraph (1)(a) has been made at a place other than at a police station, such a requirement may subsequently be made at a police station if (but only if)

- (a) a device or a reliable device of the type mentioned in paragraph (1)(a) was not available at that place or it was for any other reason not practicable to use such a device there, or
- (b) the constable who made the previous requirement has reasonable cause to believe that the device used there has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned.”.

(5) In Article 18(4) (circumstances in which requirement to provide a specimen of blood or urine may be made) in sub-paragraph (b) (breath-testing device not available etc.) insert at the beginning “specimens of breath have not been provided elsewhere and ”.

(6) In Article 19 (choice of specimens of breath) after paragraph (2) insert—

“(2A) If the person who makes a claim under paragraph (2) was required to provide specimens of breath under Article 18 at or near a place mentioned in paragraph (2)(c) of that Article, a constable may arrest him without warrant.”.

(7) In Article 20(1) (protection for hospital patients) for “for a laboratory test” substitute “ under Article 18 ”.

(8) In Article 21(1) (detention of persons affected by alcohol or a drug) —

- (a) for “until it appears to the constable” substitute “ (or, if the specimen was provided otherwise than at a police station, arrested and taken to and detained at a police station) if a constable has reasonable grounds for believing ”, and
- (b) for “not be committing” substitute “ commit ”.

(9) In Article 21(2) (grounds for detention) for “A person shall not be detained in pursuance of this Article if it appears to a” substitute “ Paragraph (1) does not apply to the person if it ought reasonably to appear to the ”.

(10) After Article 21(2) insert—

“(2A) A person who is at a hospital as a patient shall not be arrested and taken from there to a police station in pursuance of this Article if it would be prejudicial to his proper care and treatment as a patient.”.

PROSPECTIVE

### **Alcohol ignition interlocks**

**60.—**(1) In the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10), after Article 38 insert—

#### **“Reduced disqualification period: alcohol ignition interlock programme orders**

**38A.—**(1) This Article applies where—

- (a) a person is convicted of a relevant drink offence by or before a court,
- (b) he has committed another relevant drink offence at any time during the period of 10 years ending with the date of the conviction
- (c) the court makes an order under Article 35 but does not make an order under Article 36, and

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- (d) the period stated by the court as that for which, apart from this Article, he would be disqualified (“the unreduced period”) is not less than 2 years.
- (2) In this Article “relevant drink offence” means—
- (a) an offence under sub-paragraph (a) of paragraph (1) of Article 14 of the Order of 1995 (causing death or grievous bodily injury by careless driving when unfit to drive through drink) committed when unfit to drive through drink,
  - (b) an offence under sub-paragraph (b) of that paragraph (causing death by careless driving with excess alcohol),
  - (c) an offence under sub-paragraph (c) of that paragraph (failing to provide a specimen) where the specimen is required in connection with drink or consumption of alcohol,
  - (d) an offence under Article 15 of that Order (driving or being in charge when under influence of drink) committed by reason of unfitness through drink,
  - (e) an offence under Article 16(1) of that Order (driving or being in charge with excess alcohol),
  - (f) an offence under Article 18(7) of that Order (failing to provide a specimen) committed in the course of an investigation into an offence within any of the preceding sub-paragraphs, or
  - (g) an offence under Article 18A(6) of that Order (failing to allow a specimen to be subjected to a laboratory test) in the course of an investigation into an offence within any of the preceding sub-paragraphs.
- (3) Where this Article applies, the court may specify a lesser period of disqualification (“the reduced period”) if it also makes an order (an “alcohol ignition interlock programme order”) requiring the offender to comply with the alcohol ignition interlock conditions.
- (4) The difference between the unreduced period and the reduced period shall be a period specified in the order of—
- (a) not less than 12 months, and
  - (b) not more than one half of the unreduced period.
- (5) If the offender contravenes the alcohol ignition interlock conditions, a further order under Article 35 disqualifying him for the rest of the unreduced period is to be treated as having been made by the court immediately before the contravention.
- (6) “The alcohol ignition interlock conditions” are that the offender—
- (a) must participate fully in an approved alcohol ignition interlock programme specified in the order during such part of the unreduced period as is so specified, and
  - (b) during the part of that period following the reduced period, must not drive a motor vehicle unless it is fitted with an alcohol ignition interlock in good working order and must not drive a motor vehicle which is so fitted when not using the alcohol ignition interlock properly.
- (7) A court shall not make an alcohol ignition interlock programme order in the case of an offender unless—
- (a) the court is satisfied that a place on the approved alcohol ignition interlock programme specified in the order will be available for the offender,
  - (b) the offender appears to the court to be of or over the age of 17,
  - (c) the court has informed the offender (orally or in writing and in ordinary language) of the effect of the order and the amount of the fees which he is required to pay for the programme and when he must pay them, and
  - (d) the offender has agreed that the order should be made.



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(8) For the purposes of this Article an “approved alcohol ignition interlock programme” is a programme approved by the Department and involving the provision of an alcohol ignition interlock for use by the offender, training in its use and other education and counselling relating to the consumption of alcohol and driving.

(9) For the purposes of this Article “alcohol ignition interlock” means a device—

- (a) of a type approved by the Department, and
- (b) designed to be fitted to a motor vehicle with the purpose of preventing the driving of the vehicle by a person who does not, both before starting driving the vehicle and at regular intervals while driving it, provide specimens of breath in which the proportion of alcohol is likely not to exceed the limit specified in paragraph (10).

(10) That limit is 9 microgrammes of alcohol in 100 millilitres of breath or such other proportion of alcohol to breath as the Department may by regulations prescribe.

(11) For the purposes of this Article an offender uses an alcohol ignition interlock properly if (and only if) he is complying with all the instructions given to him about its use as part of the approved alcohol ignition interlock programme.

(12) Where an alcohol ignition interlock is fitted to a motor vehicle as part of an approved alcohol ignition interlock programme relating to an offender, a person commits an offence if—

- (a) he interferes with the alcohol ignition interlock with intent to cause it not to function or not to function properly, or
- (b) he is a person other than the offender and provides or attempts to provide a specimen of breath for the purposes of the alcohol ignition interlock with intent to enable the driving (or continued driving) of the vehicle by the offender

### **Certificates of failing fully to participate**

**38B.**—(1) An offender shall be regarded for the purposes of Article 38A as not fully participating in an approved alcohol ignition interlock programme if (and only if) a certificate that that is so is received by the proper officer of the supervising court.

(2) A certificate under paragraph (1) may be given if (and only if) the offender has failed—

- (a) to make due payment of fees for the programme,
- (b) to attend for training, education or counselling forming part of the programme in accordance with the programme provider's reasonable instructions,
- (c) to attend at a place specified by the programme provider for the monitoring and maintenance of the alcohol ignition interlock, at a time specified by the programme provider or a person with whom the programme provider has made arrangements for its monitoring and maintenance, or
- (d) to comply with any other reasonable requirement of the programme provider.

(3) A certificate under paragraph (1) is to be given by the programme provider and shall be in such form, and contain such particulars, as may be prescribed by, or determined in accordance with, regulations made by the Department.

(4) Where a programme provider decides to give a certificate under paragraph (1), he shall give written notice of the decision to the offender as soon as possible.

(5) An offender to whom a notice is given under paragraph (4) may, within such period as may be prescribed by rules of court, apply to the supervising court<sup>F19</sup> ..., for a declaration that the programme provider has given the certificate under paragraph (1) in contravention of paragraph (2).

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(6) If the court grants the application, Article 38A shall have effect as if the certificate had not been duly received by the proper officer of the supervising court.

(7) A notice under paragraph (4) shall specify the ground on which it is given; and the Department may by regulations make provision as to the form of notices under that paragraph and as to the circumstances in which they are to be treated as given.

(8) Where the proper officer of a court receives a certificate under paragraph (1), or a court grants an application under paragraph (5), the proper officer or court must send notice of that fact to the Department; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Department may determine

### **Approval of programmes**

**38C.**—(1) If an application is made to the Department for the approval of a programme for the purposes of Article 38A, the Department must decide whether to grant or refuse the application.

(2) In reaching that decision the Department must have regard to—

- (a) the nature of the programme, and
- (b) whether the programme provider is an appropriate person to provide the programme and administer its provision efficiently and effectively,

and may take into account any recommendations made by any persons appointed to consider the application.

(3) A programme may be approved subject to conditions specified by the Department.

(4) An approval of a programme is for the period specified by the Department (which must not exceed 7 years), subject to withdrawal of approval.

(5) Regulations made by the Department may make provision in relation to the approval of programmes and may, in particular, include provision—

- (a) in relation to the making of applications for approval,
- (b) for the payment in respect of applications for approval, or of approvals, (or of both) of fees of such amounts as are prescribed by the regulations,
- (c) specifying the maximum fees that a person may be required to pay for a programme and by when they are to be paid,
- (d) for the monitoring of programmes and programme providers,
- (e) in relation to withdrawing approval,
- (f) for an appeal to lie to a court of summary jurisdiction against a refusal of an application for approval, the imposition of conditions on the grant of such an application or the withdrawal of approval, and
- (g) authorising the Department to make available (with or without charge) information about programmes and programme providers.

### **Programmes in Great Britain**

**38D.**—(1) The Department may enter into arrangements with persons in Great Britain who provide programmes which are approved programmes within the meaning of section 34D(8) of the Road Traffic Offenders Act 1988 for the purpose of treating those programmes as approved programmes within the meaning of Articles 38A to 38E of this Order, and in this Article such programmes in respect of which such arrangements have been entered into are referred to as “recognised programmes”

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(2) Such arrangements may include provision for any matters for which provision is made in Articles 38A to 38E in relation to approved programmes.

(3) A court—

- (a) may treat recognised programmes as approved programmes for the purposes of Article 38A,
- (b) may treat any certificates received from programme providers of recognised programmes as certificates received from programme providers of approved programmes for the purposes of Article 38B.

(4) Where a court has made an order in respect of a person under Article 38A, that person may apply to the court to vary the order by substituting a recognised programme for the programme specified in the order, and if the court grants that application, it shall vary the order accordingly.

(5) The Department may by regulations make such further provision in respect of recognised programmes as it considers necessary or expedient

#### **Provisions supplementary to Articles 38A to 38D**

**38E.**—(1) The Department may issue guidance to programme providers, or to any category of programme provider, as to the conduct of programmes approved for the purposes of Article 38A; and—

- (a) programme providers shall have regard to any guidance given to them under this paragraph, and
- (b) in determining for the purposes of Article 38B whether any instructions or requirements of a programme provider were reasonable, a court shall have regard to any guidance given to him under this paragraph.

(2) The Department may by regulations make provision—

- (a) amending Article 38A(1)(b) by substituting for the period for the time being specified there a different period,
- (b) amending Article 38A(1)(d) by substituting for the period for the time being specified there a different period, or
- (c) amending Article 38A(4) by substituting for the period for the time being specified there a different period, or by substituting for the fraction of the unreduced period for the time being specified there a different fraction of that period, (or by doing both).

(3) In Articles 38A to 38D and this Article—

“contravention” includes failure to comply;

“programme provider”, in relation to an alcohol ignition interlock programme, means the person by whom it is, or is to be, provided;

“proper officer” means—

- (a) in relation to a magistrates' court, the clerk of petty sessions <sup>F20</sup> ..., an
- (b) otherwise, the chief clerk;

<sup>F21</sup> ...

“rules of court” means—

- (a) in relation to an application to a magistrates' court, magistrates' court rules; and
- (b) in relation to an application to the Crown Court, Crown Court rules;

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“supervising court”, in relation to an alcohol ignition interlock programme order, means—

- (a) if the Crown Court made the order, the Crown Court; and
- (b) otherwise a magistrates' court <sup>F22</sup>....

(4) Regulations under Article 38A, 38B, 38C or 38D or this Article may include such incidental or supplementary provision as appears to the Department to be necessary or expedient.

(5) Regulations under Article 38A, 38B, 38C or 38D shall be subject to negative resolution.

(6) No regulations shall be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”.

(2) In the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10), after Article 46 insert—

**“Suspension of certificate pending determination of applications under Article 38B**

**46A.**—(1) Where a person in respect of whom a certificate is given under paragraph (1) of Article 38B makes an application to a court under paragraph (5) of that Article, the court may suspend the effect of the certificate pending the determination of the application.

(2) Where a court exercises its power under paragraph (1) it must send notice of the suspension to the Department.

(3) The notice must be sent in such manner, and to such address and must contain such particulars, as the Department may determine.”.

(3) In Part 1 of Schedule 1 to that Order (prosecution and punishment of offences under the Road Traffic Orders), after the entry relating to Article 29 of that Order insert—

“Article 38A(12)	Interference, etc with alcohol ignition interlock.	Summarily	Level 4 on the standard scale if the motor vehicle to which the alcohol ignition interlock is fitted is a goods vehicle or a vehicle adapted to carry more than eight passengers. Level 3 on the standard scale in any other case.”.
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**Textual Amendments**

- F19** Words in art. 60(1) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 136\(1\), Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); S.R. 2016/387, art. 2(k)(m) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 60(1))
- F20** Words in art. 60(1) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 136\(2\)\(a\), Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); S.R. 2016/387, art. 2(k)(m) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 60(1))
- F21** Words in art. 60(1) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 136\(2\)\(b\), Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); S.R. 2016/387, art. 2(k)(m) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 60(1))

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**F22** Words in art. 60(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 136(2)(c), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 60(1))

PROSPECTIVE

### Experimental period for Article 60

**61.**—(1) Subject as follows, no order shall be made under Article 38A of the Road Traffic Offenders (Northern Ireland) Order 1995 (NI 18) (inserted by Article 60) after—

- (a) the end of 2012; or
- (b) such later time as may be specified in an order made by the Department.

(2) But at any time before the restriction imposed by paragraph (1) has taken effect, the Department may by order provide that it shall not do so.

(3) In this Article “the experimental period” means the period beginning when Article 60 comes into operation and ending—

- (a) when the restriction imposed by paragraph (1) takes effect; or
- (b) if the Department makes an order under paragraph (2), on a date specified in the order.

(4) During the experimental period—

- (a) no order shall be made under Article 38A by virtue of a person's conviction under Article 14 of the Road Traffic (Northern Ireland) Order 1995 (NI 10); and
- (b) no order shall be made under Article 38A except by a magistrates' court <sup>F23</sup>... which is for the time being designated for the purposes of this Article.

(5) In relation to orders made under Article 38A during the experimental period, Article 38B(5) shall have effect with the omission of the references to the relevant local court.

(6) The power to designate a [<sup>F24</sup>magistrates' court] for the purposes of this Article is exercisable by order made by the Lord Chancellor after consultation with the Lord Chief Justice, and includes power to revoke a designation previously made.

(7) An order under paragraph (6) must specify the period for which [<sup>F25</sup>a court] is designated, and may—

- (a) specify different periods for different [<sup>F25</sup>courts] ; and
- (b) extend or shorten any period previously specified.

(8) The power to make an order under paragraph (1) is not exercisable after the end of 2012, and no more than one order may be made under that paragraph.

(9) No order shall be made under paragraph (1) or (2) unless a draft of it has been laid before, and approved by a resolution of, the Assembly

(10) [<sup>F26</sup>.....]

### Textual Amendments

**F23** Words in art. 61(4)(b) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 136(3)(a), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 61)

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- F24** Words in art. 61(6) substituted (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), **Sch. 1 para. 136(3)(b)** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 61)
- F25** Words in art. 61(7) substituted (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), **Sch. 1 para. 136(3)(c)** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 61)
- F26** Art. 61(10) omitted (12.4.2010) by virtue of Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 167** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 61)

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

- C4** Art. 61(6): functions of Lord Chancellor 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), 15(1), **Sch. 17 para. 56** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

#### *Other provisions about offences*

#### **Meaning of driving without due care and attention**

**62.** In the Road Traffic (Northern Ireland) Order 1995 (NI 18), after Article 12 insert—

##### **“Meaning of careless, or inconsiderate, driving**

**12A.—**(1) This Article has effect for the purposes of Articles 11A, 12 and 14.

(2) A person is to be regarded as driving without due care and attention if (and only if) the way he drives falls below what would be expected of a competent and careful driver.

(3) In determining for the purposes of paragraph (2) what would be expected of a careful and competent driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(4) A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.”

#### **Extension of offence under Article 14 of the 1995 Order**

**63.—**(1) Article 14 of the Road Traffic (Northern Ireland) Order 1995 (NI 18) (causing death or grievous bodily injury by careless driving when under influence of drink or drugs) is amended as follows.

(2) In paragraph (1), after sub-paragraph (c) insert “or

(d) he is required by a constable to give his permission for a laboratory test of a specimen of blood taken from him under Article 18A, but without reasonable excuse fails to do so,”.

(3) In paragraph (3), for “and (c)” substitute “, (c) and (d)”.

(4) In Article 26(1) of the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (alternative verdicts), in the Table, in the entry relating to Article 14 of the Road Traffic (Northern Ireland) Order 1995, in the second column, after “Article 18(7) (failing to provide specimen)” insert “Article 18A(6) (failing to give permission for laboratory test)”.

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### **Alternative verdict on unsuccessful manslaughter prosecution**

**64.** In Article 26 of the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (alternative verdicts), after paragraph (3) insert—

“(3A) Where

- (a) a person charged with manslaughter in connection with the driving of a mechanically propelled vehicle by him is found not guilty of that offence, but
- (b) the allegations in the indictment amount to or include an allegation of any of the relevant offences,

he may be convicted of that offence.

(3B) For the purposes of paragraph (3A) the following are the relevant offences—

- (a) an offence under Article 9 of the Order of 1995 (causing death or grievous bodily injury by dangerous driving),
- (b) an offence under Article 10 of that Order (dangerous driving),
- (c) an offence under Article 14 of that Order (causing death or grievous bodily injury by careless driving when under influence of drink or drugs), and
- (d) an offence under section 35 of the Offences against the Person Act 1861 (furious driving).”.

*Seizure of vehicles used in a manner causing alarm, distress or annoyance*

### **Seizure of vehicles used in a manner causing alarm, distress or annoyance**

**65.**—(1) Where a constable in uniform has reasonable grounds for believing that a motor vehicle is being used on any occasion in a manner which—

- (a) contravenes Article 12 or 48 of the Road Traffic (Northern Ireland) Order 1995 (NI 18) (careless and inconsiderate driving and prohibition of off-road driving), and
- (b) is causing, or is likely to cause, alarm, distress or annoyance to members of the public,

he shall have the powers set out in paragraph (3).

(2) A constable in uniform shall also have the powers set out in paragraph (3) where he has reasonable grounds for believing that a motor vehicle has been used on any occasion in a manner falling within paragraph (1).

(3) Those powers are—

- (a) power, if the motor vehicle is moving, to order the person driving it to stop the vehicle;
- (b) power to seize and remove the motor vehicle;
- (c) power, for the purposes of exercising a power falling within sub-paragraph (a) or (b), to enter any premises on which he has reasonable grounds for believing the motor vehicle to be;
- (d) power to use reasonable force, if necessary, in the exercise of any power conferred by any of sub-paragraphs (a) to (c).

(4) A constable shall not seize a motor vehicle in the exercise of the powers conferred on him by this Article unless—

- (a) he has warned the person appearing to him to be the person whose use falls within paragraph (1) that he will seize it, if that use continues or is repeated; and
- (b) it appears to him that the use has continued or been repeated after the warning.

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(5) Paragraph (4) does not require a warning to be given by a constable on any occasion on which he would otherwise have the power to seize a motor vehicle under this Article if—

- (a) the circumstances make it impracticable for him to give the warning;
- (b) the constable has already on that occasion given a warning under that paragraph in respect of any use of that motor vehicle or of another motor vehicle by that person or any other person;
- (c) the constable has reasonable grounds for believing that such a warning has been given on that occasion otherwise than by him; or
- (d) the constable has reasonable grounds for believing that the person whose use of that motor vehicle on that occasion would justify the seizure is a person to whom a warning under that paragraph has been given (whether or not by that constable or in respect the same vehicle or the same or a similar use) on a previous occasion in the previous 12 months.

(6) A person who fails to comply with an order under paragraph (3)(a) is guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(7) Paragraph (3)(c) does not authorise entry into a private dwelling house.

(8) The powers conferred on a constable by this Article shall be exercisable only at a time when regulations under Article 66 are in force.

(9) In this Article and Article 66—

“driving” and “motor vehicle” have the same meanings as in the Road Traffic (Northern Ireland) Order 1995 (NI 18); and

“private dwelling house” does not include any garage or other structure occupied with the dwelling house, or any land appurtenant to the dwelling house.

#### **Retention etc. of vehicles seized under Article 65**

**66.**—(1) The Secretary of State may by regulations make provision as to—

- (a) the removal and retention of motor vehicles seized under Article 65; and
- (b) the release or disposal of such motor vehicles.

(2) Regulations under paragraph (1) may, in particular, make provision—

- (a) for the giving of notice of the seizure of a motor vehicle under Article 65 to a person who is the owner of that vehicle or who, in accordance with the regulations, appears to be its owner;
- (b) for the procedure by which a person who claims to be the owner of a motor vehicle seized under Article 65 may seek to have it released;
- (c) for requiring the payment of fees, charges or costs in relation to the removal and retention of such a motor vehicle and to any application for its release
- (d) as to the circumstances in which a motor vehicle seized under Article 65 may be disposed of;
- (e) as to the destination—
  - (i) of any fees or charges payable in accordance with the regulations; and
  - (ii) of the proceeds (if any) arising from the disposal of a motor vehicle seized under Article 65;
- (f) for the delivery to a district council, in circumstances prescribed by or determined in accordance with the regulations, of any motor vehicle seized under Article 65.

(3) Regulations under paragraph (1) must provide that a person who would otherwise be liable to pay any fee or charge under the regulations shall not be liable to pay it if—



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- (a) the use by reference to which the motor vehicle in question was seized was not a use by him; and
- (b) he did not know of the use of the vehicle in the manner which led to its seizure, had not consented to its use in that manner and could not, by the taking of reasonable steps, have prevented its use in that manner.

## PART 5

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Purchase and consumption of alcohol*

#### **Test purchases of alcohol**

67. After Article 60 of the Licensing (Northern Ireland) Order 1996 (NI 22) insert—

##### **“Test purchases of alcohol**

**60A.**—(1) Articles 58 and 60(2)(a) and (4) do not apply in relation to a person under the age of 18 who is sent into licensed premises to purchase intoxicating liquor by a constable who is acting in the course of his duty.

(2) A constable may not send a person under the age of 18 into any licensed premises to purchase intoxicating liquor unless—

- (a) the constable is satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of that person; and
- (b) that person and a parent of that person have both consented in writing to his being sent into those premises for that purpose.

(3) The Secretary of State shall issue guidance as to the exercise by constables of their powers under this Article.”.

PROSPECTIVE

#### **Alcohol consumption in designated public places**

**68.**—(1) Paragraph (2) applies if a constable reasonably believes that a person is, or has been, consuming intoxicating liquor in a designated public place or intends to consume intoxicating liquor in such a place.

(2) The constable may require the person concerned—

- (a) not to consume in that place anything which is, or which the constable reasonably believes to be, intoxicating liquor;
- (b) to surrender anything in his possession which is, or which the constable reasonably believes to be, intoxicating liquor or a container for such liquor.

(3) A constable may dispose of anything surrendered to him under paragraph (2) in such manner as he considers appropriate.

(4) A person who fails without reasonable excuse to comply with a requirement imposed on him under paragraph (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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(5) A constable who imposes a requirement on a person under paragraph (2) shall inform the person concerned that failing without reasonable excuse to comply with the requirement is an offence.

PROSPECTIVE

### **Fixed penalty notice for offence under Article 68**

**69.**—(1) A constable who has reason to believe that a person aged 16 or over has committed an offence under Article 68 may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty in accordance with this Article.

- (2) A notice under paragraph (1) may not be given by a constable unless—
- (a) in the case of a notice given at a police station, the constable is authorised by the Chief Constable to give notices under this Article;
  - (b) in the case of a notice given elsewhere, the constable is in uniform.
- (3) The Secretary of State may by order—
- (a) amend paragraph (1) by substituting for the age for the time being specified in that paragraph a different age which is not lower than 10; and
  - (b) if that different age is lower than 16 make provision as follows—
    - (i) where a person whose age is lower than 16 is given a notice, for a parent or guardian of that person to be notified of the giving of the notice; and
    - (ii) for that parent or guardian to be liable to pay the penalty under the notice;
 and an order under sub-paragraph (b) may amend or apply (with or without modification) any statutory provision (including this Part).
- (4) Where a person is given a notice under this Article in respect of an offence—
- (a) no proceedings may be instituted for that offence before the expiration of the period of 21 days following the date of the notice or such longer period as may be specified in the notice; and
  - (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period (or that longer period)
- (5) A notice under this Article must—
- (a) be in such form as the Secretary of State may by regulations prescribe;
  - (b) give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence;
  - (c) state the period during which, by virtue of paragraph (4), proceedings will not be taken for the offence;
  - (d) state the amount of the fixed penalty; and
  - (e) state the person to whom and the address at which the fixed penalty may be paid.
- (6) The fixed penalty payable in respect of a notice under this Article is such amount (not exceeding one quarter of level 2 on the standard scale) as the Secretary of State may specify by order; and different amounts may be specified for persons of different ages.
- (7) Payment of a fixed penalty shall be made to, or at the office of, the clerk of petty sessions specified in the notice under this Article, or to such other person or to or at such other office as the Secretary of State may by order direct.

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(8) Sums paid by way of a fixed penalty for any offence shall be treated as if they were fines imposed on summary conviction of that offence.

(9) In any proceedings a certificate that payment of a fixed penalty was or was not made by a date specified in the certificate to or at the office of the appropriate clerk of petty sessions, or to such other person or to or at such other office as the Secretary of State has directed under paragraph (7), shall, if the certificate purports to be signed by the clerk of petty sessions or such other person as the Secretary of State has directed under paragraph (7), be sufficient evidence of the facts stated unless the contrary is proved.

(10) The Secretary of State may by regulations prescribe—

- (a) the duties under this Article of persons or offices specified by an order made under paragraph (7); and
- (b) the information to be supplied to or by clerks of petty sessions and to such other persons or offices.

(11) In any proceedings for an offence under Article 68, no reference shall be made to the giving of any notice under this Article, or to the payment or non-payment of a fixed penalty under this Article, unless in the course of the proceedings, or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such notice or, as the case may be, to such payment or non-payment.

PROSPECTIVE

### Designated public places

**70.**—(1) A place is, subject to paragraph (2), a designated public place if it is—

- (a) a public place in the district of a council; and
- (b) identified in an order made by that council under paragraph (3).

(2) A place is not a designated public place or a part of such a place if it is—

- (a) licensed premises or a place within the curtilage of such premises;
- <sup>[F27]</sup>(aa) a relevant pavement café area;
- (b) a registered club or a place within the curtilage of such a club; or
- (c) a place at which the sale of intoxicating liquor is for the time being authorised by an occasional licence.

(3) A council may for the purposes of paragraph (1) by order identify any public place in its district if it is satisfied that—

- (a) nuisance or annoyance to members of the public or a section of the public; or
- (b) disorder,

has been associated with the consumption of intoxicating liquor in that place.

(4) The power conferred by paragraph (3) includes power—

- (a) to identify a place either specifically or by description;
- (b) to revoke or amend orders previously made.

(5) The Secretary of State shall by regulations prescribe the procedure to be followed in connection with the making of orders under paragraph (3).

(6) Regulations under paragraph (5) shall, in particular, include provision requiring councils to publicise the making and effect of orders under paragraph (3).

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- [<sup>F28</sup>(7) In this Article “a relevant pavement café area” means a public area which—
- (a) is an area shown under section 5 of the Licensing of Pavement Cafés Act (Northern Ireland) 2014 on the plan in a pavement café licence which is in force;
  - (b) for the time being has temporary furniture on it that under the terms of that licence is permitted to be on that area at that time;
  - (c) is associated with licensed premises which are—
    - (i) premises of a kind mentioned in Article 5(1)(a) of the Licensing (Northern Ireland) Order 1996;
    - (ii) a hotel;
    - (iii) a guest house in which the business of a restaurant is carried on;
    - (iv) a restaurant; or
    - (v) a refreshment room in public transport premises; and
  - (d) is not subject to an alcohol condition.
- (8) For the purposes of paragraph (7)—
- (a) the area is “associated with” particular premises if those premises are (or are part of) the premises in respect of which the pavement café licence relating to the area was granted;
  - (b) the area is “subject to an alcohol condition” if the pavement café licence relating to the area includes a condition requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture on the area.]

#### Textual Amendments

- F27** Art. 70(2)(aa) inserted (1.10.2016) by [Licensing of Pavement Cafés Act \(Northern Ireland\) 2014 \(c. 9\), s. 32\(1\), Sch. para. 4\(2\)](#); S.R. 2016/126, art. 2 (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 70)
- F28** Art. 70(7)(8) inserted (1.10.2016) by [Licensing of Pavement Cafés Act \(Northern Ireland\) 2014 \(c. 9\), s. 32\(1\), Sch. para. 4\(3\)](#); S.R. 2016/126, art. 2 (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 70)

PROSPECTIVE

#### Effect of Articles 68 and 70 on byelaws

- 71.—(1) Paragraphs (2) and (3) apply to any byelaw which—
- (a) prohibits, by the creation of an offence, the consumption in a particular public place of intoxicating liquor (including any liquor of a similar nature which falls within the byelaw); or
  - (b) makes any incidental, supplementary or consequential provision.
- (2) In so far as any byelaw to which this paragraph applies would, apart from this paragraph, have effect in relation to any designated public place, the byelaw—
- (a) shall cease to have effect in relation to that place; or
  - (b) where it is made after the order under Article 70(3), shall not have effect in relation to that place.

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(3) In so far as any byelaw made by a council and to which this paragraph applies still has effect at the end of the period of 3 years beginning with the day on which this paragraph comes into operation, it shall cease to have effect at the end of that period in relation to any public place.

PROSPECTIVE

### Interpretation of Articles 68 to 71

72. In Articles 68 to 71—

“council” means a district council;

“designated public place” has the meaning given by Article 70(1);

[<sup>F29</sup>“ guest house ”, “hotel”,] “intoxicating liquor”, “licensed premises” [<sup>F30</sup>, “occasional licence”, “public transport premises” and “restaurant”] have the same meanings as in the Licensing (Northern Ireland) Order 1996 (NI 22);

[<sup>F31</sup>“pavement café licence”, “public area” and “temporary furniture” have the same meanings as in the Licensing of Pavement Cafés Act (Northern Ireland) 2014;]

“public place” means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission

“registered club” has the same meaning as in the Registration of Clubs (Northern Ireland) Order 1996 (NI 23).

### Textual Amendments

- F29** Words in art. 72 inserted (1.10.2016) by [Licensing of Pavement Cafs Act \(Northern Ireland\) 2014](#) (c. 9), s. 32(1), **Sch. para. 5(2)(a)**; S.R. 2016/126, art. 2 (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 72)
- F30** Words in art. 72 substituted (1.10.2016) by [Licensing of Pavement Cafs Act \(Northern Ireland\) 2014](#) (c. 9), s. 32(1), **Sch. para. 5(2)(b)**; S.R. 2016/126, art. 2 (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 72)
- F31** Words in art. 72 inserted (1.10.2016) by [Licensing of Pavement Cafs Act \(Northern Ireland\) 2014](#) (c. 9), s. 32(1), **Sch. para. 5(3)**; S.R. 2016/126, art. 2 (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 72)

### *Prisons*

#### Removal of requirement to appoint medical officers

73. In section 2(2) of the Prison Act (Northern Ireland) 1953 (c. 18) (requirement to appoint governors, medical officers and other officers) the words “, medical officers” shall cease to have effect.

#### Abolition of right of justice of the peace to visit prisons

74. Section 19 of the Prison Act (Northern Ireland) 1953 (c. 18) (right of justice of the peace to visit prisons) shall cease to have effect.

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## **Assisting a prisoner to escape**

75. For sections 29 and 30 of the Prison Act (Northern Ireland) 1953 (c. 18) substitute—

### **“29 Assisting or permitting a person to escape from lawful custody**

(1) A person who assists any person in escaping or attempting to escape from lawful custody, whether in prison or not, is guilty of an offence.

(2) A person who—

(a) is an officer of a prison in which a person is lawfully confined, or

(b) is a constable having a person in his lawful custody, whether in prison or not, is guilty of an offence if he voluntarily and intentionally permits that person to escape.

(3) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years.”.

## **Facilitating escape by conveying things into prison**

76. For section 33 of the Prison Act (Northern Ireland) 1953 (c. 18) substitute—

### **“33 Facilitating escape by conveying things into prison**

(1) Any person who with intent to facilitate the escape of a prisoner—

(a) brings, throws or otherwise conveys anything into a prison,

(b) causes another person to bring, throw or otherwise convey anything into a prison, or

(c) gives anything to a prisoner or leaves anything in any place (whether inside or outside a prison),

is guilty of an offence

(2) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years.”.

## **Conveyance of prohibited articles into or out of prison**

77. For sections 34 and 35 of the Prison Act (Northern Ireland) 1953 (c. 18) substitute—

### **“34 Sections 34A and 34B: classification of articles**

(1) This section defines the categories of articles which are referred to in sections 34A and 34B.

(2) A List A article is any article or substance in the following list (“List A”)—

(a) a controlled drug (as defined for the purposes of the Misuse of Drugs Act 1971 (c. 38));

(b) an explosive;

(c) any firearm or ammunition (as defined in Article 2(2) of the Firearms (Northern Ireland) Order 2004 (NI 3));

(d) any other offensive weapon (as defined in Article 3(10) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)).

(3) A List B article is any article or substance in the following list (“List B”)—

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- (a) intoxicating liquor (as defined for the purposes of the Licensing (Northern Ireland) Order 1996 (NI 22));
  - (b) a mobile or satellite telephone;
  - (c) a camera;
  - (d) a sound-recording device.
- (4) In List B—
- “camera” includes any device by means of which a photograph (as defined in section 34C) can be produced;
  - “sound-recording device” includes any device by means of which a sound-recording (as defined in section 34C) can be made.
- (5) The reference in paragraph (b), (c) or (d) of list B to a device of any description includes a reference to —
- (a) a component part of a device of that description;
  - (b) an article designed or adapted for use with a device of that description (including any disk, film or other separate article on which images, sounds or information may be recorded).
- (6) A List C article is any article or substance prescribed for the purposes of this subsection by prison rules.
- (7) The Secretary of State may by order amend this section for the purpose of
- (a) adding an entry to List A or List B;
  - (b) repealing or modifying any entry for the time being included in List A or List B;
  - (c) adding, repealing or modifying any provision for the interpretation of any such entry.
- (8) An order made under subsection (7) is 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 (c. 36) shall apply accordingly.

#### **34A Conveyance etc. of List A articles into or out of prison**

- (1) A person who, without authorisation—
- (a) brings, throws or otherwise conveys a List A article into or out of a prison,
  - (b) causes another person to bring, throw or otherwise convey a List A article into or out of a prison,
  - (c) leaves a List A article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
  - (d) knowing a person to be a prisoner, gives a List A article to him,
- is guilty of an offence.
- (2) In this section “authorisation” means authorisation given for the purposes of this section—
- (a) in relation to all prisons or prisons of a specified description, by prison rules or the Secretary of State; or
  - (b) in relation to a particular prison, by the Secretary of State or by the governor of the prison.
- (3) Authorisation may be given to specified persons or persons of a specified description—

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- (a) in relation to specified articles or articles of a specified description;
- (b) in relation to specified acts or acts of a specified description; or
- (c) on such other terms as may be specified.

In this subsection “specified” means specified in the authorisation.

(4) Authorisation given by the Secretary of State otherwise than in writing shall be recorded in writing as soon as is reasonably practicable after being given.

(5) Authorisation given by the governor of a prison shall—

- (a) be given in writing; and
- (b) specify the purpose for which it is given.

(6) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine (or both)

### **34B Conveyance etc. of List B or C articles into or out of prison**

(1) A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List B article into or out of a prison,
- (b) causes another person to bring, throw or otherwise convey a List B article into or out of a prison,
- (c) leaves a List B article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
- (d) knowing a person to be a prisoner, gives a List B article to him,

is guilty of an offence.

(2) A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List C article into a prison intending it to come into the possession of a prisoner,
- (b) causes another person to bring, throw or otherwise convey a List C article into a prison intending it to come into the possession of a prisoner,
- (c) brings, throws or otherwise conveys a List C article out of a prison on behalf of a prisoner,
- (d) causes another person to bring, throw or otherwise convey a List C article out of a prison on behalf of a prisoner,
- (e) leaves a List C article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
- (f) while inside a prison, gives a List C article to a prisoner,

is guilty of an offence.

(3) A person who attempts to commit an offence under subsection (2) is guilty of that offence.

(4) In proceedings for an offence under this section it is a defence for the accused to show that—

- (a) he reasonably believed that he had authorisation to do the act in respect of which the proceedings are brought, or
- (b) in all the circumstances there was an overriding public interest which justified the doing of that act.

(5) A person guilty of an offence under subsection (1) is liable—



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- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both);
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both).
- (6) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) In this section “authorisation” means authorisation given for the purposes of this section; and subsections (6) to (8) of section 34C apply in relation to authorisations so given as they apply to authorisations given for the purposes of that section.”

### **Other offences relating to prison security**

**78.** After section 34B of the Prison Act (Northern Ireland) 1953 (c. 18) (as inserted by Article 77) insert—

#### **“34C Other offences relating to prison security**

- (1) A person who, without authorisation—
  - (a) takes a photograph, or makes a sound-recording, inside a prison, or
  - (b) transmits, or causes to be transmitted, any image or any sound from inside a prison by electronic communications for simultaneous reception outside the prison,is guilty of an offence.
- (2) It is immaterial for the purposes of subsection (1)(a) where the recording medium is located.
- (3) A person who, without authorisation—
  - (a) brings or otherwise conveys a restricted document out of a prison or causes such a document to be brought or conveyed out of a prison, or
  - (b) transmits, or causes to be transmitted, a restricted document (or any information derived from a restricted document) from inside a prison by means of electronic communications,is guilty of an offence.
- (4) In proceedings for an offence under this section it is a defence for the accused to show that—
  - (a) he reasonably believed that he had authorisation to do the act in respect of which the proceedings are brought, or
  - (b) in all the circumstances there was an overriding public interest which justified the doing of that act.
- (5) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both); or
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both).
- (6) In this section “authorisation” means authorisation given for the purposes of this section—
  - (a) in relation to all prisons or prisons of a description specified in the authorisation, by prison rules or by the Secretary of State;

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- (b) in relation to a particular prison—
  - (i) by the Secretary of State
  - (ii) by the governor of the prison;
  - (iii) by a person working at the prison who is authorised by the governor to grant authorisation on his behalf.

(7) Authorisation may be given—

- (a) to persons generally or to specified persons or persons of a specified description; and
- (b) on such terms as may be specified.

In this subsection “specified” means specified in the authorisation.

(8) Authorisation given by or on behalf of the governor of a prison must be in writing.

(9) In this section “restricted document” means the whole (or any part of)—

- (a) a photograph taken inside the prison;
- (b) a sound-recording made inside the prison;
- (c) a personal record (or a document containing information derived from a personal record);
- (d) any other document which contains—
  - (i) information relating to an identified or identifiable relevant individual, if the disclosure of that information would or might prejudicially affect the interests of that individual; or
  - (ii) information relating to any matter connected with the prison or its operation, if the disclosure of that information would or might prejudicially affect the security or operation of the prison.

(10) In subsection (9)—

“personal record” means any record which is required by prison rules to be prepared and maintained in relation to any prisoner (and it is immaterial whether or not the individual concerned is still a prisoner at the time of any alleged offence);

“relevant individual” means an individual who is or has at any time been—

- (a) a prisoner or a person working at the prison; or
- (b) a member of such a person's family or household.

(11) In this section—

“document” means anything in which information is recorded (by whatever means);

“electronic communications” has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001 (c. 9);

“photograph” means a recording on any medium on which an image is produced or from which an image (including a moving image) may by any means be produced; and

“sound-recording” means a recording of sounds on any medium from which the sounds may by any means be reproduced.”

*Live links*

### **Live links: introductory**

79.—(1) Articles 80 and 81—

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- (a) apply, respectively, to preliminary hearings and sentencing hearings in the course of proceedings for an offence; and
  - (b) enable the court in the circumstances provided for in those Articles to direct the use of a live link for securing the accused's attendance at any such hearing.
- (2) The accused is to be treated as present in court when, by virtue of a live link direction under either of those Articles, he attends a hearing through a live link.
- (3) In this Article and Articles 80 and 81—
- (a) references to a person being held in custody are references to his being held in custody in a prison, young offenders centre, juvenile justice centre or other institution;
  - (b) “live link” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during the hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);
  - (c) “the Order Book” means the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984 (No. 225);
  - (d) “preliminary hearing” means a hearing in the proceedings held before the start of the trial, other than a hearing at which the court may commit the accused for trial;
  - (e) “sentencing hearing” means any hearing following conviction which is held for the purpose of—
    - (i) proceedings relating to the giving or rescinding of a live link direction;
    - (ii) sentencing the offender or determining how the court should deal with him in respect of the offence;
  - (f) “the start of the trial”—
    - (i) in the case of a trial on indictment, has the meaning given by section 39(3) of the Criminal Procedure and Investigations Act 1996 (c. 25); and
    - (ii) in the case of a summary trial, shall be taken to occur—
      - (A) when the court begins to hear evidence for the prosecution at the trial or to consider whether to exercise its power under Article 44(4) of the Mental Health (Northern Ireland) Order 1986 (NI 4) (power to make hospital order without convicting the accused), or
      - (B) if the court accepts a plea of guilty without proceeding as mentioned in head (A), when that plea is accepted.
- (4) A court shall not give a live link direction under Article 80 or 81 unless—
- (a) it has been notified by the Secretary of State that a live link is available between the court and the institution in which the accused is or is to be held in custody; and
  - (b) the notice has not been withdrawn.

### **Use of live link at preliminary hearings**

**80.**—(1) This Article applies in relation to a preliminary hearing in a magistrates' court or the Crown Court.

(2) Where it appears to the court before which the preliminary hearing is to take place that the accused is likely to be held in custody during the hearing, the court may give a live link direction under this Article in relation to the attendance of the accused at the hearing.

(3) A live link direction under this Article is a direction requiring the accused, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.

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

(5) The court shall not give or rescind a live link direction under this Article (whether at a hearing or otherwise) unless the parties to the proceedings have been given the opportunity to make representations.

(6) If in a case where it has power to do so a magistrates' court decides not to give a live link direction under this Article, it shall—

- (a) state in open court its reasons for not doing so; and
- (b) cause those reasons to be entered in the Order Book.

(7) Subject to paragraph (8), if where the accused is attending a preliminary hearing through a live link it appears to the court—

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

the court shall adjourn the hearing.

(8) The court may proceed with the hearing if it is satisfied that it is not reasonably practicable to bring the accused to court before he ceases to be held in custody.

(9) If the court proceeds with the hearing under paragraph (8) it shall not remand the accused in custody for a period exceeding 8 days commencing on the day following that on which it remands him.

#### **Use of live link at sentencing hearings**

**81.**—(1) This Article applies where an accused person is convicted in the course of proceedings for an offence in a magistrates' court or the Crown Court.

(2) If it appears to the court by or before which the accused is convicted that it is likely that he will be held in custody during any sentencing hearing for the offence, the court may give a live link direction under this Article in relation to that hearing

(3) A live link direction under this Article is a direction requiring the accused, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.

(4) A live link direction under this Article—

- (a) may be given by the court of its own motion or on an application by a party; and
- (b) may be given in relation to all subsequent sentencing hearings before the court or to such hearing or hearings as may be specified or described in the direction.

(5) The court may not give a live link direction under this Article unless—

- (a) the offender has given his consent to the direction; and
- (b) the court is satisfied that it is not contrary to the interests of justice to give the direction.

(6) The court may rescind a live link direction given under this Article at any time before or during a hearing to which it relates if it appears to the court to be in the interests of justice to do so (but this does not affect the court's power to give a further live link direction under this Article in relation to the offender).

The court may exercise this power of its own motion or on an application by a party.

(7) The offender may not give oral evidence while attending a hearing through a live link by virtue of this Article unless—

- (a) he consents to give evidence in that way; and
- (b) the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.

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- (8) The court must—
- (a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this Article; and
  - (b) if it is a magistrates' court, cause those reasons to be entered in the Order Book.

### **Evidence of vulnerable accused**

- 82.**—(1) The Criminal Evidence (Northern Ireland) Order 1999 (NI 8) is amended as follows.
- (2) After Article 21 (interpretation etc of Part 2) insert—

## **“PART 2A**

### **USE OF LIVE LINK FOR EVIDENCE OF CERTAIN ACCUSED PERSONS**

#### **Live link directions**

**21A.**—(1) This Article applies to any proceedings (whether in a magistrates' court or before the Crown Court) against a person for an offence.

(2) The court may, on the application of the accused, give a live link direction if it is satisfied—

- (a) that the conditions in paragraph (4) or, as the case may be, paragraph (5) are met in relation to the accused; and
- (b) that it is in the interests of justice for the accused to give evidence through a live link.

(3) A live link direction is a direction that any oral evidence to be given before the court by the accused is to be given through a live link.

(4) Where the accused is aged under 18 when the application is made, the conditions are that—

- (a) his ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his level of intellectual ability or social functioning; and
- (b) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).

(5) Where the accused has attained the age of 18 at that time, the conditions are that—

- (a) he suffers from a mental disorder (within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4)) or otherwise has a significant impairment of intelligence and social function;
- (b) he is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court; and
- (c) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).

(6) While a live link direction has effect the accused may not give oral evidence before the court in the proceedings otherwise than through a live link.

(7) The court may discharge a live link direction at any time before or during any hearing to which it applies if it appears to the court to be in the interests of justice to do so (but this does not affect the power to give a further live link direction in relation to the accused).

The court may exercise this power of its own motion or on an application by a party.

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- (8) The court must state in open court its reasons for—
- (a) giving or discharging a live link direction, or
  - (b) refusing an application for or for the discharge of a live link direction,
- and, if it is a magistrates' court, it must cause those reasons to be entered in the Order Book.

#### **Meaning and effect of live link.**

**21B.**—(1) In Article 21A “live link” means an arrangement by which the accused, while absent from the place where the proceedings are being held, is able—

- (a) to see and hear a person there; and
- (b) to be seen and heard by the persons mentioned in paragraph (2);

and for this purpose any impairment of eyesight or hearing is to be disregarded.

(2) The persons are—

- (a) the judge and the jury (if there is one);
- (b) where there are two or more accused in the proceedings, each of the other accused;
- (c) legal representatives acting in the proceedings; and
- (d) any interpreter or other person appointed by the court to assist the accused.

#### **Saving**

**21C.** Nothing in this Part affects—

- (a) any power of a court to make an order, give directions or give leave of any description in relation to any witness (including an accused), or
- (b) the operation of any rule of law relating to evidence in criminal proceedings.”.

(3) In Article 2(2) (interpretation) in the definition of “judge” at the end add “ and (in the case of a youth court) any lay magistrate ”.

#### **Live links in appeals under Criminal Appeal Act**

**83.**—(1) In section 24 of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (right of appellant to be present at proceedings in Court of Appeal), after subsection (2) insert—

“(2A) The Court of Appeal may at any time give a live link direction in relation to any proceedings at which the appellant is expected to be in custody but is entitled to be present.

(2B) For this purpose—

- (a) a “live link direction” is a direction that the appellant (if he is being held in custody at the time of the proceedings) is to attend the proceedings through a live link from the place at which he is held; and
- (b) “live link” means an arrangement by which the appellant is able to see and hear, and to be seen and heard by, the Court of Appeal (and for this purpose any impairment of eyesight or hearing is to be disregarded)

(2C) The Court of Appeal—

- (a) shall not give a live link direction unless—
  - (i) the appellant has consented to the direction; and
  - (ii) any other party to the appeal has had the opportunity to make representations about the giving of such a direction; and

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- (b) may rescind a live link direction at any time before or during any proceedings to which it applies (whether of its own motion or on the application of a party).
- (2D) The Court of Appeal must not give a live link direction unless—
  - (a) it has been notified by the Secretary of State that a live link is available between the Court and the institution at which the appellant is expected to be in custody; and
  - (b) the notice has not been withdrawn.”.
- (2) In section 25 of that Act (giving of evidence), after subsection (3) insert—
  - “(4) A live link direction under section 24(2A) does not apply to the giving of oral evidence by the appellant at any hearing unless that direction, or any subsequent direction of the court, provides expressly for the giving of such evidence through a live link.”.
- (3) In section 45(2) of that Act (powers exercisable by single judge), after paragraph (f) there is inserted—
  - “(fa) to give a live link direction under section 24(2A);”.

#### *Legal aid*

#### **Civil legal services: anti-social behaviour orders**

- 84.**—(1) In Schedule 2 to the Access to Justice (Northern Ireland) Order 2003 (NI 10) (civil legal services: excluded services) in paragraph 2 after sub-paragraph (h) insert—
  - “(hh) proceedings under Article 3 or 4 of the Anti-social Behaviour (Northern Ireland) Order 2004;”.
- (2) Article 8 of the Criminal Justice (Northern Ireland) Order 2005 (NI 15) (which is superseded by this Article) shall cease to have effect.

#### **Civil legal services and legal aid: proceedings under Proceeds of Crime Act 2002**

- 85.**—(1) In Schedule 2 to the Access to Justice (Northern Ireland) Order 2003 (NI 10) (civil legal services: excluded services) in paragraph 3(2)(a) for “sub-paragraph 1(b)” substitute “ head (a) ”.
- (2) In Part 1 of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8) (proceedings in which legal aid may be given under Part 2 of that Order) in paragraph 2A(2)(a) for “head (b)” substitute “ head (a) ”.

#### *PACE*

#### **Entry for purposes of arrest**

- 86.** In Article 19 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) (entry for purposes of arrest) for paragraph (1)(c) substitute—
  - “(c) of arresting a person for an offence under—
    - (i) section 42 of the Offences against the Person Act 1861 (c. 100);
    - (ii) Article 18(3) or 21 of the Public Order (Northern Ireland) Order 1987 (NI 7);
    - (iii) Article 4 of the Protection from Harassment (Northern Ireland) Order 1997 (NI 9);
    - (iv) Article 25 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (NI 6);”.

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## **Pre-charge bail**

**87.**—(1) Article 48 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) is amended as follows.

(2) In paragraph (3D) (bail conditions on release under Article 39(1)) for “Article 39(1)” substitute “ Article 38(2) or (7)(b) or Article 39(1) ”.

(3) After paragraph (3H) insert—

“(4) A magistrates' court may, on an application by or on behalf of a person released on bail under Article 38(2) or (7)(b), vary the conditions of bail.

(5) A person who has been released on bail under Article 38(2) or (7)(b) may be arrested without warrant by a constable if the constable—

(a) has reasonable grounds for believing that the person is likely to break any of the conditions of his bail; or

(b) has reasonable grounds suspecting that the person has broken any of those conditions.

(5A) A person arrested under paragraph (5) must be taken to a police station (which may be the station where the conditions of bail were set or varied or any other police station) as soon as practicable after the arrest.”

(4) In Article 132A of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) in paragraph (1)(a) after “Part V of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)” insert “ (other than under Article 38(2) or (7)(b)) ”.

## **Authorisation of X-rays and ultrasound scans**

**88.** In Article 56A(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) (authorisation of x-rays and ultrasound scans) for “superintendent” substitute “ inspector ”.

## **Police officers performing duties of higher rank**

**89.** For Article 84 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) substitute—

### **“Police officers performing duties of higher rank**

**84.**—(1) For the purpose of any provision of this Order or any other statutory provision under which a power in respect of the investigation of offences or the treatment of persons in police custody is exercisable only by or with the authority of a police officer of at least the rank of superintendent, an officer of the rank of chief inspector shall be treated as holding the rank of superintendent if—

(a) he has been authorised by an officer holding a rank above the rank of superintendent to exercise the power or, as the case may be, to give his authority for its exercise; or

(b) he is acting during the absence of an officer holding the rank of superintendent who has authorised him, for the duration of that absence, to exercise the power or, as the case may be, to give his authority for its exercise.

(2) For the purpose of any provision of this Order or any other statutory provision under which such a power is exercisable only by or with the authority of an officer of at least the rank of inspector, an officer of the rank of sergeant shall be treated as holding the rank of inspector if he has been authorised by an officer of at least the rank of superintendent to exercise the power or, as the case may be, to give his authority for its exercise.”.



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## Penalties

### **Increase of maximum sentences for offences relating to knives, weapons etc.**

**90.**—(1) In Article 22 of the Public Order (Northern Ireland) Order 1987 (NI 7) (carrying of offensive weapon) in paragraph (3)(a) for “6 months” substitute “ 12 months ”.

(2) In Article 8 of the Crossbows (Northern Ireland) Order 1988 (NI 5) (offences relating to crossbows) for paragraphs (1) and (2) substitute—

“(1) A person guilty of an offence under this Order shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(3) In section 139 of the Criminal Justice Act 1988 (c. 33) (having knife etc. in public place) for subsection (6) substitute—

“(6) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(4) In section 139A of the Criminal Justice Act 1988 (c. 33) (having knife etc. on school premises) for subsection (6) substitute

“(6) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(5) In section 141(1) of the Criminal Justice Act 1988 (c. 33) (offensive weapons) in subsection (1) for the words from “on summary conviction” to the end substitute

- “(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(6) In Article 53 of the Criminal Justice (Northern Ireland) Order 1996 (NI 24) (manufacture, sale. etc. of certain knives) for the words from “on summary conviction” to the end substitute

- “(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(7) In Article 54(1) of the Criminal Justice (Northern Ireland) Order 1996 (NI 24) (sale of knives, etc to young persons) for the words from “on summary conviction” to the end substitute

- “(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

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(8) In section 1 of the Knives Act 1997 (c. 21) (unlawful marketing of knives) for subsection (5) substitute—

- “(5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”

(9) In section 2 of the Knives Act 1997 (c. 21) (publications connected with marketing of knives) for subsection (2) substitute—

- “(2) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”

(10) In Article 29(1) of the Magistrates Courts (Northern Ireland) Order 1981 (NI 26) after subparagraph (i) add—

- “(j) Article 22 of the Public Order (Northern Ireland) Order 1987;
- (k) the Crossbows (Northern Ireland) Order 1988;
- (l) section 139(1), 139A(1) 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.”

### **Driving disqualification for any offence**

**91.—**(1) The court by or before which a person is convicted of an offence committed after the commencement of this Article may, instead of or in addition to dealing with him in any other way, order him to be disqualified, for such period as it thinks fit, for holding or obtaining a driving licence.

(2) Where the person is convicted of an offence the sentence for which is fixed by law or falls to be imposed—

- (a) under Article 70(2) of the Firearms (Northern Ireland) Order 2004 (NI 3),
- (b) under paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38),  
or
- (c) under Article 13 or 14 above,

paragraph (1) shall have effect as if the words “instead of or” were omitted.

(3) A court shall not make an order under paragraph (1) unless the court has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn.

(4) A court which makes an order under this Article disqualifying a person for holding or obtaining a driving licence shall require him to produce—

- (a) any such licence held by him together with its counterpart (if any); or
- (b) in the case where he holds a Community licence (within the meaning of Part 2 of the Road Traffic (Northern Ireland) Order 1981 (NI 1)), his Community licence and its counterpart (if any),

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within 7 days or such longer time as the court may allow and if the licence is not produced within that time, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If a person who is disqualified under this Article applies under Article 47 of the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) for the disqualification to be removed and the court so orders, paragraph (6) of that Article shall not have effect so as to require particulars of the order to be endorsed on the licence, but the court shall send notice of the order to the Department of the Environment

(6) Paragraphs (3B), (4) and (4AA) of Article 180 of the Road Traffic (Northern Ireland) Order 1981 shall apply for the purposes of paragraph (4) in the same manner as they apply for the purposes of Article 29 of the Road Traffic Offenders (Northern Ireland) Order 1996.

(7) In this Article—

“driving licence” means a licence to drive a motor vehicle granted under Part 2 of the Road Traffic (Northern Ireland) Order 1981;

“counterpart”, in relation to a driving licence or a Community licence, has the same meaning as in that Part;

and Article 4(2) applies for the interpretation of paragraph (2) as it applies for the interpretation of Chapter 2 of Part 2.

PROSPECTIVE

### **[<sup>F32</sup>Extension of disqualification where custodial sentence also imposed**

**91A.**—(1) This Article applies where a person is convicted of an offence for which the court—

- (a) imposes a custodial sentence, and
- (b) orders the person to be disqualified under Article 91 for holding or obtaining a driving licence.

(2) The order under Article 91 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.

(3) The discretionary disqualification period is the period for which, in the absence of this Article, the court would have disqualified the person under Article 91.

(4) The appropriate extension period is—

- (a) where a court imposes a sentence under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (punishment of grave crimes: indeterminate sentences), a period equal to the period specified in the sentence under Article 45(2) of that Order less any relevant discount;
- (b) where an order under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001 (S.I. 2001/2564 (N.I. 2)) (determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order less any relevant discount;
- (c) where Article 8(1) (sentence for a determinate term) applies in relation to the custodial sentence, a period equal to the custodial period specified pursuant to Article 8(2) less any relevant discount;
- (d) where a court imposes a sentence under Article 13(3) (indeterminate custodial sentences for serious offences), a period equal to the period specified pursuant to Article 13(3)(b) less any relevant discount;

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- (e) where Article 14(3) (extended custodial sentences for certain offences where the offender is aged over 21) applies in relation to the custodial sentence, a period equal to half of the term imposed pursuant to Article 14(3)(a) calculated after that term has been reduced by any relevant discount;
- (f) where Article 14(5) (extended custodial sentences for certain offences where the offender is aged under 21) applies in relation to the custodial sentence, a period equal to half of the term imposed pursuant to Article 14(5)(a) calculated after that term has been reduced by any relevant discount;
- (g) in any other case, a period equal to half the custodial sentence imposed calculated after that sentence has been reduced by any relevant discount.
- (5) If a period determined under paragraph (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.
- (6) The “relevant discount” is the number of days by which the custodial sentence is treated as reduced by virtue of section 26(2) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (periods in custody before sentence passed etc).
- (7) This Article does not apply where—
- the custodial sentence was a suspended sentence, or
  - the court has made an order under Article 5(3) of the Life Sentences (Northern Ireland) Order 2001 (life sentence: no early release) in relation to the custodial sentence.
- (8) Paragraph (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in Article 18(2)(b) (duty to release prisoners serving extended custodial sentences) is to be read as a reference to another proportion (“the new proportion”).
- (9) The Secretary of State may by order provide that the proportion specified in paragraph (4) (e) and (f) of this Article is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.
- (10) In this Article—
- “amending order” means an order under Article 18(9) (alteration by order of relevant part of sentence);
- “custodial sentence” has the meaning given by Article 4;
- “driving licence” has the meaning given by Article 91;
- “suspended sentence” means a suspended sentence or order for detention under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968.

#### Textual Amendments

**F32** Arts. 91A, 91B inserted (prosp.) by [Coroners and Justice Act 2009 \(c. 25\)](#), ss. 137, 182(5), [Sch. 16 para. 6](#) (with s. 180, [Sch. 22 para. 29](#))

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

**C5** Art. 91A excluded by 2003 c. 32, s. 54(3B)(c) (as inserted (1.8.2017 in accordance with art. 3 of the commencing S.I.) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 7 para. 2\(4\)](#) (with [Sch. 7 para. 27](#)); S.I. 2017/189, art. 3)

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PROSPECTIVE

### Effect of custodial sentence in other cases

**91B.**—(1) This Article applies where a person is convicted of an offence for which a court proposes to order the person to be disqualified under Article 91 for holding or obtaining a driving licence and—

- (a) the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence, or
- (b) at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired.

(2) In determining the period for which the person is to be disqualified under Article 91, the court must have regard to the consideration in paragraph (3) if and to the extent that it is appropriate to do so.

(3) The consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.

(4) If the court proposes to order the person to be disqualified under Article 91 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for the purposes of paragraph (2).

(5) In this Article “custodial sentence” and “suspended sentence” have the same meaning as in Article 91A.]

### Textual Amendments

**F32** Arts. 91A, 91B inserted (prosp.) by [Coroners and Justice Act 2009 \(c. 25\)](#), ss. 137, 182(5), [Sch. 16 para. 6](#) (with s. 180, [Sch. 22 para. 29](#))

VALID FROM 26/02/2010

### *Proving execution of arrest warrants*

### Jurisdiction of magistrates' court in relation to proving execution of arrest warrant

**92.**—(1) This Article applies where—

- (a) a warrant mentioned in paragraph (2) is issued for the arrest of any person (“D”) by a resident magistrate, lay magistrate or magistrates' court for a county court division (“division A”); and
- (b) D is arrested on foot of the warrant.

(2) The warrants are—

- (a) a warrant under Article 20 or 25 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26);
- (b) a warrant under Article 6 of the Criminal Justice (Northern Ireland) Order 2003 (NI 13); and
- (c) a warrant under any other statutory provision prescribed for the purposes of this Article by order of the Secretary of State.

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- (3) The execution of the warrant may be proved before a magistrates' court for—
- (a) division A;
  - (b) the county court division in which D is arrested (“division B”); or
  - (c) a county court division which adjoins division B (“division C”).
- (4) Where the execution of the warrant is proved under paragraph (3) before a magistrates' court for division B or division C, that court—
- (a) may remand D in custody or on bail to appear before a magistrates' court for division A; and
  - (b) may hear and determine any application by D for the grant of a right to representation under Article 26 of the Access to Justice (Northern Ireland) Order 2003 (NI 10); but, subject to paragraph (5), that court may not exercise any other power in relation to D.
- (5) Paragraph (4) does not prevent the court from exercising any jurisdiction which the court has apart from this Article
- (6) Anything done before or by a magistrates' court for division B or division C under paragraph (3) or (4) shall have effect as if done before or by a magistrates' court for division A.
- (7) In Article 20(3) of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) for the words from “issue a warrant to arrest” to the end substitute “ issue a warrant for the arrest of that person ”.
- (8) Until the coming into operation of Article 26 of the Access to Justice (Northern Ireland) Order 2003 (NI 10) paragraph (4) has effect as if for sub-paragraph (b) there were substituted—
- “(b) may hear and determine any application by D under Article 28(1) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8) as if D had been charged before that court with the offence in respect of which the warrant was issued;”.
- (9) An order under paragraph (2)(c) prescribing any statutory provision may make such consequential amendments to that provision as the Secretary of State thinks necessary or expedient.

### *Anti-social behaviour orders*

#### **Applications for interim order**

**93.** In the Anti-social Behaviour (Northern Ireland) Order 2004 (NI 12) in Article 4 (interim orders) after paragraph (1) insert—

“(1A) An application by a relevant authority for an order under this Article may be made without notice being given to the defendant.”.

#### **Special measures for witnesses in proceedings for anti-social behaviour orders**

**94.** In Article 6C of the Anti-social Behaviour (Northern Ireland) Order 2004 (NI 12) in paragraph (4)(a) after “rules of court” insert “ (within the meaning of that Part )”.

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## Youth justice

### Rehabilitation of offenders

**95.**—(1) In Article 6(6) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (NI 27) (rehabilitation period for certain orders) after sub-paragraph (c) insert—

- “(d) a reparation order under Article 36A of that Order of 1998;
- (e) a community responsibility order under Article 36E of that Order of 1998;
- (f) a youth conference order under Article 36J of that Order of 1998;”.

(2) Paragraph (1) has effect for determining the rehabilitation period in respect of offences committed before, as well as after, the commencement of this Article.

(3) In Schedule 13 to the Justice (Northern Ireland) Act 2002 (c. 26) (repeals and revocations) omit the entry relating to Article 6(6)(c) of the Rehabilitation of Offenders (Northern Ireland) Order 1978

### Custody of children over the age of 17

**96.**—(1) The Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) is amended as follows.

(2) In Article 13(1)(b) for “paragraph (1B)” substitute “ paragraphs (1B) and (1BB) ”.

(3) In Article 13 after paragraph (1B) insert—

“(1BB) In the case of a child who has attained the age of 17, the court shall make an order committing the child to a juvenile justice centre (and not to a young offenders centre) if the court has been notified by the Secretary of State that no suitable accommodation for that child is available in a young offenders centre.”.

(4) In Article 39 for paragraph (3A) substitute—

“(3A) A court shall only make a juvenile justice centre order in the case of a child who has attained the age of 17 if either paragraph (3B) or (3C) applies in relation to the child.

(3B) This paragraph applies in relation to a child if—

- (a) the child will not become an adult during the period of the order;
- (b) the child has not had a custodial sentence imposed on him within the last two years; and
- (c) the court, after considering a report made by a probation officer, considers that it is in the child's best interests to make such an order.

(3C) This paragraph applies in relation to a child if the court has been notified by the Secretary of State that no suitable accommodation for that child is available in a young offenders centre.”.

### Remands by youth court

**97.** For Article 30A of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) substitute—

#### “Power of youth court in relation to remands

**30A.** A youth court shall not be required to adjourn any proceedings for an offence at any stage by reason only of the fact—

- (a) that the court commits the accused for trial for another offence; or

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(b) that the accused is charged with another offence.”.

### **Youth conference orders**

**98.**—(1) Article 36J of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) (youth conference orders) is amended as follows.

(2) After paragraph (2) insert—

“(2A) Unless revoked, a youth conference order remains in force until the offender has complied with the requirements mentioned in paragraph (2)(a) or (as the case may be) (b).”

### **Welfare of children**

**99.**—(1) The Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9) is amended as follows.

(2) In Article 33 (power of court to notify appropriate authority if child's welfare requires it) for the words from “and a court—” to “if the court” substitute “ the court before which he is charged may, if it ”.

(3) Omit Article 43 (effect of juvenile justice centre order where care order is in force).

## **PART 6**

### **SUPPLEMENTARY**

#### **Regulations, orders and rules**

**100.**—(1) Regulations, orders and rules made by the Secretary of State under this Order shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(2) Paragraph (1) does not apply to an order under Article 1 or 22(4).

(3) An order under Article 22(4) is not a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (NI 12).

(4) Regulations, orders and rules made by the Secretary of State under this Order may contain—

(a) any incidental, supplementary or consequential provision, and

(b) any transitory, transitional or saving provisions,

which the Secretary of State considers necessary or expedient.

#### **Supplementary and consequential provision, etc.**

**101.**—(1) The Secretary of State may by order make—

(a) any supplementary, incidental or consequential provision, and

(b) any transitory, transitional or saving provision,

which the Secretary of State considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Order.

(2) An order under paragraph (1) may, in particular—



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- (a) provide for any provision of this Order which comes into operation before another such provision has come into operation to have effect, until that other provision has come into operation, with such modifications as are specified in the order; and
  - (b) amend or repeal any statutory provision passed or made before the making of this Order.
- (3) Nothing in this Article limits the power by virtue of Article 100(4)(b) to include transitory, transitional or saving provision in an order under Article 1
- (4) The amendments that may be made under paragraph (2)(b) are in addition to those made by any other provision of this Order.

### **Amendments and repeals**

**102.**—(1) The statutory provisions set out in Schedule 5 have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 6 are repealed to the extent specified in the second column of that Schedule.

#### **Commencement Information**

**I17** Art. 102 partly in operation; art. 102(2) in operation for specified purposes at 8.6.2008, see art. 1(3); art. 102 in operation for specified purposes at 15.5.2008 by S.R. 2008/217, art. 2, Sch. (with savings and transitory provision arts. 3, 4); art. 102(2) in operation for specified purposes at 16.7.2008 by S.R. 2008/293, art. 2, Sch.; art. 102 in operation for further specified purposes at 1.4.2009 by S.R. 2009/120, art. 2, Sch. 1 (subject to Sch. 2 paras. 1(1)(2)(b)(c), 4)

*Judith Simpson*  
Clerk of the Privy Council

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