



# Justice (Northern Ireland) Act 2002

## 2002 CHAPTER 26

### PART 2

#### LAW OFFICERS AND PUBLIC PROSECUTION SERVICE

##### *Relationship of Director and Attorney General*

#### **40 Superintendence and removal of Director**

- (1) This section applies for so long as the Attorney General for England and Wales is Attorney General for Northern Ireland.
- (2) The Director must exercise his functions under the superintendence of the Attorney General for Northern Ireland and is subject to any directions given by him; but a failure to comply with this subsection does not affect the validity of anything done by or on behalf of the Director.
- (3) The Attorney General for Northern Ireland may remove the Director or Deputy Director from office on the ground of misbehaviour or inability to perform the functions of the office.

#### **41 Transfer of functions etc.**

- (1) This section and sections 42 and 43 apply once the Attorney General for Northern Ireland is a person appointed under section 22(2).
- (2) Any function of the Attorney General for Northern Ireland of consenting to the institution or conduct of criminal proceedings is transferred to the Director (but subject to Schedule 7).
- (3) The function of the Attorney General for Northern Ireland of entering a nolle prosequi is transferred to the Director.
- (4) The Attorney General for Northern Ireland may not present, or direct the presentation of, an indictment against a person charging him with an offence.

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*Changes to legislation: Justice (Northern Ireland) Act 2002, Cross Heading: Relationship of Director and Attorney General is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (5) In section 36(9)(a) of the Criminal Justice Act 1988 (c. 33) (reference to Court of Appeal of unduly lenient sentences), for “Attorney General for Northern Ireland” substitute “Director of Public Prosecutions for Northern Ireland”.
- (6) In section 15 of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (reference to Court of Appeal of point of law following acquittal on indictment), for “Attorney General for Northern Ireland” (in both places) substitute “Director of Public Prosecutions for Northern Ireland”.

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**Modifications etc. (not altering text)**

**C1** [S. 41\(2\)](#) extended (20.11.2003) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 334\(4\), 336\(1\)](#)

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**Commencement Information**

**I1** [S. 41](#) in force at 12.4.2010 by [S.R. 2010/113](#), [art. 2](#), [Sch. para. 12](#)

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## 42 Independence of Director

- (1) The functions of the Director shall be exercised by him independently of any other person.
- (2) The Director must consult the Attorney General for Northern Ireland and the Advocate General for Northern Ireland—
  - (a) before issuing or making alterations to a code under section 37, and
  - (b) before preparing his annual report.
- (3) The Attorney General for Northern Ireland and the Director may (from time to time) consult each other on any matter for which the Attorney General for Northern Ireland is accountable to the Assembly.
- (4) The Advocate General for Northern Ireland and the Director may (from time to time) consult each other on any matter for which the Advocate General for Northern Ireland is accountable to Parliament.
- (5) The Director must send a copy of each annual report prepared by him to—
  - (a) the Attorney General for Northern Ireland, and
  - (b) the Advocate General for Northern Ireland.
- (6) The Attorney General for Northern Ireland must lay before the Assembly a copy of each annual report received by him under subsection (5); and the Advocate General for Northern Ireland must lay before each House of Parliament a copy of each annual report so received by him.
- (7) If a part of an annual report is excluded from publication under section 39(4)—
  - (a) the same exclusion is to be made from the copies which are laid under subsection (6), and
  - (b) a statement that the part has been excluded is to be laid with those copies.

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**Commencement Information**

**I2** [S. 42](#) in force at 12.4.2010 by [S.R. 2010/113](#), [art. 2](#), [Sch. para. 13](#)

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### 43 Appointment and removal of Director by Attorney General

- (1) The Attorney General for Northern Ireland must consult the Advocate General for Northern Ireland before appointing a person to be Director or Deputy Director.
- (2) The Director or Deputy Director—
  - (a) may be removed from office by the Attorney General for Northern Ireland if a tribunal convened under subsection (4) has reported to him recommending that the Director or Deputy Director be removed on the ground of misbehaviour or inability to perform the functions of the office, and
  - (b) may be suspended from office by the Attorney General for Northern Ireland (pending a decision whether to remove him) if the tribunal, at any time when it is considering whether to recommend his removal, has recommended to the Attorney General for Northern Ireland that he be suspended.
- (3) If the Director or Deputy Director is suspended he may not perform any of the functions of the office until the decision whether to remove him has been taken (but his other rights as holder of the office are unaffected).
- (4) A tribunal may be convened by the Attorney General for Northern Ireland after consulting the Advocate General for Northern Ireland.
- (5) A tribunal is to consist of—
  - (a) a person who <sup>F1</sup>holds high judicial office, within the meaning of Part 3 of the Constitutional Reform Act 2005] and does not hold (and has never held) the office of Lord Chief Justice, Lord Justice of Appeal or judge of the High Court, and
  - (b) a person who holds, or has held, office as a judge of the High Court in England and Wales or a judge of the Court of Session.
- (6) The selection of the persons to be the members of a tribunal is to be made by the Lord Chancellor <sup>F2</sup>after consultation with all of the following—
  - (a) the President of the Supreme Court;
  - (b) the Lord Chief Justice of England and Wales;
  - (c) the Lord President of the Court of Session;
  - (d) the Lord Chief Justice of Northern Ireland].
- (7) The chairman of a tribunal is the person mentioned in paragraph (a) of subsection (5).
- (8) The procedure of a tribunal is to be determined by its chairman.
- (9) The Attorney General for Northern Ireland may pay to a member of a tribunal any such allowances or fees as he may determine.

#### Textual Amendments

- F1** Words in s. 43(5)(a) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 145, 148, [Sch. 17 para. 33\(2\)](#); [S.I. 2009/1604](#), [art. 2](#)
- F2** Words in s. 43(6) inserted (12.4.2010) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 5 para. 121](#) (with [Sch. 5 para. 115\(2\)](#)); [S.I. 2010/883](#), [art. 2\(c\)\(i\)](#)

#### Commencement Information

- I3** S. 43 in force at 12.4.2010 by [S.R. 2010/113](#), [art. 2](#), [Sch. para. 14](#)

**Changes to legislation:**

Justice (Northern Ireland) Act 2002, Cross Heading: Relationship of Director and Attorney General is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 31(1A) inserted by [2023 c. 41 Sch. 13 para. 5\(2\)](#)
- s. 31(7) inserted by [2023 c. 41 Sch. 13 para. 5\(4\)](#)