

# JUSTICE (NORTHERN IRELAND) ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 3: Other New Institutions

#### Chief Inspector of Criminal Justice

##### *Section 45: Chief Inspector of Criminal Justice*

82. This section provides for the creation of an office of Chief Inspector of Criminal Justice in Northern Ireland. The Chief Inspector is to be appointed by the Secretary of State. Schedule 8 makes provision dealing with the practical aspects of the new office, such as tenure, staff, delegation of powers, etc.

##### *Section 46: Functions of Chief Inspector*

83. This section lists the organisations in respect of which the Chief Inspector must conduct inspections. The Chief Inspector will be responsible for ensuring the inspection of all aspects of the criminal justice system, excluding the courts. However, he must not conduct inspections of organisations if he is satisfied that the organisation is already subject to adequate inspection, for example, by bodies such as Her Majesty's Inspector of Constabulary (*subsection (2)*).
84. The Chief Inspector may inspect the activities of the organisations listed. He may also inspect any institutions provided or managed by them. This would allow him to inspect prisons, young offenders centres, juvenile justice centres, secure accommodation provided for the purpose of custody care orders (as to which see section 56) and attendance centres. *Subsections (1)(h)* and *(4)* allow the Chief Inspector to inspect other organisations providing juvenile justice centres or attendance centres but only in respect of those activities. For example, the Secretary of State has entered into an arrangement under Article 50(2) of the [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(S.I. 1998/1504 \(NI 9\)\)](#) (the "1998 Order") with the Young Men's Christian Association ("YMCA") in Belfast whereby the YMCA provides an attendance centre. By virtue of *subsection (4)* the Chief Inspector may only inspect the activities of the YMCA in so far as they relate to attendance centres. Similarly, *subsection (5)* ensures that any inspection of a Health and Social Services Board or Trust may only deal with the activities related to keeping children in secure accommodation, where the court has made the young person the subject of a custody care order (see section 56).
85. *Subsection (6)* provides for the Secretary of State to change the list of organisations, by adding, removing, or changing the description of organisations on the list. This would be done by order. As the courts are not within the remit of the Chief Inspector, *paragraph (a)* makes it clear that courts or tribunals cannot be added to the list.

##### *Section 47: Further provisions about functions*

86. This section sets out more functions of the Chief Inspector and also provides certain limits to the exercise of his functions.

87. The Chief Inspector must consult the Secretary of State and the Attorney General for Northern Ireland when preparing his programme of inspections (*subsection (1)*). The Secretary of State is given powers to require the Chief Inspector to carry out inspections (*subsection (3)*), to provide advice (*subsection (7)*) in relation to organisations listed in section 46 and to carry out reviews into any matter relating to the criminal justice system in Northern Ireland (other than a matter relating to a court or tribunal) (*subsection (4)*). However, the consent of the Attorney General for Northern Ireland is necessary before the Secretary of State may require the Chief Inspector to carry out any inspection or review relating to the Public Prosecution Service (*subsection (5)*). These powers, and the general functions of the Chief Inspector in section 46, are subject to two express limitations, set out in *subsection (6)*, namely that the Chief Inspector is not permitted to carry out inspections or reviews of individual cases, nor may he carry out inspections relating to activities of an organisation which do not relate to the criminal justice system in Northern Ireland.

#### ***Section 48: Powers of inspectors***

88. This section sets out the powers of persons carrying out inspections or reviews for the Chief Inspector, including powers to require documents to be produced and explained. The offence of failing to comply with such a requirement without reasonable excuse, which is created by *subsection (3)*, is triable in the magistrates' courts (see *subsection (4)*). The current maximum for a fine on level 3 is £1,000.

#### ***Section 49: Reports***

89. This section sets out how often and in what form the Chief Inspector must produce reports and to whom he should give copies. The Chief Inspector must report to the Secretary of State on each inspection and review he carries out, and the Secretary of State must then place a copy of the report before both the House of Commons and the House of Lords and arrange to have it published (*subsections (1) and (2)*).
90. *Subsection (3)* enables the Secretary of State to leave out part of the report from the copy laid before the Houses of Parliament and published on the limited grounds stated. Under *subsection (4)* when the Secretary of State has excluded a part of a report, he must produce a statement with the report that part of it has been excluded.
91. If the report relates to the Prosecution Service, *subsection (5)* requires the Secretary of State to send a copy to the Attorney General for Northern Ireland. This reflects the fact that the activities of the Director of Public Prosecutions for Northern Ireland are to be overseen by the Attorney General for Northern Ireland. This obligation would continue post-devolution, when the Attorney General for Northern Ireland will not supervise the Director, but will continue to oversee his activities.

### **Law Commission**

#### ***Section 50: Law Commission***

92. *Subsection (1)* provides for the establishment of a Law Commission for Northern Ireland, which will review the criminal and civil law of Northern Ireland, including procedure and practice, with a view to making recommendations to Government for reform, codification, simplification and consolidation of legislation.
93. *Subsections (2) to (4)* require the Secretary of State to appoint a chairman and four other Commissioners. The chairman must be a person who holds the office of judge of the High Court of Northern Ireland; and of the other Commissioners one must have experience as a barrister, one must have experience as a solicitor and one must have experience as a teacher of law in a university. The remaining Commissioner must be a lay person.

94. *Subsection (5)* requires the Secretary of State to consult with the Lord Chancellor, the First Minister and deputy First Minister and the Attorney General for Northern Ireland before appointing Commissioners. *Subsection (6)* requires the Secretary of State in exercise of the powers of appointment to secure, as far as possible, that the Commission is representative of the community in Northern Ireland. *Subsection (7)* and Schedule 9 make further provision about the Commission, including Commissioners' tenure, salaries, staff and financial provisions.

### ***Section 51: Duties of Commission***

95. *Subsections (1) and (2)* require the Commission to keep the law of Northern Ireland under review and to have its work programme approved by the Secretary of State. The Commission is required to provide advice and information to and receive remits from Government. With the consent of the Secretary of State, the Commission will provide advice and information to Northern Ireland departments and other authorities or bodies on proposals for law reform or amendment of any branch of the law of Northern Ireland. In order to assist it to fulfil its duties, *subsection (2)(f)* enables the Commission to obtain information on the legal systems of other countries.
96. *Subsection (3)* requires the Secretary of State to consult the Lord Chancellor, the First Minister and deputy First Minister and the Attorney General for Northern Ireland before approving the Commission's programme of work. *Subsection (4)* requires the Commission in performing its duties to consult with the Law Commissions of England and Wales and of Scotland and the Law Reform Commission of the Republic of Ireland. *Subsection (5)* requires the Commission to report annually on how it has performed its duties.

### ***Section 52: Reports etc.***

97. This section requires the Commission to submit its approved programme, proposals for reform and annual report to the Secretary of State and the First Minister and deputy First Minister and sets out arrangements for the laying of these documents before Parliament and the Northern Ireland Assembly. Thereafter, the Commission must arrange to publish these documents (*subsection (4)*).