

JUSTICE (NORTHERN IRELAND) ACT 2002

EXPLANATORY NOTES

COMMENTARY

Part 2: Law Officers and Public Prosecution Service

Public Prosecution Service

Section 29: Public Prosecution Service

54. *Subsection (2)* of this section sets out the composition of the Prosecution Service. There are two statutory office holders: the Director and Deputy Director of Public Prosecutions. *Subsection (8)* makes it clear that the Director may set up and maintain such offices, in such places in Northern Ireland, as he considers appropriate for the exercise of his functions.
55. *Subsection (3)* makes it clear that the Prosecution Service is to be funded by the Secretary of State. *Subsection (4)* deals with the staff of the Prosecution Service. These are currently civil servants, who are considered to be on secondment from the Northern Ireland Department of Finance and Personnel. There are no plans to change this arrangement. As the main work of the service will be the conduct of prosecutions, staff to be designated as prosecutors will need to be legally qualified, as set out in *subsection (5)*.

Section 30: Director of Public Prosecutions

56. This section sets out the appointment criteria for the Director and Deputy Director. The legal qualifications for the two post-holders are set out in *subsections (2)* and *(3)* respectively.
57. The Director and Deputy Director would normally hold their posts until they reach the age of 65, unless the Attorney General for Northern Ireland extends their period of appointment, they resign by giving notice in writing, or are dismissed by the Attorney General under section 40 (which applies prior to devolution) or section 43 (which sets out the arrangements for an independent tribunal which will operate after devolution) (*subsections (5)* and *(6)*).
58. *Subsections (7)* and *(8)* set out the arrangements for temporarily exercising the functions of Director and Deputy Director should those posts fall vacant. If there were no Director, it would be for the Deputy Director to exercise the functions of the post until another Director was appointed by the Attorney General for Northern Ireland. If the post of Deputy Director became vacant, then the Attorney General for Northern Ireland could appoint an acting Deputy Director from the prosecution service staff under *subsection (8)* to cover that period.
59. In accordance with the recommendations of the Review, *subsection (11)* provides that the Director cannot be required by the Assembly to answer questions or produce documents other than in relation to the finances and administration of the prosecution service. As the Director is meant to have complete independence in the exercise of his

functions (subject to the accountability measures and limits set out in this legislation) it would not be appropriate for the Assembly to question him on individual cases. These provisions also apply to the Deputy Director and other members of staff.

Section 31: Conduct of prosecutions

60. This section sets out the core functions of the Prosecution Service. It will be the responsibility of the Prosecution Service to undertake all prosecutions for both indictable and summary offences committed in Northern Ireland that were previously the responsibility of the Director of Public Prosecutions for Northern Ireland or the police.
61. Under *subsection (1)*, the Director will have a duty to take over all prosecutions instituted by the police. On commencement the Director will take over responsibility for all prosecutions instituted by the police. Section 89(4) provides that if, for example, preparatory work is not sufficiently advanced to allow the Prosecution Service to take on all prosecutions at that time, the Director will only have responsibility for those types of prosecutions which it is reasonably practicable for him to conduct. Under *subsection (2)*, the Director will also be able to institute criminal proceedings himself where he considers it appropriate.
62. *Subsection (3)* ensures that the right to institute private prosecutions remains, although it will continue to be open to the Director to take over any privately instituted prosecution under *subsection (4)* (other than proceedings instituted by the Serious Fraud Office). *Subsection (5)* requires the Director to give advice to police forces operating in Northern Ireland on prosecutorial matters. Advice is limited to such issues; it is not intended that the Director should supervise police investigations.

Section 32: Discontinuance of proceedings before court appearance

63. This section addresses a recommendation of the Review that the prosecutor be able to withdraw charges before the defendant's first court appearance ('first remand'). When combined with a direction that the name of the accused not be released before that first court appearance it will help to address the potential for damage to reputation if someone has been wrongly charged. Removing the requirement for withdrawal of charge to be sought in court will also prevent unnecessary court appearances by the person accused and the prosecutor and will ensure a more efficient use of court time. Other methods of terminating a prosecution (such as the entering of a *nolle prosequi*) will continue to be open to the prosecution service after first remand.
64. *Subsection (3)* ensures that the person concerned will be released from custody when the charge is withdrawn (unless there are other charges pending that warrant his detention) and that any requirement for him to appear at or be brought before court, or appear at a police station (for example, those imposed by Article 47 or 48 of the Police and Criminal Evidence (Northern Ireland) Order 1989) ceases to have effect. *Subsection (4)* ensures that the person can be prosecuted for the same offence in the future.

Section 33: Consents to prosecutions

65. Certain offences are considered serious enough to require the consent of either the Director of Public Prosecutions or (at present) the Attorney General for Northern Ireland before a prosecution can be undertaken. The provisions in this section set out the detail of how this consent is to be given by the Director and used by the courts¹. After devolution, the Attorney General for Northern Ireland will no longer be able to consent to the prosecution of offences and all of those provisions requiring his consent (other than those that relate to "excepted" matters) will be passed to the Director. Commentary on this change is set out at section 41.

¹ These provisions will also apply to consents given by the Advocate General for Northern Ireland (see Schedule 7, paragraph 37).

Section 34: Police complaints

66. The amendments to the Police (Northern Ireland) Act 1998 set out in this section are intended to allow the Director to refer any allegations made to him of criminal conduct by police officers to the Police Ombudsman. The Ombudsman would then report the outcome of any investigation it was felt should be undertaken into those allegations to the Director. This builds on the Director's powers in section 35 (see below).

Section 35: Information for Director

67. *Subsections (1) and (2)* of this section require court officials, resident magistrates, lay magistrates and clerks of petty sessions to send the Director copies of relevant information when persons are committed for trial or a complaint has been made. This will ensure that the Director is made aware of prosecutions which he has not heard about through other channels. It would then be open to him to take over the conduct of those prosecutions under section 31.
68. There is a requirement in *subsection (3)* for coroners to report to the Director the circumstances of a death where it appears that an offence may have been committed. *Subsection (4)* of this section requires the Chief Constable of the Police Service of Northern Ireland to send to the Director information about offences alleged to have been committed which are of a description specified by the Director. This information will enable the Director to monitor the progress of investigations and proceedings in relation to particular types of offences.
69. *Subsection (5)* requires the Chief Constable to send information to the Director at his request about criminal offences that may have been committed or any other information that the Director might need in order to carry out his functions: this reflects provisions currently in force in Article 6(3) of the Prosecution of Offences (Northern Ireland) Order 1972. This could be used, for example, where the Director had gained information that indicated a criminal offence might have been committed. He could ensure that it had been thoroughly investigated and request any associated papers in order to ensure that a decision could be made by the Prosecution Service as to whether any prosecution should be instituted. These provisions do not, however, constitute a power for the Director to supervise the conduct of investigations by the police.

Section 36: Exercise of functions by and on behalf of Service

70. This section allows the Director to delegate any or all of his functions to a member of his staff. All staff members must carry out their work subject to the direction of the Director (see section 29(6)). *Subsection (2)* allows the Director to retain the services of a barrister or a solicitor to prosecute cases on his behalf, but they must act in accordance with any instructions issued by a Public Prosecutor (*subsection (3)*).

Section 37: Code for Prosecutors

71. Under the provisions in this section the Director must publish a Code of Practice for Public Prosecutors and barristers and solicitors conducting cases for the Director. This would incorporate a code of ethics. The Code of Practice would contain guidance on the general principles to be applied by Prosecutors in the matters set out in *subsection (3)*, such as the grounds on which the Prosecutor would make the decision to prosecute (the evidential and public interest tests); for what charge; and on what grounds proceedings would be discontinued. When preparing the code, the Director must be guided by the general principles of the UN Guidelines on the Role of Prosecutors (*subsection (5)*). The code will be published (*subsection (6)*). Section 38 requires the code to be included in the Director's annual report.

Section 38: Equality and non-discrimination

72. **Section 38** designates the Office of the Director of Public Prosecutions (DPP) for the purposes of sections 75 and 76 of the Northern Ireland Act 1998, with certain exceptions listed at *subsections (3) and (5)* designed to safeguard the Director's independence in relation to the prosecution of offences. The section 75 duty requires bodies to "have regard to the need to promote equality of opportunity" between the nine section 75 categories (religious belief, political opinion, race or ethnic group, age, marital status, sexual orientation, gender, disability and dependancy). Section 76 makes it unlawful to discriminate on the grounds of religious belief or political opinion.

Section 39: Reports by Director

73. This section contains the reporting arrangements for the Prosecution Service. For each financial year the Director will have to prepare an annual report for the Attorney General for Northern Ireland that contains details of how he has exercised his functions for that year, the Code of Practice (including the code of ethics) which the Director is required to produce under section 37 (see above) and any alterations made to those codes during the previous year.
74. The Director will present the Attorney General with a copy of his report and it will then be for the Attorney General to ensure that the report is published. *Subsection (4)* allows the Attorney General to exclude parts of the report from publication on public interest grounds.