

*These notes refer to the Justice Act (Northern Ireland)
2016 (c.21) which received Royal Assent on 12 May 2016*

Justice Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1

Fines and Other Penalties: Enforcement

Chapter 1: Collection of Fines Etc.

Section 1: Application of Chapter

This Section defines the circumstances to which this Chapter applies and defines the meaning of certain terms used throughout the Chapter.

The provisions of the Chapter apply to fines and other sums adjudged to be paid on conviction as well as sums that are treated in law in the same way (Section 1(1) (a)) referred to as “sums due”. In effect this means that the provisions of the Chapter apply to fines, compensation orders, the offender levy, costs imposed by court, fixed penalties and penalty notices and any other sums that are subsequently registered or treated as court fines.

The provisions apply to any such sums due when imposed by courts in Northern Ireland, or where a court in Northern Ireland is responsible for their enforcement, for example, sums due as a result of their being transferred to Northern Ireland from Great Britain or by an EU Member State (Section 1(1)(b)).

The term “debtor” is used throughout the Chapter to refer to the person due to pay the sum imposed or being enforced by the Court.

Section 2: Collection officers

This Section provides how collection officers are to be designated and the functions they will have. Collection officers will be civil servants designated by the Department of Justice (Section 2(1)) who can provide information and advice and whose role is to ensure collection orders are complied with (Section 2(2)). Section 2(3) provides a regulation making power to allow modification of the functions of collection officers should it prove necessary. This power will be subject to draft affirmative procedure in the Northern Ireland Assembly.

Section 3: Collection order

This Section provides that a collection order must be imposed by the court unless it is impracticable or inappropriate to do so (Section 3(1)).

It stipulates that a collection order cannot be imposed where the sum in question relates to a confiscation order (which has its own separate collection and enforcement statutory provisions) (Section 3(2)).

The Section provides the information that a collection order will contain and whom it should be served on. It must detail the amount or amounts due, any partial payments already made and the amount outstanding, how payment can be made, how to contact the collection officer, and other information (Section 3(4)).

When the Court makes a collection order it must provide it to the debtor and the collection officer (Section 3(5)). Where the debtor appeals his case and a collection order had been made, the collection order is suspended pending the outcome of the appeal (Section 3(6)).

The Section makes provision for the application of the collection order to transitional cases which were already in the criminal justice system before the legislation comes into effect. Collection orders will be available for all those not yet sentenced whether they have yet been convicted or not. In cases where a debtor has already defaulted on a sum and been dealt with for default, a collection order will not be available (Section 3(7)(b)).

Section 4: Additional powers where collection order made

This Section provides that when a court makes a collection order, it may also order the collection officer to make an application for deduction from benefits, or it may make an attachment of earnings order (Section 4(1)). (These orders are described more fully at Sections 14-19 below.)

These deduction orders can only be made by the court when making a collection order where the offender has consented (Section 4(2)(b)) and the court will not make such orders or directions without first considering whether additional time to pay or payment by way of instalments would be appropriate (Section 4(2)(a)).

Section 5: Default on payment: collection officer to contact debtor

This Section stipulates what a collection officer must or can do where an offender fails to comply with the collection order. Section 5(2) provides the information that the collection officer can seek from an individual who has failed to comply with an order. The information that can be required includes the debtor's name, address, date of birth, National Insurance number, as well as details of earnings or income, welfare benefits, bank accounts or vehicles registered in their name (Section 5(2)). Appropriate information can also be sought when the debtor is a company (Section 5(3)).

The Section also allows for the collection officer to apply to the court for a summons requiring the debtor to attend for a meeting with the collection officer should the debtor fail to make contact or fail to provide any of this information (Section 5(4)). Failure to provide information when requested by a collection officer or to provide false information is an offence under Section 5(6) which can attract a penalty of up to £500 (as provided by Section 24 by way of a fine not exceeding level 2 on the standard scale).

Section 6: Powers of collection officer in relation to debtor

This Section confers a power of referral on the court on the collection officer, at any time during the collection process he sees fit (Section 6(1)). The matter is referred to the court level where the original sentence was passed or which is responsible for the enforcement of the penalty.

The Section allows for a debtor to apply to the collection officer, either orally or in writing, for an extension of the period for repayment, payment by way of instalments, or amendment of the instalments dates and/or amounts (Section 6(2)).

The collection officer also has the power to make an attachment of earnings order or apply for a deduction from benefits order, whether or not on application of the debtor and whether or not he has consented to such orders being imposed (Section 6(3)). Where a debtor is both employed and on benefits, the collection officer can use his discretion in deciding which order to pursue (Section 6(3)(c)).

Section 6(4) requires the collection officer to consider allowing extra time or payment by instalments before making a deductions application or attachment order.

The Section also provides that where attachment or deduction orders are inappropriate or unworkable, and if the collection officer is satisfied that the debtor has funds in an account in his sole name, then the collection officer may pursue an interim bank account order (Section 6(5)). Where an interim bank account order is made, the collection officer must refer the matter to the appropriate court for a hearing to decide on whether a full order should be made.

Where the collection officer's other powers are unsuccessful, he may request the court to make a vehicle seizure order against the debtor, if satisfied that the debtor has funds available to pay the sum due, the vehicle in question is registered to the debtor and the sale of the vehicle would discharge the sum owing *including* the likely charges and costs of the sale (Section 6(6) and (7)).

The collection officer may not request a vehicle seizure order without first informing the debtor of his intentions and affording the debtor an opportunity to pay the sum owing. There is no requirement to inform the debtor of his intentions with regard to an interim bank order (Section 6(8)).

Where a collection officer has referred the matter to court, he may not thereafter exercise any of his collection powers (Section 6(9)).

Where a collection officer makes complaint to a magistrates' court, a summons may be issued requiring the debtor to appear before the appropriate court for the hearing (Section 6 (10)).

The Section makes it an offence for a person informed of a possible application for a vehicle seizure order to attempt to hide or dispose of the vehicle in question in order to frustrate the application (Section 6(11)), the penalty which is for a fine not exceeding level 2 on the standard scale (Section 24).

Section 7: Referral to the court: collection officer's report etc.

This Section states that where the collection officer refers a case to the appropriate court, he must send a report to accompany that referral, outlining the contact he has had with the debtor, any information he has received, any payments made, the actions he has taken to date, the outcomes of those actions and the steps the debtor has taken to attempt payment (Section 7(1)).

Where the referral to court is made on foot of an application for a vehicle seizure order, the collection officer must state within the report that he is satisfied of the criteria outlined above in Section 6(7) and that the vehicle does not fall within the list of prohibited vehicles, namely one used by police, ambulance, fire and rescue services, by medical practitioners on call, by those holding a blue badge or one used for a disabled person's needs (Section 23(5)).

Section 8: Referral to the court in case where no collection order made

This Section applies where a person defaults on payment of the sum due where no collection order has been made (Section 8(1)). The clerk of the appropriate court may refer the matter back to that court for a hearing on the debtor's default (Section 8 (2)). A summons may be issued upon a complaint of the clerk to require the debtor to attend at that hearing (Section 8 (3)).

Section 9: Powers of court on referral of debtor's case

Where the referral has been made under Section 6, i.e. where the debtor is in default of a collection order, the responsible court may give additional time to pay, allow payment by way of instalments, impose an attachment of earnings order or direct an application for deduction from benefits, make a bank account order (even if the collection officer has not previously made an interim bank account order), make a vehicle seizure order, issue a warrant of distress, make a supervised activity order or in the case of a child an attendance centre order, commit an adult debtor to prison in default of payment or where he is in default of distress, or remit the whole or part of the sum due (Section 9(1)).

Where the referral has been made under Section 8, i.e. where no collection order has been made, the court can decide to impose one at this point. If it does, then all of the options will be open to it. If the court decides not to impose a collection order, then all of the options bar the deductions from benefits and attachment of earnings orders will be open to it. Deductions/attachments orders will not be available as these require a collection officer to administer them (Section 9(2)).

This Section sets out the sequence of using the above options and provides for when they may or may not be used (Section 9(3) – (5)). The Section stipulates that where the court is dealing with someone aged under 18 or decides in the case of an adult to make a supervised activity order or commit an adult debtor to prison whether or not in default of distress, the court must give reasons for its decision (Section 9(6)).

This Section provides for the collection officer to attend at the hearing where he has imposed an interim bank account order and allows for representations from the deposit-taker as well as the debtor as to why the order should not be made (Section 9(7)). Where the court makes a bank account order, but the amount in the account is not sufficient to discharge the sum due, the court may use any of the other actions specified in this Section, in order to recover the outstanding amount (Section 9(8)).

If an interim bank account order was imposed but the court decides not to make a full order or uses a different enforcement option from subsection (1) of this Section, then the interim order is discharged (Section 9(9)). Where a full bank account order is made the interim order will only be discharged when full payment is received (as provided in Section 22(5)).

In a case where the sum due was imposed not as a result of a conviction, for example, a penalty notice, then the date of conviction is to be treated the same as the date when the debtor's liability to pay the sum due arose (Section 9(10)).

Section 10: Power to issue arrest warrant where debtor fails to attend hearing referral of case

This Section allows for a court to issue a warrant for the arrest of a debtor for failure to attend a hearing under Section 9.

The warrant can only be issued where the court is not satisfied that the summons (requiring the debtor's attendance at the hearing) was served on the debtor or that the debtor is evading service, but the court is satisfied that a reasonable attempt has been made to serve the summons on the debtor; the court is satisfied that the debtor is aware of the liability to pay the sum due and of the possible consequences of defaulting on the payment; the court is considering issuing a warrant to commit the debtor to prison under section 9(1)(i); and the court is satisfied that issuing a warrant for the debtor's arrest (instead of re-issuing the summons) is proportionate to the objective of securing the debtor's appearance before the court. The warrant must be endorsed for bail so that the person will be released upon entering into the recognizance.

The Section also provides that a warrant issued under the Section is not to be regarded for the purposes of Article 19(1)(a)(i) of the Police and Criminal Evidence (NI) Order 1989 as a warrant issued in connection with or arising out of criminal proceedings. This is to ensure that no power of entry attaches to an arrest warrant issued under this Section.

Section 11: Arrest under warrant under Section 10

This Section provides that if the debtor enters into a recognizance upon arrest it will not be necessary to take the debtor to the police station. Where the debtor is taken to the police station he must be released on entering into the recognizance.

If the debtor enters into a recognizance, the debtor's case will be heard at the time and place specified in the recognizance. If the debtor fails to enter into a recognizance he must, as soon as practicable, be brought before either a magistrates' court or the Crown Court whichever is sitting next. The Section then specifies the powers of the court when the debtor is brought before it. The Court must either hear the case or, if that is not possible, adjourn the hearing and either remand on bail or commit the debtor to custody.

Payment of the outstanding amount of the financial penalty may be made to the police or the court and on payment the warrant for arrest ceases to have effect.

Section 12: Remand or committal under Section 11

This Section sets out how the remand on bail or the committal in custody of the debtor works. The provisions in this Section follow the procedure in the Magistrates' Courts (NI) Order 1981.

Section 13: Costs relating to referral of debtor's case

This Section provides that costs of hearing a debtor's case under Section 9 of the Act are to be defrayed in the first instance by the Department of Justice at such rates or amounts approved by the Department of Finance and Personnel.

The Court may order the debtor to pay the whole or any part of the costs of hearing his case under Section 9 of the Act. Where the debtor is under 18 the costs ordered cannot exceed the amount of the outstanding amount owing on the financial penalty.

Section 14: Application for deduction from benefits

This Section defines what an application for a deduction from benefits is, namely an application to the Department for Social Development for deductions to be made from a debtor's relevant welfare benefit to pay the sum that he owes to the Court (Section 14(1)). Such an application may only be made in respect of those aged 18 years or older (Section 14(2)). The relevant welfare benefits are jobseeker's allowance, state pension credit, employment and support allowance and income support (Section 14(3)).

The Department for Social Development will have discretion in whether to approve the application. If the application is granted, the Department must deduct the sums payable by the debtor from his benefit and pay these to the Court (Section 14(4)).

The application will be treated as having failed if the Department rejects the application, the application is withdrawn by the collection officer, the

application is successfully appealed or the Department stops making the deductions whilst the debtor is still liable to pay any part of the sum owing to the Court (Section 14(5)).

The Section confers a regulation making power on the Department of Justice to amend the list of relevant benefits (Section 14(7)).

Section 15: Deductions from benefits: further provision in regulations

This Section provides for regulations to be made in respect of applications for deductions from benefits, and outlines what, in particular, regulations may provide for. Regulations made by the Department for Social Development may provide for the procedure for application, the eligibility for deductions, the deduction amounts and periods, the cessation of deductions, the priority between collection order deductions and other deduction orders (Section 15(1)). Regulations made by the Department of Justice may provide for the notification requirements and contents of the application (Section 15(2)).

Section 16: Enquiries into debtor's means

This Section requires the court to request information from the debtor before making an order for an application for deductions from benefits (Section 16(1)). The Section sets out what kinds of information the court may request from the debtor, namely his name, address, date of birth, National Insurance number and benefits information (Section 16(1)).

Furthermore the Section creates offences of non-compliance with the court's request for information, either by failing to provide the information (Section 16(2)), or by providing false information knowingly or recklessly, or failing to disclose a material fact (Section 16(3)).

Section 17: Disclosure of information

This Section provides a power for the Department for Social Development ("DSD"), or a person providing services to DSD, to disclose social security information (as defined in sub-section (2)) to a court or a collection officer for the purpose of facilitating a decision by a court or a collection officer whether or not to make an application for deduction from benefits in order to enforce payment of the outstanding amount of an unpaid financial penalty.

Sub-section (3) makes it an offence for a person to whom information is disclosed under this Section to unlawfully disclose the information to another person or use it for a purpose not specified in the Section.

Sub-section (6) specifies that the penalty for unlawful disclosure is a fine not exceeding the statutory maximum (£5,000) on summary conviction, or 2 years imprisonment or an unlimited fine or both on conviction on indictment.

Section 18: Attachment of earnings order

This Section defines the attachment of earnings order, namely that a person who employs the debtor must deduct specified amounts from the debtor's wages and pay them to the court in order to discharge the outstanding amount (Section 18(1)). As with the deduction from benefits order, this order only applies to those aged 18 years or older (Section 18(2)).

The Section sets out what information the attachment of earnings order must contain and allows for regulations to add to this list (Section 18(4)). The Section provides a formulation for the employer/ employee relationship (Section 18(5)) and that a definition of "earnings" will be provided in regulations (Section 18(6)). Further information regarding the attachment of earnings order may be found at Schedule 1 (Section 18(7)).

Section 19: Statement of earnings

Where an attachment of earnings order is being proposed, or at any time after one has been made, the court or collection officer may direct the debtor or employer to provide a statement of the debtor's earnings, containing all of the information required by subsection (2) and (3) of this Section (Section 19(1)-19(4)).

Such statements may be received in evidence without further proof during proceedings arising out of an attachment of earnings order (Section 19(5)).

This Section states that failure to provide a statement when requested is an offence (Section 19(6)), the penalty of which is level 2 on the standard scale as provided for by Section 24.

Section 20: Interim bank account order

An interim bank account order requires a deposit-taker with which a debtor has an account to freeze the sum specified in the order in the account and to not reduce the credit balance below that amount. If the credit balance is already below the sum specified in the order, then it must not be reduced any further (Section 20(1)).

Where the debtor instructs that the money from the account should be released in order to pay the sum due to the court, the deposit taker must allow the release of those funds for that purpose, unless there are exceptional circumstances (Section 20(2)).

When the court receives payment of the full amount, the collection officer must discharge the interim bank account order and inform the court and the deposit-taker (Section 20(3)).

Where such notice is received, the court will dismiss the referral to court for hearing of the matter if the full sum owing has been paid, but where the full sum has not been paid, the matter will proceed to hearing and the court will have the options from Section 9 open to it to recoup the outstanding amount (Section 20(4)).

The Section provides a regulation making power in order, in particular, to make further provisions about requesting information from the deposit-taker, the contents of the interim order, service and administrative charges (Section 20(6)).

Failure to provide information when requested by a collection officer or to provide false information is an offence under Sections 20(7) and (8), which can attract a penalty of up to £500 (as provided by Section 24 by way of a fine not exceeding level 2 on the standard scale).

The Section makes provision for the application of the interim bank account order to transitional cases which were already in the criminal justice system before the legislation comes into effect. Interim bank account orders will be available for those who are not yet sentenced (Section 20(9)). In cases where a debtor has already defaulted on a sum, an interim bank account order will not be available (Section 3(7)(b)).

Section 21: Hardship payments

This Section allows the debtor to apply in writing to the collection officer for a hardship payment out of his frozen amount if he or his family is suffering hardship as a result of the imposition of the order. If the collection officer approves such an application, the deposit-taker will be instructed to make such payments as the collection officer specifies (Section 21(1) & (2)).

The Section provides for regulations, in particular to specify the content, form, service and procedure of such an application, as well as circumstances to be taken into account by the collection officer when considering the application (Section 21(3)).

Section 22: Bank account order

This Section defines a bank account order, namely that the deposit-taker must pay out of the debtor's account the amount specified to court (Section 22(1)). This is the effect of the full bank account order which can only be made at a court hearing.

Where the order has been preceded by an interim bank account order, only the sum specified on the interim order is to be paid to the court. Where the court makes a bank account order of its own motion, the court will determine the amount to be paid (Section 22(2)). The release of funds under this order discharges the deposit-taker's liability to the debtor for that amount, that is to say the debtor cannot claim that the deposit-taker should still hold that amount for the debtor in his account (Section 22(3)).

The Section allows for regulations to provide for a minimum account balance below which an account cannot be reduced (Section 22(4)). Section 22(5) and (6) requires the collection officer or proper officer (as defined in Section 8) to discharge full or interim bank account orders if the outstanding amount has been paid and to notify the court and deposit-taker.

The content of regulations may provide for further information to be requested from the deposit-taker, for the contents and service of the order and for administrative charges to be imposed (Section 22(7)).

Failure to provide information when requested by a collection officer or to provide false information is an offence under Sections 22(8) and (9), which can attract a penalty of up to £500 (as provided by Section 24 by way of a fine not exceeding level 2 on the standard scale).

Section 23: Vehicle seizure order

This Section defines a vehicle seizure order, namely that a debtor's vehicle may be seized in order to secure payment of the sum due. The vehicle may be sold, scrapped or otherwise disposed of and any proceeds of sale are to be used to pay the outstanding amount (Section 23(1)). Only police officers or a person authorised by the Department of Justice may seize a vehicle (Section 23(2)).

When the collection officer makes a referral to the court under Section 6(6) to request a vehicle seizure order, he must attend at the hearing in order to give any evidence that the court may require (Section 23(3)).

The Section provides that the court, in satisfying itself that a seizure order is justified, reasonable and proportionate, must take into account the impact of a vehicle seizure order on the debtor's ability to earn a living (Section 23(4)).

This Section provides for certain vehicles which cannot be made the subject of a vehicle seizure order. These vehicles are those which have a disabled person's badge on display, those used for the carriage of a disabled person, those which are used by the police, ambulance, fire and rescue services, and those used by medical practitioners on call (Section 23(5)).

The Section allows for regulations to specify what a collection officer must take into account before making a request for this order, details around the sale of the vehicle, the removal, securing and storage of the vehicle, the release of the vehicle and the protected interests of any innocent third parties in the vehicle (Section 23(7)).

The Section makes provision for further detail to be included in regulations relating to the release of the vehicle and in particular to include a condition requiring the payment of charges (Section 23(8)).

The Section makes provision for the application of the vehicle seizure order to transitional cases which were already in the criminal justice system before the legislation comes into effect. Vehicle seizure orders will be available for those not yet sentenced (Section 23(9)). In cases where a debtor has already defaulted on a sum, a vehicle seizure order will not be available (Section 3(7)(b)).

Section 24: Offences

This Section provides that any offence mentioned in Chapter 1 is to be punishable by a fine not exceeding £500 (level 2 on the standard scale) (Section

24(1)). The Section also ensures that companies and partnerships can be subject to these offences (Section 24(2)) and that where an offence is committed by a partnership and the partner has consented, contributed or has acted in a neglectful manner so as to assist the commission of the offence, the partner as well as the partnership is guilty of the offence (Section 24(3)).

Section 25: Appeals

This Section provides that where a collection officer's decision is appealed, that appeal will take place at the court level where the fine was originally imposed or which is responsible for its enforcement (Section 25(1)). The Section allows for that court to quash or confirm the decision in question (Section 25(2)).

The Section provides, following a default hearing, that the normal appeal structure will apply whereby an appeal of a magistrates' court decision is made to a county court and an appeal of a Crown Court decision is made to the Court of Appeal (but only with leave) (Section 25(3) & (4)).

The Section explains that where an appeal is brought, the collection order is suspended until that appeal is resolved (Section 25(6)). Therefore the collection officer will not take any further enforcement actions under the collection order until after the appeal is completed.

Section 26: Guidance

This Section provides for the Department of Justice to issue guidance relating to the operation of the collection order and the associated processes (Section 26(1)) as well as revising the guidance (Section 26(2)). The Section stipulates that the collection officer must have regard to this guidance (Section 26(3)).

Section 27: Interpretation etc.

This Section provides for the definitions of terms used within Chapter 1 and sets out where these definitions may be found.

Section 28: Minor and consequential amendments

This Section gives effect to Schedule 2, which contains the minor and consequential amendments relating to this Chapter (Section 28(1)).

The Section also enables the Department by order to make any consequential, supplementary or incidental provision necessary to give effect to the provisions of Part 1 of the Act (Sections 28(2) and (3)).

Chapter 2: Other Enforcement Procedures

Section 29: Supervised activity orders

This Section substitutes a new Article 45 into the Criminal Justice (Northern Ireland) Order 2008. As well as providing for the imposition of a supervised activity order ("SAO") when a person is in default of payment, the new Article

also now provides for an SAO to be made when the person makes an application for a SAO, default not yet having occurred.

The amount in respect of which an order may be made is increased from £500 to £1000, and this will now include other financial penalties as well as fines (new Article 45(1) of the 2008 Order).

Where the court could have imposed imprisonment but considers that a SAO would be more appropriate in the circumstances, it may make the order instead (new Article 45(2) of the 2008 Order).

A SAO is defined in new Article 45(3) as an order requiring an individual to attend at a place for a period specified in the order to carry out activities as specified by the order.

New Article 45(4) sets out the minimum and maximum hours that must be performed according to the level of the fine. The Department of Justice may amend the maximum amount in respect of which a SAO may be made or the time periods by order (new Article 45(5)).

The Section specifies that the SAO comes into force as soon as it is made (new Article 45(6)) and where part performance of the order has been carried out, the sum outstanding shall be reduced proportionally by the period of part performance (new Article 45(7)).

The Section specifies how an order is to be discharged, namely by payment of the amount, performance of the order or imprisonment (new Article 45(8)). The Section also points the reader to Schedule 3 to the 2008 Order where more information on supervised activity orders may be found (new Article 45(9)) and to amendments within that Schedule (Section 29(2)-(8)).

The Section ensures that a SAO cannot be considered as an option in default of a confiscation order (given that under Section 3(2), a confiscation order is outwith the proposed new collection and enforcement arrangements (new Article 45(11)).

Finally, in terms of transitional arrangements, the SAO will operate for those who have already been prosecuted and sentenced as well as for those who have yet to be prosecuted and convicted (Section 29(12)).

Section 30: Restriction on detention of children for default in paying fines etc.

This Section amends the Criminal Justice (Children) (Northern Ireland) Order 1998 by inserting new Article 46C.

New Article 46C provides that a child shall not be detained in custody for fine default unless that child is already in custody or has been ordered to be detained in custody for a period which has not yet begun (new Article 46C(1)). The child in those circumstances may be ordered to be detained for a period which is

concurrent with the first period and which must not last longer than that first period (new Article 46C(2) and (3)).

The Section also insets new Articles 37(1A) and (1B) into the 1998 Order to ensure that an attendance centre order may still be made (in spite of new Article 46C), where the child has defaulted on payment and is not in custody or prison, or been ordered to a period of custody yet to begin (Section 30(2)).

This Section also repeals Article 48 of the 1998 Order, which had allowed for committal of children in default (Section 30(4)).

The Section amends section 35 of the Criminal Justice Act (Northern Ireland) 1945 (Section 30(5)), section 5(3) of the Treatment of Offenders (Northern Ireland) Act 1968 (Section 30(6)) and Articles 56, 91 and 92 of the Magistrates' Courts (Northern Ireland) Order 1981 (Sections 30(7)-(9)) in order to cross refer to new Article 46C of the Criminal Justice (Children) (Northern Ireland) Order 1998. It amends Article 93 of the 1981 Order in order to dis-apply it to children (Section 30(10)) and repeals Article 94 of that Order (Section 30(11)).

In terms of transitional arrangements, this Section will operate for those who have already been convicted (as well as for those who have yet to be prosecuted and convicted) (Section 30(12)).

Section 31: Distress in default

This Section amends section 3 of the Fines Act (Ireland) 1851 to prevent a warrant of distress being executed at the point of sentence in the Crown Court (Section 31(1)). It also amends Article 92 of the Magistrates' Courts (Northern Ireland) Order 1981 to prevent the same in the magistrates' courts (Section 31(2)).

Section 32: Limitation on remission

This Section amends section 13 of the Prison Act (Northern Ireland) 1953 by inserting new section 13(7A) to state that prison rules may not provide for remission to a person imprisoned for defaulting on payment of the sum due or for imprisonment imposed for breaching a supervised activity order (Section 32(1)).

Schedule 3 to the Criminal Justice (Northern Ireland) Order 1998 (which deals with supervised activity orders) is amended at paragraph 5 and 6 to reflect this (Section 32(2) and (3)). In terms of transitional arrangements, this Section does not apply to offences committed before the commencement of this Section (Section 32(4)).

Part 2

The Prison Ombudsman for Northern Ireland

Part 2 of the Act creates the office of Prison Ombudsman for Northern Ireland, and sets out the functions of the office

Section 33: The Prison Ombudsman for Northern Ireland

This Section creates the office of The Prison Ombudsman for Northern Ireland as a corporation sole (Section 33(1) and (2)), and states the aims and outcomes expected of the exercise of the Ombudsman's powers. In particular the Ombudsman should ensure the powers of the office are exercised so as to secure efficiency, effectiveness and independence, and the confidence of those affected by the exercise of those powers (Section 33(4)).

Section 34: Main functions of the Ombudsman

This Section lists the main functions that the Ombudsman must carry out, namely dealing with complaints, investigating deaths in custody and carrying out any other investigations as may be requested by the Department of Justice, or on the Ombudsman's own initiative.

Section 35: Complaints

This Section requires the Ombudsman to investigate a complaint (Section 35(1)) to which the Section applies. The Section defines matters about which a complaint may be made (Section 35(2)) and sets out who may bring a complaint (Section 35(3)) and allows a person to be entitled to complain on behalf of another person who has died or is unable to act.

Section 35(5) enables regulations to amend the matters about which complaints may be made or the descriptions of persons who may make complaints

This Section provides for circumstances where the Ombudsman may decide not to conduct an investigation (Section 35(6)) and allows for the deferral of investigations in certain scenarios (Section 35(7)). In particular the Ombudsman may decide not to investigate a complaint which the Ombudsman considers frivolous, vexatious or raises no substantial issue, or one that has not been made within reasonable time from the exhaustion of the internal complaints procedures. The Ombudsman can reopen a deferred investigation at any time (Section 35(8)) and can decide the extent of that investigation (Section 35(9)).

This Section provides that where the Ombudsman decides not to investigate a complaint, defers the investigation or reopens a deferred investigation then the Ombudsman must notify the complainant with reasons as to the decision (Section 35(10)), and this notification may be made orally (Section 35(11)).

Section 35(13) enables regulations to be made about the procedures to be followed when making and investigating a complaint.

The Ombudsman will determine which procedures are applicable in dealing with complaints and their investigation (Section 35(14)).

The Ombudsman shall draw to the attention of the police any matter which is in his opinion relevant to any criminal investigation and may draw to the attention of any person or body any matter which calls for action to be taken by that body or person (Section 35(15)).

Section 36: Report of investigation of complaint

This Section specifies that the Ombudsman must report in writing on the outcome of an investigation into a complaint to the Department and the complainant (Section 36(1)), and may report to any other person as the Ombudsman sees fit (Section 36(2)).

Within a report to the Department the Ombudsman may make recommendations arising out of the investigation (Section 36(3)). The Department must respond (Section 36(4)) and the Ombudsman can report on the response (Section 36(6)). These recommendations may relate for example to the resolution of the complaint or redress for the benefit of the complainant, or any other individual affected, or suggested improvements to the administrative processes of the Department.

This Section enables regulations to be made for the procedures to be used in relation to reports of investigations into complaints including who may see a draft of the report, who may be identified within the report, and what is to happen where the complainant has died or is unable to act (Section 36(7)).

Section 37: Investigations into deaths in custody

This Section provides that the Ombudsman must investigate the death of any person at a prison or in the custody of a prison officer outside a prison, and may also investigate a death if it appears to be linked to events which occurred while the deceased was being held at a prison or in such custody (Section 37(1)). The Section requires the Ombudsman to establish the circumstances of the death and address any concerns of the family of the deceased, as well as determining any changes which may mitigate the risk of any death in similar circumstances in future (Section 37(2)). The Ombudsman will determine the scope of the investigation (Section 37(3)) and may defer and reopen it according to the same criteria in Section 35 above (Section 37(4) and (5)).

The Ombudsman shall draw to the attention of the police any matter relevant to any criminal investigation into the death and shall draw to the attention of any person or body any matter which calls for action to be taken by that body or person (Section 37(6)).

Section 38: Report on investigation into death

This Section provides that where an investigation into a death has taken place and a report has been produced, certain authorities and persons must be given that report (Section 38(1)).

This includes a personal representative of the deceased. The Section provides that the Ombudsman may report to other persons he considers should receive the report (Section 38(2)).

The Ombudsman has the power to make recommendations in that report to the Department and a health and social care trust (Section 38(3)) who must respond

to the recommendations (Section 38(4)). The Ombudsman may report on that response to such persons as the Ombudsman sees fit (Section 38(6)).

Regulations may provide for procedures regarding the report, its publication in whole or in part, for individuals identified in the report to remain anonymous, and its contents (Section 38(7)). It is envisaged that prior to publishing such reports, the consent of the personal representative of the deceased should be obtained

Section 39: Investigations requested by the Department

The Section provides that the Department shall request the Ombudsman to investigate any custody-related matter that is prescribed in regulations (Section 39(1)(a), and can request the Ombudsman to carry out an investigation into any custody-related matter (Section 39(1)(b)). This relates to events which have occurred in a prison or juvenile justice centre or while a person was in custody (Section 39(3)).

Under section 39(4) the Department must consult the Ombudsman and such other persons as the Department thinks appropriate before making any regulations under Section 39(1)(a). The Ombudsman must decide whether to conduct the investigation and must notify the Department of that decision (Section 39(5)). The Ombudsman will determine the procedures for the investigation (Section 39(6)) and may make recommendations to the Department (Section 39(7)).

The Ombudsman shall draw to the attention of the police any matter which is in his opinion relevant to any criminal investigation and may draw to the attention of any person or body any matter which calls for action to be taken by that body or person (Section 39(8)).

Section 40: Report on investigation under section 39

This Section stipulates that where such an investigation has been carried out, a report must be produced and given to the Department and any other person the Department may request (Section 40(1)). The report may make recommendations (Section 40(2)). Regulations may make provision as to the procedures regarding the report, its publication and contents (Section 40(3)).

Section 41: Own-initiative investigations

The Section provides that the Ombudsman may carry out an investigation on his own initiative into matters in defined circumstances (Section 41(1)). The Ombudsman must first consult with the Department (Section 41(2)). The Ombudsman will determine the procedures for the investigation (Section 41(3)).

Section 42: Report on investigation under section 41

This Section stipulates that where such an investigation has been carried out, a report must be produced and given to the Department and any other person

the Ombudsman considers should receive the report (Section 42(1)). Within a report to the Department the Ombudsman may make recommendations arising out of the investigation (Section 42(2)).

The Department must respond setting out what it proposes to do about the recommendations (Section 42(3)) and the Ombudsman can report on the response (Section 42(5)). Regulations may make provision as to the procedures regarding the report, its publication and contents (Section 42(6)).

Section 43: Powers of Ombudsman

This Section confers powers on the Ombudsman of entry into a prison, juvenile justice centre or any other premises occupied by the Department for the purposes of its functions under the Prison Act (NI) 1953 (Section 43(1) and (2)). The Ombudsman may also require the production of documents or other information (Section 43(3)). This Section creates the offence of obstruction of the Ombudsman, the penalty for which is a fine not exceeding level 3 on the standard scale (Section 43(4)).

It is expected that the Ombudsman will continue to rely on good investigative practices and the contractual obligations of staff in ensuring cooperation from witnesses, however this power will enable the Ombudsman to ensure the provision of relevant information from key witnesses in event of non-cooperation.

Section 44: Disclosure of information

This Section states that information collected by the Ombudsman during the course of an investigation is protected (Section 44(1)).

The Section prescribes the persons to whom and purposes for which protected information may be disclosed (Section 44(2)). The Section also creates an offence of disclosing such information improperly (Section 44(8)), the penalty for which is a fine not exceeding level 5 on the standard scale (Section 44(9)). The placing of restrictions on the circumstances in which information can be disclosed reflects the extensive powers of the Ombudsman in obtaining information.

The Ombudsman is given discretion to disclose information for the purposes of certain legal proceedings and in certain other limited circumstances.

The Section provides that for the purpose of defamation law, the publication of any matter by the Ombudsman for purposes connected with the Ombudsman's functions shall be absolutely privileged (Section 44(7)).

Section 45: Guidance to Ombudsman in relation to matters connected with national security

This Section requires the Ombudsman to have regard to guidance issued by the Secretary of State in relation to any matter connected with national security. The Secretary of State acknowledges that the Prison Ombudsman requires full

access to material held by the Northern Ireland Prison Service in order to carry out functions in an effective manner, including information relating to national security. Guidance has been prepared which details arrangements for accessing, reviewing, disclosing, handling and reporting of national security information by the Ombudsman in the course of an investigation.

Section 46: Interpretation

This Section explains the meanings of certain words used within the Act. In particular it explains that references to “prison” include a young offender’s centre.

Section 47: Transitional provision: the Prisoner Ombudsman for Northern Ireland

This Section provides that the person holding the existing non-statutory office of Prisoner Ombudsman immediately before the appointed day will continue to hold the office of Prison Ombudsman and will do so for the remainder of their term. Maximum term periods are specified. Provision is also made for the Prison Ombudsman to take on existing investigations of the Prisoner Ombudsman (Section 47(5)).

Part 3

Miscellaneous

Section 48: Penalties for animal welfare offences

This Section amends the Welfare of Animals Act (Northern Ireland) 2011 (the 2011 Act) to, increase the maximum penalties in respect of animal welfare offences for all indictable offences and certain summary offences; amend the mode of trial for three offences from summary only to hybrid; and, extend the availability of a range of post-conviction court orders.

Subsections (1) and (3) amend the mode of trial for the following offences in the 2011 Act from summary only to hybrid, which will allow cases involving these offences to be tried either summarily or on indictment: -

- Possessing, supplying, publishing images of an animal fight (section 8(3));
- Breach of a Disqualification Order (section 33(9)); and
- Selling or parting with an animal pending the outcome of an appeal against a relevant Court Order (section 40(7)).

Subsections (2) to (4) increase the maximum sentence for cases heard on indictment from two years to five years, and for summary cases involving unnecessary suffering (section 4) and causing, attending, or other involvement in, an animal fight (sections 8(1) and 8(2)), the maximum sentence increases from six months to twelve months and the maximum fine from £5,000 to £20,000.

Subsections (5) and (6) extend the range of court orders available under sections 32(1), 33(10), 36(1), 36(6), 37(1) and 38(1) of the 2011 Act to apply to cases involving the offence of possession / supply of images of an animal fight (section 8(3)).

Subsection (7) amends Article 29(1) of the Magistrates' Courts (Northern Ireland) Order 1981 to add the offences of unnecessary suffering (section 4) and causing, attending, or other involvement in, an animal fight (sections 8(1) and 8(2)) to the list of offences for which a defendant cannot elect for a trial by jury.

Section 49: Lay visitors

This Section amends section 73 of the Police (Northern Ireland) Act 2000 to extend the scope of lay visitors to all police stations in Northern Ireland. At present, only stations designated by the Chief Constable for the purpose of detaining arrested persons fall within the statutory remit of the custody visitor scheme.

Section 50: Possession of pornographic images of rape and assault by penetration

This Section amends Part 5 of the Criminal Justice and Immigration Act 2008 ("the 2008 Act") which provides for the offence of possession of extreme pornographic images, so as to extend its provision to cover the possession of extreme pornographic images that depict non-consensual sexual penetration.

Subsection (2) amends section 63(6) of the 2008 Act, so as to include a reference to new subsection (7A) (inserted into the 2008 Act by section 37 of the Criminal Justice and Courts Act 2015).

Specifically, subsection (7A) includes two additional categories of prohibited material: an image which portrays, in an explicit and realistic way: (i) an act which involves the non-consensual penetration of a person's vagina, anus or mouth by another with the other person's penis; and (ii) an act which involves the non-consensual sexual penetration of a person's vagina or anus by another with a part of the other person's body or anything else.

The new category of prohibited material will include any image of that nature, irrespective of whether the act is real or simulated (or staged) or whether the person has come into possession of that image from an electronic source or otherwise.

Subsection (3) amends section 66 of the 2008 Act to apply a defence to possession of an image that portrays an act within new subsection (7A), alongside existing defences to the section 63 offence, to a person who is a participant in the image, as well as the possessor, where he or she can prove that, despite any appearance to the contrary, consent was given (freely and by someone who had capacity).

Subsection (4) amends section 67 to provide that a person found guilty of an offence of possessing images coming within the ambit of new subsection (7A) will be liable to a maximum sentence of imprisonment for three years, or a fine, or both.

Section 51: Disclosing private sexual photographs and films with intent to cause distress

This Section creates an offence of disclosing private sexual photographs and films if the disclosure is made without the consent of the individual in the photograph or film and the intention is to cause distress to that individual (Section 51(1)) but it is not an offence if the disclosure is made to the individual involved (Section 51(2)).

The Section sets out the defences that apply to the offence, which may include that the disclosure was necessary to prevent, detect or investigate crime, that the disclosure in the course of publication of journalistic material was in the public interest, or that there was a previous disclosure for reward. (Sections 51(3)-(7)).

The Section sets out the penalty for disclosing a private sexual photograph or film with intent to cause distress on conviction on indictment as a term of imprisonment of up to 2 years or a fine (or both), or on summary conviction to a term of imprisonment of up to 6 month or a fine not exceeding the statutory maximum (or both) (Section 51(9)).

Section 52: Meaning of “disclose” and “photograph or film”

This Section defines the terms “disclose” and “photograph or film” for the purposes of the offence in Section 51.

Section 53: Meaning of “private” and “sexual”

This Section defines the terms “private” and “sexual” for the purposes of the offence in Section 51.

Section 54: Offence of assaulting certain emergency workers

This Section creates an offence of assaulting an ambulance worker in the execution of their duty or a person who is assisting an ambulance worker in the execution of that ambulance worker’s duty (Sections 54(1) and (2)). A person found guilty on the offence shall be liable on summary conviction to a term of imprisonment of up to 6 month or to a fine not exceeding the statutory maximum (or both), or on conviction on indictment to a term of imprisonment of up to 2 years or a fine (or both) (Section 54(3)).

Section 55: Early removal from prison of prisoners liable to removal from United Kingdom

This Section makes general provision for the removal from a Northern Ireland prison of a prisoner who is liable for removal from the United Kingdom

(subsection (1)(a)) and who has served at least one-half of the requisite custodial period (subsection (1)(b)).

It also confirms that the removal from prison must be with the prisoner's agreement and that the period of removal may be at any time during the period of 135 days ending the day on which the prisoner will have served the requisite custodial period.

Subsection (2) provides that the prisoner to be removed must be serving a sentence of imprisonment for a determinate sentence of at least 6 months and that prisoners serving an extended custodial sentence under Article 14 of the Criminal Justice (NI) Order 2008 are excluded.

Subsection (3) provides that for as long as the removed prisoner remains in Northern Ireland they will be liable to be detained in pursuance of their sentence. Subsection (4) provides the Department with a power to amend the number of days specified in subsection 1 by order. Subsection (5) described the circumstances in which a prisoner is liable to removal from the United Kingdom.

Section 56: Re-entry into Northern Ireland of offender removed under section 55

This Section provides for how a prisoner removed early from prison is to be treated should they return to Northern Ireland at a later date. Subsection (2) provides for a person returning to Northern Ireland before their original sentence expiry date to be detained in pursuance of their sentence for a period of time equal in length to the outstanding custodial period or until their sentence expiry date, whichever is sooner.

Subsection (3) provides a constable with a power to arrest without warrant any person suspected of being liable to be detained by virtue of subsection (2) and to take that person to a place where that person can be detained.

Subsection (4) provides for a person so detained by virtue of subsection (2) to be unable to be removed again under Section 43. Subsection (5) provides for a person detained under the provisions of subsection (2) to be released by whichever of the two dates specified in subsection (2) is the earlier.

Subsection (6) sets out definitions of "further custodial period", "outstanding custodial period" and "sentence expiry date"

Section 57: Direct committal for trial

This Section amends Section 9 of the Justice Act (Northern Ireland) 2015 by inserting a new paragraph (aa) in subsection (2) to ensure offences that are caught by Article 45 of the Magistrates' Courts (NI) 1981 and Article 17 of the Criminal Justice (Children) (NI) Order 1998 are able to attract the direct committal arrangements where the prosecution decides to proceed on indictment.

Section 58: Amendments of Firearms (Northern Ireland) Order 2004

This Section gives effect to Schedule 4 (Section 58(1)), which contains amendments to the Firearms (Northern Ireland) Order 2004 and repeals Sections 103 to 105 of the Justice Act (Northern Ireland) 2011 (Section 58(2)).

Section 59: Costs of Accountant General in administering funds in court

This Section amends section 116 of the Judicature (Northern Ireland) Act 1978 to clarify that the current provision giving power to fix fees to be taken “in any court in Northern Ireland or in any office or by any officer connected with any such court” also includes the Accountant General and the Court Funds Office.

In addition, subsection (2) also clarifies that the existing provision in section 39 of the Administration of Justice Act 1982 is unaffected by this.

Part 4

General

Section 60: Regulations and orders

Subsections (1) and (2) provide for regulations under the Act to be made by the Department of Justice, except that the Department for Social Development will be responsible for making regulations under Section 15(1) which relates to deduction from benefits orders.

Section 60(3) and (4) provides for the Assembly control of regulations, while Section 60(5) and (6) provides for the Assembly control for orders.

Section 61: Commencement and short title

This Section provides for the short title of the Act and for commencement. Section 28(2) and (3), Part 3 (other than Section 48), and Part 4 come into operation immediately after Royal Assent. Parts 1 and 2 and Section 48 come into operation on days to be appointed by order made by the Department of Justice.