

Justice Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3

Miscellaneous

Section 48: Penalties for animal welfare offences

This Section amends the Welfare of Animals Act (Northern Ireland) 2011 (the 2011 Act) to, increase the maximum penalties in respect of animal welfare offences for all indictable offences and certain summary offences; amend the mode of trial for three offences from summary only to hybrid; and, extend the availability of a range of post-conviction court orders.

Subsections (1) and (3) amend the mode of trial for the following offences in the 2011 Act from summary only to hybrid, which will allow cases involving these offences to be tried either summarily or on indictment: -

- Possessing, supplying, publishing images of an animal fight (section 8(3));
- Breach of a Disqualification Order (section 33(9)); and
- Selling or parting with an animal pending the outcome of an appeal against a relevant Court Order (section 40(7)).

Subsections (2) to (4) increase the maximum sentence for cases heard on indictment from two years to five years, and for summary cases involving unnecessary suffering (section 4) and causing, attending, or other involvement in, an animal fight (sections 8(1) and 8(2)), the maximum sentence increases from six months to twelve months and the maximum fine from £5,000 to £20,000.

Subsections (5) and (6) extend the range of court orders available under sections 32(1), 33(10), 36(1), 36(6), 37(1) and 38(1) of the 2011 Act to apply to cases involving the offence of possession / supply of images of an animal fight (section 8(3)).

Subsection (7) amends Article 29(1) of the Magistrates' Courts (Northern Ireland) Order 1981 to add the offences of unnecessary suffering (section 4) and

causing, attending, or other involvement in, an animal fight (sections 8(1) and 8(2)) to the list of offences for which a defendant cannot elect for a trial by jury.

Section 49: Lay visitors

This Section amends section 73 of the Police (Northern Ireland) Act 2000 to extend the scope of lay visitors to all police stations in Northern Ireland. At present, only stations designated by the Chief Constable for the purpose of detaining arrested persons fall within the statutory remit of the custody visitor scheme.

Section 50: Possession of pornographic images of rape and assault by penetration

This Section amends Part 5 of the Criminal Justice and Immigration Act 2008 (“the 2008 Act”) which provides for the offence of possession of extreme pornographic images, so as to extend its provision to cover the possession of extreme pornographic images that depict non-consensual sexual penetration.

Subsection (2) amends section 63(6) of the 2008 Act, so as to include a reference to new subsection (7A) (inserted into the 2008 Act by section 37 of the Criminal Justice and Courts Act 2015).

Specifically, subsection (7A) includes two additional categories of prohibited material: an image which portrays, in an explicit and realistic way: (i) an act which involves the non-consensual penetration of a person’s vagina, anus or mouth by another with the other person’s penis; and (ii) an act which involves the non-consensual sexual penetration of a person’s vagina or anus by another with a part of the other person’s body or anything else.

The new category of prohibited material will include any image of that nature, irrespective of whether the act is real or simulated (or staged) or whether the person has come into possession of that image from an electronic source or otherwise.

Subsection (3) amends section 66 of the 2008 Act to apply a defence to possession of an image that portrays an act within new subsection (7A), alongside existing defences to the section 63 offence, to a person who is a participant in the image, as well as the possessor, where he or she can prove that, despite any appearance to the contrary, consent was given (freely and by someone who had capacity).

Subsection (4) amends section 67 to provide that a person found guilty of an offence of possessing images coming within the ambit of new subsection (7A) will be liable to a maximum sentence of imprisonment for three years, or a fine, or both.

Section 51: Disclosing private sexual photographs and films with intent to cause distress

This Section creates an offence of disclosing private sexual photographs and films if the disclosure is made without the consent of the individual in the photograph or film and the intention is to cause distress to that individual (Section 51(1)) but it is not an offence if the disclosure is made to the individual involved (Section 51(2)).

The Section sets out the defences that apply to the offence, which may include that the disclosure was necessary to prevent, detect or investigate crime, that the disclosure in the course of publication of journalistic material was in the public interest, or that there was a previous disclosure for reward. (Sections 51(3)-(7)).

The Section sets out the penalty for disclosing a private sexual photograph or film with intent to cause distress on conviction on indictment as a term of imprisonment of up to 2 years or a fine (or both), or on summary conviction to a term of imprisonment of up to 6 months or a fine not exceeding the statutory maximum (or both) (Section 51(9)).

Section 52: Meaning of “disclose” and “photograph or film”

This Section defines the terms “disclose” and “photograph or film” for the purposes of the offence in Section 51.

Section 53: Meaning of “private” and “sexual”

This Section defines the terms “private” and “sexual” for the purposes of the offence in Section 51.

Section 54: Offence of assaulting certain emergency workers

This Section creates an offence of assaulting an ambulance worker in the execution of their duty or a person who is assisting an ambulance worker in the execution of that ambulance worker’s duty (Sections 54(1) and (2)). A person found guilty on the offence shall be liable on summary conviction to a term of imprisonment of up to 6 months or to a fine not exceeding the statutory maximum (or both), or on conviction on indictment to a term of imprisonment of up to 2 years or a fine (or both) (Section 54(3)).

Section 55: Early removal from prison of prisoners liable to removal from United Kingdom

This Section makes general provision for the removal from a Northern Ireland prison of a prisoner who is liable for removal from the United Kingdom (subsection (1)(a)) and who has served at least one-half of the requisite custodial period (subsection (1)(b)).

It also confirms that the removal from prison must be with the prisoner’s agreement and that the period of removal may be at any time during the period

of 135 days ending the day on which the prisoner will have served the requisite custodial period.

Subsection (2) provides that the prisoner to be removed must be serving a sentence of imprisonment for a determinate sentence of at least 6 months and that prisoners serving an extended custodial sentence under Article 14 of the Criminal Justice (NI) Order 2008 are excluded.

Subsection (3) provides that for as long as the removed prisoner remains in Northern Ireland they will be liable to be detained in pursuance of their sentence. Subsection (4) provides the Department with a power to amend the number of days specified in subsection 1 by order. Subsection (5) described the circumstances in which a prisoner is liable to removal from the United Kingdom.

Section 56: Re-entry into Northern Ireland of offender removed under section 55

This Section provides for how a prisoner removed early from prison is to be treated should they return to Northern Ireland at a later date. Subsection (2) provides for a person returning to Northern Ireland before their original sentence expiry date to be detained in pursuance of their sentence for a period of time equal in length to the outstanding custodial period or until their sentence expiry date, whichever is sooner.

Subsection (3) provides a constable with a power to arrest without warrant any person suspected of being liable to be detained by virtue of subsection (2) and to take that person to a place where that person can be detained.

Subsection (4) provides for a person so detained by virtue of subsection (2) to be unable to be removed again under Section 43. Subsection (5) provides for a person detained under the provisions of subsection (2) to be released by whichever of the two dates specified in subsection (2) is the earlier.

Subsection (6) sets out definitions of “further custodial period”, “outstanding custodial period” and “sentence expiry date”

Section 57: Direct committal for trial

This Section amends Section 9 of the Justice Act (Northern Ireland) 2015 by inserting a new paragraph (aa) in subsection (2) to ensure offences that are caught by Article 45 of the Magistrates’ Courts (NI) 1981 and Article 17 of the Criminal Justice (Children) (NI) Order 1998 are able to attract the direct committal arrangements where the prosecution decides to proceed on indictment.

Section 58: Amendments of Firearms (Northern Ireland) Order 2004

This Section gives effect to Schedule 4 (Section 58(1)), which contains amendments to the Firearms (Northern Ireland) Order 2004 and repeals Sections 103 to 105 of the Justice Act (Northern Ireland) 2011 (Section 58(2)).

Section 59: Costs of Accountant General in administering funds in court

This Section amends section 116 of the Judicature (Northern Ireland) Act 1978 to clarify that the current provision giving power to fix fees to be taken “in any court in Northern Ireland or in any office or by any officer connected with any such court” also includes the Accountant General and the Court Funds Office.

In addition, subsection (2) also clarifies that the existing provision in section 39 of the Administration of Justice Act 1982 is unaffected by this.