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STATUTORY INSTRUMENTS

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**1994 No. 2795**

**The Criminal Justice (Northern Ireland) Order 1994**

**PART I**

**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Criminal Justice (Northern Ireland) Order 1994.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(1)</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“fine” includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation;

“relevant provision” means a provision contained in—

- (a) an Act of the Parliament of the United Kingdom;
- (b) an Act of the Parliament of Ireland;
- (c) an Act of the Parliament of Northern Ireland;
- (d) an Order in Council under section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972<sup>(2)</sup>;
- (e) an Order in Council under Schedule 1 to the Northern Ireland Act 1974;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) In Articles 19 to 24—

“complainant” means a person against whom the offence is alleged to have been committed;

“picture” includes a likeness however produced;

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990<sup>(3)</sup>; and

“written publication” includes a film, a sound-track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

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(1) 1954 c. 33 (N.I.)

(2) 1972 c. 22

(3) 1990 c. 42

## PART II

### FINES AND PENALTIES

#### *Financial and other penalties*

#### **Increase of certain maxima**

**3.**—(1) In Article 4(8) of the Fines and Penalties (Northern Ireland) Order 1984 (maximum fine on summary conviction of an offence punishable on conviction on indictment or on summary conviction), in the definition of “prescribed sum” for “£2,000” there shall be substituted “£5,000”.

(2) For Article 5(2) of the Fines and Penalties (Northern Ireland) Order 1984 (standard scale of fines) there shall be substituted—

“(2) The standard scale is shown below—

<i>Level on the scale</i>	<i>Amount of fine</i>
1	£200
2	£500
3	£1,000
4	£2,500
5	£5,000”.

(3) In section 72(1) of the Children and Young Persons Act (Northern Ireland) 1968(4) (restriction on punishment of a child and young person)—

(a) in paragraph (a) (maximum fine on summary conviction of a child) for “£100” there shall be substituted “£250”;

(b) in paragraph (b) (maximum fine on summary conviction of a young person) for “£400” there shall be substituted “£1,000”.

(4) In the Magistrates' Courts (Northern Ireland) Order 1981(5)—

(a) in Article 54(1)(b)(i) (fine in lieu of imprisonment), for “£400” there shall be substituted “level 3 on the standard scale”;

(b) in Article 119(1) (penalty for failure to appear or failure to comply), for “£50” there shall be substituted “level 4 on the standard scale”.

(5) In the statutory provisions specified in column 1 of Schedule I (the general description of which is given in column 2 of that Schedule), for the amount specified in column 3 of that Schedule there shall be substituted the amount specified in column 4 of that Schedule.

#### **Period of imprisonment for default**

**4.**—(1) In section 35 of the Criminal Justice Act (Northern Ireland) 1945(6) (powers of Crown Court or county courts in relation to fines and forfeited recognizances) for subsection (2) there shall be substituted—

(4) 1968 c. 34 (N.I.)

(5) 1981 NI 26

(6) 1945 c. 15 (N.I.)

“(2) The periods set out in the second column of the following Table shall be the maximum periods of imprisonment or detention which may be fixed under subsection (1) (c) applicable respectively to the amounts set out opposite thereto—

**TABLE**

An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years”.

(2) For the Table in paragraph 1 of Schedule 3 to the Magistrates' Courts (Northern Ireland) Order 1981(7) (maximum periods of imprisonment for default in paying sums adjudged to be paid by a conviction), there shall be substituted the following Table—

**“TABLE**

An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months

An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000	12 months”.

### **Fines on companies**

**5.**—(1) After section 35(4) of the Criminal Justice Act (Northern Ireland) 1945<sup>(8)</sup> (powers of Crown Court or county courts in relation to fines and forfeited recognizances) there shall be inserted—

“(4A) Where—

- (a) the Crown Court has imposed a fine on a company; and
- (b) the court has issued a warrant of distress under section 3 of the Fines Act (Ireland) 1851 for the purpose of levying the amount of the fine; and
- (c) it appears on the return to the warrant that the money and goods of the company are insufficient to satisfy the amount of the fine with the costs and charges of levying the same,

the chief clerk may make an application in relation to the company under Article 22 or 104 of the Insolvency (Northern Ireland) Order 1989 (administration or winding up).”.

(2) After Article 92 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(9)</sup> there shall be inserted—

#### **“Fines imposed on companies**

**92A.**—(1) Where—

- (a) a magistrates' court has, or is treated by any statutory provision as having, adjudged a company by a conviction to pay a sum; and
- (b) the court has issued a warrant of distress under Article 92(1)(a) for the purpose of levying the sum; and
- (c) it appears on the return to the warrant that the money and goods of the company are insufficient to satisfy the sum with the costs and charges of levying the same,

the clerk of petty sessions may make an application in relation to the company under Article 22 or 104 of the Insolvency (Northern Ireland) Order 1989 (administration or winding up).”.

#### *Maximum fines under instruments*

### **Fines on summary conviction for offences punishable on indictment or on summary conviction under instruments**

**6.**—(1) For any offence punishable on conviction on indictment or on summary conviction being an offence created by an instrument made before the coming into operation of this Article under any relevant provision, the maximum fine which may be imposed on summary conviction shall by virtue of this paragraph be the statutory maximum unless the offence is one for which by virtue of the instrument a larger maximum fine may be imposed on summary conviction.

(8) 1945 c. 15 (N.I.)

(9) 1981 NI 26

(2) Where apart from this Article the maximum fine would be one amount in the case of a first conviction and a different amount in the case of a second or subsequent conviction, paragraph (1) shall apply irrespective of whether the conviction is a first, second or subsequent one.

(3) Paragraph (1) shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a fine of a specified amount or to a fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued.

(4) Where there is under any relevant provision (however framed or worded) passed or made before the coming into operation of this Article a power by instrument to impose penal provisions, being a power which allows the creation of offences punishable on conviction on indictment or on summary conviction, the maximum fine which may in the exercise of that power be authorised on summary conviction in respect of such an offence shall by virtue of this paragraph be the statutory maximum unless some larger maximum fine can be authorised on summary conviction of such an offence by virtue of a relevant provision passed or made before the coming into operation of this Article.

(5) Where there is under any relevant provision (however framed or worded) passed or made before the coming into operation of this Article a power by instrument to create offences punishable on conviction on indictment or on summary conviction, the maximum fine for such an offence so created may be expressed as a fine not exceeding the statutory maximum.

(6) Paragraph (5) has effect in relation to exercises of powers before as well as after the coming into operation of this Article.

(7) An Order in Council under—

- (a) section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972<sup>(10)</sup>; or
- (b) Schedule 1 to the Northern Ireland Act 1974<sup>(11)</sup> (including this Order);

is not an instrument for the purposes of this Article.

#### **Offences punishable on summary conviction only under instruments—conversion of references to amounts to references to levels on standard scale**

7.—(1) Where under an instrument to which this paragraph applies the maximum fine on conviction of an offence punishable on summary conviction only specified in the instrument is an amount shown in the second column of the standard scale the reference in the instrument to the amount of the maximum fine shall be construed as a reference to the level in the first column of the standard scale corresponding to that amount.

(2) Paragraph (1) applies to any instrument, not being an Order in Council under Schedule 1 to the Northern Ireland Act 1974<sup>(12)</sup>, made after 31st August 1984 and before the coming into operation of this Article under any relevant provision.

(3) Paragraph (1) shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued.

(4) Where there is—

- (a) subject to paragraph (6), under any relevant provision (however framed or worded) passed or made before the coming into operation of this Article,
- (b) under any instrument (however framed or worded) made under such a relevant provision,

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<sup>(10)</sup> 1972 c. 22

<sup>(11)</sup> 1974 c. 28

<sup>(12)</sup> 1974 c. 28

a power by instrument to provide that a person, as regards any offence punishable on summary conviction only (whether or not created by the instrument), shall be liable on conviction to a fine, a person may be so made liable to a fine not exceeding a specified level on the standard scale.

(5) Paragraph (4) has effect in relation to exercises of powers before as well as after the coming into operation of this Article.

(6) An Order in Council under—

- (a) section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972<sup>(13)</sup>; or
- (b) Schedule 1 to the Northern Ireland Act 1974;

shall not be an instrument for the purposes of paragraph (4)(a).

### **Powers of harbour authorities to provide for maximum fines up to level 4 on standard scale**

8.—(1) Where in any instrument made—

- (a) under any relevant provision; or
- (b) under an instrument made under any relevant provision,

a harbour authority may provide that a person, as regards any offence punishable on summary conviction only (whether or not created by the instrument), shall be liable on conviction to a fine not exceeding an amount less than level 4 on the standard scale, the power shall extend by virtue of this Article to making him liable to a fine not exceeding level 4.

(2) Where any relevant provision or instrument made under any relevant provision (“the enabling legislation”) (however expressed) provides that a person who contravenes any provision of an instrument (“a regulatory instrument”) made by a harbour authority—

- (a) under the enabling legislation; or
- (b) under an instrument made under the enabling legislation,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding an amount less than level 4 on the standard scale, the power conferred by the enabling legislation shall by virtue of this Article enable the harbour authority to provide in a regulatory instrument that a person, as regards any such offence created by the regulatory instrument, shall be liable on summary conviction to a fine not exceeding level 4.

(3) In this Article “harbour authority” has the same meaning as in section 38(1) of the Harbours Act (Northern Ireland) 1970<sup>(14)</sup>.

### *Miscellaneous*

#### **Power to alter certain specified sums**

9. For paragraphs (4) and (5) of Article 17 of the Fines and Penalties (Northern Ireland) Order 1984<sup>(15)</sup> there shall be substituted—

“(4) The Secretary of State may by order amend a statutory provision specifying a sum to which this paragraph applies so as to substitute for that sum such other sum as appears to him—

- (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or

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<sup>(13)</sup> 1972 c. 22  
<sup>(14)</sup> 1970 c. 1 (N.I.)  
<sup>(15)</sup> 1984 NI 3

- (b) to be appropriate to take account of an order which has been made or is proposed to be made altering the statutory maximum or, as the case may be, the standard scale.
- (5) Paragraph (4) applies to—
  - (a) any sum which is specified as—
    - (i) the maximum fine which may be imposed on summary conviction in respect of an offence punishable on indictment or on summary conviction; and
    - (ii) is higher than the statutory maximum;
  - (b) any sum which is specified as—
    - (i) the maximum fine which may be imposed on conviction of an offence punishable on summary conviction only; and
    - (ii) is higher than level 5 on the standard scale.”.

### **Alteration of certain penalties**

**10.**—(1) In section 41 of the Foyle Fisheries Act (Northern Ireland) 1952(**16**) (penalty for pollution)—

- (a) in subsection (1) for the words from “on summary conviction” onwards there shall be substituted—
  - “(a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.”;
- (b) after subsection (1) there shall be inserted—
  - “(1A) If in the case of a continuing offence under subsection (1), the offender continues to contravene that subsection, he shall be guilty of a further offence and shall be liable on summary conviction to an additional fine not exceeding one-twentieth of level 5 on the standard scale for each day on which the offence is continued.”.

(2) In section 47 of the Fisheries Act (Northern Ireland) 1966(**17**) (penalty for pollution)—

- (a) in subsection (1) for the words from “on summary conviction” onwards there shall be substituted—
  - “(a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.”;
- (b) after subsection (1) there shall be inserted—
  - “(1A) If in the case of a continuing offence under subsection (1), the offender continues to contravene that subsection, he shall be guilty of a further offence and shall be liable on summary conviction to an additional fine not exceeding one-twentieth of level 5 on the standard scale for each day on which the offence is continued.”.

(3) In Article 3(4) of the Criminal Law (Amendment) (Northern Ireland) Order 1977 (penalties for bomb hoaxes)—

- (a) in sub-paragraph (a) for the words from “three months” onwards there shall be substituted “6 months or to a fine not exceeding the statutory maximum or to both”;

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**(16)** 1952 c. 5 (N.I.)

**(17)** 1966 c. 17 (N.I.)

- (b) in sub-paragraph (b) for “five years” there shall be substituted “7 years or to a fine or to both”.

### *Forfeiture*

#### **Power to deprive offenders of property used, or intended for use, for purposes of crime**

**11.—(1)** Subject to the following provisions of this Article, where a person is convicted of an offence and—

- (a) the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—
  - (i) has been used for the purpose of committing, or facilitating the commission of, any offence; or
  - (ii) was intended by him to be used for that purpose; or
- (b) the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which—
  - (i) has been lawfully seized from him; or
  - (ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,

the court may make an order under this Article in respect of that property, and may do so whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in a relevant provision.

(2) In considering whether to make such an order in respect of any property a court shall have regard—

- (a) to the value of the property; and
  - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).
- (3) Where a person commits an offence to which this paragraph applies by—
- (a) driving, attempting to drive or being in charge of a vehicle, or
  - (b) failing to comply with a requirement made under Article 146 of the Road Traffic (Northern Ireland) Order 1981(18) (failure to provide specimen for analysis or laboratory test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or
  - (c) failing, as the driver of a vehicle, to comply with Article 175(1) of that Order (duty to stop and give information or report accident),

the vehicle shall be regarded for the purposes of paragraph (1)(a) (and paragraph (7)(b)) as used for the purpose of committing the offence (and for the purpose of committing any offence of aiding, abetting, counselling or procuring the commission of the offence).

(4) Paragraph (3) applies to—

- (a) an offence under the Road Traffic (Northern Ireland) Order 1981 which is punishable with imprisonment,
- (b) an offence of manslaughter, and



(c) an offence under section 35 of the Offences against the Person Act 1861<sup>(19)</sup> (wanton and furious driving).

(5) Facilitating the commission of an offence shall be taken for the purposes of this Article to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection, and references in this Article to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any statutory provision on the imprisonment of young offenders.

(6) An order under this Article shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in their possession) be taken into the possession of the police.

(7) The Police (Property) Act 1897<sup>(20)</sup> shall apply, with the following modifications, to property which is in the possession of the police by virtue of this Article—

(a) no application shall be made under section 1(1) of that Act by any claimant of the property after the expiration of 6 months from the date on which the order in respect of the property was made under this Article; and

(b) no such application shall succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the property or, where an order is made under paragraph (1)(a), that he did not know, and had no reason to suspect, that the property was likely to be used for the purpose mentioned in that sub-paragraph.

(8) In relation to property which is in the possession of the police by virtue of this Article, regulations under section 2(1) of the Police (Property) Act 1897 (disposal of property in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect thereto) may make provision for disposal in cases where no application by a claimant of the property has been made within the period specified in paragraph (7)(a) or no such application has succeeded.

(9) In this Article “relevant provision” means a provision contained in an Act or Order mentioned in the definition of “relevant provision” in Article 2(2) being such an Act or Order passed or made before this Order is made.

### **Application of proceeds of forfeited property**

**12.**—(1) Where a court makes an order under Article 11 in a case where—

(a) the offender has been convicted of an offence which has resulted in a person suffering personal injury, loss or damage; or

(b) any such offence is taken into consideration by the court in determining sentence,

the court may also make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court shall be paid to that person.

(2) The court may only make an order under this Article if it is satisfied that but for the inadequacy of the means of the offender it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the specified amount.

(3) An order under this Article has no effect—

(a) before the end of the period specified in Article 11(7)(a); or

(b) if a successful application under section 1(1) of the Police (Property) Act 1897<sup>(21)</sup> has been made.

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<sup>(19)</sup> 1861 c. 100

<sup>(20)</sup> 1897 c. 30

<sup>(21)</sup> 1897 c. 30

**Forfeiture for drug offences**

13. In section 27(1) of the Misuse of Drugs Act 1971<sup>(22)</sup> (forfeiture on conviction of an offence under that Act) after the words “1987 relates” there shall be inserted the words “or a drug trafficking offence, as defined in Article 2(2) of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990”.

*Compensation orders***Compensation orders against convicted persons**

14.—(1) Subject to the provisions of this Article, a court by or before which a person is convicted of an offence, instead of or in addition to dealing with him in any other way, may, on application or otherwise, make an order (in this Article and Articles 15 to 17 referred to as “a compensation order”) requiring him to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence or to make payments for funeral expenses or bereavement in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road; and a court shall give reasons, on passing sentence, if it does not make such an order in a case where this Article empowers it to do so.

(2) Compensation under paragraph (1) shall be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecution.

(3) In the case of an offence under the Theft Act (Northern Ireland) 1969<sup>(23)</sup> or Article 172 of the Road Traffic (Northern Ireland) Order 1981<sup>(24)</sup>, where the property in question is recovered, any damage to the property occurring while it was out of the owner’s possession shall be treated for the purposes of paragraph (1) as having resulted from the offence, however and by whomsoever the damage was caused.

(4) A compensation order may only be made in respect of injury, loss or damage (other than loss suffered by a person’s dependants in consequence of his death) which was due to an accident arising out of the presence of a motor vehicle on a road, if—

- (a) it is in respect of damage which is treated by paragraph (3) as resulting from an offence under the Theft Act (Northern Ireland) 1969<sup>(25)</sup> or Article 172 of the Road Traffic (Northern Ireland) Order 1981;<sup>(26)</sup> or
- (b) it is in respect of injury, loss or damage as respects which—
  - (i) the offender is uninsured in relation to the use of the vehicle; and
  - (ii) compensation is not payable under any arrangements to which the Department of the Environment is a party;

and, where a compensation order is made in respect of injury, loss or damage due to such an accident, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.

(5) A vehicle the use of which is exempted from insurance by Article 90(2) or (3) of the Road Traffic (Northern Ireland) Order 1981 is not uninsured for the purposes of paragraph (4).

(6) A compensation order in respect of funeral expenses may be made for the benefit of anyone who incurred the expenses.

(22) 1971 c. 38

(23) 1969 c. 16 (N.I.)

(24) 1981 NI 1

(25) 1969 c. 16 (N.I.)

(26) 1981 NI 1

(7) A compensation order in respect of bereavement may only be made for the benefit of a person for whose benefit a claim for damages for bereavement could be made under Article 3A of the Fatal Accidents (Northern Ireland) Order 1977<sup>(27)</sup>.

(8) The amount of compensation in respect of bereavement shall not exceed the amount for the time being specified in Article 3A(3) of the Fatal Accidents (Northern Ireland) Order 1977.

(9) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall—

- (a) have regard to his means so far as they appear or are known to the court; and
- (b) in a case where it is proposed to make against him both a compensation order and a confiscation order under the Criminal Justice (Confiscation) (Northern Ireland) Order 1990<sup>(28)</sup>, also have regard to its duty under Article 8(3) of that Order (duty where the court considers that the offender's means are insufficient to satisfy both orders in full to order the payment out of sums recovered under the confiscation order of sums due under the compensation order).

(10) Where the court considers—

- (a) that it would be appropriate both to impose a fine and to make a compensation order; but
- (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to compensation (though it may impose a fine as well).

(11) The compensation to be paid under a compensation order made by a magistrates' court in respect of any offence of which the court has convicted the offender shall not exceed £5,000; and the compensation or total compensation to be paid under a compensation order or compensation orders made by a magistrates' court in respect of any offence or offences taken into consideration in determining sentence shall not exceed the difference (if any) between the amount or total amount which under this paragraph is the maximum for the offence or offences of which the offender has been convicted and the amount or total amounts (if any) which are in fact ordered to be paid in respect of that offence or those offences.

(12) A compensation order shall be enforceable—

- (a) if made by a magistrates' court, in the same manner as any other sum adjudged to be paid by a conviction of that court;
- (b) if made by any other court, in the same manner as any fine which has been or might have been imposed, in respect of the offence for which the person has been convicted, by the court making the order.

## **Enforcement and appeals**

**15.**—(1) A person in whose favour a compensation order is made shall not be entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

(2) Rules of court, Crown Court rules, county court rules and magistrates' court rules may make provision regarding the way in which a court is to deal with money paid in satisfaction of a compensation order where the entitlement of the person in whose favour it was made is suspended.

(3) Where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—

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(27) 1977 NI 18

(28) 1990 NI 17

- (a) the order shall cease to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
- (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

### **Review of compensation orders**

**16.** Without prejudice to section 49(2) of the Judicature (Northern Ireland) Act 1978<sup>(29)</sup> and Article 91 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(30)</sup>, at any time before the person against whom a compensation order has been made has paid into court the whole of the compensation which the order requires him to pay, but at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside, the court for the time being having functions in relation to the enforcement of the order may, on the application of the person against whom it was made, discharge the order, or reduce the amount which remains to be paid, if it appears to the court—

- (a) that the means of the person against whom the order was made are insufficient to satisfy in full both the order and a confiscation order under the Criminal Justice (Confiscation) (Northern Ireland) Order 1990<sup>(31)</sup> made against him in the same proceedings; or
- (b) that the person against whom the order was made has suffered a substantial reduction in his means which was unexpected at the time when the compensation order was made, and that his means seem unlikely to increase for a considerable period.

### **Effect of compensation order on subsequent award of damages in civil proceedings**

**17.—(1)** This Article shall have effect where a compensation order or a service compensation order or award has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be determined.

(2) The damages in the civil proceedings shall be assessed without regard to the order or award; but the plaintiff may only recover an amount equal to the aggregate of the following—

- (a) any amount by which they exceed the compensation; and
- (b) a sum equal to any portion of the compensation which he fails to recover,

and may not enforce the judgment, so far as it relates to a sum such as is mentioned in subparagraph (b), without the leave of the court.

(3) In this Article a “service compensation order or award” means—

- (a) an order requiring the payment of compensation under paragraph 11 of Schedule 5A to the Army Act 1955<sup>(32)</sup>, of Schedule 5A to the Air Force Act 1955<sup>(33)</sup> or of Schedule 4A to the Naval Discipline Act 1957<sup>(34)</sup>; or
- (b) an award of stoppages payable by way of compensation under any of those Acts.

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(29) 1978 c. 23  
(30) 1981 NI 26  
(31) 1990 NI 17  
(32) 1955 c. 18  
(33) 1955 c. 19  
(34) 1957 c. 53

## PART III

### SEXUAL OFFENCES

#### **Anonymity in rape, etc., cases**

**18.**—(1) The Sexual Offences (Northern Ireland) Order 1978(35) shall be amended as follows.

(2) In Article 2(2) (interpretation), in the definition of a “rape offence” for “and incitement to rape” there shall be substituted “, incitement to rape, conspiracy to rape, assault with intent to rape and burglary with intent to rape”.

(3) In Article 6 (anonymity of complainants in rape, etc., cases)—

(a) for paragraph (1) there shall be substituted—

“(1) Except as authorised by a direction given under this Article—

(a) after an allegation that a woman has been the victim of a rape offence has been made by the woman or by any other person, neither the woman’s name nor her address nor a still or moving picture of her shall during her lifetime—

(i) be published in Northern Ireland in a written publication available to the public; or

(ii) be included in a relevant programme for reception in Northern Ireland, if that is likely to lead members of the public to identify her as an alleged victim of such an offence; and

(b) after a person is accused of a rape offence, no matter likely to lead members of the public to identify a woman as the complainant in relation to that accusation shall during her lifetime—

(i) be published in Northern Ireland in a written publication available to the public; or

(ii) be included in a relevant programme for reception in Northern Ireland;

but nothing in this paragraph prohibits the publication or inclusion in a relevant programme of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

(1A) In paragraph (1) “picture” includes a likeness however produced.”;

(b) in paragraph (3)—

(i) the words “at which a person is charged with a rape offence” and “relating to the complainant” shall cease to have effect;

(ii) for “an acquittal of a defendant at” there shall be substituted “the outcome of”;

(c) after paragraph (5) there shall be inserted—

“(5A) Where a person is charged with an offence under paragraph (5) in respect of the publication of any matter or the inclusion of any matter in a relevant programme, it shall be a defence, subject to paragraph (5B), to prove that the publication or programme in which the matter appeared was one in respect of which the woman had given written consent to the appearance of matter of that description.

(5B) Written consent is not a defence if it is proved that any person interfered unreasonably with the woman’s peace or comfort with intent to obtain the consent.”.

(4) Article 8 (anonymity of defendants in rape, etc., cases) shall cease to have effect.

### **Anonymity of victims of certain other sexual offences**

**19.**—(1) Where an allegation has been made that an offence to which this Article applies has been committed against a person, neither the name nor address, and no still or moving picture, of that person shall during that person's lifetime—

- (a) be published in Northern Ireland in a written publication available to the public; or
- (b) be included in a relevant programme for reception in Northern Ireland,

if it is likely to lead members of the public to identify that person as the complainant.

(2) Where a person is accused of an offence to which this Article applies, no matter likely to lead members of the public to identify a person as the complainant shall during the complainant's lifetime—

- (a) be published in Northern Ireland in a written publication available to the public; or
- (b) be included in a relevant programme for reception in Northern Ireland.

(3) Paragraphs (1) and (2) are subject to any direction given under Article 21.

(4) Nothing in this Article prohibits the publication or inclusion in a relevant programme of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

### **Offences to which Article 19 applies**

**20.** Article 19 applies to the following offences—

- (a) any offence under any of the following provisions of the Offences against the Person Act 1861<sup>(36)</sup>—
  - (i) section 52 (indecent assault on a female);
  - (ii) section 61 (buggery);
  - (iii) section 62 (attempt to commit buggery, assault with intent to commit buggery or indecent assault on a male);
- (b) any offence under any of the following provisions of the Criminal Law (Amendment) Act 1885<sup>(37)</sup>—
  - (i) section 3 (procuring unlawful carnal knowledge of woman by threats or false pretences or representations or administering drugs);
  - (ii) section 4 (unlawful carnal knowledge or attempted unlawful carnal knowledge of a girl under 14 years of age);
  - (iii) section 5 (unlawful carnal knowledge of a girl under 17 years of age);
- (c) any offence under any of the following provisions of the Punishment of Incest Act 1908<sup>(38)</sup>—
  - (i) section 1 (incest, attempted incest by males);
  - (ii) section 2 (incest by females of or over 16);
- (d) any offence under section 22 of the Children and Young Persons Act (Northern Ireland) 1968<sup>(39)</sup> (indecent conduct toward a child);

<sup>(36)</sup> 1861 c. 100

<sup>(37)</sup> 1885 c. 69

<sup>(38)</sup> 1908 c. 45

<sup>(39)</sup> 1968 c 34 (N.I.)

- (e) any offence under Article 9 of the Criminal Justice (Northern Ireland) Order 1980<sup>(40)</sup> (inciting girl under 16 to have incestuous sexual intercourse);
- (f) any offence under any of the following provisions of the Mental Health (Northern Ireland) Order 1986<sup>(41)</sup>—
  - (i) Article 122(1)(a) (unlawful sexual intercourse with a woman suffering from severe mental handicap);
  - (ii) Article 122(1)(b) (procuring a woman suffering from severe mental handicap to have unlawful sexual intercourse);
  - (iii) Article 123 (unlawful sexual intercourse by hospital, etc., staff with a person receiving treatment for mental disorder);
- (g) without prejudice to section 62 of the Offences against the Person Act 1861<sup>(42)</sup>, section 4 of the Criminal Law (Amendment) Act 1885<sup>(43)</sup> or section 1 of the Punishment of Incest Act 1908<sup>(44)</sup>, any attempt to commit any of the offences mentioned in sub-paragraphs (a) to (f).

### **Power to displace Article 19**

**21.**—(1) If, before the commencement of a trial at which a person is charged with an offence to which Article 19 applies, he or another person against whom the complainant may be expected to give evidence at the trial, applies to the court for a direction under this paragraph and satisfies the court—

- (a) that the direction is required for the purpose of inducing persons who are likely to be needed as witnesses at the trial to come forward; and
- (b) that the conduct of the applicant’s defence at the trial is likely to be substantially prejudiced if the direction is not given,

the court shall direct that Article 19 shall not, by virtue of the accusation alleging the offence in question, apply in relation to the complainant.

(2) If at a trial the court is satisfied—

- (a) that the effect of Article 19 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial, and
- (b) that it is in the public interest to remove or relax the restriction,

the court shall direct that Article 19 shall not apply to such matter as is specified in the direction.

(3) A direction shall not be given under paragraph (2) by reason only of the outcome of the trial.

(4) If a person who has been convicted of an offence and has given notice of appeal against the conviction, or notice of an application for leave so to appeal, applies to the appellate court for a direction under this paragraph and satisfies the court—

- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and
- (b) that the applicant is likely to suffer substantial injustice if the direction is not given,

the court shall direct that Article 19 shall not, by virtue of an accusation which alleges an offence to which Article 19 applies and is specified in the direction, apply in relation to a complainant so specified.

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<sup>(40)</sup> 1980 NI 6  
<sup>(41)</sup> 1986 NI 4  
<sup>(42)</sup> 1861 c. 100  
<sup>(43)</sup> 1885 c. 69  
<sup>(44)</sup> 1908 c. 45

(5) A direction given under any provisions of this Article does not affect the operation of Article 19 at any time before the direction is given.

(6) If, after the commencement of a trial at which a person is charged with an offence to which Article 19 applies, a new trial of the person for that offence is ordered, the commencement of any previous trial shall be disregarded for the purposes of paragraph (1).

### **Special rules for cases of incest or buggery**

**22.**—(1) In this Article—

“section 1 offence” means an offence under section 1 of the Punishment of Incest Act 1908<sup>(45)</sup> (incest by males) or an attempt to commit that offence;

“section 2 offence” means an offence under section 2 of that Act (incest by females of or over 16) or an attempt to commit that offence;

“section 61 offence” means an offence under section 61 of the Offences against the Person Act 1861<sup>(46)</sup> (buggery) or an attempt to commit that offence.

(2) Article 19 does not apply to a woman against whom a section 1 offence is alleged to have been committed if she is accused of having committed a section 2 offence against the man who is alleged to have committed the section 1 offence against her.

(3) Article 19 does not apply to a man against whom a section 2 offence is alleged to have been committed if he is accused of having committed a section 1 offence against the woman who is alleged to have committed the section 2 offence against him.

(4) Article 19 does not apply to a person against whom a section 61 offence is alleged to have been committed if that person is accused of having committed a section 61 offence against the person who is alleged to have committed the section 61 offence against him.

(5) Paragraph (2) does not affect the operation of Articles 19 to 23 in relation to anything done at any time before the woman is accused.

(6) Paragraph (3) does not affect the operation of Articles 19 to 23 in relation to anything done at any time before the man is accused.

(7) Paragraph (4) does not affect the operation of Articles 19 to 23 in relation to anything done at any time before the person mentioned first in that paragraph is accused.

### **Offences**

**23.**—(1) If any matter is published or included in a relevant programme in contravention of Article 19, the following persons shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale—

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of publication in any other form, the person publishing the matter; and
- (c) in the case of matter included in a relevant programme—
  - (i) any body corporate engaged in providing the service in which the programme is included; and
  - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

<sup>(45)</sup> 1908 c. 45

<sup>(46)</sup> 1861 c. 100



(2) Where a person is charged with an offence under this Article in respect of the publication of any matter or the inclusion of any matter in a relevant programme, it shall be a defence, subject to paragraph (3), to prove that the publication or programme in which the matter appeared was one in respect of which the person against whom the offence mentioned in Article 19 is alleged to have been committed had given written consent to the appearance of matter of that description.

(3) Written consent is not a defence if it is proved that any person interfered unreasonably with the peace or comfort of the person giving the consent, with intent to obtain it.

(4) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.

(5) Where a person is charged with an offence under this Article it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the matter in question.

### **Provisions supplementary to Articles 19 to 23**

**24.**—(1) For the purposes of Articles 19 to 23—

- (a) where it is alleged that an offence to which Article 19 applies has been committed, the fact that any person has consented to an act which, on any prosecution for that offence, would fall to be proved by the prosecution, does not prevent that person from being regarded as a person against whom the alleged offence was committed; and
- (b) where a person is accused of an offence of incest or buggery, the other party to the act in question shall be taken to be a person against whom the offence was committed even though he consented to that act.

(2) For the purposes of Articles 19 to 23, a person is accused of an offence if—

- (a) a complaint is made alleging that he has committed the offence,
- (b) he appears before a court charged with the offence,
- (c) a court before which he is appearing commits him for trial on a new charge alleging the offence, or
- (d) a bill of indictment charging him with the offence is preferred before a court in which he may lawfully be indicted for the offence,

and references in Article 21 to an accusation alleging an offence shall be construed accordingly.

(3) Nothing in Articles 19 to 23 affects any prohibition or restriction imposed by virtue of any other statutory provision upon a publication or upon matter included in a relevant programme.

## **PART IV**

### **SUPPLEMENTAL**

### **Restriction on the application of this Order**

**25.** Nothing in any provision of Articles 3 and 6 to 17 shall affect the punishment for an offence committed before that provision comes into operation.

**Minor and consequential amendments and repeals**

26.—(1) The statutory provisions set out in Schedule 2 shall have effect subject to the amendments, being minor amendments and amendments consequential on the provisions of this Order, specified in that Schedule.

(2) The statutory provisions specified in Schedule 3 (which include certain provisions already spent) are hereby repealed to the extent specified in column 3 of that Schedule.

*N. H. Nicholls*  
Clerk of the Privy Council