

# JUSTICE (NORTHERN IRELAND) ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 2: Law Officers and Public Prosecution Service**

#### **Relationship of Director and Attorney General**

#### *Section 41: Transfer of functions etc.*

76. This section sets out the changes to the functions of the Attorney General that will occur on devolution. *Subsection (2)* will end the ability of the Attorney General to consent to prosecutions for certain, specified offences. The power to consent to those prosecutions will be split between the Director of Public Prosecutions for Northern Ireland and the Advocate General for Northern Ireland (with the offences for which the Advocate General's consent is required set out in *paragraphs 24 to 36* of Schedule 7).
77. *Subsection (3)* will allow the Director, rather than the Attorney General for Northern Ireland, to stop a prosecution by means of entering a nolle prosequi. This allows proceedings upon indictment to be halted at any time before judgment. It is now usually directed to be entered in cases where the accused person cannot be produced in court to plead or stand trial owing to physical or mental incapacity which is expected to be permanent. A nolle prosequi puts an end to the prosecution but does not operate as a bar or discharge or an acquittal on the merits and the party remains liable to be re-indicted.
78. *Subsection (4)* will remove the power of the Attorney General to present a Bill of Indictment so as to obtain trial before the Crown Court without the necessity of committal proceedings. *Subsection (5)* will allow the Director, rather than the Attorney General for Northern Ireland, to appeal where he feels that a sentence handed down by a court is unduly lenient. *Subsection (6)* will allow the Director to refer a point of law to the Court of Appeal following an acquittal on indictment.