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STATUTORY INSTRUMENTS

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**2003 No. 1247**

**The Criminal Justice (Northern Ireland) Order 2003**

**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.