

*These notes refer to the Justice Act (Northern Ireland)
2011 (c.24) which received Royal Assent on 4 May 2011*

Justice Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Victims and Witnesses

This Part contains two sets of powers to assist victims and witnesses in the criminal justice system.

The principal aim of the offender levy, Part 1 Chapter 1, is to make offenders more accountable for the harm which their actions cause by requiring them to make a financial contribution to the delivery of support services to victims and witnesses of crime. It is intended to help increase victim satisfaction with the criminal justice system and create a new revenue stream which would be used exclusively to resource a non-statutory victims of crime fund. The fund would pay for projects that support victims and witnesses during their engagement with the criminal justice system as well as grants to support initiatives by local groups working with victims in the community.

Special measures, Part 1 Chapter 2, are statutory provisions to assist vulnerable and intimidated witnesses give their best possible evidence in criminal proceedings. These provisions introduce a number of improvements for young witnesses, adult complainants of sexual offences, and vulnerable defendants as well as some procedural changes such as formalising the presence of a supporter in the live link room when a witness is giving evidence.

Chapter 1 - The Offender Levy

This Chapter contains the power for a financial levy to be imposed by the court on conviction or attached to certain fixed penalties.

Section 1: Offender levy imposed by court

This section sets out the sentences which attract the offender levy. These are: imprisonment; detention in the young offenders centre; a suspended custodial sentence; a community order; or a fine. The levy will only be attached to those offenders 18 years old or over. Where a period of imprisonment or detention is applied concurrent with a previous sentence of imprisonment or detention and a levy has been imposed on that previous sentence, a further levy will not be applied. Payment of compensation orders will take priority over the levy and the levy must be reduced (to nil if necessary) by the court where it

has been determined that the offender has insufficient means to pay both the compensation order and the levy. The amount of any fine imposed can only be reduced on account of the levy where the offender has insufficient means to pay both the fine and the levy. The Department may by affirmative resolution amend the list of sentences to which a levy applies.

Section 2: Enforcement and treatment of offender levy imposed by court

This section states that the offender levy shall, except where provided for in this Act, be enforced in the same manner as a fine, and that the Department of Justice can make regulations with respect to the enforcement of the levy where it considers this appropriate.

Section 3: Deduction of offender levy imposed by court from prisoners' earnings

This section permits the governor of a prison or young offenders centre (or a person authorised by the governor) to deduct money from the earnings of a prisoner to recover the value of levy imposed by the court. It also enables the Department of Justice to make directions on the rate, timing and conditions of those deductions.

Section 4: Offender levy imposed by court: other supplementary provisions

Section 4 states that a court cannot, at the point of sentencing, set a default period of imprisonment for non-payment of the offender levy. When a fine and an offender levy are imposed together, any payment made will first discharge the levy. If an offender defaults on paying a fine and is imprisoned, or given a supervised activity order, the court may remit such part of the levy which remains outstanding. Where an offender has been given a determinate sentence of imprisonment or detention (which is not suspended) and has made payments towards discharging the levy through deductions from earnings whilst in prison, any outstanding levy amount will be discharged by statute on the full expiry of their sentence i.e. when they are no longer eligible for recall to custody for deductions from prison earnings to recommence.

Section 5: Offender levy on certain penalties

This section sets out the fixed penalties which will attract an offender levy: fixed penalties (introduced in this Act); endorsable road traffic offences; and conditional offers of fixed penalties for speed camera detections for persons aged 18 years and over. It also provides that other Departmental penalties may be levied, subject to approval by an affirmative order of the Assembly. Where the relevant penalty is increased on default, the levy will be increased by the same proportion.

Section 6: Amount of the offender levy

This section sets out the amount of offender levy to be paid depending on the sentence or fixed penalty given. Where more than one sentence is given at the same time, the levy will be applied to the sentence which attracts the highest rate.

If the sentence includes a determinate sentence of imprisonment for more than two years or an indeterminate sentence of imprisonment the levy value is £50.

Where the sentence includes a determinate sentence of imprisonment less than two years it is £25.

Where a sentence includes a community order or suspended sentence of imprisonment it is £20.

Where it includes a fine, it is £15.

For fixed penalties the levy is £5.

The Department may make an order by affirmative resolution of the Assembly which amends the list and values of the levy.

Chapter 2 - Vulnerable and Intimidated Witnesses

This Chapter amends the Criminal Justice (Northern Ireland) Order 1999 to introduce improvements to special measures provisions and deal with some procedural changes.

Section 7: Eligibility for special measure: age of child witnesses

This section amends the age at which persons are considered to be young witnesses to be 18 years rather than 17 years.

Section 8: Special measures directions for child witnesses

This section allows the views of young witnesses to be taken into account when special measures applications are being made, subject to certain specified safeguards. It also removes the category of child witnesses who are in need of special protection thereby placing all child witnesses on the same footing regardless of the offence to which the proceedings relate.

Section 9: Special provisions relating to sexual offences

This section gives adult complainants of sexual offences automatic entitlement to give video recorded evidence in chief. This section does not apply in magistrates' courts.

Section 10: Evidence by live link: presence of supporter

This section formalises the presence of a supporter in the live link room when a witness is giving evidence.

Section 11: Video recorded evidence in chief: supplementary testimony

This section relaxes the restrictions on a witness giving additional evidence in chief after their video recorded statement has been admitted.

Section 12: Examination of accused through intermediary

Section 12 allows any examination of vulnerable defendants to be conducted through an interpreter or other person approved by the court. A vulnerable defendant is a person who has not attained the age of 18 or else is over 18 but suffers from a mental disorder or otherwise has a significant impairment of intelligence and social functioning. The court can give direction allowing examination through an intermediary if the above conditions are met and it is necessary in order to ensure the accused receives a fair trial.

Section 13: Age of child complainant

This section amends Article 23 of the Criminal Justice (Northern Ireland) Order 1999 so that the age of a child complainant is raised to 18 from 17.