
STATUTORY INSTRUMENTS

2003 No. 1247

The Criminal Justice (Northern Ireland) Order 2003

**PART
INTRODUCTORY**

Title and commencement

- 1.—(1) This Order may be cited as the Criminal Justice (Northern Ireland) Order 2003.
- (2) This Article and Article 2 shall come into operation on the fourteenth day after the day on which this Order is made.
- (3) The remaining provisions of this Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

**PART II
BAIL IN CRIMINAL PROCEEDINGS**

“Bail”

- 3.—(1) In this Part “bail” means bail grantable under the law for the time being in force—
- (a) in or in connection with proceedings for an offence to a person who is accused or convicted of the offence, or
 - (b) in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued.
- (2) In paragraph (1)—
- “bail” does not include bail grantable under section 67 of the Terrorism Act 2000 (c. 11);
 - “law” includes common law;
 - “offence” includes an alleged offence.
- (3) For the purposes of paragraph (1) any of the following shall be treated as a conviction—
- (a) a finding of guilt;
 - (b) a finding under Article 51 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (remand for inquiry into physical or mental condition) that the person charged did the act or made the omission charged;

- (c) a finding mentioned in Article 50A(1) of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#) (not guilty by reason of insanity, or unfit to be tried etc.);
 - (d) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally.
- (4) This Article applies—
- (a) whether the offence was committed in Northern Ireland or elsewhere; and
 - (b) whether it is an offence under the law of Northern Ireland or of any other country or territory.

Surrender to custody

- 4.—(1) A person released on bail shall be under a duty to surrender to custody.
- (2) In this Part—
- “surrender to custody” means, in relation to a person released on bail, surrendering himself (according to the requirements of the grant of bail)—
- (a) into the custody of the court at the time and place for the time being appointed for him to do so; or
 - (b) at the police station and at the time appointed for him to do so.

Offence of absconding by person released on bail

- 5.—(1) If a person who has been released on bail fails without reasonable cause to surrender to custody, he shall be guilty of an offence.
- (2) If a person who—
- (a) has been released on bail, and
 - (b) has, with reasonable cause, failed to surrender to custody,
- fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he shall be guilty of an offence.
- (3) A person guilty of an offence under paragraph (1) or (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

Arrest for absconding or breaking conditions of bail

- 6.—(1) If a person who has been released on bail and is under a duty to surrender into the custody of a court fails to surrender to custody at the time appointed for him to do so, the court may issue a warrant for his arrest.
- (2) If a person who has been released on bail absents himself from the court at any time after he has surrendered into the custody of the court and before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for his arrest; but no warrant shall be issued under this paragraph where that person is absent in accordance with permission given to him by or on behalf of the court.
- (3) A constable may arrest without warrant any person who has been released on bail and is under a duty to surrender to custody—
- (a) if the constable has reasonable grounds for believing that that person is not likely to surrender to custody;

- (b) if the constable has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or
- (c) in a case where that person was released on bail with one or more surety or sureties, if a surety notifies a constable in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.

(4) A person who is arrested under paragraph (3) shall be brought before a magistrates' court as soon as practicable after the arrest and in any event not later than the next day following the day on which he is arrested.

(5) Where the day next following the day on which that person is arrested is Christmas Day, Good Friday or a Sunday, he shall be brought before a magistrates' court not later than the next following day which is not one of those days.

(6) Where a person is brought before a magistrates' court under paragraph (4) the court—

- (a) if of the opinion that he—
 - (i) is not likely to surrender to custody, or
 - (ii) has broken or is likely to break any condition of his bail,may remand him in custody or commit him to custody, as the case may require, or alternatively, grant him bail subject to the same or to different conditions; or
- (b) if not of that opinion, shall grant him bail subject to the same conditions (if any) as were originally imposed.

(7) Paragraph (6) is subject to Articles 12 and 13 of the [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(NI 9\)](#) (release on bail or remand in custody of child).

Cases where person not to be released from police detention

7. In Article 39 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) (duties of custody officer after charge)—

- (a) in paragraph (1)(a)—
 - (i) in head (ii) the words “for his own protection or” and the word “or” where it last occurs shall cease to have effect;
 - (ii) at the end of head (iii) there shall be added
“or
(iv) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection;”;
- (b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) The custody officer, in taking the decisions required by paragraph (1)(a) and (b) (except (a)(i) and (iv) and (b)(ii)), shall have regard to such of the following considerations as appear to him to be relevant—

 - (a) the nature and seriousness of the offence;
 - (b) the character, antecedents, associations and community ties of the person;
 - (c) the person’s record as respects the fulfilment of his obligations under previous grants of bail, and
 - (d) the strength of the evidence of the person’s having committed the offence, as well as to any other considerations which appear to be relevant.”.

Bail under Part V of the Police and Criminal Evidence (Northern Ireland) Order 1989

8.—(1) In Article 48 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) (bail after arrest)—

(a) in paragraph (1) (duty to appear or attend at appointed time), for the words from the beginning to “subject to” there shall be substituted the words “The duty of a person who is released on bail under this Part to surrender to custody under Article 4 of the Criminal Justice (Northern Ireland) Order 2003 consists of”;

(b) after paragraph (2) (appointed time) there shall be inserted the following paragraph—

“(2A) The custody officer shall make a record of the time and place appointed under paragraph (1)(a) or (b) and if the person released on bail so requests, the custody officer shall cause a copy of the record to be given to that person as soon as practicable after the record is made.”;

(c) for paragraphs (3) to (5) (recognisances) there shall be substituted the following paragraphs—

“(3) No recognisance for his surrender to custody shall be taken from him.

(3A) Except as provided by this Article—

(a) no security for his surrender to custody shall be taken from him;

(b) he shall not be required to provide a surety or sureties for his surrender to custody; and

(c) no other requirement shall be imposed on him as a condition of bail.

(3B) He may be required, before release on bail, to provide a surety or sureties to secure his surrender to custody.

(3C) He may be required, before release on bail, to give security for his surrender to custody; and the security may be given by him or on his behalf.

(3D) He may be required to comply, before release on bail under Article 39(1) or later, with such requirements as appear to the custody officer to be necessary to secure that—

(a) he surrenders to custody;

(b) he does not commit an offence while on bail; and

(c) he does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(3E) Where a custody officer has granted bail he or another custody officer serving at the same police station may, at the request of the person to whom it is granted, vary the conditions of bail; and in doing so may impose conditions or more onerous conditions.

(3F) Where a custody officer grants bail to a person no conditions shall be imposed under paragraph (3B), (3C), (3D) or (3E) unless it appears to the custody officer that it is necessary to do so for the purpose of preventing that person from—

(a) failing to surrender to custody;

(b) committing an offence while on bail; or

(c) interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person.

(3G) Paragraph (3F) also applies on any request to a custody officer under paragraph (3E) to vary the conditions of bail.

(3H) Where a custody officer varies any conditions of bail or imposes conditions under paragraph (3B), (3C), (3D) or (3E), he shall make a record of the decision and shall, at the

request of the person to whom bail was granted, cause a copy of the record to be given to that person as soon as practicable after the record is made.”;

(d) in paragraph (6) the words “(with or without entering into a recognisance)” shall cease to have effect.

(2) After that Article there shall be inserted the following Article—

“Forfeiture of security

48A.—(1) Where a person has given security in pursuance of Article 48(3C), and a magistrates' court is satisfied that he failed to surrender to custody then, unless it appears to the court that he had reasonable cause for his failure, the court may order the forfeiture of the security.

(2) If a court orders the forfeiture of a security under paragraph (1), the court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

(3) An order under paragraph (1) shall, unless previously revoked, take effect at the end of 21 days beginning with the day on which it is made.

(4) A court which has ordered the forfeiture of a security under paragraph (1) may, if satisfied on an application by or on behalf of the person who gave it that he did have reasonable cause for his failure to surrender to custody, by order remit the forfeiture or declare that it extends to such amount less than the full value of the security as it thinks fit to order.

(5) An application under paragraph (4) may be made before or after the order for forfeiture has taken effect, but shall not be entertained unless the court is satisfied that the prosecution was given reasonable notice of the applicant's intention to make it.”.

Power to grant bail where police bail has been granted

9. After Article 132 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (powers of resident magistrate or other justice in relation to persons not released on bail), there shall be inserted the following Article—

“Power to grant bail where police bail has been granted

132A.—(1) Where a custody officer—

(a) grants bail to any person under Part V of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) and imposes conditions; or

(b) varies, in relation to any person, conditions of bail under Article 48(3E) of that Order,

a magistrates' court may, on application by or on behalf of that person, grant bail or vary the conditions.

(2) On an application under paragraph (1), the court, if it grants bail and imposes conditions or if it varies the conditions, may impose more onerous conditions.

(3) On determining an application under paragraph (1), the court shall remand the applicant in custody or on bail in accordance with the determination and, where the court withholds bail or grants bail, the grant of bail by the custody officer shall lapse.”.

Reconsideration of decisions granting bail

10. After Article 133 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (conditions on admission to bail) there shall be inserted the following Article—

“Reconsideration of decisions granting bail

133A.—(1) Where a magistrates' court has granted bail in connection with an offence, or proceedings for an offence, to which this Article applies, or a custody officer has granted bail in connection with proceedings for an offence, a magistrates' court may, on an application by the prosecution for the decision to be reconsidered—

- (a) vary or rescind the conditions of bail or impose further conditions;
- (b) impose conditions in respect of bail which has been granted unconditionally, or
- (c) withhold bail.

(2) This Article applies to offences which are punishable on conviction on indictment (whether or not punishable only on conviction on indictment).

(3) No application for the reconsideration of a decision under this Article shall be made unless it is based on information which was not available to the court or custody officer when the decision was taken.

(4) Where the decision of the court on a reconsideration under this Article is to withhold bail from the person to whom it was originally granted, the court shall—

- (a) if that person is before the court, remand him in custody; or
- (b) if that person is not before the court, order him to surrender himself forthwith into the custody of the court.

(5) Where a person surrenders himself into the custody of the court in compliance with an order under paragraph (4), the court shall remand him in custody.

(6) A person who has been ordered to surrender to custody under paragraph (4) may be arrested without warrant by a constable if he fails without reasonable cause to surrender to custody in accordance with the order.

(7) A person arrested in pursuance of paragraph (6) shall be brought before a magistrates' court as soon as practicable after the arrest and in any event not later than the day next following the day on which he is arrested and the court shall remand him in custody.

(8) Where the day next following the day on which that person is arrested is Christmas Day, Good Friday or a Sunday, he shall be brought before a magistrates' court not later than the next following day which is not one of those days.

(9) Magistrates' courts rules shall include provision—

- (a) requiring notice of an application under this Article and of the grounds for it to be given to the person affected, including notice of the powers available to the court under it; and
- (b) for securing that any representations made by the person affected (whether in writing or orally) are considered by the court before making its decision.

(10) In this Article “custody officer” includes an officer who is performing the functions of a custody officer by virtue of Article 37(4) or (7) of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#).”.

PART III**TIME LIMITS****Introductory**

11.—(1) In this Part—

“custody time limit” means a time limit imposed by regulations in pursuance of paragraph (1) (b) of Article 12;

“overall time limit” means a time limit imposed by regulations in pursuance of paragraph (1) (a) of Article 12;

“specified” means specified in regulations;

but where a custody time limit or an overall time limit has been extended by a court by virtue of paragraph (2)(c) of Article 12 “custody time limit” or “overall time limit”, as the case may be, means the limit as so extended.

(2) In Article 12 and Article 13—

“custody of the Crown Court” includes custody to which a person is committed in pursuance of—

- (a) Article 37 or 40(4) of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (magistrates' court committing accused for trial);
- (b) section 51(8) of the [Judicature \(Northern Ireland\) Act 1978 \(c. 23\)](#) (magistrates' court dealing with a person brought before it following his arrest in pursuance of a warrant issued by the Crown Court);
- (c) Article 4(3)(a) of the [Criminal Justice \(Serious Fraud\) \(Northern Ireland\) Order 1988 \(NI 16\)](#) (magistrates' court dealing with a person to whom notice of transfer under that Order relates); or
- (d) paragraph 2(1)(a) of Schedule 1 to the [Children's Evidence \(Northern Ireland\) Order 1995 \(NI 3\)](#) (magistrates' court dealing with a person to whom notice of transfer under that Order relates);

“custody of a magistrates' court” means custody to which a person is committed in pursuance of Article 47 or 49 of the [Magistrates' Courts \(Northern Ireland\) Order 1981](#);

“law about bail” means any statutory provision or rule of law relating to bail;

“preliminary stage”, in relation to any proceedings, does not include any stage after the start of the trial (within the meaning given by Article 13).

(3) This Part shall not apply to scheduled offences (within the meaning of section 65 of the [Terrorism Act 2000 \(c. 11\)](#)).

Preliminary stages of criminal proceedings

12.—(1) The Secretary of State may by regulations make provision, in respect of a specified preliminary stage of proceedings for an offence, as to the maximum period—

- (a) to be allowed to the prosecution to complete the stage;
- (b) during which the accused may, while awaiting completion of the stage, be in the custody of a magistrates' court or the Crown Court in relation to the offence.

(2) The regulations may, in particular—

- (a) provide for a specified law about bail to apply in relation to cases to which custody or overall time limits apply (subject to any modifications which the Secretary of State considers it necessary to specify in the regulations);
- (b) make such provision with respect to the procedure to be followed in criminal proceedings as the Secretary of State considers appropriate in consequence of another provision of the regulations; and
- (c) enable a magistrates' court or the Crown Court in specified circumstances to extend or further extend a time limit at any time before it expires.

(3) Where an overall time limit expires before the completion of the stage of proceedings to which the limit applies, a magistrates' court or the Crown Court (as the case may be) shall stay the proceedings.

(4) Regulations under this Article which provide for a custody time limit in relation to a preliminary stage shall have no effect where—

- (a) a person escapes from the custody of a magistrates' court or the Crown Court before the expiry of the custody time limit;
- (b) a person who has been released on bail in consequence of the expiry of a custody time limit fails to surrender himself into the custody of the court at the appointed time; or
- (c) a person who has been released on bail in consequence of the expiry of a custody time limit is arrested by a constable in connection with a breach, or likely breach, of a condition of his bail.

(5) Paragraph (6) applies where—

- (a) a person escapes from the custody of a magistrates' court or the Crown Court; or
- (b) a person who has been released on bail fails to surrender himself into the custody of the court at the appointed time,

and is accordingly unlawfully at large for any period.

(6) The following, namely—

- (a) the period for which the person is unlawfully at large; and
- (b) such additional period (if any) as the court may direct, having regard to the disruption of the prosecution occasioned by—
 - (i) the person's escape or failure to surrender; and
 - (ii) the length of the period mentioned in sub-paragraph (a),

shall be disregarded, so far as the offence in question is concerned, for the purposes of the overall time limit which applies in his case in relation to the stage which the proceedings have reached at the time of the escape or, as the case may be, at the appointed time.

Supplementary provisions

13.—(1) Where a person is convicted of an offence, the extension of a time limit in the exercise of the power conferred by virtue of Article 12(2)(c) in relation to proceedings for the offence shall not be called into question on an appeal against the conviction.

(2) For the purposes of Article 12 proceedings for an offence shall be taken to begin when the accused is charged with the offence or, as the case may be, a complaint is made charging him with the offence.

(3) In the application of Article 12 in relation to proceedings on indictment, “preliminary stage” does not include a stage after the time when a jury is sworn to consider the issue of guilt or fitness to plead or, if the court accepts a plea of guilty before a jury is sworn, after that plea is accepted (but this is subject to Article 7 of the [Criminal Justice \(Serious Fraud\) \(Northern Ireland\) Order 1988 \(NI 16\)](#) (trial begins with preparatory hearing)).

(4) In the application of Article 12 in relation to summary proceedings, “preliminary stage” does not include a stage—

- (a) after the court begins to hear evidence for the prosecution at the trial; or
- (b) if the court accepts a plea of guilty without proceeding as mentioned in sub-paragraph (a), after the plea is accepted; or

- (c) after the court begins to consider whether to exercise its power under Article 44(4) of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#) (power to make hospital or guardianship order without convicting person).
- (5) For the purposes of the application of a custody time limit in relation to a person who is in the custody of a magistrates' court or the Crown Court—
 - (a) all periods during which he is in the custody of a magistrates' court in respect of the same offence shall be aggregated and treated as a single continuous period; and
 - (b) all periods during which he is in the custody of the Crown Court in respect of the same offence shall be aggregated and treated similarly.

Appeals

- 14.**—(1) Where a court decides—
- (a) to extend, or further extend, a custody or overall time limit, or
 - (b) to give a direction under Article 12(6),
- the accused may appeal against the decision.
- (2) Where a court refuses—
- (a) to extend, or further extend, a custody or overall time limit, or
 - (b) to give a direction under Article 12(6),
- the prosecution may appeal against the refusal.
- (3) An appeal under paragraph (2) may not be commenced after the expiry of the limit in question, but where such an appeal is commenced before the expiry of the limit the limit shall be deemed not to have expired before the determination or abandonment of the appeal.
- (4) An appeal under this Article from a decision or refusal of—
- (a) a magistrates' court shall lie to a county court;
 - (b) the Crown Court shall lie to the Court of Appeal but only with the leave of—
 - (i) a judge of the Crown Court; or
 - (ii) the Court of Appeal.

Additional time limits for persons under 18

- 15.**—(1) The Secretary of State may by regulations make provision—
- (a) with respect to a person under the age of 18 at the time of his arrest in connection with an offence, as to the maximum period to be allowed for the completion of the stage beginning with his arrest and ending with the date fixed for his first appearance in court in connection with the offence (“the initial stage”);
 - (b) with respect to a person convicted of an offence who was under that age at the time of his arrest for the offence or (where he was not arrested for it) the making of the complaint charging him with it, as to the period within which the stage between his conviction and his being sentenced for the offence should be completed.
- (2) Paragraph (2) of Article 12 applies for the purposes of regulations under paragraph (1) as if the reference in sub-paragraph (a) of Article 12(2) to custody or overall time limits were a reference to time limits imposed by the regulations.
- (3) In this Article “initial stage time limit” means a time limit imposed by the regulations under paragraph (1)(a); but, where an initial stage time limit has been extended by the court by virtue of Article 12(2)(c) as applied by paragraph (2), “initial stage time limit” means the limit as extended.

(4) Where the initial stage time limit expires before the person arrested is charged with the offence, he shall not be charged with it unless further evidence relating to it is obtained, and—

- (a) if he is then under arrest, he shall be released;
- (b) if he is then on bail under Part V of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#), his bail (and any duty or conditions to which it is subject) shall be discharged.

(5) Where the initial stage time limit expires after the person arrested is charged with the offence but before the date fixed for his first appearance in court in connection with it, the court shall stay the proceedings.

(6) Where—

- (a) a person escapes from arrest; or
- (b) a person who has been released on bail under Part V of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989](#) fails to surrender himself at the appointed time,

and is accordingly unlawfully at large for any period, that period shall be disregarded, so far as the offence in question is concerned, for the purposes of the initial stage time limit.

(7) Article 14 (appeals) shall apply for the purposes of this Article, at any time after the person arrested has been charged with the offence in question, as if any reference (however expressed) to a custody or overall time limit were a reference to the initial stage time limit.

(8) Where a person is convicted of an offence, the extension of a time limit in the exercise of the power conferred by virtue of Article 12(2)(c) as applied by paragraph (2) shall not be called into question on an appeal against the conviction.

(9) Any reference in this Article (however expressed) to a person being charged with an offence includes a reference to the making of a complaint charging an offence.

(10) Paragraph (1) is without prejudice to Article 8 of the [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(NI 9\)](#) (child apparently under 14).

Re-institution of stayed proceedings

16.—(1) This Article applies where proceedings for an offence (“the original proceedings”) are stayed by a court under Article 12(3) or Article 15(5).

(2) In paragraph (3) “the relevant authority” means—

- (a) the Director of Public Prosecutions for Northern Ireland in the case of proceedings conducted by him;
- (b) the Director of the Serious Fraud Office in the case of proceedings conducted by him;
- (c) the Commissioners of Inland Revenue in the case of proceedings conducted by them;
- (d) the Commissioners of Customs and Excise in the case of proceedings conducted by them;
- (e) a person designated for the purpose of this paragraph by the Secretary of State in the case of proceedings not conducted as mentioned in sub-paragraphs (a) to (d).

(3) If the relevant authority so directs, fresh proceedings for the offence may be instituted within a period of three months (or such longer period as the court may allow) after the date on which the original proceedings were stayed by that court.

(4) Fresh proceedings shall be instituted as follows—

- (a) where the original proceedings were stayed by the Crown Court, by presenting an indictment;
- (b) where the original proceedings were stayed by a magistrates' court, by making a complaint.

(5) Fresh proceedings may be instituted in accordance with paragraphs (3) and (4)(b) notwithstanding anything in Article 19(1) of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (limitation of time).

(6) Where fresh proceedings are instituted, anything done in relation to the original proceedings shall be treated as done in relation to the fresh proceedings if the court so directs or it was done—

- (a) by the prosecutor in compliance or purported compliance with section 3, 4, 7 or 9 of the Criminal Procedure and Investigations Act 1996 (c. 26); or
- (b) by the accused in compliance or purported compliance with section 5 or 6 of that Act.

(7) Where a person is convicted of an offence in fresh proceedings under this Article, the institution of those proceedings shall not be called into question in any appeal against that conviction.

Regulations

17.—(1) Regulations made under this Part 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 (c. 36) shall apply accordingly.

(2) Regulations under this Part may—

- (a) be made so as to apply only in relation to proceedings instituted in specified areas, or proceedings of, or against persons of, specified classes or descriptions;
- (b) make different provision with respect to proceedings instituted in different areas, or different provision with respect to proceedings of, or against persons of, different classes or descriptions; and
- (c) make such transitional provision in relation to proceedings instituted before the commencement of any provision of the regulations, or in relation to a stage begun before that commencement, as the Secretary of State considers appropriate.

PART IV

SEXUAL OFFENCES

Rape

18.—(1) A man commits rape if—

- (a) he has sexual intercourse with a person who at the time of the intercourse does not consent to it; and
- (b) at the time he knows that the person does not consent to the intercourse or is reckless as to whether that person consents to it.

(2) Any reference to rape in a statutory provision shall be construed in accordance with paragraph (1).

(3) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a person was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed.

(4) In this Article—

“man” includes a male person of any age;

“rape offence” means rape, attempted rape, aiding, abetting, counselling and procuring rape or attempted rape, incitement to rape, conspiracy to rape, assault with intent to rape and burglary with intent to rape; and

references to sexual intercourse are to sexual intercourse whether vaginal or anal and shall be construed as references to carnal knowledge in accordance with section 63 of the Offences Against the Person Act 1861 (c. 100) (under which such intercourse is deemed complete on proof of penetration only).

Buggery

19.—(1) It is an offence for a person to commit buggery with another person other than in the circumstances described in paragraph (2) or (3).

(2) The first circumstances referred to in paragraph (1) are that the act of buggery takes place in private and both parties have attained the age of 17 years.

(3) The second circumstances so referred to are that the person is under the age of 17 years and the other person has attained that age.

(4) An act of buggery shall not be treated as taking place in private if it takes place—

- (a) when more than two persons take part or are present; or
- (b) in a lavatory to which the public have or are permitted to have access, whether on payment or otherwise.

(5) In any proceedings against a person for buggery with another person it shall be for the prosecution to prove that the act of buggery took place otherwise than in private or that one of the parties to it had not attained the age of 17 years.

(6) Subject to paragraph (7) a person guilty of an offence of buggery with another person shall be liable on conviction on indictment to imprisonment for a term not exceeding two years.

(7) A person guilty of an offence of buggery with another person shall be liable on conviction on indictment—

- (a) to life imprisonment if the other person was under the age of 16 years at the time of the commission of the offence; or
- (b) (subject to sub-paragraph (a)) to imprisonment for a term not exceeding five years if the other person was under the age of 18 and the accused had attained the age of 21 years at the time of the commission of the offence.

Assault with intent to commit buggery

20. A person who assaults another person with intent to commit buggery shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding ten years.

Indecent assault on a male

21.—(1) A person who makes an indecent assault on a man shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding ten years.

(2) In this Article “man” includes a male person of any age.

Penalty for indecent conduct towards child

22.—(1) In section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34) (indecent conduct towards child), in paragraph (a) (maximum of two years' imprisonment on conviction on indictment), for “two” there shall be substituted “ten”.

(2) Paragraph (1) does not apply in relation to an offence committed before the commencement of this Article.

Abolition of presumption of sexual incapacity

23. The presumption of criminal law that a boy under the age of 14 years is incapable of sexual intercourse is hereby abolished.

PART V

MISCELLANEOUS

Forfeiture of recognizances

24.—(1) Where—

- (a) a person enters into a recognizance;
- (b) it is a condition of the recognizance that he appears before the Crown Court; and
- (c) he fails to appear in accordance with the condition,

the Crown Court shall exercise the powers conferred by section 10 of the [Fines Act \(Ireland\) 1851 \(c. 90\)](#) (estreat of recognizances) in relation to his recognizance (whether or not it also exercises its powers in relation to any surety for that person).

(2) In Article 138 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) (estreat of recognizances), for paragraphs (2) and (3) there shall be substituted the following paragraphs—

“(2) Paragraphs (2A) and (2B) apply where—

- (a) a recognizance to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour has been entered into before a magistrates' court; or
- (b) it is a condition of any recognizance that a person appears before a magistrates' court or at a police station; or
- (c) any other recognizance may be enforced by a court of summary jurisdiction.

(2A) If, in the case of a recognizance a condition of which is that an accused appears before a magistrates' court, the accused fails to appear in accordance with the condition, the court shall—

- (a) order the estreat of the recognizance; and
- (b) direct the issue of a summons to any surety for that person requiring the surety to appear before a court of summary jurisdiction on a date specified in the summons to show cause why he should not pay the sum in which he is bound;

and on that date the court may proceed in the absence of any surety if it is satisfied that he has been served with the summons.

(2B) If, in any other case falling within paragraph (2), the recognizance appears to the magistrates' court to be forfeited, the court may order the estreat of the recognizance on each person bound by it, whether as principal or surety, but, in a case falling within paragraph (2) (a), the court shall not order the estreat of the recognizance except on complaint.

(3) The power of the court under paragraph (2A) or (2B) to order the estreat of the recognizance includes power to order the estreat of the recognizance to such lesser amount as the court thinks fit and power to remit payment of the amount due under the recognizance.”.

Amendment of summons before it is served

25. In Article 20 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (issue of summons to accused), after paragraph (4) there shall be inserted the following paragraph—

“(4A) Where a justice of the peace for any county court division is satisfied that a summons issued under paragraph (1) by him or another justice of the peace for the same county court division has not been served, he may, without a complaint being made to him, re-issue the summons extending the time for the appearance of the person summoned.”.

Non-appearance of accused: plea of guilty

26. In Article 24 of the [Magistrates' Courts \(Northern Ireland\) Order 1981](#) (non-appearance of accused: plea of guilty)—

- (a) in paragraph (1)—
 - (i) for the words “following documents” there shall be substituted the words “documents mentioned in paragraph (1A)”;
 - (ii) the words from “that is to say” to the end shall cease to have effect;
- (b) after paragraph (1) there shall be inserted the following paragraph—

“(1A) The documents referred to in paragraph (1) are—

 - (a) a notice containing such statement of the effect of this Article as may be prescribed; and
 - (b) either of the following—
 - (i) a concise statement in the prescribed form of such facts relating to the charge as will be placed before the court by or on behalf of the complainant if the accused pleads guilty without appearing before the court; or
 - (ii) a copy of such written statement or statements complying with subsections (2)(a) and (b) and (4) of section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 23) (proof by written statement) as will be so placed in those circumstances.”;
- (c) in paragraph (2), for the words “notice and statement of facts referred to in paragraph (1)” there shall be substituted the words “documents mentioned in paragraph (1A)”;
- (d) for paragraph (4) there shall be substituted the following paragraphs—

“(4) Before accepting the plea of guilty and convicting the accused in his absence under paragraph (2), the court shall cause the following to be read out before the court—

 - (a) in a case where a statement of facts as mentioned in paragraph (1A)(b)(i) was served on the accused with the summons, that statement;
 - (b) in a case where a statement or statements as mentioned in paragraph (1A)(b)(ii) was served on the accused with the summons and the court does not otherwise direct, that statement or those statements;
 - (c) the notification given under paragraph (2); and
 - (d) any submission received with the notification which the accused wishes to be brought to the attention of the court with a view to mitigation of sentence.

(4A) Where the court gives a direction under paragraph (4)(b), the court shall read aloud the purport of so much of any statement as is not read out under that paragraph.

(4B) Whether or not a direction under sub-paragraph (b) of paragraph (4) is given in relation to any statement served as mentioned in that sub-paragraph, the court need not

cause to be read out the declaration required by section 1(2)(b) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968.”;

- (e) in paragraph (5)(a) for the words “statement of facts referred to in paragraph (1)(ii)” there shall be substituted the words “statements referred to in paragraph (1A)(b)”.

Period of remand

27.—(1) In paragraph (2) of Article 47 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (period of remand in custody)—

- (a) for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) in the case where—

- (i) the accused is before the court and he consents, or
- (ii) the court has previously remanded the accused in custody for the same offence; or
- (iii) the accused is already detained under a custodial sentence, twenty-eight days;”;

- (b) for the words “sub-paragraph (a)” there shall be substituted the words “sub-paragraph (a) (iii)”.

(2) Paragraph (3) of that Article shall cease to have effect.

Riotous behaviour: increase of maximum term of imprisonment

28.—(1) In Article 18 of the [Public Order \(Northern Ireland\) Order 1987 \(NI 7\)](#) (riotous or disorderly behaviour in public place), after paragraph (2) there shall be added the following paragraphs—

“(3) A person who in any public place uses riotous behaviour shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (3) shall be liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale or to both.”.

(2) In paragraph (1)(a) of that Article the words “riotous or” shall cease to have effect.

(3) This Article does not apply in relation to an offence committed before the commencement of this Article.

Riotous behaviour: exclusion of right to claim trial by jury

29. In Article 29(1) of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (right to claim trial by jury for summary offence if maximum term of imprisonment exceeds six months, subject to specified exceptions), after sub-paragraph (f) there shall be added the following sub-paragraph—

“(g) Article 18(3) of the Public Order (Northern Ireland) Order 1987 (riotous behaviour)”.

Riotous behaviour: arrest without warrant

30. In paragraph (2) of Article 26 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) (arrest without warrant for certain offences), after sub-paragraph (i) there shall be inserted the following sub-paragraph—

“(iza) an offence under Article 18(3) of the Public Order (Northern Ireland) Order 1987 (riotous behaviour in public place);”.

Evidence through live links

31. After Article 80 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) (advance notice of expert evidence in the Crown Court) there shall be inserted the following Article—

“Evidence through live links

80A.—(1) In this Article “live link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by—

- (a) the judge and the jury (if there is one);
- (b) legal representatives acting in the proceedings; and
- (c) any interpreter or other person appointed to assist the witness.

(2) Where two or more legal representatives are acting for a party to the proceedings, paragraph (1)(b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

(3) Where the court gives leave, a witness who is outside the United Kingdom may give evidence through a live link in proceedings to which this Article applies.

(4) This Article applies—

- (a) to preliminary investigations or preliminary inquiries into indictable offences;
- (b) to trials on indictment;
- (c) to appeals to the Court of Appeal; and
- (d) to hearings of references under section 10 of the Criminal Appeal Act 1995 (c. 35).

(5) A statement made on oath by a person outside the United Kingdom and given in evidence through a link by virtue of this Article shall be treated for the purposes of Article 3 of the [Perjury \(Northern Ireland\) Order 1979 \(NI 19\)](#) as having been made in the proceedings in which it is given in evidence.

(6) Where in proceedings before a magistrates' court—

- (a) evidence is given by means of a live link by virtue of this Article, but
- (b) suitable facilities for receiving such evidence are not available at any court-house in which that court can (apart from this paragraph) lawfully sit,

the court may sit for the purposes of the whole or any part of those proceedings at a place designated by the Lord Chancellor as a place having facilities to receive evidence given through a live link.

(7) Without prejudice to any power to make such rules, magistrates' courts rules, Crown Court rules and rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Article.

(8) References in this Article to a person being able to see or hear, or be seen or heard by, another person are to be taken as not applying to the extent that either of them is unable to see or hear by reason of any impairment of sight or hearing.”.

Disclosure of pre-sentence reports

32.—(1) After Article 21 of the [Criminal Justice \(Northern Ireland\) Order 1996 \(NI 24\)](#) (procedural requirements for custodial sentences), there shall be inserted the following Article—

“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.

(3) If the offender is under the age of 17 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.”.

(2) In Article 57 of that Order (rules and orders), after “13(10),” there shall be inserted “21A(4)”.

(3) Article 34 of that Order (reports of probation officers) shall cease to have effect.

Adjournment where live television links used

33. In Article 5 of the [Criminal Justice \(Northern Ireland\) Order 1998 \(NI 20\)](#) (use of live television links at hearings for the purposes of remand), after paragraph (3) there shall be inserted the following paragraphs—

“(3A) Subject to paragraph (3B), if it appears to the court—

(a) that the accused is not able to see and hear the court and to be seen and heard by it; and

(b) that this cannot be immediately corrected,

the court shall adjourn the hearing.

(3B) The court may proceed with the hearing if it is satisfied that it is not reasonably practicable to bring the accused to court before he ceases to be held in custody.

(3C) If the court proceeds with the hearing under paragraph (3B) it shall not remand the accused in custody for a period exceeding eight days commencing on the day following that on which it remands him.”.

Payment for person appointed to cross-examine witness on behalf of accused

34. In Article 26 of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) (defence representation for purposes of cross-examination where accused prevented from cross-examining a witness in person by virtue of Article 22, 23 or 24 of that Order), after paragraph (5) there shall be inserted the following paragraph—

“(5A) The Secretary of State shall pay such amount as appears to him to be reasonable in respect of—

- (a) costs of any person so appointed (including a fee); and
- (b) any expenses properly incurred in providing him with evidence or other material in connection with his appointment.”.

Approval of costs of prosecution of certain criminal proceedings

35.—(1) In section 1(1) of the Costs in Criminal Cases Act (Northern Ireland) 1968 (c. 10) (expenses of prosecution of certain criminal proceedings to be defrayed by Secretary of State), for the words “subject to subsection (3)” there shall be substituted the words “in accordance with arrangements approved by the Treasury”.

(2) In section 10 of that Act (interpretation), after subsection (1) there shall be inserted the following subsection—

“(1A) References in this Act to the Attorney General include references to the Director of Public Prosecutions.”.

Minor and consequential amendments and repeals

36.—(1) The statutory provisions specified in Schedule 1 shall have effect subject to the amendments there specified.

(2) The statutory provisions specified in Schedule 2 are hereby repealed to the extent specified in the third column of that Schedule.

A. K. Galloway
Clerk of the Privy Council