

# JUSTICE (NORTHERN IRELAND) ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY

#### **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 Review<sup>1</sup>. 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.

##### ***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.

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<sup>1</sup> See paragraph 15 of Schedule 3 to the Northern Ireland Act 1998

**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)*).