



## 2015 CHAPTER 9

### PART 9

#### MISCELLANEOUS

##### *Jury service*

##### **Removal of maximum age for jury service**

77. In Article 3(1) of the Juries (Northern Ireland) Order 1996 (persons qualified and liable for jury service) for “aged between 18 and 70 years” substitute “aged over 18 years”.

##### **Preparation of jury lists**

78. In Article 4(2) of the Juries (Northern Ireland) Order 1996 (selection from register of electors) omit sub-paragraph (b)(i).

##### **Persons disqualified for jury service**

79. In Schedule 1 to the Juries (Northern Ireland) Order 1996 (persons disqualified for jury service) after paragraph 1 insert—

“1A. Any person who has at any time been convicted of an offence and had imposed on him an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008”.

##### **Persons ineligible for jury service**

80.—(1) Schedule 2 to the Juries (Northern Ireland) Order 1996 (persons ineligible for jury service) is amended as follows.

(2) After the entry relating to the Policing Board insert—

“Members of the National Crime Agency and National Crime Agency officers.”.

(3) Omit the following entries—

“A person appointed for the purposes of Article 7(6) of the Treatment of Offenders (Northern Ireland) Order 1976.”

“Members of the Royal Irish Regiment.”.

### **Persons excusable as of right from jury service**

**81.**—(1) Schedule 3 to the Juries (Northern Ireland) Order 1996 (persons excusable from jury service as of right) is amended as follows.

(2) For the entry relating to Representatives to the European Parliament substitute—

“Members of the European Parliament”.

(3) For the entry relating to the Secretary and any Director of the Northern Ireland Audit Office substitute—

“The Deputy Comptroller and Auditor General for Northern Ireland and any Assistant Auditor General for Northern Ireland”.

(4) For the entry relating to persons aged between 65 and 70 years and the heading immediately before it substitute—

*“Persons aged over 70 years*

*Persons aged over 70 years”.*

*Unpaid community service after early release*

### **Unpaid community service after early release**

**82.** In Article 19 of the Criminal Justice (Northern Ireland) Order 2008 after paragraph (1) insert—

“(1A) The Department may by regulations, having consulted the Probation Board, provide for a community service scheme, under which a person released under paragraph (1) may be required to engage in unpaid community service for the remaining period of the fixed term they would have served but for their early release.”.

*Personal samples, DNA profiles and fingerprints***Power to take further fingerprints or non-intimate samples**

**83.**—(1) In Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (fingerprinting)—

- (a) in paragraphs (5A) and (5B) for the words after “investigation” in sub-paragraph (b) substitute “but—
  - (i) paragraph (4A)(a) or (b) applies, or
  - (ii) paragraph (5C) applies.”;
- (b) after paragraph (5B) insert—
  - “(5C) This paragraph applies where—
    - (a) the investigation was discontinued but subsequently resumed, and
    - (b) before the resumption of the investigation the fingerprints were destroyed pursuant to Article 63B(2).”

(2) In Article 63 of that Order (non-intimate samples)—

- (a) at the end of paragraph (3ZA)(b) insert “, or
  - (iii) paragraph (3AA) applies.”;
- (b) in paragraph (3A)(b) for “insufficient; or” substitute “insufficient, or
  - “(iii) paragraph (3AA) applies; or”;
- (c) after paragraph (3A) insert—
  - “(3AA) This paragraph applies where the investigation was discontinued but subsequently resumed, and before the resumption of the investigation—
    - (a) any DNA profile derived from the sample was destroyed pursuant to Article 63B(2), and
    - (b) the sample itself was destroyed pursuant to Article 63P(2), (3) or (10).”

(3) In Schedule 2A to that Order (fingerprinting and samples: power to require attendance at police station)—

- (a) in paragraph 1 (fingerprinting: persons arrested and released)—
  - (i) in sub-paragraph (2) for “Article 61(5A)(b)” substitute “Article 61(5A)(b)(i)”;
  - (ii) after sub-paragraph (3) insert—
    - “(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 61(5A)(b)(ii) (fingerprints destroyed where investigation interrupted) after the end of the period of six

months beginning with the day on which the investigation was resumed.”;

- (b) in paragraph 2 (fingerprinting: persons charged, etc.)—
  - (i) in sub-paragraph (2)(b) for “Article 61(5B)(b)” substitute “Article 61(5B)(b)(i)”;
  - (ii) at the end of sub-paragraph (2) insert “, or
    - “(c) in a case falling within Article 61(5B)(b)(ii) (fingerprints destroyed where investigation interrupted), the day on which the investigation was resumed.”;
- (c) in paragraph 9 (non-intimate samples: persons arrested and released)—
  - (i) in sub-paragraph (2) for “within Article 63(3ZA)(b)” substitute “within Article 63(3ZA)(b)(i) or (ii)”;
  - (ii) after sub-paragraph (3) insert—
    - “(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3ZA)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.”;
- (d) in paragraph 10 (non-intimate samples: person charged etc.)—
  - (i) in sub-paragraph (3) for “within Article 63(3A)(b)” substitute “within Article 63(3A)(b)(i) or (ii)”;
  - (ii) after sub-paragraph (4) insert—
    - “(5) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3A)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.”.

#### **Retention of material: persons convicted of an offence in England and Wales or Scotland**

**84.** After Article 63G of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

#### **“Retention of material: effect of convictions in England and Wales or Scotland**

**63GA.**—(1) This Article applies to Article 63B material which does not fall within Article 63G (2).

(2) If the material relates to a person who has been convicted under the law in force in England and Wales of a recordable offence within the

meaning of section 118(1) of PACE (“an EW recordable offence”) Articles 63D, 63E, 63H and 63L apply as if—

- (a) references in Article 63D(2) and (14), 63E(2) 63H(1)(a)(ii) and (5) and 63L(3)(b) to a person being convicted of a recordable offence included references to a person being convicted of an EW recordable offence (and section 65B(1) of PACE (meaning of “convicted”) applies for that purpose);
  - (b) references in Article 63D(14) to a qualifying offence included references to a qualifying offence within the meaning of section 65A of PACE;
  - (c) references in Article 63D(14) and 63H(2) to (4) to a custodial sentence included references to a relevant custodial sentence within the meaning of section 63K(6) of PACE.
- (3) If the material relates to a person who has been convicted under the law in force in Scotland of an offence which is punishable by imprisonment (“a relevant Scottish offence”) Article 63D, 63E, 63H and 63L apply as if—
- (a) references in Article 63D(2) and (14), 63E(2) 63H(1)(a)(ii) and (5) and 63L(3)(b) to a person being convicted of a recordable offence included references to a person being convicted of a relevant Scottish offence;
  - (b) references in Article 63D(14) to a qualifying offence included references to—
    - (i) a relevant sexual offence and a relevant violent offence within the meaning of section 19A of the Criminal Procedure (Scotland Act) 1995; and
    - (ii) an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008;
  - (c) references in Article 63D(14) and 63H(2) to (4) to a custodial sentence included references to a sentence of imprisonment or detention.
- (4) In this Article “PACE” means the Police and Criminal Evidence Act 1984.”.

**Retention of DNA profiles or fingerprints: persons given a prosecutorial fine**

**85.** After Article 63K of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

**“Retention of Article 63B material: persons given a prosecutorial fine notice**

**63KA.**—(1) This Article applies to Article 63B material which—

- (a) relates to a person who is given a prosecutorial fine notice under section 18 of the Justice Act (Northern Ireland) 2015, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence (or one of the offences) to which the notice relates.
- (2) The material may be retained—
- (a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,
  - (b) in the case of a DNA profile, for a period of 2 years beginning with—
    - (i) the date on which the DNA sample from which the profile was derived was taken, or
    - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.”.

**Power to retain DNA profile or fingerprints in connection with different offence**

**86.** For Article 63N of the Police and Criminal Evidence (Northern Ireland) Order 1989 (Article 63B material obtained for one purpose and used for another) substitute—

**“Retention of Article 63B material in connection with different offence**

**63N.**—(1) Paragraph (2) applies if—

- (a) Article 63B material is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence, and
- (b) the person subsequently—
  - (i) is arrested for or charged with a different offence,
  - (ii) is convicted of a different offence,
  - (iii) is given a penalty notice or a prosecutorial fine notice in respect of a different offence;
  - (iv) is given a caution in respect of a different offence committed when the person is under the age of 18; or
  - (v) completes a diversionary youth conference process with respect to a different offence.

(2) Articles 63C to 63M and Articles 63O and 63Q have effect in relation to the material as if the material were also taken (or, in the case of a DNA profile, derived from a sample taken)—

- (a) in connection with the investigation of the offence mentioned in paragraph (1)(b),
- (b) on the date on which the person was arrested for that offence or, if the person was not arrested, on the date on which the person—
  - (i) was charged with the offence or given a penalty notice or prosecutorial fine in respect of the offence, or
  - (ii) was cautioned in respect of the offence; or
  - (iii) completed the diversionary youth conference process with respect to the offence.
- (3) Paragraph (3) of Article 63J applies for the purposes of this Article as it applies for the purposes of Article 63J.”.

**Retention of personal samples that are or may be disclosable**

**87.** In Article 63R of the Police and Criminal Evidence (Northern Ireland) Order 1989 (exclusions for other regimes)—

- (a) in paragraph (5) (material that is or may become disclosable to the defence) for “Articles 63B to 63O and 63Q” substitute “Articles 63B to 63Q”;
- (b) after that paragraph insert—
  - “(5A) A sample that—
    - (a) falls within paragraph (5), and
    - (b) but for that paragraph would be required to be destroyed under Article 63P,

must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(5B) A sample that once fell within paragraph (5) but no longer does, and so becomes a sample to which Article 63P applies, must be destroyed immediately if the time specified for its destruction under that Article has already passed.”.

*Early guilty pleas*

**Sentencing court to indicate sentence which would have been imposed if guilty plea entered at earliest reasonable opportunity**

**88.—**(1) Subsection (2) applies where in any criminal proceedings a person (“D”) is convicted of an offence and—

- (a) D did not at any stage of the proceedings plead guilty to the offence; or

(b) D's plea of guilty to the offence (or D's indication of intention to plead guilty) was not, in the opinion of the court, entered (or given) at the earliest reasonable opportunity.

(2) The court in sentencing D for the offence must indicate the sentence which the court would have imposed for the offence if D had pleaded guilty to the offence (or indicated D's intention to do so) at the earliest reasonable opportunity in the proceedings.

(3) For the purposes of this section—

- (a) a plea of guilty which is changed to a plea of not guilty is to be disregarded;
- (b) an indication of intention to plead guilty is to be disregarded if a plea of not guilty is actually entered.

### *Sexual offences against children*

#### **Meeting a child following sexual grooming etc.**

**89.** In Article 22(1)(a) of the Sexual Offences (Northern Ireland) Order 2008 (meeting a child following sexual grooming etc.) for “on at least two occasions” substitute “on one or more occasions”.

#### **Sexual communication with a child**

**90.**—(1) In the Sexual Offences (Northern Ireland) Order 2008 after Article 22 insert—

##### **“Sexual communication with a child**

**22A.**—(1) A person aged 18 or over (A) commits an offence if—

- (a) for the purpose of obtaining sexual gratification, A intentionally communicates with another person (B),
  - (b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual, and
  - (c) B is under 16 and A does not reasonably believe that B is 16 or over.
- (2) For the purposes of this Article, a communication is sexual if—

- (a) any part of it relates to sexual activity, or
- (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual;

and in sub-paragraph (a) “sexual activity” means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.



(3) A person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.”.

(2) In Article 4 of that Order (meaning of “sexual”) after “except” insert “Article 22A (sexual communication with a child) or”.

(3) In Article 76(10)(a) of that Order (offences outside the United Kingdom) after “children)” insert “except Article 22A”.

(4) In the Sexual Offences Act 2003 in Schedule 3 (sexual offences for purposes of Part 2 of that Act) after paragraph 92H insert—

“**92HA.** An offence under Article 22A of that Order (sexual communication with a child)”.

(5) In the Criminal Justice (Northern Ireland) Order 2008 in Part 2 of Schedule 2 (specified sexual offences) in paragraph 14A after the entry relating to Article 22 of the Sexual Offences (Northern Ireland) Order 2008 insert—

“Article 22A (sexual communication with a child),”.

### *Avoiding delay in criminal proceedings*

#### **General duty to progress criminal proceedings**

**91.** In relation to criminal proceedings in the Crown Court or a magistrates’ court, it is the duty of the court, the prosecution and the defence to reach a just outcome as swiftly as possible.

#### **Case management regulations**

**92.—(1)** The Department may make regulations in relation to the management and conduct of criminal proceedings in the Crown Court or a magistrates’ court.

(2) The regulations may impose duties on—

- (a) the court;
- (b) the prosecution; and
- (c) the defence.

(3) The regulations may confer functions on the court in relation to the active case management of criminal cases.

(4) Active case management includes in particular—

- (a) the early identification of the real issues;
- (b) the early identification of the needs of witnesses;

- (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
  - (d) monitoring the progress of the case and compliance with directions;
  - (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
  - (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
  - (g) encouraging the participants to co-operate in the progression of the case;
  - (h) making use of technology; and
  - (i) giving any direction appropriate to the needs of that case as early as possible.
- (5) The regulations must in particular take account of the need to identify and respect the needs of—
- (a) victims,
  - (b) witnesses, particularly those to whom Article 4(2) of the Criminal Evidence (Northern Ireland) Order 1999 may apply; and
  - (c) persons under the age of 18.
- (6) Before making any regulations under this section the Department must consult—
- (a) the Lord Chief Justice;
  - (b) the Director of Public Prosecutions;
  - (c) the General Council of the Bar of Northern Ireland; and
  - (d) the Law Society of Northern Ireland.

#### *Public Prosecutor's summons*

#### **Public Prosecutor's summons**

**93.—**(1) Where a complaint has been made by a Public Prosecutor to a lay magistrate for any county court division that a person has, or is suspected of having, committed a summary offence in respect of which a magistrates' court for that county court division has jurisdiction to hear a charge, the Public Prosecutor may issue a summons directed to that person requiring that person to appear before that court to answer to the complaint.

(2) Where—

- (a) a Public Prosecutor issues a summons under subsection (1) directed to a person requiring that person to appear before a magistrates' court for a county court division, and

- (b) a complaint has been made to a lay magistrate that the person in respect of whom the summons has been issued has, or is suspected of having, committed a summary offence in another county court division,

the Public Prosecutor may issue a summons directed to that person requiring that person to appear before that court to answer to the complaint.

(3) Where a Public Prosecutor has made a complaint to a lay magistrate for any county court division that a person has, or is suspected of having, committed an indictable offence into which a magistrates' court for that county court division has jurisdiction to conduct a preliminary investigation or a preliminary inquiry the Public Prosecutor may issue a summons requiring that person to appear before that magistrates' court.

(4) Where a Public Prosecutor is satisfied that a summons issued under subsection (1) has not been served, the Public Prosecutor may, without a complaint being made to a lay magistrate, re-issue the summons extending the time for the appearance of the person summoned.

(5) Any existing statutory provision which applies to a complaint made or summons issued under paragraph (1), (2), (3) or (4A) of Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 shall apply (with appropriate modifications) to a complaint made or summons issued by a Public Prosecutor under the corresponding subsection of this section.

(6) In this section "Public Prosecutor" has the meaning given in section 29(5) of the Justice (Northern Ireland) Act 2002.

### *Defence access to premises*

#### **Defence access to premises**

**94.—**(1) Where a person charged with an offence appears or is brought before a court in connection with that offence, the court may, on the application of that person, make an order under this section for access by or on behalf of that person to any premises specified in the order.

(2) Where a person convicted of an offence appeals against that conviction, the court to which the appeal lies may, on the application of that person, make an order under this section for access by or on behalf of that person to any premises specified in the order.

(3) In this section—

- (a) in relation to an order made under subsection (1), "D" and "the court" mean, respectively, the person and the court referred to in that subsection;
- (b) in relation to an order made under subsection (2), "D" and "the court" mean, respectively, the person and the court referred to in that subsection;

- (c) “premises” means any place and, in particular, includes a vehicle, vessel or moveable object;
- (d) “specified”, in relation to an order under this section, means specified in the order.
- (4) The court shall not make an order under this section in relation to any premises unless it is satisfied that—
  - (a) access to the premises is required to ensure compliance with Article 6 of the European Convention on Human Rights; and
  - (b) the order is an appropriate means of securing such access.
- (5) An order under this section for access to any premises authorises the specified persons—
  - (a) to enter those premises;
  - (b) to inspect those premises and anything on those premises;
  - (c) to carry out any other specified activity on those premises or in relation to anything on those premises.
- (6) An order under this section does not of itself authorise the release of D from custody.
- (7) An order under this section may include conditions in connection with the access granted by the order to any premises including conditions—
  - (a) requiring the specified persons to be accompanied by a police officer at all times while on the premises;
  - (b) as to the date and time of day when access to the premises is to take place;
  - (c) as to the conduct of any activity specified under subsection (5)(c);
  - (d) as to such other matters as the court thinks fit.
- (8) An order under this section authorises entry to the specified premises on one occasion only; but nothing in this section prevents a court from making more than one order in relation to any premises.
- (9) An application to a court for an order under this section in relation to any premises is to be made in accordance with the rules governing the practice and procedure of that court; and such rules may in particular provide for—
  - (a) notice of the making of the application to be served on the occupier of the premises and any other persons appearing to the court to have an interest in the matter; and
  - (b) for such persons to have an opportunity to make representations to the court as to the conditions to be imposed in relation to any order made under this section.

*Court security officers***Powers of court security officers**

**95.** At the end of Schedule 3 to the Justice (Northern Ireland) Act 2004 (court security officers) add—

*“Powers of court security officers to extend  
to land on which relevant building stands*

**8.** Any power of a court security officer exercisable in, or in relation to, the relevant building, is also exercisable in, or in relation to, any place within the boundary of the land on which the building stands; and references in this Schedule to a relevant building are to be construed accordingly”.

*Causing or allowing child or vulnerable adult to suffer serious physical harm*

**Causing or allowing child or vulnerable adult to suffer serious physical harm**

**96.—**(1) Section 5 of the Domestic Violence, Crime and Victims Act 2004 (offence of causing or allowing the death of a child or vulnerable adult) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a) after “dies” insert “or suffers serious physical harm”;
- (b) in paragraph (d) for “V’s death” substitute “the death or serious physical harm”.

(3) In subsection (3)(a) for “V’s death” substitute “the death or serious physical harm”.

(4) In subsection (4)(b) for “V’s death” substitute “the death or serious physical harm”.

(5) In subsection (7) after “this section” insert “of causing or allowing a person’s death”.

(6) After that subsection insert—

“(8) A person guilty of an offence under this section of causing or allowing a person to suffer serious physical harm is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine, or to both.”.

(7) For the cross-heading before section 5 substitute “Causing or allowing a child or vulnerable adult to die or suffer serious physical harm”.

(8) Schedule 6 (which contains amendments consequential on this section) has effect.

*Domestic violence protection notices and orders***Domestic violence protection notices and orders**

**97.** Schedule 7 (which makes provision about domestic violence protection notices and orders) has effect.

*Youth justice***Aims of youth justice system**

**98.** In section 53 of the Justice (Northern Ireland) Act 2002 (Aims of youth justice system) for subsection (3) substitute—

“(3) But all such persons and bodies must also—

- (a) have the best interests of children as a primary consideration; and
- (b) have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.”.

**Amendment to section 10 of the Criminal Justice Act (Northern Ireland) 2013**

**99.—**(1) Section 10 of the Criminal Justice Act (Northern Ireland) 2013 (release on licence of child convicted of serious offence) is amended as follows.

(2) Omit subsection (5).

(3) For subsection (6) substitute—

“(6) Subsection (7) applies where—

- (a) on commencement a person is detained in pursuance of a sentence under Article 45(2) of the 1998 Order, and
- (b) that person is a person whose licence has been revoked under Article 46(2) of the 1998 Order.”.

*Salary of Lands Tribunal members***Salary of Lands Tribunal members**

**100.—**(1) Section 2 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 is amended as follows.

(2) For subsections (5) and (5A) substitute—

“(5) There shall be paid to the members of the Lands Tribunal appointed under section 1(2) such remuneration as the Department of Justice may determine.”.

*Amendment to Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*

**Amendment to Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015**

**101.**—(1) Section 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (independent guardian) is amended as follows.

(2) In subsection (4) for paragraph (a) (which requires arrangements to be made with a charity registered under the Charities Act (Northern Ireland) 2008) substitute—

“(a) be made with a charity;”.

(3) In subsection (11) (definitions) after the definition of “administrative decision” insert—

““charity” means an institution which is—

- (a) a charity within the meaning of section 1 of the Charities Act (Northern Ireland) 2008 or treated as such a charity by virtue of the Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2013;
- (b) a charity within the meaning of section 1 of the Charities Act 2011; or
- (c) a charity within the definition set out in section 106 of the Charities and Trustee Investment (Scotland) Act 2005;”.