

JUSTICE (NORTHERN IRELAND) ACT 2002

EXPLANATORY NOTES

COMMENTARY

Part 5: Miscellaneous

Royal Arms and Flags

Section 66: Display of the Royal Arms at courts

134. This section prohibits the display of Royal Coat of Arms within courtrooms (*subsection (1)*), with the exception of existing Coats of Arms at courtrooms listed at *subsection (2)*. Royal Arms will continue to be displayed on the exterior of existing court-houses where they are already displayed (*subsection (3)*). *Subsection (4)* defines an “existing court-house” as a court-house which has been in use before this section is commenced.

Section 67: Flying of flags at court-houses

135. *Section 67* ensures that the flying of the Union flag at court-houses will continue to be in line with flag flying practice at other government buildings. The [Flags \(Northern Ireland\) Order 2000 \(S.I.2000/1347 \(N.I. 31\)\)](#) enables the Secretary of State to make regulations about the flying of flags at government buildings; it defines government buildings as those wholly or mainly occupied by members of the Northern Ireland Civil Service. The associated Regulations list both the designated days and the specified government buildings at which the Union flag shall be flown. This section adds court-houses to the buildings about which regulations can be made under the Flags Order and provides that the Flags Regulations also apply in relation to court-houses.

Victims of Crime

Section 68: Information about discharge and temporary release of prisoners

136. The Secretary of State must make a victim information scheme under *subsection (1)* to give to victims of offences the information specified in *subsection (3)*, that is, the month in which it is anticipated that the offender will be discharged and, where reasonably practicable, the fact that the offender is being considered for temporary release under the Prison Rules¹. The scheme can make provision about the giving of further, more detailed information (*subsection (4)*). However, information need not be given in the circumstances described in *subsection (8)*, for example, where this would adversely affect the well-being of a victim or threaten the safety of any person.
137. The information is to be given to the actual victim of the offence. But the Secretary of State may decide that it should also be given to other persons who he considers to have been directly affected by the offence (*subsection (5)*), such as the immediate family of a

¹ Rule 27 of the Prisons and Young Offenders Centre Rules (Northern Ireland) 1995 permits the temporary release of eligible prisoners for any special purpose or to enable a prisoner to have medical treatment, to engage in employment, to receive instruction or training or to assist in the transition from prison to outside life ([S.R. 1995 No.8](#)).

murder victim, or a person who was present when a violent offence was committed. The Secretary of State may also decide that the information should not be given to the actual victim but should instead be given to some other person on his behalf (*subsection (6)*), such as when the victim is a young child or is mentally disabled.

Section 69: Views on temporary release

138. This section makes provision for the rights of victims in relation to the temporary release of prisoners under the Prison Rules. The Secretary of State must have regard to representations made by any person considered by the Secretary of State to be a victim of the offence for the purposes of the scheme made under section 68 if they are to the effect that the temporary release of the person serving a sentence in respect of that offence would threaten the safety or adversely affect the well-being of the actual victim or a person regarded as a victim by virtue of section 68(5). Thus, a person who is a victim for the purposes of the scheme by virtue of section 68(6) may make representations but they must relate to the safety or well-being of the actual victim or a person who is a victim by virtue of *subsection (5)* of that section. The victim making the representations must be informed of the decision (*subsection (3)*).

Section 70: Supplementary

139. This section makes provision supplementary to sections 68 and 69. Victim information schemes will only cover information about offenders aged 18 or over. *Subsection (1)* makes it clear that the victim information scheme will cover information about offenders aged 18 or over who were detained pursuant to Article 45 of the 1998 Order (i.e. who were found guilty of grave crimes as children and who are still in detention after they have attained the age of 18) or who were detained in a young offenders centre by the Crown Court (a young offenders centre can hold persons aged between 16 and 24, see Article 7 of the Treatment of Offenders (Northern Ireland) Order 1989).
140. The effect of *subsection (2)* is to require the scheme to cover-
- prisoners who are transferred from a prison in Northern Ireland to a prison elsewhere in the United Kingdom on what is known as a restricted transfer. Restricted transfer has the same meaning as in Part 2 of Schedule 1 to the Crime (Sentences) Act 1997. It means that, despite the transfer, they remain subject to Northern Ireland law in relation to their imprisonment, and
 - prisoners on unrestricted transfer from another part of the United Kingdom, as they will be subject to Northern Ireland law in relation to discharge and temporary release.
141. The scheme will not cover -
- prisoners transferred from Northern Ireland to another part of the United Kingdom on an unrestricted transfer, or
 - prisoners on restricted transfer from another United Kingdom jurisdiction, since they are not subject to discharge and temporary release provisions under Northern Ireland law (but remain governed by the law of the other part of the United Kingdom from which they were transferred).

Community Safety

Section 71: Community safety strategy

142. This section puts a duty on the Secretary of State to publish a community safety strategy for Northern Ireland. “Community safety” is defined in *subsection (2)*. This includes not only the reduction of crime, but also the reduction of anti-social behaviour and the addressing of other factors that affect people’s perceptions of safety. Measures to enhance community safety could, for example, include approaches which seek

to address the development of criminality among young people, reduce criminal opportunities and act upon the social conditions that sustain crime.

143. The strategy published by the Secretary of State will identify what the Government sees as the key priorities for community safety in Northern Ireland. It will set out how it believes those issues can best be addressed and the means for delivery (which will include the bodies created under section 72 below). The strategy will also include details of the financial and other resources to be provided by the Secretary of State.

Section 72: Local community safety partnerships

144. This section gives the Secretary of State the power to set up local community safety partnerships. This power would only be exercised after discussion with the First and Deputy First Ministers on the best way forward. The membership of the community safety partnerships will be drawn from organisations exercising statutory functions (*subsection (3)*). These partnerships will identify local problems and the appropriate solutions, and will work in association with voluntary groups and others in the local community. The membership could include district councils, Health and Social Services Boards and Trusts, Education and Library Boards, the Probation Board, the police and the Northern Ireland Housing Executive, all of whom have statutory functions which have a bearing on community safety. These organisations are not specified in the Act, since it would be premature to do so as many of them are likely to be affected by the review of public administration launched by the Executive.
145. The functions of the local community safety partnerships are set out in *subsection (4)*. One of those is to prepare and publish local plans for enhancing community safety which should take into account both the result of the local research and the Secretary of State's strategy (as published under section 71). The local plans will not be identical to the Secretary of State's strategy because they will reflect local concerns, but they must fit in with the Secretary of State's strategy.

Civil Procedure

146. **Sections 73 to 75** implement recommendations of the Civil Justice Reform Group which was established by the Lord Chancellor to review civil justice procedures in Northern Ireland and which issued its final report in June 2000.

Section 73: Constitution of Rules Committees

147. **Section 73** amends section 54(1) of the Judicature (Northern Ireland) Act 1978 and Article 46(1) of the **County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3))**, respectively to provide for the reconstitution of the Supreme Court and County Court Rules Committees. The newly constituted Committees are intended to be more representative of the legal and litigant communities as a whole and will each include two lay persons.

Section 74: Appeals in small claims cases

148. At present, the route of appeal from a small claims court is to the High Court by way of case stated on point of law. Appeals by way of case stated from other lower courts or tribunals are to the Court of Appeal. *Subsection (2)(a)* of this section inserts a new subparagraph (ab) into Article 30(4) of the County Courts (Northern Ireland) Order 1980, to provide for appeals on a question of law to a county court judge.
149. *Subsection (2)(b)* amends Article 30(4)(b) of the County Courts (Northern Ireland) Order 1980, replacing references to the High Court with references to the Court of Appeal and ensuring that appeals on a point of law may only be brought to the Court of Appeal where they have not previously been brought before a county court judge.

150. *Subsection (2)(c)* amends Article 30(4)(c) of the County Courts (Northern Ireland) Order 1980 to take account of the new right of appeal and ensure that no further right of appeal is available.
151. *Subsection (3)* inserts a new paragraph (4A) into Article 30 of the County Courts (Northern Ireland) Order 1980 to prescribe the time limits for, and powers of the judge on, the new right of appeal.

Section 75: Time limit for cases stated by county court

152. This section amends Article 61(2) of the County Courts (Northern Ireland) Order 1980 to change the time limit for appealing from a county court judge to the Court of Appeal by case stated on a point of law from fourteen days to twenty one days.

Legal Aid

Section 76: Exceptional legal aid

153. This section adds a new Article to the 1981 Order which gives the Lord Chancellor the power to direct that legal aid is to be available in proceedings for which legal aid is not otherwise available under that Order or for which assistance by way of representation may not be approved under Article 5 of the Order. It thus provides a power to ensure that legal aid is available in exceptional cases which would otherwise not be covered by the general provisions of the 1981 Order.

Section 77: Proceedings before coroner

154. This section amends Schedule 1 to the 1981 Order in so far as it relates to the provision of legal aid for proceedings before a coroner. At present, legal aid is not available under the 1981 Order for proceedings before a coroner. Schedule 1 to the 1981 Order lists the proceedings for which civil legal aid is available. The reference in that Schedule to proceedings before a coroner has not been brought into force: this section deletes that reference. The new power to grant exceptional legal aid (see section 76) will extend to proceedings before a coroner.

Court Service

Section 78: Power to abolish the Court Service

155. The Criminal Justice Review recommended that in the event of the devolution of justice matters, a Department of Justice should be created with responsibility for all justice functions (para 15.62). This would not include those Northern Ireland Court Service (“Court Service”) functions which are being devolved elsewhere, for example judicial appointments (see section 3). The Review envisaged the remaining functions being delivered through a Next Steps agency. This section and section 89(1) provide for the Lord Chancellor to make an order transferring the Court Service’s functions and allows this transfer to take place at any time. It provides for the Court Service to be abolished as part of this process.

Court Security

Sections 79-81: Court security and court security officers

156. *Section 79(1)* imposes a duty on the Northern Ireland Court Service to take all reasonable steps to provide security at court-houses. *Subsections (2) and (3)* provide that court security officers will be employed at each courthouse. These officers may be either members of the Court Service’s own staff designated as such, or employees of other organisations with which the Court Service has entered into arrangements for the provision of court security officers under section 69 of the Judicature (Northern Ireland) Act 1978. Section 80 sets out the powers and duties of court security officers. Section

*These notes refer to the Justice (Northern Ireland) Act
2002 (c.26) which received Royal Assent on 24th July 2002*

81 creates two new offences: first, an offence of assaulting a court security officer in the execution of his duty, which is punishable by a fine not exceeding level 5 on the standard scale or 6 months imprisonment or both, and secondly, an offence of resisting or intentionally obstructing a court security officer, which is punishable by a fine not exceeding level 3 on the standard scale. The present maximum fine on those scales is £5,000 and £1,000 respectively.