

*These notes refer to the Justice Act (Northern Ireland)
2015 (c.9) which received Royal Assent on 24 July 2015*

Justice Act (Northern Ireland) 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Miscellaneous

This part contains miscellaneous provisions.

Jury Service

Section 77: Removal of maximum age for jury service

This section abolishes the upper the age limit for jury service, making everyone over 18 qualified for jury service.

Section 78: Preparation of jury lists

This section removes the duty on the Chief Electoral Officer not to select for inclusion in divisional jury lists those electors whose names have been furnished by the Juries Officer as being disqualified, ineligible or excused.

Section 79: Persons disqualified for jury service

This section adds to the categories of persons disqualified for jury service persons who have received an indeterminate custodial sentence.

Section 80: Persons ineligible for jury service

This section updates the list of persons ineligible for jury service: paragraph (2) adds members and staff of the National Crime Agency; and paragraph (3) removes persons “appointed for the purposes of Article 7(6) of the Treatment of Offenders (NI) Order 1976” and members of the Royal Irish Regiment.

Section 81: Persons excusable as of right from jury service

This section updates the list of persons excusable from jury service as of right: paragraph (2) replaces “Representatives to the European Parliament” with “Members of the European Parliament”; paragraph (3) replaces “the Secretary and any Director of the Northern Ireland Audit Office” with “The Deputy Comptroller and Auditor General for Northern Ireland and any Assistant Auditor General for Northern Ireland”; and paragraph (4) replaces “persons aged between 65 and 70 years” with “persons aged over 70 years”.

Unpaid community service after early release

Section 82: Unpaid community service after early release

This section provides the Department with a power to introduce a community service scheme, having first consulted with the Probation Board for Northern Ireland. Under such a scheme a person released early from prison under the terms of the Conditional Early Release Scheme (as provided for by Article 19 of the Criminal Justice (NI) Order 2008) may be required to engage in unpaid community service from the time of their early release up until the time they were originally due to be released.

Personal samples, DNA profiles and fingerprints

Section 83: Power to take further fingerprints or non-intimate samples

This section amends Article 61 and Article 63 of PACE to provide powers for police to take fingerprints or a non-intimate sample from persons without their consent, in cases where the investigation was discontinued but then resumed and the previous DNA sample, profile and fingerprints had been destroyed.

Consequential amendments to Schedule 2A of PACE, impose a time limit of six months from the resumption of the investigation for the sample and fingerprints to be retaken.

Section 84: Retention of material; persons convicted of an offence in England and Wales or Scotland

This section will correct a gap identified in new Article 63G of PACE which makes provision for the retention of DNA and fingerprints taken from persons convicted of an offence outside Northern Ireland. As currently enacted, Article 63G would not permit the retention of the DNA profile and fingerprints taken from a person in Northern Ireland on the basis of a conviction recorded against the person for a recordable, non-qualifying offence in England, Scotland or Wales. New Article 63GA of PACE will ensure that DNA and fingerprints taken in Northern Ireland may be retained by virtue of the existence of a conviction in England, Scotland or Wales.

Section 85: Retention of DNA profiles or fingerprints: persons given a prosecutorial fine

This section makes provision for a DNA profile and fingerprints taken by police from a person who accepts a prosecutorial fine for an offence to be retained for a period of two years.

Section 86: Power to retain DNA profile or fingerprints in connection with different offence

This section substitutes a new Article 63N into PACE to provide that fingerprints or a DNA profile taken in connection with the investigation of one offence are to

be treated as if they were taken in connection with the investigation of any other offence that the person is subsequently arrested for, charged with, convicted of or given a penalty notice for. This means that provisions in PACE for the retention of fingerprints or DNA profiles where there is a criminal conviction will apply in such cases, without the need for a causal link between the arrest in respect of which the fingerprints and DNA profiles were taken and the subsequent offence.

Section 87: Retention of personal samples that are or may be disclosable

This section amends Article 63R of PACE to insert a reference to Article 63P of PACE (which governs the retention of DNA samples) thereby making the retention rules for samples subject to the Criminal Procedure and Investigations Act 1996 (CPIA) in the same way as DNA profiles and fingerprints retained under Articles 63B to 63O and 63Q. The amendments provide that any sample retained under the CPIA must not be used other than for the purposes of any proceedings for the offence in connection with which it was taken and, that once the CPIA no longer applies, the sample must be destroyed.

Early Guilty Pleas

Section 88: Sentencing court to indicate sentence which would have been imposed if guilty plea entered at earliest reasonable opportunity

This section requires a court, in certain circumstances when passing sentence, to indicate the sentence that it would have passed had the defendant entered a guilty plea at the earliest reasonable opportunity. This section is intended to increase awareness of the availability of sentencing credit for an early plea and add some clarity around the level of credit that may be available in particular circumstances.

Sexual offences against children

Section 89: Meeting a child following sexual grooming etc.

This section amends Article 22(1) (a) of the Sexual Offences (Northern Ireland) Order 2008 to reduce the number of times an adult has to have met, or communicated with a child, before meeting them, or travelling to meet them, from two occasions to one or more occasions. The provision does not apply retrospectively and is effective only from the date of commencement of this section.

Section 90: Sexual communication with a child

This section introduces new section 22A into the Sexual Offences (Northern Ireland) Order 2008.

Section 22A provides that an adult person (18 years or over) commits an offence if they communicate sexually with a child under 16 years (or a child who the person committing the offence believes to be under 16 years) for the purpose

of obtaining sexual gratification, or if they encourage the child to make a communication that is sexual, with them or someone else.

It defines a sexual communication as one which relates to sexual activity or where a reasonable person would consider it to be sexual. It defines sexual activity as an activity that a reasonable person would consider to be sexual.

Those found guilty of the offence would be liable to up to 6 months imprisonment, or a fine on summary conviction, or imprisonment of up to 2 years on indictment. Those guilty of the offence would also be subject to notification requirements under the terms of Part 2 of the Sexual Offences Act 2003.

Avoiding delay in criminal proceedings

Section 91: General duty to progress criminal proceedings

This section provides that in relation to criminal proceedings in the Crown Court or a magistrates' court, it is the duty of the court, the prosecution and the defence, to reach a just outcome as swiftly as possible.

Section 92: Case management regulations

This section confers a power on the department to make regulations about the management and conduct of criminal cases that may impose duties on: the court; the prosecution; and the defence. The section also provides that the regulations may also confer functions on the court in relation to the "active management" of criminal cases and defines "active management" of cases in terms of the key responsibilities of a presiding judge.

Public Prosecutor's summons

Section 93: Public prosecutor's summons

This section enables a prosecutor from the Public Prosecution Service to issue a summons to an accused person without first having to get a lay magistrate to sign the summons, provided that a complaint has been made to a lay magistrate.

Defence access to premises

Section 94: Defence access to premises

This section introduces a power for a court, in criminal proceedings, to order access to specified premises for the defendant.

The section directs that an order will only be made where appropriate, and where it is required in connection with the preparation of the defendant's defence (or appeal), authorising entry into and inspection of the premises and any other specified activity on the premises or in relation to anything on them.

Court security officers

Section 95: Powers of court security officers

This section amends Schedule 3 to the Justice (Northern Ireland) Act 2004 (court security officers) by providing that the powers exercisable by a security officer in a relevant building (as defined in the said Act) also extend within the boundary of the land on which the building stands.

Causing or allowing child or vulnerable adult to suffer serious physical harm

Section 96: Causing or allowing child or vulnerable adult to suffer serious physical harm

This section amends Section 5 of the Domestic Violence, Crime and Victims Act 2004 (offence of causing or allowing the death of a child or vulnerable adult). The section provides that in addition to causing or allowing death (under the current legislation) it will be an offence to cause or allow a child or vulnerable adult to suffer serious physical harm.

The section stipulates that a person found guilty of this offence is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine, or both.

Domestic violence protection notices and orders

Section 97: Domestic violence protection notices and orders.

This section gives effect to Schedule 7 of the Act, which provides for the police and the courts to have the power to issue protection notices and orders aimed at ensuring the immediate protection of victims or potential victims of domestic violence.

Youth Justice

Section 98: Aims of youth justice system

This section inserts new wording in Section 53(3) of the Justice (NI) Act 2002, which compels all those working in the youth justice system to take account of the best interests of the children with whom they are working as a primary consideration.

Section 99: Amendment to section 10 of the Criminal Justice Act (Northern Ireland) 2013

This section deletes sub-section 10.5 of the Criminal Justice Act (NI) 2013 and amends sub-sections (6) and (7) to only such extent as to maintain the integrity of the Section.

Salary of Lands Tribunal members

Section 100: Salary of Lands Tribunal members

This section removes the need for an increase in the salary of the member of the Lands Tribunal to be made by an affirmative resolution order and to align the arrangements for determining that salary with the non-Assembly procedure used to determine other judicial salaries.

Amendment to Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

Section 101: Amendment to Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

This section amends sections 21(4)(a) and 21(11) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

Section 21(4) requires the Health and Social Care Board to make arrangements with a registered charity (within the meaning of the Charities Act (Northern Ireland) 2008) to provide for an Independent Guardian to be appointed for a child who is a victim, or a potential victim, of human trafficking, or who is determined to be a separated child.

Section 101 substitutes the term “registered charity” in section 21 (4)(a) with “charity” and inserts a new definition of “charity” in section 21(11). The amendment provides that, in addition to charities already registered under the Charities Act (Northern Ireland) 2008, charities waiting to be called forward to register under that Act and charities registered in either England and Wales or Scotland are eligible to be considered by the Health and Social Care Board to provide an independent guardian service in Northern Ireland.