



# Justice (Northern Ireland) Act 2002

## 2002 CHAPTER 26

### PART 2

#### LAW OFFICERS AND PUBLIC PROSECUTION SERVICE

VALID FROM 12/04/2010

#### *Attorney General*

#### **22 Attorney General**

- (1) The Attorney General for England and Wales shall no longer be Attorney General for Northern Ireland.
- (2) The First Minister and deputy First Minister, acting jointly, must appoint a person to be Attorney General for Northern Ireland.
- (3) The Attorney General for Northern Ireland is to be funded by the First Minister and deputy First Minister, acting jointly.
- (4) The Attorney General for Northern Ireland may appoint staff, but subject to the approval of the First Minister and deputy First Minister as to—
  - (a) numbers,
  - (b) salary, and
  - (c) other conditions of service.
- (5) The functions of the Attorney General for Northern Ireland shall be exercised by him independently of any other person.
- (6) A person is not qualified for appointment as Attorney General for Northern Ireland unless he is—
  - (a) a member of the Bar of Northern Ireland of at least ten years' standing, or
  - (b) a solicitor of the Supreme Court of at least ten years' standing.

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- (7) The First Minister and deputy First Minister, acting jointly, must make arrangements for the discharge of the functions of the Attorney General of Northern Ireland during any vacancy in that office.

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

- C1** S. 22 applied (*prosp.*) (N.I.) by 2000 c. 1, s. 1(8), **Sch. para. 5A** (as inserted (*prosp.*) by 2002 c. 26, ss. 85, 87, **Sch. 12 para. 79**)

**23 Terms of appointment of Attorney General**

- (1) Subject as follows, the Attorney General for Northern Ireland holds office in accordance with the terms of his appointment (or re-appointment).
- (2) A person may not be appointed as the Attorney General for Northern Ireland for more than five years at a time.
- (3) The Attorney General for Northern Ireland may resign by notice in writing to the Office of the First Minister and deputy First Minister.
- (4) The First Minister and deputy First Minister, acting jointly, must pay to or in respect of the Attorney General for Northern Ireland any such salary or allowances as they may determine.
- (5) Section 48 of the Northern Ireland Act 1998 (c. 47) (pensions) applies in relation to a person who has ceased to be the Attorney General for Northern Ireland.
- (6) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (disqualifying offices), insert (at the appropriate place in alphabetical order)—  
 “Attorney General for Northern Ireland.”
- (7) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices), insert (at the appropriate place in alphabetical order)—  
 “Attorney General for Northern Ireland.”
- (8) The Attorney General for Northern Ireland is disqualified from being elected to, or being a member of, a district council in Northern Ireland.
- (9) In Part 7 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public authorities), insert (at the appropriate place in alphabetical order)—  
 “The Attorney General for Northern Ireland.”

**24 Removal of Attorney General**

- (1) The Attorney General for Northern Ireland—  
 (a) may be removed from office by the First Minister and deputy First Minister, acting jointly, if a tribunal convened under subsection (3) has reported to them recommending that he be removed on the ground of misbehaviour or inability to perform the functions of the office, and

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- (b) may be suspended from office by them (pending a decision whether to remove him) if the tribunal, at any time when it is considering whether to recommend his removal, has recommended to them that he be suspended.
- (2) If the Attorney General for Northern Ireland is suspended he may not perform any of the functions of the office until the decision whether to remove him has been taken (but his other rights as holder of the office are unaffected).
- (3) A tribunal may be convened by the First Minister and deputy First Minister, acting jointly.
- (4) A tribunal is to consist of—
  - (a) a person who holds the office of Lord of Appeal in Ordinary or high judicial office as defined in section 25 of the Appellate Jurisdiction Act 1876 (c. 59) (ignoring for this purpose section 5 of the Appellate Jurisdiction Act 1887 (c. 70)) and does not hold (and has never held) the office of Lord Chief Justice, Lord Justice of Appeal or judge of the High Court, and
  - (b) a person who holds, or has held, office as a judge of the High Court in England and Wales or a judge of the Court of Session.
- (5) The selection of the persons to be the members of a tribunal is to be made by the Lord Chancellor.
- (6) The chairman of a tribunal is the person mentioned in paragraph (a) of subsection (4).
- (7) The procedure of a tribunal is to be determined by its chairman.
- (8) The First Minister and deputy First Minister, acting jointly, may pay to a member of a tribunal any such allowances or fees as they may determine.

## **25 Participation by Attorney General in Assembly proceedings**

- (1) The Attorney General for Northern Ireland may participate in the proceedings of the Assembly to the extent permitted by its standing orders but he may not vote in the Assembly.
- (2) The Assembly's standing orders may in other respects provide that they are to apply to the Attorney General of Northern Ireland as if he were a member of the Assembly.
- (3) The Attorney General for Northern Ireland may, in any proceedings of the Assembly, decline to answer any question or produce any document relating to the operation of the system of prosecution of offences in any particular case if he considers that answering the question or producing the document—
  - (a) might prejudice criminal proceedings in that case, or
  - (b) would be otherwise against the public interest.
- (4) Section 43 of the Northern Ireland Act 1998 (c. 47) (interests of members of Assembly) applies to the Attorney General for Northern Ireland as if he were a member of the Assembly.

## **26 Annual report by Attorney General**

- (1) The Attorney General for Northern Ireland must, as soon as possible after the end of each financial year, prepare a report on how he has exercised his functions during the financial year.

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- (2) The Attorney General for Northern Ireland must send a copy of each annual report of his to the Office of the First Minister and deputy First Minister.
- (3) The First Minister and deputy First Minister, acting jointly, must lay before the Assembly a copy of each annual report received by their Office under subsection (2).
- (4) After a copy of an annual report has been laid in accordance with subsection (3), the First Minister and deputy First Minister, acting jointly, must arrange for the annual report to be published.
- (5) But the First Minister and deputy First Minister, acting jointly, may exclude a part of an annual report from the copy laid or published if, in their opinion, the laying or publication of the part—
  - (a) would be against the public interest, or
  - (b) might jeopardise the safety of any person.
- (6) If the First Minister and deputy First Minister exclude a part of an annual report from laying or publication, they must lay or publish with the annual report a statement that it has been excluded.
- (7) “Financial year” means—
  - (a) the period beginning with the day on which the first person appointed under section 22 takes office and ending with the first 31st March which falls at least six months after that day, and
  - (b) each subsequent period of twelve months beginning with 1st April.

VALID FROM 12/04/2010

### *Advocate General*

#### **27 Advocate General**

- (1) After the coming into force of section 22(1), the Attorney General for England and Wales shall, by virtue of that office, also be Advocate General for Northern Ireland.
- (2) In section 2 of the Law Officers Act 1997 (c. 60) (exercise of functions of Attorney General for Northern Ireland by Solicitor General)—
  - (a) in subsection (1), for “Attorney General for Northern Ireland” substitute “Advocate General for Northern Ireland”,
  - (b) in subsections (2) to (5), for “Attorney General” (in each place) substitute “Advocate General”, and
  - (c) in subsection (6), for ““Attorney General” means the Attorney” substitute ““Advocate General” means the Advocate”.
- (3) The Advocate General for Northern Ireland and the Solicitor General for England and Wales shall have in Northern Ireland the same rights of audience as members of the Bar of Northern Ireland.
- (4) In Schedule 2 to the Northern Ireland Act 1998 (c. 47) (excepted matters), after paragraph 21 insert—

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“21A The office and functions of the Advocate General for Northern Ireland.”

## **28 Functions of Advocate General**

- (1) Schedule 7 makes provision about the functions of the Advocate General for Northern Ireland.
- (2) The Secretary of State may by order make amendments in any enactment or instrument (whenever passed or made) for, or in connection with, the transfer to the Advocate General for Northern Ireland of a function of the Attorney General for Northern Ireland of giving consent to the institution or conduct of criminal proceedings (whether or not as an alternative to the consent of any other person).

### *Public Prosecution Service*

## **29 Public Prosecution Service**

- (1) There is to be a prosecuting service for Northern Ireland known as the Public Prosecution Service for Northern Ireland.
- (2) The Service is to consist of—
  - (a) the Director of Public Prosecutions for Northern Ireland,
  - (b) the Deputy Director of Public Prosecutions for Northern Ireland, and
  - (c) the members of staff of the service appointed under subsection (4).
- (3) The Service is to be funded by the Secretary of State.
- (4) The Director may appoint staff of the Service, but subject to the approval of the Secretary of State as to—
  - (a) numbers,
  - (b) salary, and
  - (c) other conditions of service.
- (5) The Director may designate any member of staff of the Service who is—
  - (a) a member of the Bar of Northern Ireland, or
  - (b) a solicitor of the Supreme Court;and any person designated under this subsection is to be known as a Public Prosecutor.
- (6) The Director is head of the Service; and the Deputy Director and the Public Prosecutors and the other members of staff of the Service are subject to his direction and control.
- (7) The Director and Deputy Director (if barristers) and Public Prosecutors designated under subsection (5)(a) are not prevented from—
  - (a) conducting any criminal proceedings, or
  - (b) exercising a right of audience in any criminal proceedings,by not having been instructed by a solicitor.
- (8) The Director may set up and maintain such offices, in such places in Northern Ireland, as he considers appropriate for the exercise of his functions.

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### **30 Director of Public Prosecutions**

- (1) The Attorney General for Northern Ireland must—
  - (a) appoint a person to be Director of Public Prosecutions for Northern Ireland, and
  - (b) appoint a person to be Deputy Director of Public Prosecutions for Northern Ireland.
- (2) A person is not qualified for appointment as Director unless he is—
  - (a) a member of the Bar of Northern Ireland of at least ten years' standing, or
  - (b) a solicitor of the Supreme Court of at least ten years' standing.
- (3) A person is not qualified for appointment as Deputy Director unless he is—
  - (a) a member of the Bar of Northern Ireland of at least seven years' standing, or
  - (b) a solicitor of the Supreme Court of at least seven years' standing.
- (4) The Deputy Director has all the powers of the Director but must exercise them subject to his direction and control.
- (5) A person appointed as Director or Deputy Director holds office until the end of the year of service in which he attains the age of 65 or such later time as the Attorney General for Northern Ireland may specify.
- (6) But the Director and Deputy Director—
  - (a) may resign by notice in writing to the Attorney General for Northern Ireland, and
  - (b) may be removed from office in accordance with section 40(3) or 43.
- (7) If the office of Director is vacant or the Director is not available to exercise his functions, the Deputy Director has all the functions of the Director.
- (8) If the office of Deputy Director becomes vacant, the Attorney General for Northern Ireland may appoint a member of staff of the Service to act as Deputy Director, on such terms as to tenure as the Attorney General for Northern Ireland determines, pending a new appointment.
- (9) The Secretary of State must pay to or in respect of the Director, the Deputy Director and any person appointed to act as Deputy Director any such—
  - (a) salary,
  - (b) allowances, or
  - (c) sums for the provision of pensions,as the Secretary of State may determine.
- (10) The Director is not required to give security with respect to any proceedings; and no order may be made by any court requiring security to be given to the Director with respect to any proceedings.
- (11) The Director (and the Deputy Director and members of staff of the Service) may not be required in any proceedings of the Assembly to answer any question or produce any document relating to a matter other than the finances and administration of the Service.

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#### Commencement Information

- II** S. 30 partly in force, s. 30 not in force at Royal Assent, see s. 87; s. 30(1)-(10) in force at 13.6.2005 by S.R. 2005/281, art. 2, Sch. 1

VALID FROM 12/03/2009

#### [<sup>F1</sup>30A Corporation sole etc

- (1) The Director of Public Prosecutions for Northern Ireland is a corporation sole.
- (2) The Director may do anything, apart from borrowing money, which is calculated to facilitate the exercise of the Director's functions or which is incidental or conducive to the exercise of those functions.
- (3) An instrument or other document purporting to be signed or otherwise executed by or on behalf of the Director is to be received in evidence and is, unless the contrary is proved, to be taken to be so signed or executed.]

#### Textual Amendments

- F1** S. 30A inserted (12.3.2009) by Northern Ireland Act 2009 (c. 3), ss. 3(2), 5

### 31 Conduct of prosecutions

- (1) The Director must take over the conduct of all criminal proceedings which are instituted in Northern Ireland on behalf of any police force (whether by a member of that force or any other person).
- (2) The Director may institute, and have the conduct of, criminal proceedings in any other case where it appears appropriate for him to do so.
- (3) This section does not preclude any person other than the Director from—
  - (a) instituting any criminal proceedings, or
  - (b) conducting any criminal proceedings to which the Director's duty to conduct proceedings does not apply.
- (4) The Director may at any stage take over the conduct of any criminal proceedings which are instituted in circumstances in which he is not under a duty to take over their conduct, other than any proceedings of which the Director of the Serious Fraud Office has conduct.
- (5) The Director must give to police forces such advice as appears to him appropriate on matters relating to the prosecution of offences.
- (6) "Police force" means—
  - (a) the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve,
  - (b) the Ministry of Defence Police,

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- (c) any body of constables appointed under Article 19 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)), or
- (d) any body of special constables appointed in Northern Ireland under section 79 of the Harbours, Docks, and Piers Clauses Act 1847 (c. 27) or section 57 of the Civil Aviation Act 1982 (c. 16).

### [<sup>F2</sup>31A Conduct of extradition proceedings

- (1) The Director may have the conduct of any extradition proceedings in Northern Ireland.
- (2) The Director may give to such persons as appear to him appropriate such advice as appears to him appropriate on matters relating to extradition proceedings, or proposed extradition proceedings, in Northern Ireland.]

#### Textual Amendments

**F2** S. 31A inserted (1.1.2004) by [Extradition Act 2003 \(c. 41\)](#), **ss. 192(6), 221**; [S.I. 2003/3103](#), **art. 2** (subject to savings in Order (as amended by [S.I. 2003/3258](#) and [S.I. 2003/3312](#)))

### 32 Discontinuance of proceedings before court appearance

- (1) Where the Director has the conduct of proceedings in relation to an offence against a person, he may discontinue the proceedings (without the leave of any court) at any time before the person has appeared or been brought before a court in connection with the offence.
- (2) Where proceedings against a person in relation to an offence are discontinued under subsection (1), the Director must inform—
  - (a) the person, and
  - (b) any court before which the person has been required to appear in connection with the offence,
 that the proceedings have been discontinued.
- (3) Where proceedings against a person in relation to an offence are discontinued under subsection (1)—
  - (a) if he is in detention in connection with the offence, he must be released unless his detention is justified otherwise than by reason of the offence, and
  - (b) if he is subject to a requirement to appear before a court, or attend at a police station, in connection with the offence, the requirement ceases to have effect.
- (4) The discontinuance under subsection (1) of proceedings against a person in relation to an offence does not prevent the subsequent institution of proceedings against him in relation to the offence (or any other offence).

### [<sup>F3</sup>32A Influencing a prosecutor

- (1) A person commits an offence if, with the intention of perverting the course of justice, he seeks to influence the Director, the Deputy Director or a Public Prosecutor in any decision as to whether to institute or continue criminal proceedings.
- (2) A person commits an offence if, with the intention of perverting the course of justice, he seeks to influence a barrister or solicitor to whom the Director has under



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section 36(2) assigned the institution or conduct of any criminal proceedings in any decision as to whether to institute or continue those proceedings.

- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (4) Proceedings for an offence under this section shall not be instituted without the consent of the Director.]

#### Textual Amendments

- F3** S. 32A inserted (13.6.2005) by Justice (Northern Ireland) Act 2004 (c. 4), ss. 7, 19(1); S.R. 2005/282, art. 2

VALID FROM 12/04/2010

### 33 Consents to prosecutions

- (1) This section has effect in relation to every provision requiring the giving of consent by the Director (whether or not as an alternative to the consent of any other person) to the institution or conduct of criminal proceedings (“a consent provision”).
- (2) A consent provision is deemed to be complied with if the consent is produced to the court—
  - (a) in the case of an indictable offence, at any time before the indictment is presented, or
  - (b) in the case of an offence to be tried summarily, at any time before the plea of the accused person is taken.
- (3) For the purposes of a consent provision it is sufficient—
  - (a) to describe the offence to which the consent relates in general terms,
  - (b) to describe in ordinary language any property or place to which reference is made in the consent so as to identify with reasonable clarity that property or place in relation to the offence, and
  - (c) to describe the accused person or any other person to whom reference is made in the consent in terms which are reasonably sufficient to enable him to be identified in relation to the offence, without necessarily stating his correct name, or his address or occupation.
- (4) A consent required by a consent provision may be amended at any time before the arraignment of the accused person, or before his plea is taken.
- (5) And if at any subsequent stage of a trial it appears to the court that the consent is defective, the court may afford the person giving the consent the opportunity of making such amendments as the court may think necessary if the court is satisfied that such amendments can be made without injustice to the accused person.
- (6) Any document purporting—

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- (a) to be the consent of the Director or the Deputy Director to the institution or conduct of criminal proceedings, or criminal proceedings in any particular form, and
  - (b) to be signed by the Director or Deputy Director,
- is admissible as prima facie evidence without further proof.

### **34 Police complaints**

- (1) Part 7 of the Police (Northern Ireland) Act 1998 (c. 32) (Police Ombudsman for Northern Ireland) is amended as follows.
- (2) In section 50(1) (interpretation), after the definition of “complainant” insert—
  - ““the Director” means the Director of Public Prosecutions for Northern Ireland;”.
- (3) In section 52 (complaints: receipt and initial classification), in subsections (1)(b), (6) and (7), after “Board” insert “, the Director”.
- (4) In section 55 (consideration of other matters by Ombudsman), in subsection (1) (in each place) and in subsection (7), after “Board” insert “, the Director”.

### **35 Information for Director**

- (1) Where a person is committed for trial, the clerk of the court to which he is committed must send, or cause to be sent, to the Director without delay—
  - (a) a copy of every complaint, deposition, examination, statement and recognisance connected with the charge, and
  - (b) a copy of all other documents in his custody which are connected with the charge or, if it is not reasonably practicable to copy any of them, particulars of the documents which it is not reasonably practicable to copy.
- (2) Where a complaint has been made before a resident magistrate, a lay magistrate or a clerk of petty sessions, he must (whether or not proceedings have been taken on it) cause to be sent to the Director, on being requested by the Director to do so, copies of all documents in his custody which are connected with the complaint.
- (3) Where the circumstances of any death which has been, or is being, investigated by a coroner appear to the coroner to disclose that an offence may have been committed against the law of Northern Ireland or the law of any other country or territory, the coroner must as soon as practicable send to the Director a written report of the circumstances.
- (4) The Chief Constable of the Police Service of Northern Ireland must give to the Director information about offences alleged to have been committed against the law of Northern Ireland which are of any description specified by the Director.
- (5) The Chief Constable of the Police Service of Northern Ireland must, at the request of the Director, ascertain and give to the Director—
  - (a) information about any matter appearing to the Director to need investigation on the ground that it may involve an offence committed against the law of Northern Ireland, and

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- (b) information appearing to the Director to be necessary for the exercise of his functions.

### 36 Exercise of functions by and on behalf of Service

- (1) The Director may delegate any of his powers (to such extent as he determines) to—
  - (a) any Public Prosecutor, or
  - (b) any other member of staff of the Public Prosecution Service for Northern Ireland.
- (2) The Director may at any time appoint a person who is not a member of staff of the Service but who is a barrister or solicitor in Northern Ireland to institute or take over the conduct of criminal proceedings [<sup>F4</sup>or extradition proceedings] assigned to him by the Director.
- (3) A person conducting proceedings assigned to him under subsection (2) has all the powers of a Public Prosecutor but must exercise them subject to any instructions given to him by a Public Prosecutor.

#### Textual Amendments

- F4** Words in s. 36(2) inserted (1.1.2004) by Extradition Act 2003 (c. 41), ss. 192(7), 221; S.I. 2003/3103, art. 2 (subject to savings in Order (as amended by S.I. 2003/3258 and S.I. 2003/3312))

### 37 Code for Prosecutors

- (1) The Director must prepare a code of practice for—
    - (a) Public Prosecutors, and
    - (b) barristers and solicitors to whom the Director assigns the institution or conduct of criminal proceedings.
  - (2) The code must include a code of ethics laying down standards of conduct and practice.
  - (3) The code must also give guidance on general principles to be applied—
    - (a) in determining, in any case, whether criminal proceedings should be instituted or, where criminal proceedings have been instituted, whether they should be discontinued, and
    - (b) in determining, in any case, what charges should be preferred.
  - (4) The Director may from time to time prepare a new code or make alterations to a code.
  - (5) In preparing or making alterations to a code the Director must be guided by the general principles of the Guidelines on the Role of Prosecutors adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana between 27th August and 7th September 1990.
- [<sup>F5</sup>(5A) In preparing or making alterations to a code the Director must also have regard to any guidance for the time being in operation under section 8 of the Justice (Northern Ireland) Act 2004.]
- (6) The Director must publish each code prepared by him and any alterations which he makes to a code (or the code as altered).

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#### Textual Amendments

**F5** S. 37(5A) inserted (1.2.2006) by [Justice \(Northern Ireland\) Act 2004 \(c. 4\)](#), [ss. 8\(7\)](#), 19(1) (with [s. 8\(8\)](#)); [S.R. 2005/282](#), [art. 5](#)

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

**C2** S. 37(4) modified (1.3.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 37, 94](#), [Sch. 2 para. 18](#); [S.I. 2008/219](#), [art. 3](#)

### 38 Equality and non-discrimination

- (1) Section 75 (duty on public authorities to have regard to need to promote equality of opportunity and good relations between different groups) and section 76 (discrimination by public authorities) of the Northern Ireland Act 1998 (c. 47) are amended as follows.
- (2) In subsection (3) of section 75, after paragraph (cc) insert—
 

“(cd) the Director of Public Prosecutions for Northern Ireland;”.
- (3) After subsection (4) of that section insert—
 

“(4A) The references in subsections (1) and (2) and Schedule 9 to the functions of the Director of Public Prosecutions for Northern Ireland do not include any of his functions relating to the prosecution of offences.”
- (4) In subsection (7) of section 76, after paragraph (e) insert—
 

“(ea) the Director of Public Prosecutions for Northern Ireland;”.
- (5) After that subsection insert—
 

“(8) This section does not apply to a decision of the Director of Public Prosecutions for Northern Ireland not to institute, or to discontinue, criminal proceedings or, where such a decision has been made, to any act done for the purpose of enabling the decision whether to institute or continue the proceedings to be made or for securing that the proceedings are discontinued.

(9) No injunction may be granted in respect of a contravention of this section by the Director of Public Prosecutions for Northern Ireland unless the court is satisfied that it would not prejudice any decision to institute criminal proceedings or any criminal proceedings.

(10) Where a party to proceedings for a contravention of this section applies for a stay of those proceedings on the ground of prejudice to a decision to institute criminal proceedings, or of prejudice to particular criminal proceedings, the court must grant the stay unless it is satisfied that continuance of the proceedings for the contravention would not result in the prejudice alleged.”

### 39 Reports by Director

- (1) The Director must, as soon as possible after the end of each financial year, prepare a report (an “annual report”) on how he has exercised his functions during the financial year.

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- (2) The provisions of a code of practice for Public Prosecutors must be set out in the Director's annual report for the financial year in which the code is issued; and any alterations to the code must be set out in his annual report for the financial year in which the alterations are made.
- (3) The Attorney General for Northern Ireland must arrange for each annual report of the Director to be published.
- (4) But the Attorney General for Northern Ireland may exclude a part of an annual report from the copy to be published if, in his opinion, the publication of the part—
  - (a) would be against the public interest, or
  - (b) might jeopardise the safety of any person.
- (5) If the Attorney General for Northern Ireland excludes a part of an annual report from publication, he must publish with the annual report a statement that it has been excluded.
- (6) "Financial year" means—
  - (a) the period beginning with the day on which section 29 comes into force and ending with the first 31st March which falls at least six months after that day, and
  - (b) each subsequent period of twelve months beginning with 1st April.

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

- C3** S. 39(2) modified (1.3.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 37, 94, [Sch. 2 para. 18](#); S.I. 2008/219, [art. 3](#)

*Relationship of Director and Attorney General*

**40 Superintendence and removal of Director**

- (1) This section applies for so long as the Attorney General for England and Wales is Attorney General for Northern Ireland.
- (2) The Director must exercise his functions under the superintendence of the Attorney General for Northern Ireland and is subject to any directions given by him; but a failure to comply with this subsection does not affect the validity of anything done by or on behalf of the Director.
- (3) The Attorney General for Northern Ireland may remove the Director or Deputy Director from office on the ground of misbehaviour or inability to perform the functions of the office.

VALID FROM 12/04/2010

**41 Transfer of functions etc.**

- (1) This section and sections 42 and 43 apply once the Attorney General for Northern Ireland is a person appointed under section 22(2).

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*Changes to legislation: There are currently no known outstanding effects for the Justice (Northern Ireland) Act 2002, Part 2. (See end of Document for details)*

- (2) Any function of the Attorney General for Northern Ireland of consenting to the institution or conduct of criminal proceedings is transferred to the Director (but subject to Schedule 7).
- (3) The function of the Attorney General for Northern Ireland of entering a nolle prosequi is transferred to the Director.
- (4) The Attorney General for Northern Ireland may not present, or direct the presentation of, an indictment against a person charging him with an offence.
- (5) In section 36(9)(a) of the Criminal Justice Act 1988 (c. 33) (reference to Court of Appeal of unduly lenient sentences), for “Attorney General for Northern Ireland” substitute “ Director of Public Prosecutions for Northern Ireland ”.
- (6) In section 15 of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (reference to Court of Appeal of point of law following acquittal on indictment), for “Attorney General for Northern Ireland” (in both places) substitute “ Director of Public Prosecutions for Northern Ireland ”.

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

**C4** S. 41(2) extended (20.11.2003) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 334(4), 336(1)**

VALID FROM 12/04/2010

**42 Independence of Director**

- (1) The functions of the Director shall be exercised by him independently of any other person.
- (2) The Director must consult the Attorney General for Northern Ireland and the Advocate General for Northern Ireland—
  - (a) before issuing or making alterations to a code under section 37, and
  - (b) before preparing his annual report.
- (3) The Attorney General for Northern Ireland and the Director may (from time to time) consult each other on any matter for which the Attorney General for Northern Ireland is accountable to the Assembly.
- (4) The Advocate General for Northern Ireland and the Director may (from time to time) consult each other on any matter for which the Advocate General for Northern Ireland is accountable to Parliament.
- (5) The Director must send a copy of each annual report prepared by him to—
  - (a) the Attorney General for Northern Ireland, and
  - (b) the Advocate General for Northern Ireland.
- (6) The Attorney General for Northern Ireland must lay before the Assembly a copy of each annual report received by him under subsection (5); and the Advocate General for Northern Ireland must lay before each House of Parliament a copy of each annual report so received by him.

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- (7) If a part of an annual report is excluded from publication under section 39(4)—
- (a) the same exclusion is to be made from the copies which are laid under subsection (6), and
  - (b) a statement that the part has been excluded is to be laid with those copies.

### **43 Appointment and removal of Director by Attorney General**

- (1) The Attorney General for Northern Ireland must consult the Advocate General for Northern Ireland before appointing a person to be Director or Deputy Director.
- (2) The Director or Deputy Director—
- (a) may be removed from office by the Attorney General for Northern Ireland if a tribunal convened under subsection (4) has reported to him recommending that the Director or Deputy Director be removed on the ground of misbehaviour or inability to perform the functions of the office, and
  - (b) may be suspended from office by the Attorney General for Northern Ireland (pending a decision whether to remove him) if the tribunal, at any time when it is considering whether to recommend his removal, has recommended to the Attorney General for Northern Ireland that he be suspended.
- (3) If the Director or Deputy Director is suspended he may not perform any of the functions of the office until the decision whether to remove him has been taken (but his other rights as holder of the office are unaffected).
- (4) A tribunal may be convened by the Attorney General for Northern Ireland after consulting the Advocate General for Northern Ireland.
- (5) A tribunal is to consist of—
- (a) a person who holds the office of Lord of Appeal in Ordinary or high judicial office as defined in section 25 of the Appellate Jurisdiction Act 1876 (c. 59) (ignoring for this purpose section 5 of the Appellate Jurisdiction Act 1887 (c. 70)) and does not hold (and has never held) the office of Lord Chief Justice, Lord Justice of Appeal or judge of the High Court, and
  - (b) a person who holds, or has held, office as a judge of the High Court in England and Wales or a judge of the Court of Session.
- (6) The selection of the persons to be the members of a tribunal is to be made by the Lord Chancellor.
- (7) The chairman of a tribunal is the person mentioned in paragraph (a) of subsection (5).
- (8) The procedure of a tribunal is to be determined by its chairman.
- (9) The Attorney General for Northern Ireland may pay to a member of a tribunal any such allowances or fees as he may determine.

### *Supplementary*

### **44 Interpretation**

- (1) For the purposes of this Part proceedings in relation to an offence are instituted—

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- (a) where a summons is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)), when the complaint for the offence is made under that Article,
  - (b) where a warrant is issued for the arrest of any person under that Article, when the complaint for the offence is made under that Article,
  - (c) where a person is charged with the offence after being taken into custody without a warrant, when he is informed of the particulars of the charge,
  - (d) where an indictment is presented under section 2 of the Grand Jury (Abolition) Act (Northern Ireland) 1969 (c. 15 (N.I.)) in a case falling within paragraph (c) or (e) of subsection (2) of that section, when the indictment is presented to the court.
- (2) Where the application of subsection (1) would result in there being more than one time for the institution of the proceedings, they are to be taken to have been instituted at the earliest of those times.
- (3) Where proceedings are instituted on the making of a complaint under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)), section 31(1) does not require the Director to do anything until the summons or warrant issued under that Article has been served or executed.
- (4) For the purposes of this Part references to the conduct of any proceedings include discontinuing the proceedings and the taking of any steps which may be taken in relation to the proceedings (including making representations on appeals or applications for judicial review or in bail applications).
- (5) For the purposes of this Part binding over proceedings shall be taken to be criminal proceedings.
- (6) "Binding over proceedings" means any proceedings instituted (whether by way of complaint under Article 127 of the Magistrates' Courts (Northern Ireland) Order 1981 or otherwise) with a view to obtaining from a magistrates' court an order requiring a person to enter into a recognisance to keep the peace or to be of good behaviour.
- [<sup>F6</sup>(7) For the purposes of this Part "extradition proceedings" means proceedings under the Extradition Act 2003.]

#### **Textual Amendments**

**F6** S. 44(7) inserted (1.1.2004) by [Extradition Act 2003 \(c. 41\)](#), **ss. 192(8)**, 221; S.I. 2003/3103, **art. 2** (subject to savings in Order (as amended by S.I. 2003/3258 and S.I. 2003/3312))



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**Changes to legislation:**

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