

*Status: Point in time view as at 07/06/2006.*

*Changes to legislation: The Criminal Justice (Northern Ireland) Order 1996 is up to date with all changes known to be in force on or before 05 May 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)*

## STATUTORY INSTRUMENTS

# 1996 No. 3160 (N.I. 24)

## The Criminal Justice (Northern Ireland) Order 1996

- - - - - 19th December 1996

### Modifications etc. (not altering text)

- C1** Order: functions transferred from Secretary of State to Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 4(1)(2), [Sch. 1](#) (with arts. 28-31); [S.I. 2010/977](#), [art. 1\(2\)](#)

## PART I

### INTRODUCTORY

#### Title and commencement

- 1.—(1) This Order may be cited as the Criminal Justice (Northern Ireland) Order 1996.
- (2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint<sup>F1</sup>.
- (3) An order under paragraph (2) may also appoint a day for the coming into operation of any provision of an order made under section 38(2) of the Northern Ireland Constitution Act 1973 as necessary or expedient in consequence of this Order.

**F1** partly exercised SRs 1997/267, 523; 1999/230

#### Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 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—

“attendance centre order” means an order under<sup>F2</sup> Article 37 of the Criminal Justice (Children) (Northern Ireland) Order 1998;]

“Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972;

“combination order” means an order under Article 15;

“community order” means any of the following orders, namely—

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- (a) a probation order;
  - (b) <sup>F3</sup>a community service order;
  - (c) a combination order;
  - (ca) [<sup>F4</sup>a reparation order;
  - (cb) a community responsibility order;]
- Sub.#para. (d) rep. by 1998 NI 9*
- and

- (e) an attendance centre order;

[<sup>F4</sup>“community responsibility order” means an order under Article 36E of the Criminal Justice (Children) (Northern Ireland) Order 1998 (N.I. 9);]

“community sentence” means a sentence which consists of or includes one or more community orders;

“community service order” means an order under Article 13;

“custodial sentence” means—

- (a) in relation to an offender of or over the age of 21 years, a sentence of imprisonment; and
- (b) in relation to an offender under that age,—
  - (i) a sentence of imprisonment for a term of more than 4 years;
  - (ii) [<sup>F2</sup>a sentence of detention in a young offenders centre or a sentence of detention during the Secretary of State's pleasure under Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998;
  - (iii) an order under Article 39 of that Order sending the offender to a juvenile justice centre;]

<sup>F5</sup>“custody probation order” means an order under Article 24;

<sup>F3</sup>“HSS trust” means a Health and Social Services trust established under Article 10(1) of the Health and Personal Social Services (Northern Ireland) Order 1991 and “authorised HSS trust” shall be construed in accordance with paragraph (3);

“mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986;

“Order Book” means the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984;

“order for conditional discharge” means an order under Article 4 discharging a person subject to the condition specified in Article 4(1)(b);

“period of conditional discharge” means the period specified in an order for conditional discharge;

“pre-sentence report” means a report in writing which—

- (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by a probation officer or a social worker of a Board or authorised HSS trust; and
- (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State;

“Probation Board” means the Board established by the Probation Board (Northern Ireland) Order 1982;

“probation order” means an order under Article 10;

“probation period” means the period specified in a probation order;

[<sup>F4</sup>“reparation order” means an order under Article 36A of the Criminal Justice (Children) (Northern Ireland) Order 1998;]

“sentence of imprisonment” does not include a committal or attachment for contempt of court;

“sexual offence”, except in Article 45(1)(b), [<sup>F6</sup> means any of the following—

- (a) a sexual offence within the meaning of Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998;
- (b) an offence under section 3 of the Sexual Offences (Amendment) Act 2000;
- (c) an offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of attempting to commit any of the offences in paragraph (a) or (b);
- (d) an offence under Article 9 of that Order of conspiracy to commit any of those offences;
- (e) an offence of inciting another to commit any of those offences;]

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

*Definition rep. by 1998 NI 9*

“violent offence” means an offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition);

“young offenders centre” has the meaning assigned to it by section 2(a) of the Treatment of Offenders Act (Northern Ireland) 1968.

[<sup>F4</sup>“youth conference order” means an order under Article 36J of the Criminal Justice (Children) (Northern Ireland) Order 1998;]

(3) A reference in any provision of this Order to an “authorised HSS trust” is a reference to an HSS trust by which functions under that provision are exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994.

(4) For the purposes of this Order except Article 10(4) or 13(S), where an order for discharge, a probation order or a community service order has been made on appeal, the order shall be treated as if it had been made by the court from which the appeal was brought.

(5) For the purposes of any reference (however expressed) in this Order to a term of imprisonment or to a term of detention in a young offenders centre, consecutive terms shall be treated as a single term.

(6) For the purposes of any reference in this Order to a sentence of imprisonment or detention in a young offenders centre, that reference includes—

- (a) a sentence or term passed by a court in the United Kingdom, the Channel Islands or the Isle of Man;
- (b) in the case of imprisonment, a sentence passed by a court-martial on a person found guilty of a civil offence (within the meaning of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957).

(7) For the purposes of this Order, an offence is associated with another if—

- (a) the offender is convicted of it in the proceedings in which he is convicted of the other offence, or (although convicted of it in earlier proceedings) is sentenced for it at the same time as he is sentenced for that offence; or

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(b) the offender admits the commission of it in the proceedings in which he is sentenced for the other offence and requests the court to take it into consideration in sentencing him for that offence.

(8) In this Order any reference, in relation to an offender convicted of a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.

[<sup>F7</sup>(9) For the purposes of this Order, a sentence falls to be imposed under paragraph (2) of [<sup>F8</sup> Article 70] of the Firearms (Northern Ireland) Order [<sup>F8</sup> 2004] if it is required by that paragraph and the court is not of the opinion there mentioned.]

<b>F2</b>	<a href="#">1998 NI 9</a>
<b>F3</b>	prosp. insertion by <a href="#">1998 NI 20</a>
<b>F4</b>	<a href="#">2002 c. 26</a>
<b>F5</b>	prosp. insertion by <a href="#">2002 c. 26</a>
<b>F6</b>	<a href="#">2003 NI 13</a>
<b>F7</b>	<a href="#">2003 c. 44</a>
<b>F8</b>	<a href="#">2004 NI 3</a>

## PART II

### TREATMENT OF OFFENDERS

#### *Preliminary*

#### **Deferment of sentence**

3.—(1) Subject to the provisions of this Article, the Crown Court or a magistrates' court may defer passing sentence on an offender for the purpose of enabling the court to have regard, in determining his sentence, to his conduct after conviction (including, where appropriate, the making by him of reparation for his offence) or to any change in his circumstances.

(2) Any deferment under this Article shall be until such date as may be specified by the court, not being more than 6 months after the date on which the deferment is announced by the court; and where the passing of sentence has been deferred under this Article it shall not be further deferred thereunder.

(3) The power conferred by this Article shall be exercisable only if the offender consents and the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power.

(4) A court which under this Article has deferred passing sentence on an offender may pass sentence on him before the expiration of the period of deferment if during that period he is convicted in Northern Ireland of any offence.

(5) If an offender on whom a court has under this Article deferred passing sentence in respect of one or more offences is during the period of deferment convicted in Northern Ireland of any offence (“the subsequent offence”), then, without prejudice to paragraph (4) but subject to paragraph (6), the court which (whether during that period or not) passes sentence on him for the subsequent offence may also, if this has not already been done, pass sentence on him for the first-mentioned offence or offences.

(6) The power conferred by paragraph (5) shall not be exercised by a magistrates' court if the court which deferred passing sentence was the Crown Court; and the Crown Court, in exercising that power in a case in which the court which deferred passing sentence was a magistrates' court, shall not pass any sentence which could not have been passed by a magistrates' court in exercising it.

(7) A court which under this Article has deferred passing sentence on an offender may issue a summons requiring him to appear before the court, or may issue a warrant for his arrest where—

- (a) the court proposes to sentence him, whether on the date originally specified by the court or by virtue of paragraph (4) before that date; or
- (b) the offender does not appear on the date so specified.

(8) In deferring the passing of sentence under this Article a magistrates' court shall be regarded as exercising the power of adjourning the trial which is conferred by Article 161(1) of the Magistrates' Courts (Northern Ireland) Order 1981 and accordingly Articles 23 and 25(3) of that Order (non-appearance of the accused) apply (without prejudice to paragraph (7)) if the offender does not appear on the date specified in pursuance of paragraph (2).

(9) A court which under this Article defers passing sentence on an offender shall not on the same occasion remand him.

(10) Nothing in this Article shall affect the power of the Crown Court to bind over an offender to come up for judgment when called upon or the power of any court to defer passing sentence for any purpose for which it may lawfully do so apart from this Article.

(11) The power of a court under this Article to pass sentence on an offender in a case where the passing of sentence has been deferred thereunder includes power to deal with him in any way in which the court which deferred passing sentence could have dealt with him.

### *Discharge*

#### **Absolute and conditional discharge**

4.—(1) Where a court by or before which a person is convicted of an offence<sup>[F9]</sup> (not being an offence for which the sentence is fixed by law or falls to be imposed under<sup>[F10]</sup> Article 70(2)) of the Firearms (Northern Ireland) Order<sup>[F10 2004]</sup>) is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order either—

- (a) discharging him absolutely; or
- (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding 3 years from the date of the order, as may be specified in the order.

(2) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

(3) Where, under this Part, a person conditionally discharged under this Article is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

(4) The Secretary of State may by order direct that paragraph (1) shall be amended by substituting for the maximum period for the time being specified in sub-paragraph (b) of that paragraph, such other period as may be specified in the order.

(5) Nothing in paragraph (1) shall be construed as preventing a court which discharges an offender absolutely or conditionally in respect of any offence from making an order for costs against the offender or from making an order under Article 11 or 14 of the Criminal Justice (Northern Ireland)

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Order 1994 (power to deprive offenders of property used, or intended for use, for purposes of crime and compensation orders) or under Article 8 of the Criminal Justice (Northern Ireland) Order 1980 (driving disqualification where vehicle used for purposes of crime) or under section 27 of the Theft Act (Northern Ireland) 1969 (restitution orders).

**F9** 2003 c. 44

**F10** 2004 NI 3

### **Commission of further offence by person conditionally discharged**

5.—(1) If it appears to the Crown Court, where that Court has jurisdiction in accordance with paragraph (2), or to a justice of the peace having jurisdiction in accordance with that paragraph, that a person in whose case an order for conditional discharge has been made—

- (a) has been convicted by a court in any part of Northern Ireland of an offence committed during the period of conditional discharge; and
- (b) has been dealt with in respect of that offence,

the Court or justice may, subject to paragraph (3), issue a summons requiring that person to appear at the place and time specified therein or a warrant for his arrest.

(2) Jurisdiction for the purposes of paragraph (1) may be exercised—

- (a) if the order for conditional discharge was made by the Crown Court, by that Court;
- (b) if the order was made by a magistrates' court, by a justice of the peace.

(3) A justice of the peace shall not issue a summons under this Article except on complaint and shall not issue a warrant under this Article except on complaint in writing and on oath.

(4) A summons or warrant issued under this Article shall direct the person to whom it relates to appear or to be brought before the court by which the order for conditional discharge was made.

(5) If a person in whose case an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the period of conditional discharge, the magistrates' court—

- (a) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court; and
- (b) if it does so, shall send to the Crown Court a copy of the entry of the conviction made in the Order Book, signed by the clerk of petty sessions by whom the Order Book is kept.

(6) Where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with him, for the offence for which the order was made, in any manner in which it could deal with him if he had just been convicted by or before that court of that offence.

(7) If a person in whose case an order for conditional discharge has been made by a magistrates' court is convicted before the Crown Court of an offence committed during the period of conditional discharge, the Crown Court may deal with him, for the offence for which the order was made, in any manner in which the magistrates' court could deal with him if it had just convicted him of that offence.

(8) If a person in whose case an order for conditional discharge has been made by a magistrates' court is convicted by another magistrates' court of any offence committed during the period of conditional discharge, that other court may deal with him, for the offence for which the order was made, in any manner in which the court could deal with him if it had just convicted him of that offence.

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(9) Where an order for conditional discharge has been made by a court of summary jurisdiction in the case of an offender under the age of<sup>F11</sup> 18] in respect of an offence not being a summary offence or an offence which, in the case of an adult, could have been tried summarily with his consent under Article 45 of the Magistrates' Courts (Northern Ireland) Order 1981, any powers exercisable under paragraph (6), (7) or (8) by that or any other court in respect of the offender after he has attained the age of<sup>F11</sup> 18] shall be those which would be exercisable if that offence were an offence which could have been tried summarily under the said Article 45 with the offender's consent, and had been so tried.

(10) For the purposes of this Article the age of an offender at a particular time shall be deemed to be or to have been that which appears to the court after considering any available evidence to be or to have been his age at that time.

**F11** 2002 c. 26

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

**C2** Art. 5 excluded (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 41(9), 111(3) (with s. 106(4), Sch. 6 para. 3); S.R. 2011/370, art. 3(d)

**Effect of discharge**

6.—(1) Subject to paragraph (2) and to section 30(4) of the Criminal Appeal (Northern Ireland) Act 1980 and Article 140(1A) of the Magistrates' Courts (Northern Ireland) Order 1981, a conviction of an offence for which an order is made under this Part discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under Article 5.

(2) Where the offender being not less than<sup>F12</sup> 18] years of age at the time of his conviction of the offence in question, is subsequently sentenced under this Part for that offence, paragraph (1) shall cease to apply to the conviction.

(3) Without prejudice to paragraphs (1) and (2), the conviction of an offender who is discharged absolutely or conditionally under this Part shall in any event be disregarded for the purposes of any statutory provision which—

- (a) imposes any disqualification or disability upon convicted persons; or
  - (b) authorises or requires the imposition of any such disqualification or disability.
- (4) Paragraphs (1) to (3) shall not affect—
- (a) any right of any offender discharged absolutely or conditionally under this Part to rely on his conviction in bar of any subsequent proceedings for the same offence; or
  - (b) the restoration of any property in consequence of the conviction of any such offender; or
  - (c) the operation, in relation to any such offender, of any statutory provision in force at the commencement of this Part which is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.

**F12** 2002 c. 26

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

**C3** Art. 6 excluded (6.4.2008) by Serious Crime Act 2007 (c. 27), ss. 36(5), 94(1); S.I. 2008/755, art. 15(1)(f)

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- C4** Art. 6 excluded (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 36(6), 94(1)**; S.I. 2008/755, **art. 15(1)(f)**
- C5** Art. 6(1) excluded (6.4.2010) by Coroners and Justice Act 2009 (c. 25), **ss. 158(3)(b), 182(5)** (with s. 180); S.I. 2010/816, **art. 2, Sch. para. 11**

### Supplementary provisions as to discharge

7.—<sup>F13</sup>(1) Without prejudice to Article 36(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (which enables a court to order the parent or guardian of a child found guilty of an offence to give security for his good behaviour), a court may, on the making of an order for conditional discharge or a probation order, if it thinks it expedient for the purpose of the reformation of the offender, require the offender, or—

- (a) if the offender is under the age of 16 years, his parent or guardian; or
- (b) if the offender has attained the age of 14 years but is under the age of <sup>F14</sup> 18] years, the offender or his parent or guardian,

to give security for the good behaviour of the offender.]

(2) Any security given under paragraph (1) shall be by way of recognizance.

(3) In proceedings before the Crown Court under Articles 4 to 6, any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence during the period of conditional discharge shall be determined by the Court and not by the verdict of a jury.

**F13** 1998 NI 9

**F14** 2002 c. 26

### Community sentences

#### Restrictions on imposing community sentences

8.—(1) A court shall not pass on an offender a community sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.

(2) Subject to paragraph (3), where a court passes a community sentence—

- (a) the particular order or orders comprising or forming part of the sentence shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and
- (b) the restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(3) In consequence of the provision made by Article 15 with respect to combination orders, a community sentence shall not consist of or include both a probation order and a community service order.

#### Procedural requirements for community sentences

9.—(1) In forming any such opinion as is mentioned in Article 8(1) or (2)(b), a court shall take into account all such information about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it (including any aggravating or mitigating factors) as is available to it.



(2) In forming any such opinion as is mentioned in Article 8(2)(a), a court may take into account any information about the offender which is before it.

(3) Subject to paragraph (4), a court shall obtain and consider a pre-sentence report before forming an opinion as to the suitability for the offender of one or more of the following orders, namely—

(a) a probation order which includes additional requirements authorised by Schedule 1;

<sup>F15</sup>(b) a community service order;

(c) a combination order;<sup>F16</sup> . . .

<sup>F17</sup>(ca) a reparation order; and

(cb) a community responsibility order.]

Sub.#para. (d) rep. by 1998 NI 9

(4) Paragraph (3) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report and where the court does not obtain and consider a pre-sentence report, it shall state in open court that it is of that opinion and what the circumstances are.

(5) In the case of an offender under the age of<sup>F18</sup> 18] years, except where the offence or any other offence associated with it is punishable only on conviction on indictment, the court shall not form such an opinion as is mentioned in paragraph (4) or (7) unless there exists a previous pre-sentence report obtained in respect of the offender and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(6) No community sentence which consists of or includes such an order as is mentioned in paragraph (3) shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in that paragraph, but any court on an appeal against such a sentence—

(a) shall, subject to paragraph (7), obtain a pre-sentence report if none was obtained by the court below; and

(b) shall consider any such report obtained by it or by that court.

(7) Paragraph (6)(a) does not apply if the court is of the opinion—

(a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or

(b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

**F15** prosp. insertion by 1998 NI 20

**F16** 1998 NI 9

**F17** 2002 c. 26

**F18** 2002 c. 26

## Probation

### Probation orders

**10** <sup>F19</sup>.—(1) Where a court by or before which a person is convicted of an offence<sup>F20</sup> (not being an offence for which the sentence is fixed by law or falls to be imposed under<sup>F21</sup> Article 70(2)] of the Firearms (Northern Ireland) Order<sup>F21</sup> 2004)] is of the opinion that the supervision of the offender by a probation officer is desirable in the interests of—

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- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from him or preventing the commission by him of further offences,

the court may make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period specified in the order of not less than 6 months nor more than 3 years.

(2) A probation order shall specify the petty sessions district in which the offender resides or will reside; and the offender shall, subject to paragraph 12 of Schedule 2, be required to be under the supervision of a probation officer appointed for or assigned to that district.

(3) Before making a probation order, the court shall—

- (a) state in open court that it is of the opinion that Article 8(1) applies and why it is of that opinion; and
- (b) explain to the offender in ordinary language—
  - (i) why it is making a probation order;
  - (ii) the effect of the order (including any additional requirements proposed to be included in the order in accordance with Article 11);
  - (iii) the consequences which may follow under Schedule 2 if he fails to comply with any of the requirements of the order; and
  - (iv) that the court has under Schedule 2 power to review the order on the application either of the offender or of the supervising officer,

and if the offender has attained the age of 14 years the court shall not make the order unless he expresses his willingness to comply with its requirements.

(4) The court by which a probation order is made shall forthwith give copies of the order to a probation officer assigned to the court, and he shall give a copy—

- (a) to the offender;
- (b) to the probation officer responsible for the offender's supervision; and
- (c) to the person in charge of any institution in which the offender is required by the order to reside, present himself or attend.

(5) The court by which such an order is made shall also, except where it itself acts for the petty sessions district specified in the order, send to the clerk of petty sessions for that district—

- (a) a copy of the order; and
- (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that district in the exercise of its functions in relation to the order.

(6) An offender in respect of whom a probation order is made shall keep in touch with the probation officer responsible for his supervision in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.

(7) A magistrates' court shall cause a reason stated by it under paragraph (3) to be entered in the Order Book.

(8) The Secretary of State may by order direct that paragraph (1) shall be amended by substituting, for the minimum or maximum period specified in that paragraph, such period as may be specified in the order.

(9) An order under paragraph (8) may make in paragraph 13(2)(a) of Schedule 2 any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order.

(10) Nothing in paragraph (1) shall be construed as preventing a court which makes a probation order in respect of any offence from making an order for costs against, or imposing any disqualification on, the offender or from making in respect of the offence an order under Article 11 or 14 of the Criminal Justice (Northern Ireland) Order 1994 (power to deprive offenders of property used or intended for use, for purposes of crime and compensation orders) or under Article 8 of the Criminal Justice (Northern Ireland) Order 1980 (driving disqualification where vehicle used for purposes of crime) or under section 27 of the Theft Act (Northern Ireland) 1969 (restitution orders).

**F19** mod. by [2000 c. 43](#)  
**F20** [2003 c. 44](#)  
**F21** [2004 NI 3](#)

### **Additional requirements which may be included in such orders**

**11.**—(1) Subject to paragraph (2), a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers desirable in the interests of—

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from him or preventing the commission by him of further offences.

(2) Without prejudice to the power of the court under Article 11 or 14 of the Criminal Justice (Northern Ireland) Order 1994 to make a compensation order, the payment of sums by way of damages for injury or compensation for loss shall not be included among the additional requirements of a probation order.

(3) Without prejudice to the generality of paragraph (1), the additional requirements which may be included in a probation order shall include the requirements which are authorised by Schedule 1.

### **Substitution of conditional discharge for probation**

**12.**—(1) Where on an application made by an offender placed on probation or a probation officer it appears to the court having power to discharge a probation order that the order is no longer appropriate in the case of the offender, the court may make, in substitution for the probation order, an order discharging him in respect of the original offence subject to the condition that he commits no offence between the making of the order under this Article and the expiration of the probation period.

(2) No application may be made under paragraph (1) while an appeal against the probation order is pending.

(3) A person in respect of whom an order is made under this Article shall so long as the said condition continues in force be treated in all respects and in particular for the purposes of paragraph 7 of Schedule 2 as if the original probation order made in his case had been an order for conditional discharge made by the court which made that original order and as if the period of conditional discharge were the same as the probation period.

(4) On the making of an order under this Article the appropriate officer of the court shall forthwith give copies of the order to the probation officer, who shall give a copy to the person in respect of whom the order is made and a copy to the person in charge of any institution in which that person was required by the probation order to reside.

*Status: Point in time view as at 07/06/2006.*

*Changes to legislation: The Criminal Justice (Northern Ireland) Order 1996 is up to date with all changes known to be in force on or before 05 May 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)*

## *Community service orders*

### **Community service orders in respect of convicted persons**

13.—(1) Subject to paragraph (4), where a person of or over 16 years of age is convicted of an offence punishable with imprisonment<sup>F22</sup> (not being an offence for which the sentence is fixed by law or falls to be imposed under<sup>F23</sup> Article 70(2)] of the Firearms (Northern Ireland) Order<sup>F23</sup> 2004)], the court by or before which he is convicted may, make a community service order, that is to say, an order requiring him to perform unpaid work in accordance with the subsequent provisions of this Part.

(2) The number of hours which a person may be required to work under a community service order shall be specified in the order and shall be in the aggregate—

- (a) not less than 40; and
- (b) not more than 240.

(3) The reference in paragraph (1) 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 persons under 21 years of age.

(4) A court shall not make a community service order in respect of any offender unless the offender consents and the court is satisfied—

- (a) after hearing (if the court thinks it necessary) a probation officer, that the offender is a suitable person to perform work under such an order; and

<sup>F24</sup>(b) that provision can be made by the Probation Board for him to do so.

(5) Where a court makes community service orders in respect of 2 or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent shall not exceed the maximum specified in paragraph (2)(b).

(6) A community service order shall specify the petty sessions district in which the offender resides or will reside; and the functions conferred by the subsequent provisions of this Part on the relevant officer shall be discharged by a probation officer selected under arrangements made by the Probation Board or a person appointed by it for the purposes of this paragraph.

(7) Before making a community service order the court shall—

- (a) state in open court that it is of the opinion that Article 8(1) applies and why it is of that opinion; and
- (b) explain to the offender in ordinary language—
  - (i) why it is making a community service order;
  - (ii) the effect of the order (including the requirements of the order as specified in Article 14);
  - (iii) the consequences which may follow under Part II of Schedule 2 if he fails to comply with any of the requirements of the order; and
  - (iv) that the court has under Schedule 2 power to review the order on the application either of the offender or of the relevant officer.

(8) The court by which a community service order is made shall forthwith give copies of the order to a probation officer assigned to the court and he shall give a copy to the offender and to the relevant officer; and the court shall, except where it is itself a magistrates' court acting for the petty sessions district specified in the order, send to the clerk of petty sessions for the petty sessions district specified in the order a copy of the order, together with such documents and information relating to

the case as it considers likely to be of assistance to a court acting for that district in exercising its functions in relation to the order.

(9) A magistrates' court shall cause a reason stated by it under paragraph (7) to be entered in the Order Book.

(10) The Secretary of State may by order direct that paragraph (2) fl shall be amended by substituting for the maximum number of hours for the time being specified in sub-paragraph (b) of that paragraph such number of hours as may be specified in the order.

(11) Nothing in paragraph (1) shall be construed as preventing a court which makes a community service order in respect of any offence from making an order for costs against, or imposing any disqualification on, the offender or from making in respect of the offence an order under Article 11 or 14 of the Criminal Justice (Northern Ireland) Order 1994 (power to deprive offenders of property used, or intended for use, for purposes of crime and compensation orders) or under Article 8 of the Criminal Justice (Northern Ireland) Order 1980 (driving disqualification where vehicle used for purposes of crime) or under section 27 of the Theft Act (Northern Ireland) 1969 (restitution orders).

F22 2003 c. 44

F23 2004 NI 3

F24 mod. by 2000 c. 43

### Obligations of person subject to community service order

14.—(1) An offender in respect of whom a community service order is in force shall—

- (a) keep in touch with the relevant officer in accordance with such instructions as he may be given by that officer and notify him of any change of address; and
- (b) perform for the number of hours specified in the order such work at such times as he may be instructed by the relevant officer.

(2) Subject to paragraph 15 of Schedule 2, the work required to be performed under a community service order shall be performed during the period of 12 months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under it for the number of hours specified in it.

(3) The instructions given by the relevant officer under this Article shall so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

### Orders combining probation and community service

15.—(1) Where a court by or before which a person of or over the age of 16 years is convicted of an offence punishable with imprisonment<sup>F25</sup> (not being an offence for which the sentence is fixed by law or falls to be imposed under<sup>F26</sup> Article 70(2)] of the Firearms (Northern Ireland) Order<sup>F26</sup> 2004)] is of the opinion mentioned in paragraph (2), the court may make a combination order, that is to say, an order requiring him both—

- (a) to be under the supervision of a probation officer for a period specified in the order, being not less than 12 months nor more than 3 years; and
- (b) to perform unpaid work for a number of hours so specified, being in the aggregate not less than 40 nor more than 100.

(2) The opinion referred to in paragraph (1) is that the making of a combination order is desirable in the interests of—

- (a) securing the rehabilitation of the offender; or

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- (b) protecting the public from harm from him or preventing the commission by him of further offences.
- (3) Before making a combination order, the court shall—
  - (a) state in open court that it is of the opinion that Article 8(1) applies and why it is of that opinion; and
  - (b) explain to the offender in ordinary language why it is making a combination order.
- (4) A magistrates' court shall cause a reason stated by it under paragraph (3) to be entered in the Order Book.
- (5) Subject to paragraph (1) and to paragraph 6(6) of Schedule 2 a combination order shall be treated for the purposes of this Part as if it were a probation order (so far as it imposes requirements to be under the supervision of a probation order) and as if it were a community service order (so far as it imposes requirements to perform unpaid work).

**F25** 2003 c. 44

**F26** 2004 NI 3

#### *Orders: supplemental*

#### **Enforcement etc. of community orders**

**16.** Schedule 2 (which makes provision for dealing with failures to comply with the requirements of certain community orders, for amending such orders and for revoking them with or without the substitution of other sentences) shall have effect.

#### **Regulation of community orders**

- 17.—**(1) The Secretary of State may make rules for regulating—
- (a) the supervision of persons subject to probation orders;
  - (b) the arrangements to be made under Article 4(1)(b) of the Probation Board (Northern Ireland) Order 1982 for persons subject to community service orders to perform work and the performance of such work;
  - (c) without prejudice to the generality of sub-paragraphs (a) and (b), the functions of the responsible officers of such persons as are mentioned in those sub-paragraphs.
- (2) Rules under paragraph (1)(b), may in particular make provision—
- (a) limiting the number of hours of work to be done by a person on any one day;
  - (b) as to the reckoning of hours worked and the keeping of work records; and
  - (c) for the payment of travelling and other expenses in connection with the performance of work.
- (3) In this Part “responsible officer” means—
- (a) in relation to an offender who is subject to a probation order, the probation officer responsible for his supervision; <sup>F27</sup>and
  - (b) in relation to an offender who is subject to a community service order, the relevant officer within the meaning of Article 13(6).

**F27** prosp. subst. by 1998 NI 20

### *Custodial sentences*

#### **Restriction on imposing sentences of imprisonment or detention on persons not legally represented**

**18.**—(1) A magistrates' court on summary conviction or the Crown Court on conviction on indictment shall not pass a sentence of imprisonment or detention in a young offenders centre or a sentence of detention during the Secretary of State's pleasure under<sup>F28</sup> Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 on, or make a juvenile justice centre order<sup>F29</sup> with respect to, a person who is not legally represented in that court and has not been previously sentenced to that punishment by a court in any part of the United Kingdom, unless either—

- (a) he applied for legal aid and the application was refused on the ground that it did not appear his means were such that he required assistance; or
- (b) having been informed of his right to apply for legal aid and had the opportunity to do so, he refused or failed to apply.

(2) In paragraph (1)(a) and (b) “legal aid” means legal aid for the purposes of proceedings in that court, whether the whole proceedings or the proceedings on or in relation to sentence.

(3) In the case of a person committed to the Crown Court for trial, it is immaterial whether he applied for legal aid in the Crown Court to, or was informed of his right to apply by, that Court, or the court which committed him.

(4) For the purposes of this Article—

- (a) a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced;
- (b) a previous sentence of imprisonment or order for detention in a young offenders centre which has been suspended and which has not taken effect under section 40 of the Criminal Justice Act 1967, section 19 of the Treatment of Offenders Act (Northern Ireland) 1968 or section 23 of the Powers of Criminal Courts Act 1973 shall be disregarded; and
- (c) “young offenders centre” means in relation to Great Britain a young offenders institution.

**F28** 1998 NI 9

**F29** prosp. insertion by 2002 c. 26

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

**C6** Art. 18(1) modified (temp. from 15.5.2008) by Criminal Justice (Northern Ireland) Order 2008 (Commencement No. 1 and Savings and Transitory Provisions) Order 2008 (S.R. 2008/ 217), {art. 4(a)}

#### **Restrictions on imposing custodial sentences**

**19.**—(1) This Article applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law<sup>F30</sup> or falling to be imposed under<sup>F31</sup> Article 70(2) of the Firearms (Northern Ireland) Order<sup>F31</sup> 2004]].

(2) Subject to paragraph (3), the court shall not pass a custodial sentence on the offender unless it is of the opinion—

- (a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or

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(b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.

<sup>F32</sup>(3) Nothing in paragraph (2) shall prevent the court from passing a custodial sentence on the offender if he refuses to give his consent to a community sentence which is proposed by the court and requires that consent [<sup>F33</sup>or a youth conference order].

(4) Where a court passes a custodial sentence, it shall—

- (a) in a case not falling within paragraph (3), state in open court that it is of the opinion that either or both of sub-paragraphs (a) and (b) of paragraph (2) apply and why it is of that opinion; and
- (b) in any case, explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.

(5) A magistrates' court shall cause a reason stated by it under paragraph (4) to be specified in the warrant of commitment and to be entered in the Order Book.

**F30** 2003 c. 44  
**F31** 2004 NI 3  
**F32** prosp. subst. by 1998 NI 20  
**F33** 2002 c. 26

### Length of custodial sentences

**20.**—(1) This Article applies where a court passes a custodial sentence other than one fixed by law<sup>F34</sup> . . . [<sup>F35</sup> or falling to be imposed under<sup>F36</sup> Article 70(2)] of the Firearms (Northern Ireland) Order<sup>F36</sup> 2004].

(2) The custodial sentence shall be—

- (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it; or
- (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.

(3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it, the court shall—

- (a) state in open court that it is of the opinion that paragraph (2)(b) applies and why it is of that opinion; and
- (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.

(4) A custodial sentence for an indeterminate period shall be regarded for the purposes of paragraphs (2) and (3) as a custodial sentence for a term longer than any actual term.

**F34** 1998 NI 9  
**F35** 2003 c. 44  
**F36** 2004 NI 3



## Procedural requirements for custodial sentences

**21.**—(1) Subject to paragraph (2), a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in Article 19(2) or 20(2).

(2) Paragraph (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report and where the court does not obtain and consider a pre-sentence report, it shall state in open court that it is of that opinion and what the circumstances are.

(3) In the case of an offender under the age of<sup>[F37]</sup> 18] years, except where the offence or any other offence associated with it is punishable only on conviction on indictment, the court shall not form such an opinion as is mentioned in paragraph (2) or (6) unless there exists a previous pre-sentence report obtained in respect of the offender and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(4) In forming any such opinion as is mentioned in Article 19(2) or 20(2) a court—

- (a) shall take into account all such information about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it (including any aggravating or mitigating factors) as is available to it; and
- (b) in the case of any such opinion as is mentioned in sub-paragraph (b) of that paragraph, may take into account any information about the offender which is before it.

(5) No custodial sentence shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in paragraph (1) but any court on an appeal against such a sentence—

- (a) shall, subject to paragraph (6), obtain a pre-sentence report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

(6) Paragraph (5)(a) does not apply if the court is of the opinion—

- (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or
- (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

**F37** 2002 c. 26

### Modifications etc. (not altering text)

**C7** Art. 21(1) modified (temp. from 15.5.2008) by Criminal Justice (Northern Ireland) Order 2008 (Commencement No. 1 and Savings and Transitory Provisions) Order 2008 (S.R. 2008/ 217), {art. 4(d)}

## <sup>[F38]</sup>Disclosure of pre-sentence reports

**21A.**—(1) This Article applies where a court obtains a pre-sentence report.

(2) Subject to paragraphs (3) and (4), the court shall give a copy of the report—

- (a) to the offender or his counsel or solicitor; and
- (b) to the prosecutor, that is to say, the person having conduct of the proceedings in respect of the offence.

**Status:** Point in time view as at 07/06/2006.

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(3) If the offender is under the age of<sup>F39</sup> 18 ]years and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.

(4) If the prosecutor is not of a description prescribed by order made by the Secretary of State, a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for him to be given it.

(5) No information obtained by virtue of paragraph (2)(b) shall be used or disclosed otherwise than for the purpose of—

- (a) determining whether representations as to matters contained in the report need to be made to the court; or
- (b) making such representations to the court.]

**F38** 2003 NI 13

**F39** 2005 NI 15

#### **Additional requirements in the case of mentally disordered offenders**

**22.**—(1) Subject to paragraph (2), in any case where Article 21(1) applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Paragraph (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider—

- (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
- (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which paragraph (1) applies shall be invalidated by the failure of a court to comply with that paragraph, but any court on an appeal against such a sentence—

- (a) shall obtain a medical report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

(5) In this Article “medical report” means a report as to an offender's mental condition made or submitted orally or in writing by a registered medical practitioner appointed by the Mental Health Commission for Northern Ireland for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986.

(6) Nothing in this Article shall be taken as prejudicing the generality of Article 21.

#### **Suspended sentences of imprisonment or orders for detention**

**23.** In section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (suspended sentences of imprisonment or orders for detention in a young offenders centre)—

- (a) in subsections (1) and (1A) at the beginning there shall be inserted “Subject to subsection (1C)”;
- (b) after subsection (1B) there shall be inserted—

“(1C) A court shall not deal with an offender by means of a suspended sentence or order for detention unless it is of the opinion—

- (a) that the case is one in which a sentence of imprisonment or order for detention in a young offenders centre would have been appropriate even without the power to suspend the sentence or order; and
- (b) that the exercise of that power can be justified by the exceptional circumstances of the case.

(1D) A court which passes a suspended sentence or makes an order for detention on any person for an offence shall consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order.” .

### Custody probation orders

24.—(1) Where, in the case of a person convicted of an offence punishable with a custodial sentence<sup>F40</sup>, other than an offence for which the sentence is fixed by law or falls to be imposed under<sup>F41</sup> Article 70(2)] of the Firearms (Northern Ireland) Order<sup>F41</sup> 2004],], a court has formed the opinion under Articles 19 and 20 that a custodial sentence of 12 months or more would be justified for the offence, the court shall consider whether it would be appropriate to make a custody probation order, that is to say, an order requiring him both—

- (a) to serve a custodial sentence; and
- (b) on his release from custody, to be under the supervision of a probation officer for a period specified in the order, being not less than 12 months nor more than 3 years.

(2) Under a custody probation order the custodial sentence shall be for such term as the court would under Article 20 pass on the offender less such period as the court thinks appropriate to take account of the effect of the offender's supervision by the probation officer on his release from custody in protecting the public from harm from him or for preventing the commission by him of further offences.

(3) A court shall not make a custody probation order in respect of any offender unless the offender consents and, where an offender does not so consent, the court shall not pass a custodial sentence of a greater length than the term the court would otherwise pass under Article 20.

(4) Where in any case a court does not consider a custody probation order to be appropriate, the court shall state in open court that it is of that opinion and why it is of that opinion.

(5) A court which makes a custody probation order shall state the term of the custodial sentence it would have passed under Article 20 if the offender had not consented to the order.

F40 2003 c. 44

F41 2004 NI 3

### Supplementary provisions as to custody probation orders

25.—(1) The period of supervision under a custody probation order shall commence on the offender's release from custody at the expiry of the custodial sentence.

(2) Subject to Article 24(1), in relation to a custody probation order—

- (a) in so far as it imposes a custodial sentence, all statutory provisions relating to such custodial sentences shall apply as if it were such a sentence; and —
- (b) in so far as it imposes such a requirement as is mentioned in paragraph (1)(b) of that Article, this Part shall, subject to paragraph (3), apply as if it were a probation order.

*Status: Point in time view as at 07/06/2006.*

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(3) In its application to a custody probation order, a court exercising its powers under paragraph 3(1)(d), 4(1)(d), 7(2)(a)(ii) or 8(2)(b) of Schedule 2 shall have regard to the term of the custodial sentence which would have been imposed by the court which made the order had the offender not consented to the order and to the term of the custodial sentence served by the offender in respect of the offence.

(4) In relation to release from custody under paragraph (1), section 13(7) of the Prison Act (Northern Ireland) 1953 (prison rules) shall have effect as if the words from “and on the discharge” onwards were omitted.

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

**C8** Art. 25(2)(b) applied (prosp.) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), **35(3)**

*Release on licence of certain offenders*

**Release on licence of sexual offenders**

**26.—**(1) Where, in the case of an offender who has been sentenced to imprisonment or ordered to be detained in a young offenders centre—

- (a) the whole or any part of his sentence or order for detention was imposed for a sexual offence, and
- (b) the court by which he was sentenced or ordered to be detained for that offence, having regard to—
  - (i) the need to protect the public from serious harm from him, and
  - (ii) the desirability of preventing the commission by him of further offences and of securing his re-habilitation,

ordered that this Article shall apply,

instead of being granted remission of his sentence or order for detention under prison rules, the offender shall, on the day on which he might have been discharged if the remission had been granted, be released on licence under the provisions of this Article.

(2) An offender released on licence under this Article shall be under the supervision of a probation officer appointed for or assigned to the petty sessions district within which the offender resides until the date on which he would (but for his release) have served the whole of his sentence or order for detention.

(3) An offender released on licence under this Article shall comply with such conditions determined by the Secretary of State as may be specified in the licence.

(4) An offender released on licence under this Article shall be given a notice from the Secretary of State before any alteration in the conditions specified in the licence comes into effect.

(5) The Secretary of State may make rules for regulating the supervision of sex offenders under this Article.

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

**C9** Art. 26(1)(a) modified (temp. from 15.5.2008) by Criminal Justice (Northern Ireland) Order 2008 (Commencement No. 1 and Savings and Transitory Provisions) Order 2008 (S.R. 2008/ 217), {art. 4(f)}

### **Breach of licence conditions**

**27.**—(1) If at any time while an offender is released on licence under Article 26 it appears on complaint to a justice of the peace that the offender has failed to comply with any of the conditions specified in the licence, the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in it; or
- (b) if the complaint is in writing and on oath, issue a warrant for his arrest.

(2) Any summons or warrant issued under paragraph (1) shall direct the offender to appear or be brought before a court of summary jurisdiction acting for the petty sessions district in which he resides.

(3) If it is proved to the satisfaction of the court of summary jurisdiction before which an offender released on licence under Article 26 appears or is brought under paragraph (2) that he failed without reasonable excuse to comply with any of the conditions specified in the licence, the court may—

- (a) impose on him a fine not exceeding £1,000; or
- (b) suspend the licence for a period not exceeding 6 months and order him to be recalled to prison or, as the case may be, a young offenders centre for the period of the suspension.

(4) On the suspension of the licence of an offender under paragraph (3)(b), he shall be liable to be detained in pursuance of his sentence or order for detention and, if at large, shall be deemed to be unlawfully at large.

### **Convictions during currency of original sentences**

**28.**—(1) Where an offender released on licence under Article 26—

- (a) before the date on which he would (but for his release) have served his sentence or order for detention in full, commits an offence punishable with imprisonment; and
- (b) whether before or after that date, is convicted of that offence ( “the new offence”);

the court by or before which he is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be returned to prison or a young offenders centre for the whole or any part of the period which—

- (i) begins with the date of the order; and
- (ii) is equal in length to the period between the date on which the new offence was committed and the date mentioned in sub-paragraph (a).

(2) A court of summary jurisdiction—

- (a) shall not have power to order an offender released on licence under Article 26 to be returned to prison or a young offenders centre for a period of more than 6 months; but
- (b) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

(3) Where, under paragraph (2)(b), a court deals with an offender released on licence under Article 26, it shall send to the Crown Court such particulars of the case as may be desirable.

(4) Where, by virtue of paragraph (2)(b), an offender released on licence under Article 26 is brought or appears before the Crown Court, the Court may order him to be returned to prison or a young offenders centre for the whole or any part of the period which—

- (a) begins with the date of the order; and
- (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in paragraph (1)(a).

(5) The period for which an offender released on licence under Article 26 is ordered under paragraph (1) or (4) to be returned to prison or a young offenders centre—

*Status: Point in time view as at 07/06/2006.*

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- (a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, the sentence imposed for the new offence; and
- (b) in either case, shall be disregarded in determining the appropriate length of that sentence.

### *Financial penalties*

#### **Fixing of fines**

**29.**—(1) Before fixing the amount of any fine to be imposed on an offender who is an individual, a court shall inquire into his financial circumstances.

(2) The amount of any fine fixed by a court shall be such as, in the opinion of the court, reflects the seriousness of the offence.

(3) In fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court shall take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.

(4) Where—

- (a) an offender has been convicted in his absence in pursuance of Article 23 or 24 of the Magistrates' Courts (Northern Ireland) Order 1981 (non-appearance of accused), or
- (b) an offender—
  - (i) has failed to comply with an order under Article 30(1); or
  - (ii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

[<sup>F42</sup>or

- (c) the parent or guardian of an offender who is under the age of [<sup>F43</sup> 18] years—
  - (i) has failed to comply with an order under Article 30(2A); or
  - (ii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,]

and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.

(5) Paragraph (3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.

[<sup>F42</sup>(5A) For the purposes of any order under Article 35 of the Criminal Justice (Children) (Northern Ireland) Order 1998 against a parent or guardian of an officer (parent or guardian to pay fine, etc., instead of child)—

- (a) this Article and Article 32 shall have effect (so far as applicable) as if any reference to the financial circumstances of the offender were a reference to the financial circumstances of the parent or guardian; but
- (b) for the purposes of any such order made against the appropriate authority (within the meaning of that Order) paragraph (1) shall not apply.]

(6) The amendments made by Schedule 3 shall have effect.

**F42** 1998 NI 9

**F43** 2002 c. 26

### Statements as to offenders' means

30.—(1) Where an individual has been convicted of an offence the court may, before sentencing him, make a financial circumstances order with respect to him.

(2) Where a magistrates' court has been notified in accordance with Article 24(4) of the Magistrates' Courts (Northern Ireland) Order 1981 that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to him.

[<sup>F44</sup>(2A) Before making an order under Article 35 of the Criminal Justice (Children) (Northern Ireland) Order 1998 against a parent or guardian, the court may make a financial circumstances order with respect to him.]

(3) In this Article “a financial circumstances order” means, in relation to any individual, an order requiring him to give to the court, to within such period as may be specified in the order, such a statement of his financial circumstances as the court may require.

(4) An individual who without reasonable excuse fails to comply with a financial circumstances order shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

F44 1998 NI 9

### False statements as to financial circumstances

31.—(1) If an individual in furnishing a statement in pursuance of a financial circumstances order under Article 30 or a person who is charged with an offence in furnishing a statement of his financial circumstances in response to an official request—

- (a) makes a statement which he knows to be false in a material particular;
- (b) recklessly furnishes a statement which is false in a material particular; or
- (c) knowingly fails to disclose any material fact,

he shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 4 on the standard scale or to both.

(2) For the purposes of this Article an official request is a request which—

- (a) is made by the clerk of petty sessions or the chief clerk, as the case may be; and
- (b) is expressed to be made for informing the court, in the event of his being convicted, of his financial circumstances for the purpose of determining the amount of any fine the court may impose.

(3) Proceedings in respect of an offence under this Article may, notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 (limitation of time), be commenced at any time within 2 years from the date of the commission of the offence or within 6 months from its first discovery by the prosecution, whichever period expires the earlier.

[<sup>F45</sup>(3) Where a person who is charged with an offence is under the age of [<sup>F46</sup> 18] years, this Article shall also apply to his parent or guardian and accordingly this Article shall have effect in relation to the parent or guardian of such a person as if—

- (a) any reference to his financial circumstances were a reference to the financial circumstances of his parent or guardian;
- (b) the reference in paragraph (1) to a person who is charged with an offence were a reference to his parent or guardian;

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- (c) the reference in paragraph (2) to his being convicted were a reference to his being convicted and the court's deciding to make an order under Article 35 of Criminal Justice (Children) (Northern Ireland) Order 1998 against his parent or guardian.]

F45 1998 NI 9

F46 2002 c. 26

### Remission of fines

**32.**—(1) This Article applies where a court has, in fixing the amount of a fine, determined the offender's financial circumstances under Article 29(4).

(2) If, on subsequently inquiring into the offender's financial circumstances, the court is satisfied that had it had the results of that inquiry when sentencing the offender it would—

- (a) have fixed a smaller amount; or
- (b) not have fined him,

it may remit the whole or any part of the fine.

(3) Where under this Article the court remits the whole or part of a fine after a term of imprisonment has been fixed under Article 92(1)(b) of the Magistrates' Courts (Northern Ireland) Order 1981 (issue of warrant of commitment for default) or section 35 of the Criminal Justice Act 1945 (powers of Crown Court or county court in relation to fines), it shall reduce the term by the corresponding proportion.

(4) In calculating any reduction required by paragraph (3), any fraction of a day shall be ignored.

### Miscellaneous

#### Reduction in sentences for guilty pleas

**33.**—(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence a court shall take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which this indication was given.

(2) If, as a result of taking into account any matter referred to in paragraph (1), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, it shall state in open court that it has done so.

*Art. 34 rep. by 2003 NI 13*

*Art. 35 rep. by 2003 NI 13*

#### Savings for mitigation and mentally disordered offenders

**36.**—(1) Nothing in this Part shall prevent a court from mitigating an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.

(2) Without prejudice to the generality of paragraph (1), nothing in this Part shall prevent a court—

- (a) from mitigating any penalty included in an offender's sentence by taking into account any other penalty included in that sentence; or



- (b) in a case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.
- (3) Nothing in this Part shall be taken—
  - (a) as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender; or
  - (b) as restricting any power (whether under the Mental Health (Northern Ireland) Order 1986 or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.

### **Effect of previous convictions and of offending while on bail**

**37.**—(1) In considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences.

(2) In considering the seriousness of any offence committed while the offender was on bail, the court shall treat the fact that it was committed in those circumstances as an aggravating factor.

(3) A probation order or conditional discharge order made before 1 the coming into operation of this Part (which, by virtue of section 1 or 5 of the Probation Act (Northern Ireland) 1950, would otherwise not be a sentence for the purposes of this Article) is to be treated as a sentence for those purposes.

(4) A conviction in respect of which a probation order or an order discharging the offender absolutely or conditionally was made before the coming into operation of this Part (which, by virtue of section 8 of that Act, would otherwise not be a conviction for those purposes) is to be treated as a conviction for those purposes.

(5) A conditional discharge order made after the coming into operation of this Part (which, by virtue of Article 4 would otherwise not be a sentence for those purposes) is to be treated as a sentence for those purposes.

(6) A conviction in respect of which an order discharging the offender absolutely or conditionally was made after the coming into operation of this Part (which, by virtue of Article 6, would otherwise not be a conviction for those purposes) is to be treated as a conviction for those purposes.

## **PART III**

### **JURISDICTION**

#### **Offences to which this Part applies**

- 38.**—(1) This Part applies to two groups of offences—
- (a) any offence mentioned in paragraph (2) (a “Group A offence”); and
  - (b) any offence mentioned in paragraph (3) (a “Group B offence”).
- (2) The Group A offences are—
- (a) an offence under any of the following provisions of the Theft Act (Northern Ireland) 1969—
    - section 1 (theft);
    - section 15 (obtaining property by deception);
    - [<sup>F47</sup>section 15A (obtaining a money transfer by deception);]
    - section 16 (obtaining pecuniary advantage by deception);

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- section 17 (false accounting);
- section 18 (false statements by company directors, etc.);
- section 19(2) (procuring execution of valuable security by deception);
- section 20 (blackmail);
- section 21 (handling stolen goods);
- [<sup>F47</sup>section 23A (dishonestly retaining a wrongful credit);]
- (b) an offence under either of the following provisions of the Theft (Northern Ireland) Order 1978—
  - Article 3 (obtaining services by deception);
  - Article 4 (avoiding liability by deception);
- (c) an offence under any of the following provisions of the Forgery and Counterfeiting Act 1981—
  - section 1 (forgery);
  - section 2 (copying a false instrument);
  - section 3 (using a false instrument);
  - section 4 (using a copy of a false instrument);
  - section 5 (offences which relate to money orders, share certificates, passports, etc.);
  - [<sup>F48</sup>section 14 (offences of counterfeiting notes and coins);]
  - [<sup>F48</sup>section 15 (offences of passing etc counterfeit notes and coins);]
  - [<sup>F48</sup>section 16 (offences involving the custody or control of counterfeit notes and coins);]
  - [<sup>F48</sup>section 17 (offences involving or making or custody or control of counterfeiting materials and implements);]
  - [<sup>F48</sup>section 20 (prohibition of importation of counterfeit notes and coins);]
  - [<sup>F48</sup>section 21 (prohibition of exportation of counterfeit notes and coins);.]
- [<sup>F49</sup>(ca) an offence under section 25 of the Identity Cards Act 2006;]
- (d) the common law offence of cheating in relation to the public revenue.
- (3) The Group B offences are—
  - (a) conspiracy to commit a Group A offence;
  - (b) conspiracy to defraud;
  - (c) attempting to commit a Group A offence;
  - (d) incitement to commit a Group A offence.
- (4) The Secretary of State may by order amend paragraph (2) or (3) by adding or removing any offence.

**F47** 1997 NI 3

**F48** SR 2000/226

**F49** Art. 38(2)(ca) inserted (7.6.2006) by Identity Cards Act 2006 (c. 15), ss. 30(5), 44(3); S.I. 2006/1439, art. 2(c)

### **Jurisdiction in respect of Group A offences**

**39.**—(1) For the purposes of this Part, “relevant event”, in relation to any Group A offence, means any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

(2) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence any question as to where it occurred is to be disregarded.

(3) A person may be guilty of a Group A offence if any of the events which are relevant events in relation to the offence occurred in Northern Ireland.

### **Questions immaterial to jurisdiction in the case of certain offences**

**40.**—(1) A person may be guilty of a Group A or Group B offence whether or not—

- (a) he was a British citizen at any material time;
- (b) he was in Northern Ireland at any such time.

(2) On a charge of attempting to commit a Group A offence, the defendant may be guilty of the offence whether or not—

- (a) the attempt was made in Northern Ireland;
- (b) it had an effect in Northern Ireland.

(3) On a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in Northern Ireland, the defendant may be guilty of the offence whether or not—

- (a) he became a party to the conspiracy in Northern Ireland;
- (b) any act or omission or other event in relation to the conspiracy occurred in Northern Ireland.

(4) Paragraph (1)(a) does not apply where jurisdiction is given to try the offence in question by a statutory provision which makes provision by reference to the nationality of the person charged.

(5) Paragraph (2) does not apply in relation to any charge under the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 brought by virtue of Article 3A of that Order.

(6) Paragraph (3) does not apply in relation to any charge under that Order brought by virtue of Article 9A of that Order.

### **Rules for determining certain jurisdictional questions relating to the location of events**

**41.** In relation to a Group A or Group B offence—

- (a) there is an obtaining of property in Northern Ireland if the property is either despatched from or received at a place in Northern Ireland; and
- (b) there is a communication in Northern Ireland of any information, instruction, request, demand or other matter if it is sent by any means—
  - (i) from a place in Northern Ireland to a place elsewhere; or
  - (ii) from a place elsewhere to a place in Northern Ireland.

### **Attempt, conspiracy and incitement**

**42.**—(1) In the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983—

- (a) after Article 3 there shall be inserted—

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### “Extended jurisdiction in relation to certain attempts

**3A.**—(1) If this Article applies to an act, what the person doing the act had in view shall be treated as an offence to which Article 3(1) applies.

(2) This Article applies to an act if—

- (a) it is done in Northern Ireland, and
- (b) it would fall within Article 3(1) as more than merely preparatory to the commission of a Group A offence but for the fact that that offence, if completed, would not be an offence triable in Northern Ireland.

(3) In this Article “Group A offence” has the same meaning as in Part III of the Criminal Justice (Northern Ireland) Order 1996.

(4) Paragraph (1) is subject to the provisions of Article 43 of the Order of 1996 (relevance of external law).

(5) Where a person does any act to which this Article applies, the offence which he commits shall for all purposes be treated as the offence of attempting to commit the relevant Group A offence.”

*Sub.#para. (b) rep. by 1998 c. 40*

(2) A person may be guilty of incitement to commit a Group A offence if the incitement—

- (a) takes place in Northern Ireland; and
- (b) would be triable in Northern Ireland but for what the person charged had in view not being an offence triable in Northern Ireland.

(3) A person may be guilty of conspiracy to defraud if—

- (a) a party to the agreement constituting the conspiracy, or a party's agent, did anything in Northern Ireland in relation to the agreement before its formation, or
- (b) a party to it became a party in Northern Ireland (by joining it either in person or through an agent), or
- (c) a party to it, or a party's agent, did or omitted anything in Northern Ireland in pursuance of it,

and the conspiracy would be triable in Northern Ireland but for the fraud which the parties to it had in view not being intended to take place in Northern Ireland.

(4) Paragraphs (2) and (3) are subject to Article 43.

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

**C10** Art. 42(2) modified (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 63(1), 94(1), [Sch. 6 para. 33\(b\)](#) (with [Sch. 13 para. 5](#)); [S.I. 2008/2504](#), [art. 2\(a\)](#)

#### Relevance of external law

**43.**—(1) A person is guilty of an offence triable by virtue of Article 3A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, or by virtue of Article 42(2), only if what he had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(2) A person is guilty of an offence triable<sup>F50</sup> . . . by virtue of Article 42(3), only if the pursuit of the agreed course of conduct would at some stage involve—

- (a) an act or omission by one or more of the parties, or
- (b) the happening of some other event,

constituting an offence under the law in force where the act, omission or other event was intended to take place.

(3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this Article, however it is described in that law.

(4) Subject to paragraph (6), a condition specified in paragraph (1) or (2) shall be taken to be satisfied unless, not later than Crown Court rules or magistrates' court rules may provide, the defence serve on the prosecution a notice—

- (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;
- (b) showing their grounds for that opinion; and
- (c) requiring the prosecution to show that it is satisfied.

(5) In paragraph (4) “the relevant conduct” means—

- (a) where the condition in paragraph (1) is in question, what the defendant had in view; and
- (b) where the condition in paragraph (2) is in question, the agreed course of conduct.

(6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under paragraph (4).

(7) In the Crown Court, the question whether the condition is satisfied shall be decided by the judge alone.

(8) In Article 8(3) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (preparatory hearing in a case of serious fraud), after sub-paragraph (a) there shall be inserted—

- “(aa) a question arising under Article 43 of the Criminal Justice (Northern Ireland) Order 1996 (relevance of external law to certain charges of conspiracy, attempt and incitement); and” .

**F50** 1998 c. 40

## PART IV

### COURSE OF JUSTICE: EVIDENCE, PROCEDURE, ETC.

#### *Imputations on character*

#### **Imputations on character**

**44.** <sup>F51</sup> .....

**F51** Art. 44 repealed (3.4.2006) by Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)), arts. 1(3), 46(2), Sch. 2; S.R. 2006/63, **art. 2**

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## *Corroboration*

### **Abolition of corroboration rules**

**45.**—(1) Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is—

- (a) an alleged accomplice of the accused, or
- (b) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,

is hereby abrogated.

(2) In Article 13(2) of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (abolition of requirement of corroboration warning in respect of evidence of a child) the words from “in relation to” to the end shall be omitted.

(3) Any requirement that—

- (a) is applicable at the summary trial of a person for an offence, and
- (b) corresponds to the requirement mentioned in paragraph (1) or that mentioned in Article 13(2) of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988,

is hereby abrogated.

(4) Nothing in this Article applies in relation to—

- (a) any trial, or
- (b) any preliminary investigation or preliminary inquiry into an indictable offence conducted by a magistrates' court,

which began before the coming into operation of this Article.

### **Abolition of corroboration requirements under Criminal Law Amendment Act 1885**

**46.**—(1) In the Criminal Law Amendment Act 1885 in—

- (a) section 2 (procurement); and
- (b) section 3 (procurement of women by threats, false pretences or administering drugs),

the words from “Provided that” onwards (which provide that a person shall not be convicted of the offence concerned on the evidence of one witness only unless the witness is corroborated) are hereby repealed.

(2) Nothing in this Article applies in relation to—

- (a) any trial, or
- (b) any preliminary investigation or preliminary inquiry into an indictable offence conducted by a magistrates' court,

which began before the coming into operation of this Article.

## *Intimidation, etc., of witnesses, jurors and others*

### **Intimidation, etc., of witnesses, jurors and others**

**47.**—<sup>F52</sup>(1) A person who does to another person—

- (a) an act which intimidates, and is intended to intimidate, that other person;

- (b) knowing or believing that the other person is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and
- (c) intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with,

shall be guilty of an offence.

<sup>F52</sup>(2) A person who does or threatens to do to another person—

- (a) an act which harms or would harm, and is intended to harm, that other person;
- (b) knowing or believing that the other person, or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence; and
- (c) does or threatens to do the act because of what (within sub-paragraph (b)) he knows or believes,

shall be guilty of an offence.

<sup>F52</sup>(3) A person does an act “to” another person with the intention of intimidating, or (as the case may be) harming, that other person not only where the act is done in the presence of that other and directed at him directly but also where the act is done to a third person and is intended, in the circumstances, to intimidate or (as the case may be) harm the person at whom the act is directed.

(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.

(5) The intention required by paragraph (1)(c) and the motive required by paragraph (2)(c) need not be the only or the predominating intention or motive with which the act is done or, in the case of paragraph (2), threatened.

(6) A person guilty of an offence under this Article shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

(7) If, in proceedings against a person for an offence under paragraph (1), it is proved that he did an act falling within sub-paragraph (a) with the knowledge or belief required by sub-paragraph (b), he shall be presumed, unless the contrary is proved, to have done the act with the intention required by sub-paragraph (c) of that paragraph.

(8) If, in proceedings against a person for an offence under paragraph (2), it is proved that<sup>F52</sup> he did or threatened to do an act falling within sub-paragraph (a) within the relevant period with the knowledge or belief required by sub-paragraph (b), he shall be presumed, unless the contrary is proved, to have done the act<sup>F53</sup> with the motive required by sub-paragraph (c) of that paragraph.

(9) In this Article—

“investigation into an offence” means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;

“offence” includes an alleged or suspected offence;

“potential”, in relation to a juror, means a person who has been summoned for jury service at the court at which proceedings for the offence are pending; and

“the relevant period”

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- (a) in relation to a witness or juror in any proceedings for an offence, means the period beginning with the institution of the proceedings and ending with the first anniversary of the conclusion of the trial or, if there is an appeal or reference under section 10 or 12 of the Criminal Appeal Act 1995, of the conclusion of the appeal;
  - (b) in relation to a person who has or is believed by the accused to have, assisted in an investigation into an offence, but was not also a witness in proceedings for an offence, means the period of one year beginning with any act of his, or any act believed by the accused to be an act of his, assisting in the investigation; and
  - (c) in relation to a person who both has or is believed by the accused to have, assisted in the investigation into an offence and was a witness in proceedings for the offence, means the period beginning with any act of his, or any act believed by the accused to be an act of his, assisting in the investigation and ending with the anniversary mentioned in sub-paragraph (a).
- (10) For the purposes of the definition of the relevant period in paragraph (9)—
- (a) proceedings for an offence are instituted at the earliest of the following times—
    - (i) when a summons or warrant is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 in respect of the offence;
    - (ii) when a person is charged with the offence after being taken into custody without a warrant;
    - (iii) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969;
 and where the application of this sub-paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times;
  - (b) proceedings at a trial of an offence are concluded with the occurrence of any of the following, the discontinuance of the prosecution, the discharge of the jury without a finding, the acquittal of the accused or the sentencing of or other dealing with the accused for the offence of which he was convicted; and
  - (c) proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.
- (11) This Article is in addition to, and not in derogation of, any offence subsisting at common law.

**F52** prosp. subst. by 1999 NI 8  
**F53** prosp. insertion by 1999 NI 8

### *Insanity and unfitness to be tried*

#### **Procedure in relation to unfitness to be tried**

**48.** In Article 49 of the Mental Health (Northern Ireland) Order 1986 (procedure in relation to unfitness to be tried)—

- (a) after paragraph (4) there shall be inserted—
  - “(4A) A jury shall not make a determination under paragraph (4) except on the oral evidence of a medical practitioner appointed for the purposes of Part II by the Commission and on the written or oral evidence of one other medical practitioner” ;
- (b) paragraphs (5) to (8) shall be omitted;



- (c) in paragraph (9) for “Article 51(6)” there shall be substituted “Articles 49A, 50A and 51(6)”.

### **Trial of the facts in cases of defendants found unfit to be tried**

**49.** After Article 49 of the Mental Health (Northern Ireland) Order 1986 there shall be inserted—

#### **“Finding that the accused did the act or made the omission charged against him**

**49A.**—(1) This Article applies where in accordance with Article 49(4) it is determined by a jury that the accused is unfit to be tried.

(2) The trial shall not proceed or further proceed but it shall be determined by a jury—

- (a) on the evidence (if any) already given in the trial; and
- (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this Article to put the case for the defence,

whether it is satisfied, as respects the count or each of the counts on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.

(3) If as respects that count or any of those counts the jury is satisfied as mentioned in paragraph (2), it shall make a finding that the accused did the act or made the omission charged against him.

(4) If as respects that count or any of those counts the jury is not so satisfied, it shall return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.

(5) A determination under paragraph (2) shall be made—

- (a) where the question of fitness to be tried was determined on the arraignment of the accused, by a jury other than that which determined that question; and
- (b) where that question was determined at any later time, by the jury by whom the accused was being tried.”

### **Procedure in relation to finding of insanity**

**50.** In Article 50 of the Mental Health (Northern Ireland) Order 1986 (procedure in relation to finding of insanity)—

- (a) in paragraph (1)(a) for “evidence” there shall be substituted “oral evidence of a medical practitioner appointed for the purposes of Part II by the Commission and on the written or oral evidence of one other medical practitioner”;
- (b) paragraphs (2) and (3) shall be omitted.

### **Powers to deal with persons not guilty by reason of insanity or unfit to be tried, etc.**

**51.**—(1) After Article 50 of the Mental Health (Northern Ireland) Order 1986 there shall be inserted—

#### **“Powers to deal with persons not guilty by reason of insanity or unfit to be tried, etc.**

**50A.**—(1) This Article applies where—

- (a) a finding is recorded that the accused is not guilty by reason of insanity; or

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- (b) findings are recorded that the accused is unfit to be tried and that he did the act or made the omission charged against him.
- (2) Subject to paragraphs (3) to (5), the court shall either—
- (a) make an order that the accused be admitted to hospital; or
- (b) make in respect of the accused such one of the following orders as the court thinks most suitable in all the circumstances of the case, namely—
- (i) a guardianship order;
- (ii) subject to and in accordance with Part II of Schedule 2A, a supervision and treatment order within the meaning of that Schedule; and
- (iii) an order for his absolute discharge.
- (3) A person who is admitted to a hospital in pursuance of an order under paragraph (2)(a) shall be treated for the purposes of this Order—
- (a) as if he had been so admitted in pursuance of a hospital order made on the date on which the order under paragraph (2)(a) was made; and
- (b) if the court so directs, as if a restriction order had been made, either without limit of time or during such period as may be specified in the direction.
- (4) An order shall not be made under paragraph (2)(a) by a court unless an opportunity has been given to the Department to make representations to the court concerning the making of such an order.
- (5) A guardianship order placing a patient under the guardianship of any person shall not be made under paragraph (2)(b)(i) unless the court is satisfied that that person is willing to receive the patient into guardianship.
- (6) Where the offence to which the findings relate is an offence the sentence for which is fixed by law—
- (a) paragraphs (2)(b), (4) and (5) shall not apply; and
- (b) the court shall give a direction under paragraph (3)(b) without specifying any period.
- (7) Where the Secretary of State is notified by the responsible medical officer that a person detained in a hospital in pursuance of an order made by virtue of paragraph (1)(b) no longer requires treatment for mental disorder, the Secretary of State may remit that person for trial—
- (a) to the Crown Court at the place where, but for the order, he would have been tried; or
- (b) to a prison; or
- (c) to a remand centre; or
- (d) to a remand home;
- and on his arrival at the Crown Court, prison, remand centre or remand home the order shall cease to have effect.
- (8) The provisions of Schedule 2A shall have effect with respect to supervision and treatment orders.”.
- (2) In Article 51 of the Mental Health (Northern Ireland) Order 1986 (appeals)—
- (a) in paragraph (2), after “a hospital order” there shall be inserted “, a supervision and treatment order” and after “the hospital order” where it twice occurs there shall be inserted “supervision and treatment order”;
- (b) in paragraphs (3) and (4) after “hospital order” wherever it occurs there shall be inserted “, supervision and treatment order”.

(3) In Article 84(1)(b) of the Mental Health (Northern Ireland) Order 1986 (interpretation of Part V)—

- (a) for “49(7) or 50(3) has the same effect” there shall be substituted “50A(3) shall be treated”;
- (b) for “49 or 50” there shall be substituted “50A(2)”.

(4) After Schedule 2 to the Mental Health (Northern Ireland) Order 1986 there shall be inserted as Schedule 2A the provisions set out in Schedule 4 to this Order.

#### *Advance information*

#### **Rules as to furnishing of information by prosecution in criminal cases**

**52.**—(1) Magistrates' courts rules may make, with respect to proceedings against any person for a prescribed offence or an offence of any prescribed class, provision—

- (a) subject to paragraph (4), for requiring the prosecution to do such things as may be prescribed for the purpose of securing that the accused or a person representing him is furnished with, or can obtain, advance information concerning all, or any prescribed class of, the facts and matters of which the prosecution proposes to adduce evidence; and
- (b) for requiring a magistrates' court, if satisfied that any requirement imposed under subparagraph (a) has not been complied with, to adjourn the proceedings pending compliance with that requirement unless the court is satisfied that the conduct of the case for the accused will not be substantially prejudiced by non-compliance with the requirement.

(2) Rules made under paragraph (1)(a)—

- (a) may require the prosecution to do as provided in the rules either—
  - (i) in all cases; or
  - (ii) only if so requested by or on behalf of the accused; and
- (b) may exempt facts and matters of any prescribed description from any requirement imposed by the rules, and may make the opinion of the prosecution material for the purposes of any such exemption.

(3) It shall not be open to a person convicted of an offence to appeal against the conviction on the ground that a requirement imposed by virtue of paragraph (1) was not complied with by the prosecution.

(4) For the purposes of paragraph (1)(a), a written statement tendered, or proposed to be tendered, in evidence under section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (proof by written statement) shall constitute advance information of that statement.

(5) In this Article “prescribed” means prescribed by magistrates' courts rules.

## **PART V**

### **MISCELLANEOUS**

#### *Certain knives and other dangerous weapons*

#### **Manufacture or sale, etc., of certain knives**

**53.** Any person who manufactures, sells or hires or offers for sale or hire, exposes or has in his possession for the purpose of sale or hire, or lends or gives to any other person—

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- (a) any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a “flick knife” or “flick gun”; or
- (b) any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever, or other device, sometimes known as a “gravity knife”;

shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both.

### **Sale of knives and certain articles with blade or point to persons under 16**

**54.**—(1) Any person who sells to a person under the age of 16 years an article to which this Article applies shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both.

(2) Subject to paragraph (3), this Article applies to—

- (a) any knife, knife blade or razor blade,
- (b) any axe, and
- (c) any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.

(3) This Article does not apply to any article described in—

- (a) Article 53,
- (b) an order made under section 141(2) of the Criminal Justice Act 1988 (offensive weapons), or
- (c) an order made by the Secretary of State under this Article.

(4) It shall be a defence for a person charged under paragraph (1) to prove that he took all reasonable precautions and exercised due diligence to avoid the commission of the offence.

### **Arrest without warrant for offence of having certain weapons on school premises**

**55.** In Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (arrestable offences), after sub-paragraph (f) there shall be inserted—

- “(g) an offence under section 139A(1) or (2) of the Criminal Justice Act 1988 (offence of having article with blade or point (or offensive weapon) on school premises).” .

## *Information*

### **Information for financial and other purposes**

**56.**—(1) The Secretary of State shall publish such information as he considers expedient for the purpose of—

- (a) enabling persons engaged in the administration of criminal justice to become aware of the financial implications of their decisions; or
- (b) facilitating the performance by such persons of their duty to avoid discriminating against any persons on any improper ground.

(2) Publication under paragraph (1) shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned.

(3) The Secretary of State may make rules regulating the collection of information under this Article.

### **Rules and orders**

**57.** Rules made under Article 2(2), 17, 26(5) or 56(3) and orders made under Article 4(4), 10(8), 13(10),<sup>F54</sup> 21A(4)] 38(4) or 54(3)(c) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

**F54** 2003 NI 13

### **Amendments, transitional provisions and repeals**

*Para. (1)—Amendments*

(2) The transitional provisions and savings contained in Schedule 6 shall have effect.

*Para. (3)—Repeals*

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## SCHEDULES

### SCHEDULE 1

Articles 9(3) and 11(3).

#### ADDITIONAL REQUIREMENTS IN PROBATION ORDERS

##### *Requirements as to residence*

1.—(1) Subject to sub-paragraphs (2) and (3), a probation order may include requirements as to the residence of the offender.

(2) Before making a probation order containing any such requirement, the court shall consider the home surroundings of the offender.

(3) Where a probation order requires the offender to reside at any place, the period for which he is so required to reside shall be specified in the order.

##### *Requirements as to activities etc.*

2.—(1) Subject to the provisions of this paragraph, a probation order may require the offender—

(a) to present himself to a person or persons specified in the order at a place or places so specified;

(b) to participate or refrain from participating in activities specified in the order—

(i) on a day or days so specified; or

(ii) during the probation period or such portion of it as may be so specified.

(2) A court shall not include in a probation order a requirement such as is mentioned in sub-paragraph (1) unless—

(a) it has consulted a probation officer; and

(b) it is satisfied that it is feasible to secure compliance with the requirement.

(3) A court shall not include a requirement such as is mentioned in sub-paragraph (1)(a) or a requirement to participate in activities if it would involve the co-operation of a person other than the offender and the probation officer responsible for his supervision, unless that other person consents to its inclusion.

(4) A requirement such as is mentioned in sub-paragraph (1)(a) shall operate to require the offender—

(a) in accordance with instructions given by the probation officer responsible for his supervision, to present himself at a place or places for not more than 60 days in the aggregate; and

(b) while at any place, to comply with instructions given by, or under the authority of, the person in charge of that place.

(5) A place specified in an order shall have been approved by the Probation Board as providing facilities suitable for persons subject to probation orders.

(6) A requirement to participate in activities shall operate to require the offender—

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- (a) in accordance with instructions given by the probation officer responsible for his supervision, to participate in activities for not more than 60 days in the aggregate; and
  - (b) while participating, to comply with instructions given by, or under the authority of, the person in charge of the activities.
- (7) Instructions given by a probation officer under sub-paragraph (4) or (6) shall, as far as practicable, be such as to avoid any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

*Requirements as to attendance at day centre*

3.—(1) Subject to the provisions of this paragraph, a probation order may require the offender during the probation period to attend at a day centre specified in the order.

- (2) A court shall not include such a requirement in a probation order unless—
- (a) it has consulted a probation officer; and
  - (b) it is satisfied—
    - (i) that arrangements can be made for the offender's attendance at a centre; and
    - (ii) that the person in charge of the centre consents to the inclusion of the requirement.
- (3) A requirement under sub-paragraph (1) shall operate to require the offender—
- (a) in accordance with instructions given by the probation officer responsible for his supervision, to attend on not more than 60 days at the centre specified in the order; and
  - (b) while attending there to comply with instructions given by, or under the authority of, the person in charge of the centre.

(4) Instructions given by a probation officer under sub-paragraph (3) shall, so far as is practicable, be such as to avoid any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

(5) References in this paragraph to attendance at a day centre include references to attendance elsewhere than at the centre for the purpose of participating in activities in accordance with instructions given by, or under the authority of, the person in charge of the centre.

- (6) In this paragraph “day centre” means premises—
- (a) at which non-residential facilities are provided for use in connection with the rehabilitation of offenders; and
  - (b) which—
    - (i) are provided by the Probation Board; or
    - (ii) are for the time being approved by the Probation Board as providing facilities suitable for persons subject to probation orders.

*Requirements as to treatment for mental condition etc.*

4.—(1) This paragraph applies where a court proposing to make a probation order is satisfied on the oral or written evidence of a registered medical practitioner appointed by the Mental Health Commission for Northern Ireland for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986, that the mental condition of the offender—

- (a) is such as requires and may be susceptible to treatment; but
- (b) is not such as to warrant his detention in pursuance of a hospital order under Part III of that Order.

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(2) The probation order may include a requirement that the offender shall submit during the whole of the probation period or during such part of that period as may be specified in the order, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the offender's mental condition.

(3) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say —

- (a) treatment (whether as an in-patient or an out-patient) at such hospital as may be specified in the order, being a hospital within the meaning of the Mental Health (Northern Ireland) Order 1986 approved by the Department of Health and Social Services for the purposes of this paragraph; or
- (b) treatment by or under the direction of such registered medical practitioner as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b).

(4) A court shall not by virtue of this paragraph include in a probation order a requirement that the offender shall submit to treatment for his mental condition unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as an in-patient).

(5) While the offender is under treatment as an in-patient in pursuance of a requirement of the probation order, the probation officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

(6) Where the medical practitioner by whom or under whose direction an offender is being treated for his mental condition in pursuance of a probation order is of the opinion that part of the treatment can be better or more conveniently given in or at a hospital or place which—

- (a) is not specified in the order; and
- (b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner,

he may, with the consent of the offender, make arrangements for him to be treated accordingly.

(7) Such arrangements as are mentioned in sub-paragraph (6) may provide for the offender to receive part of his treatment as an in-patient in a hospital or place notwithstanding that the hospital or place is not one which could have been specified for that purpose in the probation order.

(8) Where any such arrangements as are mentioned in sub-paragraph (6) are made for the treatment of an offender—

- (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the probation officer responsible for the supervision of the offender, specifying the hospital or place in or at which the treatment is to be carried out; and
- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.

(9) Article 60 of the Mental Health (Northern Ireland) Order 1986 (written medical reports as evidence) shall apply for the purposes of this paragraph as it applies for the purposes of Part III of the Order.

#### *Requirements as to treatment for drug or alcohol dependency*

5.—(1) This paragraph applies where a court proposing to make a probation order is satisfied—

- (a) that the offender is dependent on <sup>F55</sup>drugs or alcohol;



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- (b) that his dependency caused or contributed to the offence in respect of which the order is proposed to be made; and
- (c) that his dependency is such as requires and may be susceptible to treatment.

(2) The probation order may include a requirement that the offender shall submit, during the whole of the probation period or during such part of that period as may be specified in the order, to treatment by or under the direction of a person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on <sup>F55</sup>drugs or alcohol.

(3) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say —

- (a) treatment (whether as an in-patient or an out-patient) at such hospital as may be specified in the order, being a hospital within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972 approved by the Department of Health and Social Services for the purposes of this paragraph; or
- (b) treatment by or under the direction of such person having the necessary qualifications or experience as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b).

(4) A court shall not by virtue of this paragraph include in a probation order a requirement that the offender shall submit to treatment for his dependency on <sup>F55</sup>drugs or alcohol unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as an in-patient).

(5) While the offender is under treatment as an in-patient in pursuance of a requirement of the probation order, the probation officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

(6) Where the person by whom or under whose direction an offender is being treated for dependency on <sup>F55</sup>drugs or alcohol in pursuance of a probation order is of the opinion that part of the treatment can be better or more conveniently given in or at a hospital which—

- (a) is not specified in the order; and
- (b) is one in or at which the treatment of the offender will be given by or under the direction of a person having the necessary qualifications or experience,

he may, with the consent of the offender, make arrangements for him to be treated accordingly.

(7) Such arrangements as are mentioned in sub-paragraph (6) may provide for the offender to receive part of his treatment as an in-patient in a hospital notwithstanding that the hospital is not one which could have been specified for that purpose in the probation order.

(8) Where any such arrangements as are mentioned in sub-paragraph (6) are made for the treatment of an offender—

- (a) the person by whom the arrangements are made shall give notice in writing to the probation officer responsible for the supervision of the offender, specifying the hospital in or at which the treatment is to be carried out; and
- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.

(9) In this paragraph the reference to the offender being dependent on <sup>F55</sup>drugs or alcohol includes a reference to his having a propensity towards the misuse of <sup>F55</sup>drugs or alcohol, and references to his dependency on <sup>F55</sup>drugs or alcohol shall be construed accordingly.

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**F55** prosp. rep. by 1998 NI 20

## SCHEDULE 2

Article 16.

### ENFORCEMENT ETC. OF COMMUNITY ORDERS

#### PART I

##### PRELIMINARY

1. <sup>F56</sup>In this Schedule—

“relevant order” means a probation order <sup>F56</sup> or a community service order; and

“the petty sessions district concerned” means the petty sessions district for the time being specified in the relevant order. <sup>F56</sup>

**F56** prosp. insertion by 1998 NI 20

#### PART II

##### BREACH OF REQUIREMENT OF ORDER

###### *Issue of summons or warrant*

2.—(1) If at any time while a relevant order is in force in respect of an offender it appears on complaint to a justice of the peace that the offender has failed to comply with any of the requirements of the order, the justice may —

- (a) issue a summons requiring the offender to appear at the place and time specified in it; or
- (b) if the complaint is in writing and on oath, issue a warrant for his arrest.

(2) Any summons or warrant issued under this paragraph shall direct the offender to appear or be brought <sup>F57</sup> before a court of summary jurisdiction acting for the petty sessions district concerned.

**F57** prosp. subst. by 1998 NI 20

###### *Powers of court of summary jurisdiction*

3.—(1) If it is proved to the satisfaction of the court of summary jurisdiction before which an offender appears or is brought under paragraph 2 that he has failed without reasonable excuse to comply with any of the requirements of the relevant order, the court may deal with him in respect of the failure in any one of the following ways, namely—

- (a) it may impose on him a fine not exceeding £1,000;
- (b) subject to paragraph 6(3) to (5), it may make a community service order in respect of him;

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- (c) where the relevant order is a probation order and the case is one to which<sup>F58</sup> Article 37 of the Criminal Justice (Children) (Northern Ireland) Order 1998 applies, it may make an order under that Article] requiring him to attend at an attendance centre; or
  - (d) where the relevant order was made by a magistrates' court, it may revoke the order and deal with him, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.
- (2) In dealing with an offender under sub-paragraph (1)(d), a court of summary jurisdiction—
- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and,
  - (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that he has refused to give his consent to a community sentence which has been proposed by the court and requires that consent.
- (3) Where a relevant order was made by the Crown Court and a court of summary jurisdiction has power to deal with the offender under sub-paragraph (1)(a), (b) or (c), it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.
- (4) A court of summary jurisdiction which deals with an offender's case under sub-paragraph (3) shall send to the Crown Court—
- (a) a certificate signed by a resident magistrate certifying that the offender has failed to comply with the requirements of the relevant order in the respect specified in the certificate; and
  - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Crown Court.

**F58** 1998 NI 9

#### *Powers of Crown Court*

- 4.—(1) Where<sup>F59</sup> by virtue of paragraph 3(3) an offender is brought or appears before the Crown Court and it is proved to the satisfaction of the court that he has failed to comply with any of the requirements of the relevant order, that court may deal with him in respect of the failure in any one of the following ways, namely—
- (a) it may impose on him a fine not exceeding £1,000;
  - (b) subject to paragraph 6(3) to (5), it may make a community service order in respect of him;
  - (c) where the relevant order is a probation order and the case is one to which<sup>F60</sup> Article 37 of the Criminal Justice (Children) (Northern Ireland) Order 1998 applies, it may make an order under that Article] requiring him to attend at an attendance centre; or
  - (d) it may revoke the order and deal with him, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by or before the court of the offence.
- (2) In dealing with an offender under sub-paragraph (1)(d), the Crown court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and
  - (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that he has refused to give his consent to a community sentence which has been proposed by the court and requires that consent.

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(3) In proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the requirements of the relevant order shall be determined by the court and not by the verdict of a jury.

**F59** prosp. insertion by 1998 NI 20  
**F60** 1998 NI 9

#### *Exclusions*

**5.—(1)** Without prejudice to paragraphs 7 and 8, an offender who is convicted of a further offence while a relevant order is in force in respect of him shall not on that account be liable to be dealt with under paragraph 3 or 4 in respect of a failure to comply with any requirement of the order.

(2) An offender who <sup>F61</sup>is required by a probation order to submit to treatment for his mental condition, or his dependency on drugs or alcohol, shall not be treated for the purposes of paragraph 3 or 4 as having failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.

**F61** prosp. subst. by 1998 NI 20

#### *Supplemental*

**6.—(1)** Any exercise by a court of its powers under paragraph 3(1)(a), (b) or (c) or 4(1)(a), (b) or (c) shall be without prejudice to the continuance of the relevant order.

(2) A fine imposed under paragraph 3(1)(a) or 4(1)(a) shall be deemed for the purposes of any statutory provision to be a sum adjudged to be paid by a conviction.

(3) The number of hours which an offender may be required to work under a community service order made under paragraph 3(1)(b) or 4(1)(b)—

- (a) shall be specified in the order and shall not exceed 60 in the aggregate; and
- (b) where the relevant order is a community service order, shall not be such that the total number of hours under both orders exceeds the maximum specified in Article 13(2).

(4) Article 13(4) and, so far as applicable—

- (a) the provisions of this Order relating to community service orders; and
- (b) the provisions of this Schedule so far as so relating,

shall have effect in relation to a community service order under paragraph 3(1)(b) or 4(1)(b) as they have effect in relation to a community service order in respect of an offender.

(5) Where the provisions of this Schedule have effect as mentioned in sub-paragraph (4), the powers conferred by those provisions to deal with the offender for the offence in respect of which the community service order was made shall be construed as powers to deal with the offender for the failure to comply with the requirements of the relevant order in respect of which the community service order was made.

(6) In its application to combination orders, sub-paragraph (3) shall have effect as if the reference to Article 13(2) were a reference to Article 15(1).

## PART III REVOCATION OF ORDER

### *Revocation of order with or without re-sentencing*

7.—(1) This paragraph applies where a relevant order is in force in respect of any offender and, on the application of the offender or the responsible officer, it appears to a court of summary jurisdiction acting for the petty sessions district concerned <sup>F62</sup>that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice—

- (a) that the order should be revoked; or
- (b) that the offender should be dealt with in some other manner for the offence in respect of which the order was made.

(2) The court may—

- (a) if the order was made by a magistrates' court—
  - (i) revoke the order; or
  - (ii) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence; or
- (b) if the order was made by the Crown Court, commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

(3) The circumstances in which a probation order <sup>F62</sup>may be revoked under sub-paragraph (2)(a)(i) shall include the offender's making good progress or his responding satisfactorily to supervision <sup>F62</sup>.

(4) In dealing with an offender under sub-paragraph (2)(a)(ii), a court of summary jurisdiction shall take into account the extent to which the offender has complied with the requirements of the relevant order.

(5) Where the court deals with an offender's case under sub-paragraph (2)(b), it shall send to the Crown Court such particulars of the case as may be desirable.

(6) Where a court of summary jurisdiction proposes to exercise its powers under this paragraph otherwise than on the application of the offender it shall summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

(7) No application may be made by the offender under sub-paragraph (1) while an appeal against the relevant order is pending.

**F62** prosp. insertion by 1998 NI 20

8.—(1) This paragraph applies where an offender in respect of whom a relevant order is in force—

- (a) is convicted of an offence before the Crown Court; or
- (b) by virtue of paragraph 7(2)(b) is brought or appears before the Crown Court.

<sup>F63</sup>(2) If it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Crown Court may—

- (a) revoke the order; or

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(b) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by or before the court of the offence.

(3) The circumstances in which a probation order <sup>F63</sup> may be revoked under sub-paragraph (2)(a) shall include the offender's making good progress or his responding satisfactorily to supervision <sup>F63</sup>.

(4) In dealing with an offender under sub-paragraph (2)(b), the Crown Court shall take into account the extent to which the offender has complied with the requirements of the relevant order.

**F63** prosp. insertion by 1998 NI 20

### *Revocation of order following custodial sentence*

**9.**—(1) This paragraph applies where—

<sup>F64</sup>(a) an offender in respect of whom a relevant order is in force is convicted of an offence before a court of summary jurisdiction other than a court of summary jurisdiction acting for the petty sessions district concerned; and

(b) the court imposes a custodial sentence on the offender.

(2) If it appears to the court, on the application of the offender or the responsible officer, that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may—

(a) if the order was made by a magistrates' court revoke it; and

(b) if the order was made by the Crown Court, commit the offender to custody or release him on bail until he can be brought or appear before the Crown Court.

(3) Where the court deals with an offender's case under sub-paragraph (2)(b), it shall send to the Crown Court such particulars of the case as may be desirable.

**F64** prosp. subst. by 1998 NI 20

**10.** Where by virtue of paragraph 9(2)(b) an offender is brought or appears before the Crown Court and it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the relevant order was made, the Crown Court may revoke the order.

### *Supplemental*

**11.**—(1) On the making under this Part of an order revoking a relevant order, the clerk to the court shall forthwith give copies of the revoking order to the responsible officer.

(2) A responsible officer to whom in accordance with sub-paragraph (1) copies of a revoking order are given shall give a copy to the offender and to the person in charge of any institution in which the offender was required by the order to reside.

(3) Where a probation order is in force in respect of an offender under the age of 21 years who is subsequently committed to <sup>F65</sup> a <sup>F66</sup> juvenile justice centre under the Criminal Justice (Children) (Northern Ireland) Order 1998] or to a young offenders centre, the probation officer who supervises the case shall send such documents and information relating to the case as he considers likely to be of assistance to <sup>F65</sup> the <sup>F66</sup> managers of the juvenile justice centre] or, as the case may be, the governor of the young offenders centre.

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**F65** prosp. insertion by 2002 c. 26

**F66** 1998 NI 9

## PART IV

### AMENDMENT OF ORDER

#### *Amendment by reason of change of residence*

**12.**—(1) This paragraph applies where, at any time while a relevant order <sup>F67</sup>is in force in respect of an offender, a court of summary jurisdiction acting for the petty sessions district concerned is satisfied that the offender proposes to change, or has changed, his residence from that petty sessions district to another petty sessions district.

(2) Subject to sub-paragraphs (3) and (4), the court may, and on the application of the responsible officer shall, amend the relevant order by substituting the other petty sessions district for the district specified in the order.

(3) The court shall not amend under this paragraph a probation order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the petty sessions district concerned unless, in accordance with paragraph 13, it either—

- (a) cancels those requirements; or
- (b) substitutes for those requirements other requirements which can be complied with if the offender ceases to reside in that district.

(4) The court shall not amend a community service order under this paragraph unless it appears to the court that provision can be made for the offender to perform work under the order under the arrangements which exist for persons who reside in the other petty sessions district to perform work under such orders.

**F67** prosp. insertion by 1998 NI 20

#### *Amendment of requirements of probation order*

**13.**—(1) Without prejudice to the provisions of paragraph 12, but subject to sub-paragraph (2), a court of summary jurisdiction for the petty sessions district concerned may, on the application of the offender or the + responsible officer, by order amend a probation order—

- (a) by cancelling any of the requirements of the order; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were then making the order.

(2) A court of summary jurisdiction shall not amend a probation order under sub-paragraph (1)—

- (a) by reducing the probation period, or by extending that period beyond the end of 3 years from the date of the original order; or
- (b) by inserting in it a requirement that the offender shall submit to treatment for his mental condition, or his dependency on drugs or alcohol, unless the amending order is made within 3 months after the date of the original order.

(3) In this paragraph and paragraph 14, references to the offender's dependency on drugs or alcohol include references to his propensity towards the misuse of drugs or alcohol.

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**14.—(1)** Where the medical practitioner or other person by whom or under whose direction an offender is being treated for his mental condition, or his dependency on drugs or alcohol, in pursuance of any requirement of a probation order—

- (a) is of the opinion mentioned in sub-paragraph (2); or
- (b) is for any reason unwilling to continue to treat or direct the treatment of the offender,

he shall make a report in writing to that effect to the responsible officer and that officer shall apply under paragraph 13 to a court of summary jurisdiction for the petty sessions district concerned for the variation or cancellation of the requirement.

(2) The opinion referred to in sub-paragraph (1) is—

- (a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order;
- (b) that the offender needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of a probation order;
- (c) that the offender is not susceptible to treatment; or
- (d) that the offender does not require further treatment.

F68

F68 prosp. insertion by 1998 NI 20

#### *Extension of community service order*

**15.** Where—

- (a) a community service order is in force in respect of any offender; and
- (b) on the application of the offender or the responsible officer, it appears to a court of summary jurisdiction acting for the petty sessions district concerned that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made,

the court may, in relation to the order, extend the period of 12 months specified in Article 14(2).

#### *Supplemental*

**16.** No order may be made under paragraph 12, and no application may be made under paragraph 13 or 15<sup>F69</sup>, while an appeal against the relevant order is pending.

F69 prosp. insertion by 1998 NI 20

**17.—(1)** Subject to sub-paragraph (2), where a court proposes to exercise its powers under this Part, otherwise than on the application of the offender, the court—

- (a) shall summon him to appear before the court; and
- (b) if he does not appear in answer to the summons, may issue a warrant for his arrest;

and the court shall not amend a relevant order under this Part unless the offender expresses his willingness to comply with the requirements of the order as amended.



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(2) This paragraph shall not apply to an order cancelling a requirement of a relevant order or reducing the period of any requirement, or substituting a new petty sessions district or a new place for the one specified in the relevant order.

**18.—**(1) On the making under this Part of an order amending a relevant order <sup>F70</sup>, the clerk to the court shall forthwith—

- (a) if the order amends the relevant order otherwise than by substituting a new petty sessions district or a new place for the one specified in the relevant order, give copies of the amending order to the responsible officer;
- (b) if the order amends the relevant order in the manner excepted by paragraph (a), send to the clerk of petty sessions for the new petty sessions district—
  - (i) copies of the amending order; and
  - (ii) such documents and information relating to the case as he considers likely to be of assistance to a court acting for that district in exercising its functions in relation to the order;

and in a case falling within paragraph (b) the clerk of petty sessions for that district shall give copies of the amending order to the responsible officer.

<sup>F70</sup>(2) A responsible officer to whom in accordance with sub-paragraph (1) <sup>F70</sup>copies of an order are given shall give a copy to the offender and to the person in charge of any institution in which the offender is or was required by the order to reside.

(3) Where a probation order is in force in respect of an offender under the age of 21 years who is subsequently committed to <sup>F71</sup> a <sup>F72</sup> juvenile justice centre under the Criminal Justice (Children) (Northern Ireland) Order 1998] or to a young offenders centre, the probation officer who supervises the case shall send such documents and information relating to the case as he considers likely to be of assistance to <sup>F71</sup> the <sup>F72</sup> managers of the juvenile justice centre] or, as the case may be, the governor of the young offenders centre.

**F70** prosp. insertion by [1998 NI 20](#)

**F71** prosp. insertion by [2002 c. 26](#)

**F72** [1998 NI 9](#)

### Schedules 3#5—Amendments

## SCHEDULE 6

Article 58(2).

### TRANSITIONAL PROVISIONS AND SAVINGS

**1.** Each of Articles 8 to 11, 13, 15, 19 to 33, 36 and 37 shall apply in relation to offenders convicted (but not sentenced) before the date on which that Article comes into operation as it applies in relation to offenders convicted after that date.

**2.** Neither paragraph (2) of Article 6, nor the repeal by this Order of section 8 of the Probation Act (Northern Ireland) 1950, shall affect the operation of section 8 in relation to persons placed on

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probation before the date of the coming into operation of that paragraph or, as the case may be, that repeal.

3. An order made under Article 49(5) or 50(2) of the Mental Health (Northern Ireland) Order 1986 (court order to admit person to a hospital) before the date on which Article 53 comes into operation shall after that date be treated as an order made under Article 50A(2) of that Order together with a restriction order made without limit of time.

#### *Schedule 7—Repeals*

**Status:**

Point in time view as at 07/06/2006.

**Changes to legislation:**

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