



2016 CHAPTER 21

PART 3

Miscellaneous

*Animal welfare*

**Penalties for animal welfare offences**

**48.**—(1) In section 31 of the Welfare of Animals Act (Northern Ireland) 2011 (penalties), in subsection (1) (summary-only offences), omit “8(3),” and “, 33(9), 40(7)”.

(2) After that subsection insert—

“(1A) A person guilty of an offence under section 4 or 8(1) or (2) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding £20,000, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or both.”.

(3) In subsection (2) of that section (hybrid offences)—

- (a) omit “4,” and
- (b) for “and 8(1) and (2)” substitute “, 8(3), 33(9) and 40(7)”.

(4) In that subsection, in paragraph (b), for “2 years” substitute “5 years”.

(5) In each of the following provisions of that Act, for “8(1) and (2)” substitute “8”—

- (a) section 32(1) (deprivation);

- (b) section 33(10) (disqualification);
- (c) section 36(1) (destruction in interests of animal).
- (6) In each of the following provisions of that Act, for “8(1) or (2)” substitute “8”—
  - (a) section 36(6) (destruction in interests of animal);
  - (b) section 37(1) (destruction of animals involved in fighting offences);
  - (c) section 38(1) (reimbursement of expenses relating to animals involved in fighting offences).
- (7) In Article 29(1) of the Magistrates’ Courts (Northern Ireland) Order 1981 (right to claim trial by jury subject to exceptions), after sub-paragraph (o) insert —
  - “(p) section 4 or 8(1) or (2) of the Welfare of Animals Act (Northern Ireland) 2011 (unnecessary suffering; fighting).”.

#### *Lay visitors*

#### **Lay visitors for all police stations**

- 49.** In section 73 of the Police (Northern Ireland) Act 2000 (arrangements for lay visitors to visit designated places of detention)—
- (a) in subsections (1), (3)(a) and (4)(a) omit “designated”;
  - (b) for subsections (9) and (10) substitute—
    - “(9) In this section “place of detention” means a police station at which persons are detained”

#### *Pornographic or other sexual images*

#### **Possession of pornographic images of rape and assault by penetration**

- 50.—(1)** The Criminal Justice and Immigration Act 2008 is amended as follows.
- (2) In section 63(6) (possession of extreme pornographic images) after “subsection (7)” insert “or (7A)”.
  - (3) In section 66 (defence: participation in consensual acts)—
    - (a) in subsection (1)(b) for the words from “within” to the end substitute “within subsection (7)(a) to (c) or (7A) of that section (but does not portray an act within subsection (7)(d) of that section).”;
    - (b) in subsection (2) after paragraph (c) insert “; and

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(d) if the image portrays an act within section 63(7A), that what is portrayed as non-consensual penetration was in fact consensual.”.

(4) In section 67 (penalties for possession of extreme pornographic images) in subsection (5)(b) at the end add “or (7A)(a) or (b).”.

### **Disclosing private sexual photographs and films with intent to cause distress**

**51.—**(1) It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made—

- (a) without the consent of an individual who appears in the photograph or film, and
- (b) with the intention of causing that individual distress.

(2) But it is not an offence under this section for the person to disclose the photograph or film to the individual mentioned in subsection (1)(a) and (b).

(3) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.

(4) It is a defence for a person charged with an offence under this section to show that—

- (a) the disclosure was made in the course of, or with a view to, the publication of journalistic material, and
- (b) he or she reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest.

(5) It is a defence for a person charged with an offence under this section to show that—

- (a) he or she reasonably believed that the photograph or film had previously been disclosed for reward, whether by the individual mentioned in subsection (1)(a) and (b) or another person, and
- (b) he or she had no reason to believe that the previous disclosure for reward was made without the consent of the individual mentioned in subsection (1)(a) and (b).

(6) A person is taken to have shown the matters mentioned in subsection (4) or (5) if—

- (a) sufficient evidence of the matters is adduced to raise an issue with respect to it, and
- (b) the contrary is not proved beyond reasonable doubt.

(7) For the purposes of subsections (1) to (5)—

- (a) “consent” to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure, and
  - (b) “publication” of journalistic material means disclosure to the public at large or to a section of the public.
- (8) A person charged with an offence under this section is not to be taken to have disclosed a photograph or film with the intention of causing distress merely because that was a natural and probable consequence of the disclosure.
- (9) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both), and
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).
- (10) Schedule 4 makes special provision in connection with the operation of this section in relation to persons providing information society services.

### **Meaning of “disclose” and “photograph or film”**

**52.—**(1) The following apply for the purposes of section 51, this section and section 53.

(2) A person “discloses” something to a person if, by any means, he or she gives or shows it to the person or makes it available to the person.

(3) Something that is given, shown or made available to a person is disclosed

- (a) whether or not it is given, shown or made available for reward, and
  - (b) whether or not it has previously been given, shown or made available to the person.
- (4) “Photograph or film” means a still or moving image in any form that—
- (a) appears to consist of or include one or more photographed or filmed images, and
  - (b) in fact consists of or includes one or more photographed or filmed images.
- (5) The reference in subsection (4)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.
- (6) “Photographed or filmed image” means a still or moving image that—
- (a) was originally captured by photography or filming, or
  - (b) is part of an image originally captured by photography or filming.
- (7) “Filming” means making a recording, on any medium, from which a moving image may be produced by any means.
- (8) References to a photograph or film include—
- (a) a negative version of an image described in subsection (4), and

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- (b) data stored by any means which is capable of conversion into an image described in subsection (4).

### **Meaning of “private” and “sexual”**

**53.**—(1) The following apply for the purposes of section 51.

(2) A photograph or film is “private” if it shows something that is not of a kind ordinarily seen in public.

(3) A photograph or film is “sexual” if—

- (a) it shows all or part of an individual’s exposed genitals or pubic area,
- (b) it shows something that a reasonable person would consider to be sexual because of its nature, or
- (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.

(4) Subsection (5) applies in the case of—

- (a) a photograph or film that consists of or includes a photographed or filmed image that has been altered in any way,
- (b) a photograph or film that combines two or more photographed or filmed images, and
- (c) a photograph or film that combines a photographed or filmed image with something else.

(5) The photograph or film is not private and sexual if—

- (a) it does not consist of or include a photographed or filmed image that is itself private and sexual,
- (b) it is only private or sexual by virtue of the alteration or combination mentioned in subsection (4), or
- (c) it is only by virtue of the alteration or combination mentioned in subsection (4) that the person mentioned in section 51(1)(a) and (b) is shown as part of, or with, whatever makes the photograph or film private and sexual.

### *Assaulting ambulance workers etc*

#### **Offence of assaulting ambulance workers etc**

**54.**—(1) A person commits an offence if he or she assaults—

- (a) an ambulance worker in the execution of that ambulance worker’s duty;
- (b) a person who is assisting an ambulance worker in the execution of that ambulance worker’s duty.

(2) “Ambulance worker” means a person who provides ambulance services (including air ambulance services) under arrangements made by or at the request of—

- (a) the Northern Ireland Ambulance Service Health and Social Care Trust,
- (b) St. John Ambulance (NI),
- (c) the British Red Cross Society, or
- (d) the charity registered in the Republic of Ireland known as the Order of Malta Ireland.

(3) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

#### *Early removal of prisoners*

#### **Early removal from prison of prisoners liable to removal from United Kingdom**

**55.—**(1) Where a prisoner to whom this section applies (“P”)—

- (a) is liable to removal from the United Kingdom, and
- (b) has served at least one-half of the requisite custodial period,

the Department may, with P’s agreement, remove P from prison under this section at any time during the period of 135 days ending with the day on which P will have served the requisite custodial period.

(2) This section applies to a prisoner who is serving a sentence of imprisonment for a determinate term of at least 6 months, other than a prisoner serving an extended custodial sentence under Article 14 of the 2008 Order.

(3) So long as P after being removed from prison under this section remains in Northern Ireland P remains liable to be detained in pursuance of P’s sentence until P has served the requisite custodial period.

(4) The Department may by order amend the number of days for the time being specified in subsection (1).

(5) For the purposes of this section P is liable to removal from the United Kingdom if—

- (a) P is liable to deportation under section 3(5) of the Immigration Act 1971 and has been notified of a decision to make a deportation order against him,
- (b) P is liable to deportation under section 3(6) of that Act,

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- (c) P has been notified of a decision to refuse P leave to enter the United Kingdom,
  - (d) P is an illegal entrant within the meaning of section 33(1) of that Act, or
  - (e) P is liable to removal under section 10 of the Immigration and Asylum Act 1999.
- (6) In this section and section 56—
- “the 2008 Order” means the Criminal Justice (Northern Ireland) Order 2008;
  - “the requisite custodial period”—
  - (a) in a case where P is a prisoner to whom Article 17 of the 2008 Order applies, has the meaning given by paragraph (2) of that Article;
  - (b) in any other case, means one-half of P’s sentence.

#### **Re-entry into Northern Ireland of offender removed under section 55**

**56.—**(1) This section applies to a person who, having been removed from prison under section 55, has been removed from the United Kingdom before serving the requisite custodial period.

(2) If a person to whom this section applies enters Northern Ireland at any time before the person’s sentence expiry date, the person is liable to be detained in pursuance of the person’s sentence from the time of the person’s entry into Northern Ireland until whichever is the earlier of the following—

- (a) the end of a period (“the further custodial period”) beginning with that time and equal in length to the outstanding custodial period, and
- (b) the person’s sentence expiry date.

(3) A constable may arrest without warrant any person whom he reasonably suspects is liable to be detained by virtue of subsection (2) and take that person to the place in which that person is liable to be detained.

(4) A person returned to prison by virtue of subsection (2) may not be again removed from prison under section 55.

(5) Where—

- (a) a person to whom Article 17(1) of the 2008 Order applies is returned to prison by virtue of subsection (2), and
- (b) the further custodial period ends before the sentence expiry date,

Article 17(1) has effect in relation to the person as if the reference to the requisite custodial period were a reference to the further custodial period.

(6) In this section—

- “further custodial period” has the meaning given by subsection (2)(a);
- “outstanding custodial period”, in relation to a person, means the period beginning with the date of the person’s removal from the United Kingdom and

ending with the date on which the person would, but for that removal, have served the requisite custodial period;

“sentence expiry date”, in relation to a person to whom this section applies, means the date on which, but for that person’s release from prison and removal from the United Kingdom, that person would have served the whole of the sentence.

### *Direct committal for trial*

#### **Direct committal for trial: indictable offence triable summarily**

**57.**—(1) Section 9 of the Justice Act (Northern Ireland) 2015 (cases where direct committal provisions may apply) is amended as follows.

(2) In subsection (1) for “either” substitute “one”.

(3) In subsection (2) after paragraph (a) insert—

“(aa) that the offence is an indictable offence to which Article 45 of the Magistrates’ Courts (Northern Ireland) Order 1981 or Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 applies; or”.

### *Firearms*

#### **Amendments of Firearms (Northern Ireland) Order 2004, etc.**

**58.**—(1) The Firearms (Northern Ireland) Order 2004 has effect subject to the amendments contained in Schedule 5.

(2) The following provisions of the Justice Act (Northern Ireland) 2011 are repealed—

section 103 (variation of firearm certificate);

section 104 (restrictions on use of shotguns by young persons), and

section 105 (restrictions on possession of air guns by young persons).

### *Costs*

#### **Costs of Accountant General in administering funds in court**

**59.**—(1) In section 116 of the Judicature (Northern Ireland) Act 1978 (fees), in subsection (1), after “in any office or by any officer connected with any such court” insert “(including the Accountant General and the office maintained under section 77(2))”.

(2) At the end of that section insert—

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“(5) Nothing in this section affects section 39 of the Administration of Justice Act 1982 (which includes provision relating to the costs of administering funds in court).”.