

JUSTICE (NORTHERN IRELAND) ACT 2002

EXPLANATORY NOTES

COMMENTARY

Part 1: the Judiciary

General

9. The Review recommended a number of changes to the appointment, removal and structure of the judiciary in Northern Ireland. The current arrangements revolve around the role of the Lord Chancellor – he is responsible for making or advising on all judicial appointments in Northern Ireland, has responsibility for removing judges up to Supreme Court level on grounds of incapacity or misbehaviour and holds the pivotal position as the head of all tiers of the judiciary in Northern Ireland. There is the need to secure a transparent process for appointment and removal following devolution and to replace the Lord Chancellor with the Lord Chief Justice as head of the judiciary in Northern Ireland. Other changes which are explained below include broadening of eligibility criteria for appointments and a new oath. More information on the current system and recommended changes can be found in Chapters 5, 6 and 7 of the Review.

Section 1: Guarantee of continued judicial independence

10. This section places those with responsibility for the administration of justice in Northern Ireland under a duty to uphold the continued independence of the judiciary, regardless of what structures might be put in place for administering justice matters in the future.

Appointment and Removal

Section 2: Introductory

11. This section sets out the offices which are covered by the sections dealing with judicial appointment and removal. These include the offices of Lord Chief Justice, Lords Justices of Appeal and any other office listed in Schedule 1. *Subsection (2)* provides for the First Minister and deputy First Minister, acting jointly, to be able to amend this list of offices (although they cannot add the offices of the Lord Chief Justice or Lord Justice of Appeal). The list may only be amended with the agreement of the Lord Chief Justice (*subsection (3)*).

Section 3: Judicial Appointments Commission

12. The Lord Chancellor is currently responsible for making or advising on all judicial appointments in Northern Ireland.
13. The Review recommended that on devolution a Judicial Appointments Commission should be set up to enhance public confidence in the judicial appointments system. This section provides for the creation of a Judicial Appointments Commission (which would be put in place on devolution of justice functions). The Commission will be responsible for making recommendations to the First Minister and deputy First Minister on judicial appointments from the level of High Court judge downwards.

14. The Commission will have 13 members, including the Lord Chief Justice as chairman (*subsections (2) and (4)*). *Subsection (4)* provides for the senior Lord Justice of Appeal to act as chairman in the Lord Chief Justice's absence. As well as the chairman, there will be five judicial members (*subsection (5)(a)*). These will be drawn from the judicial tiers listed in *subsection (6)*. In addition, there will be a barrister, a solicitor and five lay members appointed by the First Minister and deputy First Minister (*subsection (5)(b) and (c)*). *Subsection (7)* requires lay members of the Judicial appointments Commission to declare in writing their commitment to non-violence and exclusively peaceful and democratic means before being appointed. *Subsection (8)* requires the First Minister and deputy First Minister to ensure, so far as possible, that the lay membership is representative of the community in Northern Ireland in overall terms.
15. *Subsection (3)* gives effect to Schedule 2 which provides for the Commission's status, staff, funding and procedural arrangements.

Section 4: Appointment to most senior judicial offices

16. This section replaces section 12 of the Judicature (Northern Ireland) Act 1978. It requires the Prime Minister to consult the First Minister and deputy First Minister and the Lord Chief Justice (or the senior Lord Justice of Appeal in his absence) before making recommendations to Her Majesty The Queen as to who should fill the posts of Lord Chief Justice and Lords Justices of Appeal. As recommended by the Review (para 6.109), new section 12(4) provides for the Commission to advise the First Minister and deputy First Minister over the procedure they should adopt for formulating their response to the Prime Minister. This procedure will be submitted to the Prime Minister for approval (new section 12(5)).
17. **Section 4** also amends the Judicature (Northern Ireland) Act 1978 to provide that the First Minister and deputy First Minister must advise Her Majesty The Queen on appointments to the post of High Court judge based on the Commission's recommendation (new section 12A and section 5(2)).

Section 5: Appointment to listed judicial offices

18. *Subsection (1)* gives effect to Schedule 3 which transfers to the First Minister and deputy First Minister the power to make appointments, or recommendations for appointment, to offices listed in Schedule 1. *Subsection (2)* provides that only a person selected by the Commission can be appointed, or recommended for appointment, to an office listed in Schedule 1. The section also sets out the procedure to be adopted by the Commission and the First Minister and deputy First Minister for filling those offices.
19. Once the Commission is informed by the First Minister and deputy First Minister of a vacancy it must select a person to be appointed or recommended for appointment, solely on the basis of merit (*subsection (9)*). The Commission is required (*subsection (4)*) to inform the First Minister and deputy First Minister of the person selected and provide them with a report explaining why that candidate was selected. If the First Minister and deputy First Minister do not (within a reasonable time after receiving the report) appoint, or recommend for appointment, the person selected by the Commission they must require the Commission to reconsider its decision once (*subsection (5)*), giving their reasons for doing so. The Commission can either reaffirm its selection or select a different person, reporting the reason for its decision to the First Minister and deputy First Minister (*subsection (6)*). The First Minister and deputy First Minister must appoint, or recommend for appointment, the person selected by the Commission after its reconsideration (*subsection (7)*). The Commission must, so far as it is practicable to do so, secure a range of persons reflective of the community in Northern Ireland is available for consideration by the Commission whenever it is required to select a person to be appointed, or recommended for appointment, to a listed judicial office (*subsection (8)*).

Section 6: Removal from most senior judicial offices

20. This section amends the Judicature (Northern Ireland) Act 1978 to provide for the removal of the Lord Chief Justice or a Lord Justice of Appeal or of a judge of the High Court appointed before section 7 comes into force. It requires the Prime Minister and the Lord Chancellor to consult the First Minister and deputy First Minister before making a motion for an address to Her Majesty The Queen by both Houses of Parliament recommending removal of a person from office, and no such motion may be presented in respect of any person unless a tribunal convened by the First Minister and deputy First Minister under section 8 has recommended that the person be removed from the office and reported this recommendation to the First Minister and deputy First Minister.
21. The First Minister and deputy First Minister must send a copy of this report, together with any response of their own, to the Lord Chancellor and Prime Minister to be laid before both Houses of Parliament before the Lord Chancellor and Prime Minister make a motion for removal. New section 12B(8) provides for the suspension of the Lord Chief Justice, Lord Justice of Appeal or judge of the High Court while the Lord Chancellor and Prime Minister consider making any such motion.
22. New section 12B(10) provides that removal and suspension of judges of the High Court appointed after the coming into force of section 7 are dealt with under section 7 of the Act instead of under the Judicature (Northern Ireland) Act 1978.

Section 7: Removal from listed judicial offices

23. This section gives the First Minister and deputy First Minister the power to remove a person holding a judicial office listed in Schedule 1 for misbehaviour or inability to perform the functions of the office, but only on the basis of the recommendation of a tribunal convened under section 8 and only with the agreement of the Lord Chief Justice.
24. This section also provides for the First Minister and deputy First Minister to suspend persons from judicial offices pending a decision on their removal, if a tribunal recommends this and the Lord Chief Justice agrees.

Section 8: Tribunals for considering removal

25. This section provides for the creation of tribunals for the purpose of considering the removal of the Lord Chief Justice, a Lord Justice of Appeal or a holder of any of the offices listed in Schedule 1. A tribunal to consider the removal of the Lord Chief Justice may only be convened by the First Minister and deputy First Minister (acting jointly) after consulting the Prime Minister (*subsections (1) and (3)*). A tribunal to consider the removal of a Lord Justice of Appeal may be convened by the First Minister and deputy First Minister after consulting the Lord Chief Justice and the Prime Minister or by the Lord Chief Justice after consulting the First Minister and deputy First Minister and the Prime Minister (*subsections (2) and (3)*). Tribunals to consider the removal of any other listed judicial office-holder may be convened by the First Minister and deputy First Minister (after consulting the Lord Chief Justice) or by the Lord Chief Justice (after consulting the First Minister and deputy First Minister) (*subsection (2)*).
26. Three members are to be appointed to the tribunal (*subsections (4) and (5)*). These are a chairman, a judicial member and a lay person. The chairman and judicial member are to be selected by the Lord Chancellor or the Lord Chief Justice (*subsections (7) and (8)*) and the lay person is to be selected by the First Minister and deputy First Minister (*subsection (9)*).
27. *Subsection (10)* provides for the Lord Chief Justice or, in the Lord Chief Justice's absence or when the Lord Chief Justice is under consideration for removal by a tribunal, the tribunal chairman to determine the procedure of the tribunal.

Magistrates

Section 9: Lay magistrates

28. The Review recommended that the criminal justice functions of Justices of the Peace and the office of lay panellist should be undertaken by holders of the new office of lay magistrate. This section creates the office of lay magistrate and provides for the Lord Chancellor to appoint lay magistrates to each county court division in Northern Ireland (“county court division” is defined in *subsection (14)*).
29. *Subsection (2)* provides that a person may not be appointed as a lay magistrate unless he has either completed a course of training approved by the Lord Chancellor or has undertaken in writing to attend such a course of training. *Subsection (3)* requires all appointees to the office of lay magistrate to complete their training within a year of appointment, unless given leave by the Lord Chancellor to take longer.
30. The Lord Chancellor can make further provision about eligibility to be appointed as a lay magistrate by regulations, including that a person may not be appointed if he is a bankrupt or lives more than a prescribed distance outside the county court division to which the appointment relates (*subsections (4) and (5)*). *Subsection (10)* provides for the Lord Chancellor to be able to remove a lay magistrate. On devolution, this provision will be repealed and lay magistrates will be removed under section 7 by the First Minister and deputy First Minister on the recommendation of a tribunal.

Section 10: Transfer of functions of justices of the peace

31. This section provides for certain functions to transfer from justices of the peace to lay magistrates and gives effect to Schedule 4. Schedule 4 lists those functions which will remain with justices of the peace or be transferred to resident magistrates. Functions which may be exercised by either justices of the peace or resident magistrates are also listed. *Subsections (2) and (3)* provide that lay magistrates, when sitting out of petty sessions, may only exercise functions of magistrates’ courts relating to proceedings for the issuing of a warrant or summons, proceedings for the remand of an accused who has not previously been remanded for the offence or binding over proceedings, together with a number of ancillary powers, such as powers to deal with misbehaviour in court and certain powers to grant legal aid. The Lord Chancellor can amend this list of functions by order (*subsection (4)*).

Section 11: Transfer of functions of lay panellists

32. This section provides for the functions of lay panellists to be discharged by lay magistrates. Lay magistrates will replace lay panellists, sitting as part of a juvenile court and sitting as assessors in a county court dealing with appeals from juvenile courts. *Subsection (3)* allows provision to be made by rules of court authorising lay magistrates to discharge those functions of a court of summary jurisdiction which at present can be discharged by a lay panellist.

Lord Chief Justice

Section 12: Role of the Lord Chief Justice

33. The Review recommended that the Lord Chief Justice should have a clearly defined position as head of the judiciary in Northern Ireland (para 6.141). This section states that the Lord Chief Justice is president of the Court of Appeal, the High Court, the Crown Court, the county courts and the magistrates’ courts and head of the judges and magistrates who sit in them. *Subsection (2)* gives effect to Schedule 5 which transfers certain functions in relation to the operation of the courts from the Lord Chancellor to the Lord Chief Justice. *Subsection (3)* provides for the Lord Chancellor to amend any enactment or instrument for effecting further transfers of functions.

Sections 13-15: Presiding judges

34. The Review also recommended that each tier of the judiciary should have a representative or President in order to facilitate the co-ordination and management of court business and provide a figurehead. These sections provide for the Lord Chief Justice to appoint a Presiding county court judge, Presiding resident magistrate and Presiding lay magistrate to represent each tier of the courts. These appointees will hold their office in accordance with their terms of appointment.

Section 16: Complaints about holders of judicial office

35. This section requires the Lord Chief Justice to prepare and publish a code of practice relating to the handling of complaints against any person who holds the office of Lord Chief Justice or Lord Justice of Appeal or any of the offices listed in Schedule 1.

Section 17: Secretaries to Lord Chief Justice

36. This section removes the offices of Principal Secretary and Legal Secretary from Schedule 3 to the Judicature (Northern Ireland) Act 1978 (i.e. the list of statutory offices). As a consequence, appointment to these offices will not fall within the Commission's remit and the post-holders will not be required to take the judicial oath. It also provides for the Principal Secretary to the Lord Chief Justice and a person designated by the Lord Chancellor to be joint secretaries to certain court Rules Committees.

Other Provisions

Section 18: Qualification for appointment

37. This section provides for changes to the appointment criteria for Lords of Appeal in Ordinary, the Lord Chief Justice, Lords Justices of Appeal, High Court Judges, county court judges (and deputy county court judges), resident magistrates and coroners and statutory officers listed in Schedule 3 of the Judicature (Northern Ireland) Act 1978 (including district judges). Currently many of these posts are only open to barristers or to solicitors and appointment depends on 'practice' (the period spent actively working as a barrister or solicitor) or 'standing' (the period since being called to the Bar or admitted as a solicitor). The section makes these posts (apart from that of Official Solicitor (*subsection (8)*)) available to both barristers and solicitors and makes the qualifying criterion 'standing' alone. *Subsection (10)* makes it clear that a person is qualified to be appointed as the Crown Solicitor if he is a solicitor or a barrister.

Section 19: Judicial oath or affirmation

38. This section extends the number of posts required to take a judicial oath and provides for a new form of oath or affirmation and declaration. This oath is to be taken by appointees to the judicial offices listed in Schedule 6, which can be amended by the Lord Chancellor (*subsection (4)*). It replaces the current Oath of Allegiance and the Judicial Oath set out in the Promissory Oaths Act 1868. These oaths are set out in full in paragraph 6.24 of the Review.

Section 20: Crown Solicitor

39. This section amends the Northern Ireland Constitution Act 1973 to redefine the functions of the Crown Solicitor. This reflects the changed role of the Crown Solicitor in relation to the devolved administration as well as to the United Kingdom government.

Section 21: Judicial Pensions: pension sharing

40. The Welfare Reform and Pensions (Northern Ireland) Order 1999 provided for pension sharing on divorce or nullity of marriage. Article 40 of this Order allows for subordinate

legislation to be made to ensure that various judicial pensions schemes are able to accommodate the new pension sharing regime. The corresponding power in England and Wales has been used to direct transfer payments away from older judicial pension schemes, which are closed to new members, and into the pension scheme constituted under the Judicial Pensions and Retirement Act 1993. Section 21 allows for a similar approach to be adopted in Northern Ireland by amending Article 40 of the 1999 Order to include a reference to the Judicial Pensions Act 1981 and the Judicial Pensions and Retirement Act 1993.

Part 2: Law Officers and Public Prosecution Service

General

41. The Office of the Director of Public Prosecutions was created by the Prosecution of Offences (Northern Ireland) Order 1972. That Order gives the Director of Public Prosecutions an overview of all prosecutions in Northern Ireland. The Director has a role in ensuring that all prosecutions are carried out properly and he can take over prosecutions being conducted by any other individual or agency. Article 5(1)(c) of that Order provides that the Director shall, where he thinks proper, initiate and undertake on behalf of the Crown proceedings for indictable offences (tried in the Crown Court) and for any summary offence or class of summary offence that he considers should be dealt with by him. The remainder of summary offences are prosecuted by police officers, usually in the magistrates' courts.
42. Under Article 3(2) of the Prosecution of Offences (Northern Ireland) Order 1972 the Director operates under the superintendence and direction of the Attorney General in all matters and he is responsible to the Attorney for the performance of his functions. The Northern Ireland Constitution Act 1973 provides that the Attorney General for England and Wales is also Attorney General for Northern Ireland and the Director's line of accountability has therefore been to the Attorney General at Westminster.
43. This Part of the Act implements the recommendations in Chapter 4 of the Review, establishing a Public Prosecution Service for Northern Ireland and providing for the appointment of the Attorney General for Northern Ireland after the devolution of justice functions. After devolution, the Attorney General for England and Wales will hold the new post of Advocate General for Northern Ireland. This Westminster figure will be responsible for matters relating to prosecutions that are not within the competence of the devolved administration, for example matters relating to national security and international relations.

Attorney General

Section 22: Attorney General

44. It is planned to commence the provisions in sections 22 to 28 and sections 41 to 43 on the devolution of justice functions to the Northern Ireland Assembly. *Subsection (1)* of section 22 will remove the linkage, established by section 10 of the Northern Ireland Constitution Act 1973, between the Attorney General for England and Wales and the Attorney General for Northern Ireland.
45. *Subsection (2)* of this section gives the First Minister and deputy First Minister the duty to appoint a person to be Attorney General for Northern Ireland, after consulting the Advocate General for Northern Ireland (see *paragraph 13* of Schedule 7). *Subsections (3) and (4)* make it clear how the new, local Attorney General for Northern Ireland is to be funded and that he may appoint new staff. *Subsection (5)* requires the Attorney General to exercise his functions independently. *Subsection (6)* sets out the legal qualifications for the post. These are equivalent to those of a judge of the High Court in Northern Ireland (see section 18). Under *subsection (7)* the First Minister and deputy First Minister may make arrangements to fill the post of Attorney General temporarily

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during a vacancy. Before doing so they must consult the Advocate General for Northern Ireland (see [paragraph 12](#) of Schedule 7).

Section 23: Terms of appointment of Attorney General

46. *Subsection (2)* of this section provides that the local Attorney General cannot be appointed for a period of longer than five years at a time. It would be possible for the First Minister and deputy First Minister to reappoint an individual to the post of Attorney General for Northern Ireland after such a period of five years has come to an end.
47. The effect of *subsections (6) to (8)* is to disqualify the holder of the post of Attorney General for Northern Ireland from being a member of the House of Commons, the Northern Ireland Assembly or a local authority in Northern Ireland.
48. *Subsection (9)* makes the local Attorney General subject to the provisions of the Freedom of Information Act 2000. This is equivalent to the position of the Attorney General in England and Wales.

Section 24: Removal of Attorney General

49. *Subsection (1)* provides that the First Minister and deputy First Minister can only remove or suspend the Attorney General for Northern Ireland from office on the recommendation of a tribunal. The members of the tribunal will be judges in England, Wales or Scotland (*subsection (4)*). The tribunal will be convened by the First Minister and deputy First Minister and its members will be appointed by the Lord Chancellor.

Section 25: Participation by Attorney General in Assembly proceedings

50. The effect of this section is to make the Attorney General accountable before the Northern Ireland Assembly for the operation of the Prosecution Service. He will be allowed to answer questions and make statements pursuant to standing orders, but without the right to vote. *Subsection (3)* will give him the right to refuse to answer questions or produce documents on public interest grounds or where that might prejudice criminal proceedings. *Subsection (4)* makes the Attorney subject to the provisions of section 43 of the Northern Ireland Act 1998 (members' interests), under which he will be required to declare any interests in the register maintained by the Assembly before taking part in any relevant proceedings of the Assembly.

Section 26: Annual report by Attorney General

51. This section sets out arrangements whereby the Attorney General for Northern Ireland is required to write an annual report for each financial year on how he has exercised his functions. This report will be laid before the Northern Ireland Assembly by the First Minister and deputy First Minister, who will also arrange for it to be published.

Advocate General

Section 27: Advocate General

52. There are certain functions of the present Attorney General for Northern Ireland that cannot be given to the Attorney General for Northern Ireland appointed by the First Minister and deputy First Minister. These relate to matters over which the Northern Ireland Assembly has no jurisdiction. These 'excepted matters' are set out in Schedule 2 to the Northern Ireland Act 1998 and include, for example, international relations (including treaties and the European Union), the defence of the realm, taxation and national security. Accordingly, this section establishes a new post of Advocate General for Northern Ireland to take responsibility for Northern Ireland interests in these issues. *Subsection (1)* of this section makes the Attorney General for England and Wales the holder of this post. The amendments set out in *subsection (2)* allow the Solicitor General

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(as the Attorney General for England and Wales's deputy) to also carry out the functions of the Advocate General for Northern Ireland. This is done by amending the provisions of the Law Officers Act 1997. The office and functions of the Advocate General are made an excepted matter by means of *subsection (4)*, which adds them to the list of excepted matters in Schedule 2 to the Northern Ireland Act 1998.

Section 28: Functions of Advocate General

53. This section introduces Schedule 7 to the Act which sets out the functions of the new post of Advocate General for Northern Ireland (see also below). The Secretary of State can by order transfer to the Advocate General other functions of giving consent to the institution or conduct of criminal proceedings (*subsection (2)*).

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.

Relationship of Director and Attorney General

Section 40: Superintendence and removal of Director

75. This section sets out the relationship between the Director and the Attorney General prior to devolution and the appointment of a local Attorney under section 22. This reflects the current relationship between the Director and the Attorney.

Section 41: Transfer of functions etc.

76. This section sets out the changes to the functions of the Attorney General that will occur on devolution. *Subsection (2)* will end the ability of the Attorney General to consent to prosecutions for certain, specified offences. The power to consent to those prosecutions will be split between the Director of Public Prosecutions for Northern Ireland and the Advocate General for Northern Ireland (with the offences for which the Advocate General's consent is required set out in *paragraphs 24 to 36* of Schedule 7).
77. *Subsection (3)* will allow the Director, rather than the Attorney General for Northern Ireland, to stop a prosecution by means of entering a nolle prosequi. This allows proceedings upon indictment to be halted at any time before judgment. It is now usually directed to be entered in cases where the accused person cannot be produced in court to plead or stand trial owing to physical or mental incapacity which is expected to be permanent. A nolle prosequi puts an end to the prosecution but does not operate as a bar or discharge or an acquittal on the merits and the party remains liable to be re-indicted.
78. *Subsection (4)* will remove the power of the Attorney General to present a Bill of Indictment so as to obtain trial before the Crown Court without the necessity of committal proceedings. *Subsection (5)* will allow the Director, rather than the Attorney General for Northern Ireland, to appeal where he feels that a sentence handed down by a court is unduly lenient. *Subsection (6)* will allow the Director to refer a point of law to the Court of Appeal following an acquittal on indictment.

Section 42: Independence of Director

79. This section sets out the arrangements for consultation and advice between the Director of Public Prosecutions, the Attorney General for Northern Ireland and the Advocate General for Northern Ireland after the devolution of justice functions to the Northern Ireland Assembly. It includes (in *subsection (1)*) a statutory declaration of the independence of the Director of Public Prosecutions in the exercise of his functions. *Subsections (5) to (7)* deal with the publication of the Director's annual report.

Section 43: Appointment and removal of Director by Attorney General

80. This section sets out the appointment and removal criteria for the Director and Deputy Director after devolution. As the Director will be carrying out some prosecutions that fall within the area of responsibility of the Advocate General for Northern Ireland, the Attorney General for Northern Ireland will have to consult him before making an appointment (*subsection (1)*). The Director and Deputy Director can only be suspended or dismissed on the recommendation of a tribunal convened under *subsection (4)* (see *subsection (2)*). The membership of such a tribunal is set out at *subsection (5)*. The tribunal will be convened by the Attorney General for Northern Ireland, after consulting the Advocate General for Northern Ireland, and its members will be chosen by the Lord Chancellor (see *subsections (4) and (6)*).

Supplementary

Section 44: Interpretation

81. This section defines when proceedings in any case are to be considered to have been instituted for the purposes of this Part.

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)*).

Part 4: Youth Justice

Aims

Section 53: Aims of youth justice system

98. The principal aim of the youth justice system is set out in *subsection (1)*: to protect the public by preventing offending by children. This section provides that all persons and bodies exercising functions in relation to the youth justice system (such as the police, the

Director of Public Prosecutions and the courts) must have regard to the principal aim of the youth justice system and to the welfare of children affected by the exercise of those functions (*subsections (2) and (3)*). Thus, decisions as to whether to prosecute children, how to deal with them if they are found guilty, and the content of any sentence will have to be made having regard to these matters. The “youth justice system” is defined in *subsection (4)*. “Children” is defined in *subsection (6)* as persons under the age of 18.

New Orders

Section 54: Reparation orders

99. This section amends the 1998 Order by adding to that Order a number of Articles dealing with reparation orders.
100. A reparation order is a new sentence available to courts dealing with child offenders in Northern Ireland. The reparation ordered to be made by the child would be either to the victim of the offence or some other person affected by it or to the community at large. It would be for the court to decide to whom the reparation is to be made and what form it should take in any individual case. Forms of reparation will be as varied as the offences in respect of which they are imposed, but reparation could take the form of repairing property in cases of property damage or some worthwhile community work. A reparation order must not require the offender to carry out activities for more than 24 hours and the reparation must be made within 6 months of the order being made (new Article 36C(1)(a) and (3)(b)).
101. The court cannot make a reparation order unless the offender and, where reparation is to be made to a person, that person consent (new Articles 36B(1) and 36C(1)(b)). The effect of new Article 36B(2) and new Article 36J(8) (see section 60) is that a reparation order may only be combined with an attendance centre order, probation order or fine. By virtue of new Article 36A(4) and (5), before making a reparation order, the court must obtain a report indicating the type of activity suitable for the offender and the attitude of the victim or victims of the offence to the requirements proposed to be included in the order. The court must also obtain a pre-sentence report before imposing a reparation order, unless it considers it unnecessary in the circumstances (see the amendment to Article 9(3) of the [Criminal Justice \(Northern Ireland\) Order 1996 \(S.I. 1996/3160 \(NI 24\)\)](#) (the “1996 Order”), made by *paragraph 56* of Schedule 12).
102. Reparation orders are a “community sentence” within the meaning of Article 2(2) of the 1996 Order (by virtue of the amendment made to that Order by *paragraph 55(2)* of Schedule 12). New Article 36B(4) requires that the court, before making a reparation order, must state in open court that it is of the opinion that Article 8(1) of the 1996 Order applies and why it is of that opinion. This means that the court must be satisfied that the offence, or the combination of the offence and one or more other offences associated with it, was serious enough to warrant a reparation order. The concept of offences associated with other offences is defined in Article 2(7) of the 1996 Order². Provision for dealing with breach of a reparation order and for the revocation or amendment of an order is made in Schedule 10 (which adds a new Schedule 1A to the 1998 Order). Under Article 36C(5) and (6) the Secretary of State may make rules regulating the making of reparation by persons subject to reparation orders. These may regulate the functions of responsible officers (defined in new Article 36D(2)) and limit the number of hours of making reparation on any one day as well as setting the requirement for keeping records of such hours.

Section 55: Community responsibility orders

103. This section amends the 1998 Order to provide for a further additional sentencing option for the courts in relation to children.

² Applied by Article 2(5) of the 1998 Order, inserted by *paragraph 67(9)* of Schedule 12.

104. Where a child is found guilty of an offence, other than an offence the sentence for which the sentence is fixed by law as imprisonment for life, the court may make a community responsibility order. Such an order will have two distinct components. The first part will require the offender to attend a specific place for a few hours at a time where they will receive “relevant instruction in citizenship” (new Article 36E(2)(a)). This part must be at least one-half of the total number of hours specified in the order (new Article 36E(5)). “Relevant instruction in citizenship” is defined in new Article 36E(3) and covers personal and social responsibility, the impact of crime on victims and any factors in the offender’s life that may be linked to crime. The second part of the order will require the offender to carry out, for a specified number of hours, such practical activities as the responsible officer (defined in new Article 36E(4)) considers appropriate in the light of the instruction given to the offender. The aggregate number of hours specified in the order must be not less than 20 and not more than 40 (new Article 36E(6)). Both aspects of the order must be completed within 6 months of the order being made (new Article 36G(4)). A community responsibility order can only be made with the offender’s consent (new Article 36F(1)).
105. Community responsibility orders are community sentences within the meaning of Article 2(2) of the 1996 Order (by virtue of the amendment to that Order made by *paragraph 55(2)* of Schedule 12). By virtue of Article 9(3) of the 1996 Order (as amended by *paragraph 56* of Schedule 12) the court must obtain a pre-sentence report before making a community responsibility order, unless it considers it unnecessary to do so in the circumstances. New Article 36F(4) requires the court, before making a community responsibility order, to state in open court that it is of the opinion that Article 8(1) of the 1996 Order applies and why it is of that opinion. This means that the court must be satisfied that the offence, or the combination of the offence and one or more other offences associated with it, was serious enough to warrant a community responsibility order. The concept of offences associated with other offences is defined in Article 2(7) of the 1996 Order³.
106. Provision for dealing with breach of a community responsibility order and for the revocation or amendment of an order is made in Schedule 10 (which adds a new Schedule 1A to the 1998 Order). Article 36H allows the Secretary of State to make rules for regulating both the attendance of offenders subject to community responsibility orders and the functions of responsible officers (defined in Article 36E(4)).

Section 56: Custody care orders

107. This section creates a new form of custodial sentence for child offenders, to be known as a custody care order. It does this by adding a number of Articles to the 1998 Order.
108. A custody care order may only be imposed on a child who has attained the age of 10 but is not yet 14 and who has been found guilty of an offence for which the court could (if the offence had been committed by an adult) sentence him to a period of imprisonment (new Article 44A(1)). At present, if a court wished to impose a custodial sentence on such a child, it would have to make a juvenile justice centre order (under Article 39 of the 1998 Order). A child in respect of whom a custody care order is made would be held in secure accommodation by an “appropriate authority” for a specified period (rather than being held in a juvenile justice centre), and thereafter be under supervision for a further period (new Article 44A(2)). The period of time for which a child would be held in secure accommodation is to be one half of the total period of the order unless discharged sooner with the consent of the Secretary of State (new Article 44A(6)). The total period of the order is to be 6 months unless the court specifies a longer period, which cannot be more than 2 years (new Article 44A(3)). An “appropriate authority”, in relation to a child, is (by virtue of Article 2(2) of the 1998 Order) the Health and Social Services Board or Trust within whose area the child is ordinarily resident or, if that is not known, the Board or Trust within whose area the child is. “Secure accommodation”

3 See footnote 4 above.

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

is also defined in Article 2(2) of the 1998 Order (as amended by [paragraph 67\(7\)](#) of Schedule 12).

109. New Article 44A(4) provides that a court must not make a custody care order unless, after taking into account the matters which it is required to by Article 37 of the 1996 Order, it has formed the opinion under Articles 19 and 20 of that Order that a custodial sentence would be justified for the offence. Article 37 provides that, when considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences. It also provides that, when considering the seriousness of any offence committed while the offender was on bail, the court must treat this as an aggravating factor (that is to say, something which makes the offence more serious). Thus a custody care order could not be imposed if the offence, taking into account these further matters, was not serious enough to warrant a custodial sentence.
110. New Article 44B sets out the legal regime which is to apply to a child held in secure accommodation pursuant to a custody care order. It does this by applying, and modifying where necessary, a number of provisions in the [Children \(Northern Ireland\) Order 1995 \(S.I. 1995/755 \(NI 2\)\)](#) (the “1995 Order. Only those specified in Article 44B(3) The effect is that the regime which will apply is in a number of respects similar to that which would apply if the child were the subject of a care order within the meaning of Article 49 of the 1995 Order. Nonetheless, while in secure accommodation pursuant to a custody care order, a child is subject to a legal regime distinct from that which applies to a child under a care order. To help keep this distinction clear, new Article 44B(7) provides that any care order made in respect of a child has no effect while the child is held in secure accommodation pursuant to a custody care order. In the light of the custodial nature of this order, provision is made to deal with those children who escape from secure accommodation, and those who assist them or take them away without lawful authority (new Article 44C) and with the taking into custody by the police or other responsible person of the child (new Article 44D). These provisions are comparable to the provisions which apply in respect of a child in respect of whom a juvenile justice centre order is made (see Articles 54 and 42 of the 1998 Order, respectively).
111. A child in respect of whom a custody care order is made may attain the age of 14 before the period he is to serve in secure accommodation is completed. In the light of this, new Article 44A(8) gives the court, when making the order, a power to provide that such a child shall be detained in a juvenile justice centre for the whole or part of the period after he reaches 14.
112. The supervision element of a custody care order will be carried out by a probation officer or other person designated by the Secretary of State (new Article 44E(1)). The Secretary of State may make rules regulating this supervision (new Article 44E(4)). Article 44F provides that, in the event of a failure to comply with supervision requirements, a court may impose a fine, to be paid in normal circumstances by the parent or guardian of the child instead of the child, or a period of detention not exceeding 30 days (new Article 44F(3) and (4)). A child, parent or guardian has a right of appeal against an order made against him under Article 44F (new Article 44F(7) and [paragraph 31](#) of Schedule 12).
113. Where a child in respect of whom a custody care order is in force is convicted by or before a court of another offence and given a custodial sentence, that court must revoke the custody care order and, in passing sentence for the new offence, take into account the length of time left to run on that order (new Article 44G(1)). If, in respect of the new offence, the court decides to make a further custody care order the effect of new Article 44G(2) is that the order may be of any period not exceeding 2 years and the period of secure accommodation can be whatever portion of the whole the court specifies. Similar provision is made where the court, in sentencing the child for the new offence, makes a juvenile justice centre order (i.e. where the child has reached 14 between the

passing of the first custody care order and his conviction for the later offence) (new Article 44G(3)).

Youth Conferences

General

114. **Sections 57 to 60** add a number of new Articles to the 1998 Order. These new Articles create for Northern Ireland a wholly new way of dealing with child offenders and with children who, but for these provisions, would be the subject of proceedings.

Section 57: Youth conferences and youth conference plans

115. This section inserts new Article 3A into the 1998 Order, which makes general provisions about youth conferences. A youth conference is a meeting or series of meetings held to consider how a child ought to be dealt with for an offence (new Article 3A(1)). The meetings will be under the chairmanship of a person to be known as a youth conference co-ordinator (new Article 3A(2)(a)). This person will be given powers to run the meetings effectively (under rules to be made under new Article 3B) and the Secretary of State may set a time limit for completing the youth conference. The aim of the youth conference will be to devise a youth conference plan which will propose how the child should be dealt with (new Article 3C). The purpose of a youth conference plan is to require the child to carry out specified actions in order to make reparation for the offence, address the child's offending behaviour, and/or meet the needs of the victim. The content of the plan is for the youth conference to decide, from the various options listed in new Article 3C(1), such as apologising, making reparation, or participating in activities designed to address offending behaviour, offer education or assist with rehabilitation. The conference can propose any combination of these options it wishes. The plan must specify the period within which it must be completed, and this must not be more than one year (new Article 3C(4) and (5)).
116. There are three distinct groups of people who may be involved in a youth conference. The first is the core group without whom the youth conference cannot proceed. These are the youth conference co-ordinator, the child, a police officer and an "appropriate adult" (new Article 3A(2)). "Appropriate adult" means a parent or guardian of the child, but provision is made for the case where such a person is unable or unwilling to participate or the child is in care (within the meaning of the 1995 Order) (new Article 3A(4) and (5)). The second group are those who have a right to participate but in whose absence the youth conference may proceed. This group includes the victim of the offence (new Article 3A(6)). The final group are those who may participate or attend if the youth conference co-ordinator thinks that would be of value (new Article 3A(8)). This could include persons who play a significant role in the child's life (such as a community or religious leader) or people who can provide support to the victim.
117. A key feature of youth conferences is that neither the child, his parents or guardians, nor the victim can be compelled by any person or the court to participate. In particular, the child must agree to a youth conference being held (new Article 10A(3)(b) (section 58) and new Article 33A(6) (section 59)) and must agree to the youth conference plan or the youth conference order (new Article 10C(1)(a) (section 57) and new Article 36J(5) (section 60)). Neither the fact that a child has made any admission to a Public Prosecutor or agreed to participate in a diversionary youth conference, or withdrawn such an admission or agreement (new Article 10B(2) (section 58), nor any matter relating to a youth conference (new Article 3A(9)) may be used in any subsequent criminal proceedings as evidence of the child's guilt.
118. There are two distinct types of youth conference: diversionary youth conferences (section 58) and court-ordered youth conferences (section 59).

Section 58: Diversionary youth conferences

119. A reference to a diversionary youth conference can be made by the Director of Public Prosecutions (and only the Director) and will be made at an early stage, either before proceedings had been instituted for the offence or shortly after (new Article 10A(1)). The decision as to whether to refer the child and offence to a diversionary youth conference is for the Director, but he can only make a reference if the child admits that he has committed the offence (new Article 10A(3)). If a reference is made no further steps may be taken in relation to proceedings against the child for the offence until the youth conference is completed or terminated (new Article 10A(5)). As the youth conferencing provisions are to be introduced area by area, the Director may only make a reference if he has been notified that the provisions have been brought into force in the area in which the child lives or will live (new Article 10A(4)).
120. The youth conference co-ordinator may make one of three recommendations (Article 10A(2)). One of these is that the child be subject to a youth conference plan, in which case the youth conference co-ordinator will submit a plan (as agreed by the child and any other person required to agree by new Article 10C) to the Director. The Director must decide whether to accept the youth conference plan or not. If he accepts it, no further steps in any proceedings against the child for the offence may be taken unless the child fails to comply with the youth conference plan to a significant extent (new Article 10A(7)). The child's compliance is monitored by the youth conference co-ordinator or other person nominated by the Secretary of State, and this person must report to the Director on the child's compliance (new Article 10D). If the Director rejects the plan, or if he accepts it but the child fails to comply to a significant extent, or if the conference is unable to agree a plan, the Director can institute or continue the proceedings against the child in the normal way. For the purpose of calculating any time limits for instituting proceedings, the period taken by the diversionary youth conference and compliance with any youth conference plan is to be disregarded (new Article 10B(4)).
121. The Director may refer any offence to a youth conference, i.e. there is no restriction on referring even the most serious offences. However, the youth conference can recommend to the Director that the child should not be the subject of a youth conference plan at this stage but that proceedings should be instituted in the normal way (new Article 10A(2)(b)). Equally, the youth conference may recommend that no further action should be taken against the child (new Article 10A(2)(a)).

Section 59: Court-ordered youth conferences

122. The second type of youth conference is one ordered by the court. A court-ordered youth conference would occur after a court had found a child guilty of an offence and provides a way to consider how to deal with the child for the offence in question. It is not itself a sentence. Unlike diversionary youth conferences, specific rules are laid down as to when a court must, may and may not refer a child and offence to a youth conference (new Article 33A). The effect of this is that the court must refer a child and offence to a youth conference if the offence in question is anything other than -
- an offence for which the sentence (in the case of an adult) is fixed by law as imprisonment for life (such as murder);
 - an offence which is, in the case of an adult, triable on indictment only (i.e. triable only in the Crown Court);
 - an offence which is a "scheduled offence", i.e. an offence listed in Parts 1 to 3 of Schedule 9 to the Terrorism Act 2000;
 - in certain specified circumstances only, an offence for which a diversionary youth conference has been held (new Article 33C(2)); or
 - an offence for which the court intends to grant an absolute or conditional discharge (new Article 33C(5)).

123. A court may not refer a child and offence to a youth conference where the offence is either one for which the sentence (in the case of an adult) is fixed by law as imprisonment for life or where it intends to grant an absolute or conditional discharge. In any other case (i.e. where the offence is one of those mentioned in the second, third or fourth bullet points above) the court may refer the child and offence to a youth conference, but is not obliged to do so. As the youth conferencing provisions are to be introduced area by area, the court may only make a reference if it has been notified that the provisions have been brought into force in the area in which the child lives or will live (new Article 33C(1)).
124. New Article 33B sets out the rules to deal with the situation where the child is found guilty of more than one offence. If any of the offences are ones for which the sentence (in the case of an adult) is fixed by law as imprisonment for life the court cannot refer any of the offences to a youth conference (new Article 33B(2)). If the combination of offences includes both one or more for which a court-ordered youth conference is mandatory and one or more for which it is at the discretion of the court, the court may (but is not obliged to) refer all or any of the offences to a youth conference (new Article 33B(3)).
125. As well as recommending a youth conference plan to a court, a court-ordered youth conference can also recommend that the court simply exercise its existing powers to deal with the child or recommend that a youth conference plan and a custodial sentence be combined (new Article 33A(5)). In each case any person required by new Article 33E to consent to the recommendation must have indicated their agreement. If the conference is unable to agree any recommendation the co-ordinator will report this to the court.
126. If a court does not refer a case to a youth conference co-ordinator where it has the power to do so, it must give its reasons in open court (new Article 33C(4)).

Section 60: Youth conference orders

127. Where a recommendation made to a court by a youth conference includes a youth conference plan (whether alone or in combination with a recommendation that a custodial sentence be imposed) the court may make a youth conference order. This is a new type of sentence for the court. The youth conference order can be in identical terms to the youth conference plan or the court can vary that plan (and include within it anything from the range of options open to the youth conference) (new Article 36J(2)). In either case the child must consent to the youth conference order (new Article 36J(5)) and, where the court varies the youth conference plan, it must consult the youth conference co-ordinator (new Article 36J(6)). A youth conference order cannot be combined with any other court sentence unless the youth conference recommended it be combined with a custodial sentence, in which case the court may also impose any custodial sentence which it could have imposed for the offence (new Article 36J(8) and (9)). The youth conference is not empowered to recommend to the court any specific period of custody or type of custodial sentence. However, the child must agree to any custodial sentence imposed.
128. Before making such an order, the court must state in open court that it is of the opinion that the offence was serious enough to warrant it and why it is of that opinion (see new Article 36J(3) and (4) and new Article 36K(1)).
129. Provision for dealing with breach of a youth conference order and for revocation and amendment of such an order is made by new Schedule 1A of the 1998 Order (added by section 62 and Schedule 10).

Section 61: Legal aid for youth conferences

130. This section adds two new Articles to the [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(S.I. 1981/228 \(NI 8\)\)](#) (the “1981 Order”) which make free legal

aid available for attendance by legal representatives at diversionary youth conferences and court-ordered youth conferences.

Other Provisions

Section 63: Extension of youth justice system to 17 year olds

131. This section introduces Schedule 11. The amendments made by that Schedule have the effect that persons who have not attained the age of 18 will be treated as children in respect of proceedings against them for criminal offences. At present a “child” is defined as a person who has not attained the age of 17.

Section 64: Juvenile justice centre orders for 17 year olds

132. Currently a court cannot make a juvenile justice centre order in respect of a child who has attained the age of 17 (Article 39(1) of the 1998 Order). As a result of the amendments made in Schedule 11 (in particular that at [paragraph 17](#)), a court will be able to make such an order in respect of a 17 year old offender. The effect of the amendment made by this section is to limit the ability of a court to make such an order to cases of 17 year olds who may be particularly vulnerable, as recommended by the Review (paragraph 10.72). A 17 year old in respect of whom a court wishes to impose a custodial sentence and for whom a juvenile justice centre order cannot be made by virtue of this amendment will be sentenced to a period of detention in a young offenders centre.

Section 65: Consultation about detention

133. Article 45 of the 1998 Order deals with children who have been found guilty of offences the sentences for which are (in the case of an adult) fixed by law as imprisonment for life (Article 45(1)) and, on indictment, for which an adult could be sentenced to 14 years or more imprisonment and the court thinks no other way of dealing with the offender (i.e. non-custodial) is suitable (Article 45(2)). In the case of offences to which Article 45(1) applies, the child is detained during the pleasure of the Secretary of State; in the case of offences to which Article 45(2) applies, the court specifies the period of detention. But in both cases the Secretary of State directs the place and conditions in which the child is to be detained. The amendment made to Article 45 by this section requires the Secretary of State, before making such a direction in relation to a child of less than 14, to consult the appropriate authority (i.e. the Health and Social Services Board or Trust for the area where the child ordinarily resides or, if that is not known, for the area where he is).

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 Rules⁴. 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 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.

⁴ 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).

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

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 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.

Part 6: Supplementary

Section 82: Excepted matters: judicial office-holders

157. At present, the Northern Ireland Assembly cannot legislate about the appointment and removal of specified judicial office holders: those are “excepted” matters under the Northern Ireland Act 1998. This section provides for the appointment and removal of judicial office holders to become a “reserved” matter, in preparation for the transfer of this power from Westminster to the Northern Ireland Assembly by order once responsibility for justice matters is devolved as recommended by the Review⁵. Remuneration, superannuation and other terms and conditions of holders of these judicial offices (other than those relating to removal from office) are, however, to remain an “excepted” matter.

Section 83: Reserved matters: new institutions

158. This section adds the Chief Inspector of Criminal Justice in Northern Ireland, the Northern Ireland Law Commission and local community partnerships to the list of organisations in Schedule 3 to the Northern Ireland Act 1998. It makes clear that those bodies fall within the reserved field before devolution of justice matters, and it will allow them to be transferred on devolution.

⁵ See paragraph 15 of Schedule 3 to the Northern Ireland Act 1998

Section 84: Assembly Acts about judiciary, law officers and prosecutions

159. *Subsection (1)* amends the Northern Ireland Act 1998 to add to the list of entrenched enactments in section 7 of that Act section 1 of this Act (judicial independence) and this section. These provisions of the Act therefore cannot therefore be modified by the Assembly or by a Minister of the Assembly.
160. The effect of *subsection (2)* is to require that, after devolution of justice functions, any Bill of the Northern Ireland Assembly that deals with certain matters relating to the judiciary, prosecution service or Attorney General for Northern Ireland will require cross-community support. Section 4(5) of the Northern Ireland Act 1998 defines cross-community support as -
- the support of a majority of members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or
 - the support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting.

Section 89: Transitionals and savings

161. *Subsection (2)* ensures that the current holders of the posts of Director and Deputy Director of Public Prosecutions for Northern Ireland will continue to hold office when the provisions relating to the Public Prosecution Service for Northern Ireland are commenced.
162. If, when section 31 (conduct of prosecutions) comes into force, it is not practicable for the Director of Public Prosecutions to have the conduct of criminal proceedings for all indictable and summary offences, *subsection (4)* of this section allows him to take over only the conduct of proceedings which it is practicable for him to do so until such a time as he can carry out all such prosecutions, but specifies that this will be completed within 5 years of the commencement of section 31(1).
163. *Subsections (8) and (10)* ensure that no one can be dealt with by the making of a reparation order or community responsibility order nor can a child and offence be referred to either a diversionary youth conference or a court-ordered youth conference in relation to an offence committed before the commencement of the relevant provisions.

Section 90: Statutory rules

164. This section provides for orders, regulations or schemes made by either the Lord Chancellor, the Secretary of State or the First Minister and deputy First Minister to be made by statutory rule.

Section 91: Extent

165. This section makes it clear that most of the provisions of the Act will apply only to Northern Ireland (*subsection (1)*). The exceptions, which are listed in *subsection (2)*, are the transfer of functions of justices of the peace (section 10(6) and paragraphs 5 and 6 of Schedule 4) and the establishment of the office of Advocate General for Northern Ireland (section 22(1) and 27(1)). Amendments effected by the Act will have the same extent as the provisions they amend (*subsection (3)*).

Schedule 1: Listed Judicial Offices

166. This Schedule lists the offices to which people can only be appointed if they are selected by the Judicial Appointments Commission and from which they can only be removed following a recommendation by a tribunal convened under section 8. It is brought into effect by section 2.

Schedule 2: Judicial Appointments Commission

167. This Schedule sets out provisions about the members of the Judicial Appointments Commission and the arrangements for its staffing and procedure. *Paragraph 1* provides for judicial members to remain on the Commission for as long as they hold their judicial office. Judicial members may resign or may be removed from office by the First Minister and deputy First Minister on the advice of the Lord Chief Justice.
168. *Paragraph 2* sets out the term of office of non-judicial members, including maximum periods of appointment and resignation and dismissal criteria. *Paragraph 3* requires the Commission to pay non-judicial members remuneration as decided by the First Minister and deputy First Minister. *Paragraph 4* sets out the staffing arrangements for the Commission. *Sub-paragraph (3)* provides for pensions for Commission staff.
169. *Paragraph 5* requires the Commission to publish an annual report at the end of each financial year. The report must include statistical information about the gender, age, ethnic origins, community background and geographical connection of applicants for judicial posts. A copy of the report must be sent to the First Minister and deputy First Minister, laid before the Assembly and then published.
170. *Paragraphs 6 and 7* enable the First Minister and deputy First Minister to make grants to the Commission and require the Commission to keep proper accounts and financial records.
171. *Paragraphs 8 to 10* make provision for the Commission to set up committees and sub-committees and regulate their procedure. Committees and sub-committees may consist of or include persons who are not members of the Commission.
172. *Paragraphs 11 and 12* provide for the Commission to delegate its functions to a committee. Committees may further delegate to sub-committees. When the power to select a person for appointment is delegated then the committee or sub-committee must include a member of the Commission and, if that member is not a lay member, a lay person.
173. *Paragraphs 13 to 17* deal with miscellaneous matters including the status of the Commission.

Schedule 3: Appointment to Listed Judicial Offices

174. *Schedule 3* transfers to the First Minister and deputy First Minister, acting jointly, the power to make appointments or recommendations for appointment, to listed judicial offices. This Schedule is not intended to take effect until after the devolution of justice functions when the Judicial Appointments Commission is set up.

Schedule 4: Functions of Justices of the Peace

175. *Section 10(1)* provides for the transfer of functions of justices of the peace to lay magistrates, subject to *section 10(2)* and to *Schedule 4*. *Paragraph 1* lists the functions which will continue to be exercised by justices of the peace in Northern Ireland; *paragraph 2* deals with functions which may be discharged by either justices of the peace or lay magistrates; and *paragraph 3* sets out functions of justices of the peace which will be exercisable only by resident magistrates after the creation of the office of lay magistrate. *Paragraphs 4 and 5* enable the Lord Chancellor to amend the provisions on the transfer of functions. *Paragraph 6* provides for references to justices of the peace to be construed as references to lay magistrates, so far as appropriate in consequence of the provisions of *section 10* and this Schedule. The rest of the Schedule contains consequential amendments.

Schedule 5: Transfer of Functions to Lord Chief Justice

176. This Schedule lists the functions of the Lord Chancellor in relation to the operation of the courts which will transfer to the Lord Chief Justice following the devolution of responsibility for justice matters to the Northern Ireland Assembly.

Schedule 6: Office-Holders Required to Take Judicial Oath

177. This Schedule lists the offices for which new appointees will be required to take the new oath or make the new affirmation and declaration.

Schedule 7: Functions of Advocate General

178. The changes in this Schedule are not intended to take effect until after the devolution of justice functions and the appointment of a local Attorney General for Northern Ireland.
179. *Paragraph 1* of the Schedule amends the Northern Ireland Act 1998 to allow the Advocate General for Northern Ireland to refer Bills of the Northern Ireland Assembly to the Judicial Committee of the Privy Council if he is unsure if they are within the legislative competence of the Assembly. The Attorney General for Northern Ireland will continue to have the same power.
180. *Paragraph 2* makes amendments to the Northern Ireland Act 1998, in order to involve both the Advocate General for Northern Ireland and the Attorney General for Northern Ireland in the institution and defence of proceedings in relation to devolution issues. *Paragraphs 3 and 4* amend corresponding provisions in the Scotland Act 1998 and the Government of Wales Act 1998 to substitute references to the Attorney General for Northern Ireland.
181. *Paragraph 11* makes arrangements for the carrying out of the functions of the Attorney General in the event that the operation of the Northern Ireland Assembly is suspended under the Northern Ireland Act 2000 after the devolution of justice functions. If that were to happen, the Attorney's functions would be exercised by the Advocate General for Northern Ireland for the duration of the period of suspension. If, at any stage after devolution the post of Attorney General for Northern Ireland is vacant, *paragraph 12* requires the First Minister and deputy First Minister to consult the Advocate General before filling the post temporarily.
182. Under *paragraph 14*, it is for the Advocate General for Northern Ireland to appoint the Crown Solicitor for Northern Ireland. The holder of this post represents the Crown in civil matters in Northern Ireland. As many of these fall within the "excepted" field the power to appoint an individual to hold this post should be for the Advocate General for Northern Ireland to exercise.
183. Under *paragraphs 18 to 20* it will become the responsibility of the Advocate General for Northern Ireland to appoint special advocates to represent prisoners in front of the Sentence Review Commissioners on those occasions where the prisoners themselves are not allowed to appear. Special advocates are also used in tribunals convened under section 91(7) of the Northern Ireland Act 1998.
184. *Paragraphs 21 to 23* make changes to the Terrorism Act 2000 so that it will be the responsibility of the Advocate General for Northern Ireland to determine the mode of trial for proceedings for a scheduled offence. These are tried in Northern Ireland by means of the Diplock court system. It would be for the Advocate General for Northern Ireland to determine in each case whether the context of the offence indicates that it should be tried by a judge sitting alone or by a judge with a jury. If he determines that it should go through the more standard procedure, the Advocate General for Northern Ireland would then issue a certificate to remove that case from the Diplock system. The prosecution would then proceed as with other, non-scheduled offences and be purely the responsibility of the prosecution service from that point onwards.

185. *Paragraphs 24 to 36* make changes to those offences which currently require the consent of the Attorney General before a prosecution can be undertaken. It would not be consistent with the independence of the new prosecution service for the local Attorney to make decisions as to whether prosecutions should go ahead, particularly when the Criminal Justice Review Group recommended that the local Attorney should have no power to direct the prosecutor on individual cases (paragraph 4.162 of the Review). Accordingly, the power of the Attorney to consent to prosecutions will be transferred to the Director of Public Prosecutions, except in those cases when the offences are related to “excepted” matters (as set out in Schedule 2 to the Northern Ireland Act 1998). The provisions in these paragraphs transfer the power to give consent in cases related to “excepted” matters to the Advocate General for Northern Ireland.

Schedule 8: Chief Inspector of Criminal Justice

186. This Schedule deals with operational issues, such as appointment, tenure and staffing. *Paragraph 4* requires the Chief Inspector to send a report each financial year to the Secretary of State, who is required to publish it.
187. *Paragraph 7* enables the Chief Inspector of Criminal Justice to delegate any of his functions to a member of his staff, to members of the United Kingdom or Northern Ireland civil service who are assisting him or to Her Majesty’s Inspector of Constabulary, Her Majesty’s Chief Inspector of Prisons or Her Majesty’s Chief Inspector of the Crown Prosecution Service.
188. *Paragraph 8* deals with the relationship between the Chief Inspector and those appointed under section 41(1) of the Police (Northern Ireland) Act 1998 as inspectors of constabulary for Northern Ireland (“HMIC”). The effect is that if the Chief Inspector considers that any particular inspection should be carried out in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve he must give HMIC the option of carrying out that inspection. If HMIC do not wish to carry out the inspection, the Chief Inspector may do so, but only after consulting the Secretary of State with a view to obtaining his approval for the inspection. If the Secretary of State did not give his approval, it would still be open to the Chief Inspector to go ahead and carry out the inspection.
189. *Paragraph 11* allows the Chief Inspector to do anything which a private person could do, apart from borrow money, if he considers it appropriate for facilitating, or incidental or conducive to, the exercise of his functions. In particular, this would allow him to enter into contracts and other arrangements.

Schedule 9: Law Commission

190. *Paragraph 1(4)* sets out the grounds for dismissal of a Commissioner by the Secretary of State, which include a conviction for a criminal offence and bankruptcy. *Paragraph 2* provides for a person holding judicial office to be appointed as a Commissioner without relinquishing that office. Except for a person holding full-time judicial office, *paragraph 3* makes provision for payment to Commissioners of remuneration, allowances and sums for the provision of pensions.
191. *Paragraph 4* requires the Secretary of State to approve the Commission’s staffing complement, their salary and terms of employment. It enables the Commission to perform its functions by arranging to engage the assistance of members of the Civil Service and the Northern Ireland Court Service. *Paragraphs 4(3) and 4(4)* deal with superannuation provisions for staff in the employ of the Commission.
192. *Paragraph 5* enables the Secretary of State to make grants to the Commission. *Paragraph 6* sets out requirements on the Commission in terms of financial accountability.

Schedule 10: Youth Justice Orders: Enforcement Etc

193. This Schedule adds Schedule 1A to the 1998 Order. This makes provision dealing with the consequences of a breach of a reparation order, community responsibility order or youth conference order (each of which is referred to as a “relevant order” in the Schedule) and the revocation and amendment of a relevant order.
194. If a person in respect of whom a relevant order is in force breaches that order there are two possible ways the matter could be dealt with by the courts, following an application by the responsible officer:
- it could impose an additional order as punishment for the breach (*paragraph 3*); or
 - it could revoke the relevant order and re-sentence the offender for the original offence (*paragraph 4*).
195. When dealing with an offender under *paragraph 3 or 4*, the court must take into account the extent to which the offender has complied with the relevant order (*paragraph 2(3)*).
196. *Paragraph 3* deals with the imposition of an additional order by the court for breach of the relevant order. The application must be brought to the youth court. *Sub-paragraph (1)* sets out what additional orders may be imposed. If such an order is made the offender is then subject to both the original relevant order and the new order imposed by the court as punishment for the breach. This paragraph makes certain modifications to the basic provisions relating to the orders which may be imposed for breach to ensure they work properly in this context. In relation to community service orders, *sub-paragraph (5)* provides that there is to be no minimum period for such an order when imposed for breach and a maximum of 60 hours. This is in contrast to the position where a community service order is imposed for an offence in which case it must be of at least 40 hours and no more than 240 hours (Article 13(2) of the 1996 Order).
197. *Paragraph 4* deals with the situation where the court thinks an additional order is not appropriate punishment for the breach of the relevant order and wants instead to revoke it and re-sentence the offender for the original offence. *Sub-paragraph (6)* of *paragraph 4* allows a court when re-sentencing an offender who has persistently failed to comply with a requirement to assume that the offender has not consented to the relevant order. This provision makes it clear that, where an offender breaches a relevant order, the court can rely on Article 19(3) of the 1996 Order and impose a custodial sentence despite Article 19(2) of that Order. Article 19(2) provides that a court may only impose a custodial sentence for an offence where it is of the opinion that the offence was so serious that only such a sentence was justified or, in the case of a violent or sexual offence, that only a custodial sentence would be adequate to protect the public from serious harm. Article 19(3) provides that nothing in *paragraph 2* of that Article prevents a court from passing a custodial sentence where the offender refuses to give his consent to a community sentence proposed by the court and which requires his consent.
198. *Paragraph 5* enables the responsible officer or the offender to apply to the court for the revocation or amendment of the relevant order or for an extension of the time within which the relevant order must be complied with. The powers provided by this paragraph are not dependent on the offender being in breach of the relevant order, but could be exercised in those circumstances instead of the specific powers to deal with breach discussed above.
199. *Paragraph 6* makes provision for the situation where the offender in respect of whom a relevant order is in force is convicted of another offence. This paragraph ensures that the courts have the power to make any order in respect of the relevant order necessary to take account of the subsequent conviction. The powers are the same as those conferred on the court under *paragraph 5* of the Schedule – to revoke or vary the relevant order or extend the period within which it must be complied with.

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

200. *Paragraph 8* provides that the offender must be in court before the court can make an order under *paragraphs 3, 4, 5 or 6* in respect of him, subject to the minor exceptions in *sub-paragraph (8)*. It sets out a procedure whereby the court can secure the presence of the offender in court. The reference in *sub-paragraph (6)(b)* to the place “to which it [the court] would remand him if making an order under Article 13” is a reference to the place of remand provided for by Article 13 of the 1998 Order for children. Article 13 is amended by *paragraph 69* of Schedule 12.
201. A right of appeal against decisions under this Schedule is provided by the amendments to Article 140 of the Magistrates’ Court (Northern Ireland) Order 1981 (appeal from magistrates’ court) (see *paragraphs 29 to 31* of Schedule 12) and to section 9 of the Criminal Appeal (Northern Ireland) Act 1980 (appeal from Crown Court) (see *paragraph 15* of Schedule 12).

Schedule 11: Extension of Youth Justice System to 17 Year Olds

202. These amendments provide that a person who is under 18 is treated as a child for the purposes of criminal proceedings against him.

Schedule 12: Minor and Consequential Amendments

203. This Schedule makes a number of minor and consequential amendments.
204. *Paragraphs 1, 2 and 6* of this Schedule replicate amendments made by the Prosecution of Offences (Northern Ireland) Order 1972, which is repealed by this Act.
205. *Paragraphs 3, 4 and 5* make minor amendments to the County Courts Act (Northern Ireland) 1959, including clarifying that one or more judges may be assigned to each county court division. *Paragraph 4* also reflects the current position in Belfast where four judges are assigned to Belfast, one of whom is appointed Recorder of Belfast. *Paragraph 5* is consequential on the repeal of section 105(3) of that Act (which makes provision about judicial oaths, now provided for by section 19).
206. *Paragraphs 7, 8 and 9* make amendments to the Law Commission Act 1965 consequential on the establishment of an independent Northern Ireland Law Commission.
207. *Paragraphs 10, 11 and 12* make minor amendments to the Administration of Justice Act 1973, including provision for the salaries of judges of the Supreme Court in Northern Ireland to be paid out of the Consolidated Fund of Northern Ireland. *Paragraph 12* provides that the power of the Lord Chancellor to declare a higher judicial office vacant where the holder of that office is so incapacitated that he cannot resign it shall not be exercisable in respect of judges to whom section 7 of this Act applies.
208. *Paragraph 13* amends the manner in which a judge of the Supreme Court in Northern Ireland may resign, by providing that the Lord Chief Justice or a Lord Justice of Appeal may tender a letter of resignation to her Majesty, and a judge of the High Court may write to the First Minister and deputy First Minister.
209. *Paragraph 15* amends the Criminal Appeal (Northern Ireland) Act 1980 to provide for appeals against sentence following proceedings for breach of a youth conference order (see Schedule 10).
210. *Paragraphs 16 to 28* amend the 1981 Order. *Paragraph 17* is consequential on the repeal of paragraph 5 of Schedule 1 to the 1981 Order (which provided for legal aid for proceedings before a coroner). *Paragraph 18* provides that advice and assistance under the 1981 Order will not be available for proceedings in respect of which exceptional legal aid is available under a direction given by the Lord Chancellor (provided for by section 76). This replicates the existing restriction on the availability of advice and assistance when a civil aid certificate is in force.

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211. *Paragraphs 19 and 20* are consequential on the repeal of Article 10(6) of the 1981 Order (position of providers and parties where services are given by way of legal aid) and the re-enactment of the same provisions (provided for by *paragraph 20*). *Paragraph 21* amends the effect of the indemnity granted in relation to contributions to include contributions arising from a grant of exceptional legal aid (provided for by section 76).
212. *Paragraphs 24 to 26* make amendments consequential on the provision of free legal aid for diversionary youth conferences (see section 61).
213. *Paragraph 40* amends the definition of “place of safety” in the Mental Health (Northern Ireland) Order 1986 to include any young offenders centre and any secure accommodation provided by the Health and Social Services Boards in Northern Ireland.
214. The amendment in *paragraph 41* to Schedule 3 to the Criminal Justice Act 1988 is consequential on section 41(5) which allows the Director of Public Prosecutions for Northern Ireland (instead of the Attorney General for Northern Ireland) to make an appeal where it is thought that a sentence handed down by a court is unduly lenient .
215. *Paragraphs 42 to 46* amend the Police and Criminal Evidence (Northern Ireland) Order 1989 (the “1989 Order”). *Paragraph 43* adds definitions of “juvenile justice centre”, “secure accommodation” and “young offenders centre”, which are referred to in the substantive amendments made by *paragraphs 44 to 46* of Schedule 12 to the 1989 Order. Article 19(1)(d) of that Order provides that a constable may enter premises without a search warrant for the purposes of recapturing a person who is unlawfully at large from specified custodial institutions. *Paragraph 45* adds secure accommodation (used for detaining a child who is subject to a custody care order) to that list. Article 39 of the 1989 Order provides for the detention after arrest of juveniles in a place of safety. *Paragraph 46* extends the definition of “place of safety” to include young offenders centres and secure accommodation.
216. *Paragraph 53* amends Schedule 2 to the Juries Order 1996 to include court security officers, the Director and Deputy Director of the Public Prosecution Service and members of staff of the Public Prosecution Service and the Chief Inspector of Criminal Justice and his staff within the list of persons who are ineligible for jury service.
217. *Paragraph 55(2)* provides that reparation orders and community responsibility orders are added to the definition of a “community order” for the purposes of the 1996 Order. *Sub-paragraph (4)* provides that an order sending an offender to secure accommodation is included in the definition of “custodial sentence”.
218. *Paragraph 56* amends Article 9(3) of the 1996 Order (procedural requirements for community orders) to include “reparation order” and “community responsibility order” so that those provisions apply to these new orders. As a consequence of the creation of custody care orders (provided for by section 56) the definition of orders on which restrictions are imposed by Article 18(1) is extended to include a custody care order (*paragraph 57*).
219. *Paragraph 58* adds references to a youth conference order to Article 19(3) of the 1996 Order. This has the effect that a court is not prevented from passing a custodial sentence if the offender refuses to consent to a youth conference order.
220. *Paragraph 61* amends section 42(3) of the Police (Northern Ireland) Act 1998 to include the Chief Inspector of Criminal Justice in the list of those who must receive a copy of a report by Her Majesty’s Inspector of Constabulary on the Police Service of Northern Ireland.
221. *Paragraphs 63 and 64* designate the Chief Inspector of Criminal Justice and the Law Commission for the purposes of sections 75 and 76 of the Northern Ireland Act 1998 respectively.

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222. The amendments set out in *paragraph 65* of the Schedule are consequent on making the role and functions of the Advocate General for Northern Ireland an “excepted” matter (see commentary on section 27 above). They exclude the Advocate General from the list of justice matters in the reserved field (as set out in Schedule 3 to the Northern Ireland Act 1998).
223. *Paragraph 67* adds a number of definitions to the 1998 Order consequential on the provision made by Part 4 of this Act.
224. *Paragraph 68* amends Article 8(3) and (4) of the 1998 Order to provide that if a child under 14 cannot be released before he appears in court, he must be held in secure accommodation rather than in a juvenile justice centre.
225. *Paragraph 69* amends Article 13 (remand in custody) of the 1998 Order. Children under 14 must be held in secure accommodation. Those who are 14 but not yet 17 must be held in a juvenile justice centre, unless, in the case of a child who has attained the age of 15, the court considers he is likely to injure himself or someone else, in which case he must be held in a young offenders centre. Those children who have attained the age of 17 must be held in a young offenders centre unless two conditions are met. These are that, when he was first remanded in custody, he was not yet 17 years and 6 months old and that he has not had a custodial sentence passed on him in the previous two years. If these conditions are met the court must send him to a juvenile justice centre if it thinks that such an order is in the child’s best interests.
226. *Paragraph 70* adds references to youth conference orders to Article 30(3) of the 1998 Order. This ensures that the youth court retains jurisdiction to deal with breach of such orders, or to amend or discharge them, even though the offender has attained the age of 18 since the order was made.
227. *Paragraph 71* amends Article 37(4) (requirements of attendance centre orders) of the 1998 Order. This brings the language of the 1998 Order into line with Article 14 of the 1996 Order.
228. *Paragraph 72* amends Article 39(1) of the 1998 Order to provide, firstly, that juvenile justice centre orders cannot be made in respect of an offender who has not attained the age of 14 (for such offenders a custody care order is available) and, secondly, to clarify for which offences such orders are not appropriate.
229. *Paragraph 73* amends Article 41 of the 1998 Order. It omits reference to breach of juvenile justice centre orders by children under 14 as they will no longer be subject to such orders. It also provides that where a court orders an offender to be detained for breach of a juvenile justice centre order he will be held in a juvenile justice centre if he has not yet attained the age of 17 and a young offenders centre if he has, unless certain conditions are satisfied. Those conditions are that the offender is 17 but will not be 18 within the next 30 days (the maximum period for which he can be detained for breach) and that he has not had a custodial sentence (other than the juvenile justice centre order in respect of which he is in breach) in the previous two years. If these conditions are met and the court thinks it is in the child’s best interest to be detained in a juvenile justice centre, he will be detained in such a place. It also provides that where a fine is imposed for breach of the supervision requirements of a juvenile justice centre order, the court must (if the child is under 16) or may (if the child has attained that age) order that the fine be paid by the child’s parent or guardian instead of the child.
230. *Paragraph 74* amends Article 44(1) of the 1998 Order to remove the obligation on a court to revoke a juvenile justice centre order on subsequent conviction unless it intends to impose a further custodial sentence. This corrects an anomaly in the 1998 Order where, if the child was in custody, the court had to revoke that sentence even if only to pass a non-custodial sentence.
231. *Paragraph 75* amends Article 56(5)(a) of the 1998 Order to provide that the Secretary of State may by order provide that the functions of the Juvenile Justice Board shall include

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power to make and give effect to schemes for children who are subject to reparation orders, community responsibility orders and youth conference plans.

232. *Paragraphs 76 to 79* amend the Northern Ireland Act 2000. During any period in which section 1 of that Act is in force (when devolved government in Northern Ireland is suspended) no person may continue to hold office or be appointed as Attorney General for Northern Ireland. On restoration, the Attorney General who held office immediately before suspension would resume office, unless his term of appointment had expired, in which case a new Attorney General would be appointed in accordance with section 22.
233. *Paragraph 81* amends the Regulatory Reform Act 2001 to require consultation with the Northern Ireland Law Commission before an order under section 1 of that Act can be made.

Schedule 13: Repeals and Revocations

234. This Schedule sets out the repeals and revocations of other legislation which are needed as a result of the Act.