

SCHEDULES

SCHEDULE 5

Article 58(1).

AMENDMENTS

Criminal Law Amendment Act 1885 (c. 69)

1. In section 2 (procurement) and section 3 (procurement of woman by threats, false pretences or administering drugs) the word “unlawful” wherever it occurs shall be omitted.

Treatment of Offenders Act (Northern Ireland) 1968 (c. 29)

2. After section 32 there shall be inserted—

“Rules.

32A.—(1) The Secretary of State may make rules for prescribing the procedure to be followed and the forms to be used for the purposes of proceedings under or in consequence of this Act.

(2) Rules made under paragraph (1) 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 shall apply accordingly.”.

Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.))

3. In section 74 (powers of court on finding of guilt of juvenile offenders)—
 - (a) in subsection (1) for “the Probation Act (Northern Ireland) 1950” substitute “Article 10 of the Criminal Justice (Northern Ireland) Order 1996”;
 - (b) in subsection (2) for “the Probation Act (Northern Ireland) 1950” substitute “Article 10 of the Criminal Justice (Northern Ireland) Order 1996”.

Criminal Appeal (Northern Ireland) Act 1980 (c. 47)

4. In section 9 (appeal in other cases dealt with by Crown Court)—
 - (a) in subsection (2)—
 - (i) in paragraph (a) for “probation order” substitute “community order within the meaning of Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996”;
 - (ii) paragraph (b) for “probation order” substitute “community order”;
 - (b) in subsection (3)—
 - (i) for paragraphs (c) and (d) substitute—

“(c) upon whom a fine is imposed under paragraph 4(1)(a) of Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996;”;
 - (ii) omit “sentence” in the first and third places where it occurs and “passing that sentence”.

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5. In section 11 (appeal against conviction: substitution of finding of insanity)—
 - (a) in subsection (1)(b) for the words from “Article 50” onwards substitute “Article 50A(2) of the Mental Health Order (powers to deal with persons found not guilty by reason of insanity)”;
 - (b) in subsection (2)—
 - (i) for “finding that the accused was unfit to be tried” substitute “findings that the accused was unfit to be tried and that he did the act or made the omission charged against him”;
 - (ii) in paragraph (b) for the words from “Article 49” onwards substitute “Article 50A(2) of the Mental Health Order (powers to deal with persons found unfit to be tried)”.
6. In section 13 (disposal of appeal allowed under section 12)—
 - (a) in subsection (5A) for the words from “a finding” onwards substitute “findings that the accused was unfit to be tried and that he did the act or made the omission charged against him, the court may make any such order as may be made under Article 50A(2) of the Mental Health Order (powers to deal with persons found not guilty of insanity)”;
 - (b) in subsection (6)—
 - (i) for “Article 50(2)” in the first place where it occurs substitute “Article 50A(2)”;
 - (ii) for the words from “the Court may” to “Article 50(2)” in the second place where it occurs substitute “the Court shall make an order that the appellant be admitted for assessment to such hospital as may be specified by the Department of Health and Social Services”.
7. In section 13A (appeal against finding of unfitness to be tried)—
 - (a) in subsection (1) for the words from “a finding” onwards substitute “findings that he is unfit to be tried and that he did the act or made the omission charged against him, the person may appeal to the Court of Appeal against either or both of those findings”;
 - (b) in subsection (3) omit “(except one to which subsection (5) below applies)”;
 - (c) omit subsection (5);
 - (d) in subsection (6) for the words from the beginning to “allowed” substitute “Where the Court of Appeal allows an appeal under this section against a finding that the appellant is unfit to be tried”;
 - (e) at the end of subsection (7) add—

“(8) Where, otherwise than in a case falling within subsection (6) above, the Court of Appeal allows an appeal under this section against a finding that the appellant did the act or made the omission charged against him, the Court shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity)”.
8. In section 30 (interpretation of Part I) at the end add—

“(4) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 (under which a conviction of an offence for which an order for conditional or absolute discharge is made is deemed not to be a conviction for certain purposes) shall not prevent an appeal under this Act, whether against conviction or otherwise.”.

Magistrates' Courts (Northern Ireland) Order 1981 (NI 26)

9. In Article 15(1) (rules under or for the purposes of particular enactments) for “section 16(1) of the Probation Act (Northern Ireland) 1950” substitute “section 32A(1) of the Treatment of Offenders Act (Northern Ireland) 1968”.

10. In Article 140 (appeals to county court against conviction or sentence)—

(a) at the end of paragraph (1) insert—

“(1A) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 (under which a conviction of an offence for which an order for conditional or absolute discharge is made is deemed not to be a conviction except for certain purposes) shall not prevent an appeal under this Article, whether against conviction or otherwise.”;

(b) omit paragraph (2)(a);

(c) omit paragraph (3);

(d) in paragraph (4) for “section 7(1) of the Probation Act (Northern Ireland) 1950” substitute “Article 7(1) of the Criminal Justice (Northern Ireland) Order 1996”.

11. In Schedule 2 (indictable offences which may be dealt with summarily upon consent of the accused)—

(a) omit paragraph 2;

(b) in paragraph 5 (offences under the Offences against the Person Act 1861) after subparagraph (a)(vi) insert—

“(via) section 47 (assault occasioning actual bodily harm and common assault);”.

Criminal Justice Act 1982 (c. 48)

12. In Schedule 13, in Part III (Community Service — Reciprocal Arrangements)—

(a) in paragraph 7(1) for the words from “the Treatment” onwards substitute

“Part II of the Criminal Justice (Northern Ireland) Order 1996 shall have effect as if the following were substituted for Article 13(4)—

“(4) A court shall not make a community service order in respect of any offender unless the offender consents and—

(a) the court is satisfied after hearing (if the court thinks it necessary) a probation officer, that the offender is a suitable person to perform work under such an order; and

(b) it appears to the court that provision for the offender to perform work under such an order can be made under the arrangements for persons to perform work under such orders which exist in the petty sessions area in England and Wales in which he resides or will reside.”;

(c) in paragraph 8(1) for the words from “the Treatment” onwards substitute

“Part II of the Criminal Justice (Northern Ireland) Order 1996 shall have effect as if the following were substituted for Article 13(4)—

“(4) A court shall not make a community service order in respect of any offender unless the offender consents and—

(a) the court is satisfied after hearing (if the court thinks it necessary) a probation officer, that the offender is a suitable person to perform work under such an order; and

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- (b) the court has been notified by the Secretary of State that arrangements exist for persons who reside in the locality in Scotland in which the offender resides, or will be residing when the order comes into force, to perform work under community service orders made under section 238 of the Criminal Procedure (Scotland) Act 1995; and it appears to the court that provision can be made for him to perform work under those arrangements.”;
- (c) in paragraph 9(4) for “Article 7(7) of the Treatment of Offenders (Northern Ireland) Order” substitute “Article 13(7) of the Criminal Justice (Northern Ireland) Order 1996”.

Probation Board (Northern Ireland) Order 1982 (NI 10)

13. In Article 2(2) (interpretation)—

- (a) for the definition of “community service order” substitute—

““community service order” means an order under Article 13 of the Criminal Justice (Northern Ireland) Order 1996”;
- (b) in the definition of “probation order” for “section 1(1) of the Probation Act (Northern Ireland) 1950” substitute “Article 10 of the Criminal Justice (Northern Ireland) Order 1996”.

14. After Article 14 insert—

“Duties of probation officers

14A. It shall be the duty of probation officers—

- (a) to supervise the persons placed under their supervision and to advise, assist and befriend those persons;
- (b) to enquire in accordance with any direction of the court into the circumstances or home surroundings of any person with a view to assisting the court in determining the most suitable method of dealing with him; and
- (c) to perform such other duties as may be prescribed or imposed by or under any statutory provision or as the Probation Board may direct.”.

15. In Schedule 2 (transfer of property and staff) after paragraph 2 add—

“**3.**—(1) Any probation officer appointed by the Ministry of Home Affairs before 14th February 1950 shall be deemed to have been appointed under the Probation Act (Northern Ireland) 1950 and any full-time service rendered by him as a probation officer before that date shall, for the purposes of the Superannuation (Northern Ireland) Order 1972 be deemed to have been service in an unestablished capacity.

(2) Sub-paragraph (1) is without prejudice to the Northern Ireland (Modification of Enactments — No. 1) Order 1973 (which amongst other things transferred the functions of the Ministry of Home Affairs under the the Probation Act (Northern Ireland) 1950 to the Secretary of State).”.

Fines and Penalties (Northern Ireland) Order 1984 (NI 3)

16. In Article 17(2) (power to alter sums) after sub-paragraph (k) insert—

“(1) paragraph 3(1)(a) or 4(1)(a) of Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996 (fine for failure to comply with community order).”.

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Children (Northern Ireland) Order 1995 (NI 2)

17. In Article 2(2) (interpretation) in the definition of “probation order” for “section 1 of the Probation Act (Northern Ireland) 1950” substitute “Article 10 of the Criminal Justice (Northern Ireland) Order 1996”.

Criminal Procedure and Investigations Act 1996 (c. 25)

18. In Schedule 4 (modifications for Northern Ireland), in paragraph 20 for the words from the beginning to “paragraph (b) and” substitute—

“ .—(1) In section 54(6) in paragraph (b) for “section 51(1) of the Criminal Justice and Public Order Act 1994” substitute “Article 47(1) of the Criminal Justice (Northern Ireland) Order 1996.”

(2) In section 54(6)”.