
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Criminal Justice (Northern Ireland) Order 2008

PART 5

MISCELLANEOUS AND SUPPLEMENTARY

Purchase and consumption of alcohol

Test purchases of alcohol

67. After Article 60 of the [Licensing \(Northern Ireland\) Order 1996 \(NI 22\)](#) insert—

“Test purchases of alcohol

60A.—(1) Articles 58 and 60(2)(a) and (4) do not apply in relation to a person under the age of 18 who is sent into licensed premises to purchase intoxicating liquor by a constable who is acting in the course of his duty.

(2) A constable may not send a person under the age of 18 into any licensed premises to purchase intoxicating liquor unless—

- (a) the constable is satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of that person; and
- (b) that person and a parent of that person have both consented in writing to his being sent into those premises for that purpose.

(3) The Secretary of State shall issue guidance as to the exercise by constables of their powers under this Article.”.

Alcohol consumption in designated public places

68.—(1) Paragraph (2) applies if a constable reasonably believes that a person is, or has been, consuming intoxicating liquor in a designated public place or intends to consume intoxicating liquor in such a place.

(2) The constable may require the person concerned—

- (a) not to consume in that place anything which is, or which the constable reasonably believes to be, intoxicating liquor;
- (b) to surrender anything in his possession which is, or which the constable reasonably believes to be, intoxicating liquor or a container for such liquor.

(3) A constable may dispose of anything surrendered to him under paragraph (2) in such manner as he considers appropriate.

(4) A person who fails without reasonable excuse to comply with a requirement imposed on him under paragraph (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) A constable who imposes a requirement on a person under paragraph (2) shall inform the person concerned that failing without reasonable excuse to comply with the requirement is an offence.

Fixed penalty notice for offence under Article 68

69.—(1) A constable who has reason to believe that a person aged 16 or over has committed an offence under Article 68 may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty in accordance with this Article.

- (2) A notice under paragraph (1) may not be given by a constable unless—
- (a) in the case of a notice given at a police station, the constable is authorised by the Chief Constable to give notices under this Article;
 - (b) in the case of a notice given elsewhere, the constable is in uniform.
- (3) The Secretary of State may by order—
- (a) amend paragraph (1) by substituting for the age for the time being specified in that paragraph a different age which is not lower than 10; and
 - (b) if that different age is lower than 16 make provision as follows—
 - (i) where a person whose age is lower than 16 is given a notice, for a parent or guardian of that person to be notified of the giving of the notice; and
 - (ii) for that parent or guardian to be liable to pay the penalty under the notice;and an order under sub-paragraph (b) may amend or apply (with or without modification) any statutory provision (including this Part).
- (4) Where a person is given a notice under this Article in respect of an offence—
- (a) no proceedings may be instituted for that offence before the expiration of the period of 21 days following the date of the notice or such longer period as may be specified in the notice; and
 - (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period (or that longer period)
- (5) A notice under this Article must—
- (a) be in such form as the Secretary of State may by regulations prescribe;
 - (b) give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence;
 - (c) state the period during which, by virtue of paragraph (4), proceedings will not be taken for the offence;
 - (d) state the amount of the fixed penalty; and
 - (e) state the person to whom and the address at which the fixed penalty may be paid.
- (6) The fixed penalty payable in respect of a notice under this Article is such amount (not exceeding one quarter of level 2 on the standard scale) as the Secretary of State may specify by order; and different amounts may be specified for persons of different ages.
- (7) Payment of a fixed penalty shall be made to, or at the office of, the clerk of petty sessions specified in the notice under this Article, or to such other person or to or at such other office as the Secretary of State may by order direct.
- (8) Sums paid by way of a fixed penalty for any offence shall be treated as if they were fines imposed on summary conviction of that offence.

(9) In any proceedings a certificate that payment of a fixed penalty was or was not made by a date specified in the certificate to or at the office of the appropriate clerk of petty sessions, or to such other person or to or at such other office as the Secretary of State has directed under paragraph (7), shall, if the certificate purports to be signed by the clerk of petty sessions or such other person as the Secretary of State has directed under paragraph (7), be sufficient evidence of the facts stated unless the contrary is proved.

(10) The Secretary of State may by regulations prescribe—

- (a) the duties under this Article of persons or offices specified by an order made under paragraph (7); and
- (b) the information to be supplied to or by clerks of petty sessions and to such other persons or offices.

(11) In any proceedings for an offence under Article 68, no reference shall be made to the giving of any notice under this Article, or to the payment or non-payment of a fixed penalty under this Article, unless in the course of the proceedings, or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such notice or, as the case may be, to such payment or non-payment.

Designated public places

70.—(1) A place is, subject to paragraph (2), a designated public place if it is—

- (a) a public place in the district of a council; and
- (b) identified in an order made by that council under paragraph (3).

(2) A place is not a designated public place or a part of such a place if it is—

- (a) licensed premises or a place within the curtilage of such premises;
- (b) a registered club or a place within the curtilage of such a club; or
- (c) a place at which the sale of intoxicating liquor is for the time being authorised by an occasional licence.

(3) A council may for the purposes of paragraph (1) by order identify any public place in its district if it is satisfied that—

- (a) nuisance or annoyance to members of the public or a section of the public; or
- (b) disorder,

has been associated with the consumption of intoxicating liquor in that place.

(4) The power conferred by paragraph (3) includes power—

- (a) to identify a place either specifically or by description;
- (b) to revoke or amend orders previously made.

(5) The Secretary of State shall by regulations prescribe the procedure to be followed in connection with the making of orders under paragraph (3).

(6) Regulations under paragraph (5) shall, in particular, include provision requiring councils to publicise the making and effect of orders under paragraph (3).

Effect of Articles 68 and 70 on byelaws

71.—(1) Paragraphs (2) and (3) apply to any byelaw which—

- (a) prohibits, by the creation of an offence, the consumption in a particular public place of intoxicating liquor (including any liquor of a similar nature which falls within the byelaw); or

(b) makes any incidental, supplementary or consequential provision.

(2) In so far as any byelaw to which this paragraph applies would, apart from this paragraph, have effect in relation to any designated public place, the byelaw—

(a) shall cease to have effect in relation to that place; or

(b) where it is made after the order under Article 70(3), shall not have effect in relation to that place.

(3) In so far as any byelaw made by a council and to which this paragraph applies still has effect at the end of the period of 3 years beginning with the day on which this paragraph comes into operation, it shall cease to have effect at the end of that period in relation to any public place.

Interpretation of Articles 68 to 71

72. In Articles 68 to 71—

“council” means a district council;

“designated public place” has the meaning given by Article 70(1);

“intoxicating liquor”, “licensed premises” and “occasional licence” have the same meanings as in the [Licensing \(Northern Ireland\) Order 1996 \(NI 22\)](#);

“public place” means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission

“registered club” has the same meaning as in the [Registration of Clubs \(Northern Ireland\) Order 1996 \(NI 23\)](#).

Prisons

Removal of requirement to appoint medical officers

73. In section 2(2) of the Prison Act (Northern Ireland) [1953 \(c. 18\)](#) (requirement to appoint governors, medical officers and other officers) the words “, medical officers” shall cease to have effect.

Abolition of right of justice of the peace to visit prisons

74. Section 19 of the Prison Act (Northern Ireland) [1953 \(c. 18\)](#) (right of justice of the peace to visit prisons) shall cease to have effect.

Assisting a prisoner to escape

75. For sections 29 and 30 of the Prison Act (Northern Ireland) [1953 \(c. 18\)](#) substitute—

“29 Assisting or permitting a person to escape from lawful custody

(1) A person who assists any person in escaping or attempting to escape from lawful custody, whether in prison or not, is guilty of an offence.

(2) A person who—

(a) is an officer of a prison in which a person is lawfully confined, or

(b) is a constable having a person in his lawful custody, whether in prison or not, is guilty of an offence if he voluntarily and intentionally permits that person to escape.

(3) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years.”.

Facilitating escape by conveying things into prison

76. For section 33 of the Prison Act (Northern Ireland) 1953 (c. 18) substitute—

“33 Facilitating escape by conveying things into prison

(1) Any person who with intent to facilitate the escape of a prisoner—

- (a) brings, throws or otherwise conveys anything into a prison,
- (b) causes another person to bring, throw or otherwise convey anything into a prison, or
- (c) gives anything to a prisoner or leaves anything in any place (whether inside or outside a prison),

is guilty of an offence

(2) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years.”.

Conveyance of prohibited articles into or out of prison

77. For sections 34 and 35 of the Prison Act (Northern Ireland) 1953 (c. 18) substitute—

“34 Sections 34A and 34B: classification of articles

(1) This section defines the categories of articles which are referred to in sections 34A and 34B.

(2) A List A article is any article or substance in the following list (“List A”)—

- (a) a controlled drug (as defined for the purposes of the Misuse of Drugs Act 1971 (c. 38));
- (b) an explosive;
- (c) any firearm or ammunition (as defined in Article 2(2) of the [Firearms \(Northern Ireland\) Order 2004 \(NI 3\)](#));
- (d) any other offensive weapon (as defined in Article 3(10) of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#)).

(3) A List B article is any article or substance in the following list (“List B”)—

- (a) intoxicating liquor (as defined for the purposes of the [Licensing \(Northern Ireland\) Order 1996 \(NI 22\)](#));
- (b) a mobile or satellite telephone;
- (c) a camera;
- (d) a sound-recording device.

(4) In List B—

“camera” includes any device by means of which a photograph (as defined in section 34C) can be produced;

“sound-recording device” includes any device by means of which a sound-recording (as defined in section 34C) can be made.

(5) The reference in paragraph (b), (c) or (d) of list B to a device of any description includes a reference to —

- (a) a component part of a device of that description;
- (b) an article designed or adapted for use with a device of that description (including any disk, film or other separate article on which images, sounds or information may be recorded).

(6) A List C article is any article or substance prescribed for the purposes of this subsection by prison rules.

(7) The Secretary of State may by order amend this section for the purpose of

- (a) adding an entry to List A or List B;
- (b) repealing or modifying any entry for the time being included in List A or List B;
- (c) adding, repealing or modifying any provision for the interpretation of any such entry.

(8) An order made under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

34A Conveyance etc. of List A articles into or out of prison

(1) A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List A article into or out of a prison,
- (b) causes another person to bring, throw or otherwise convey a List A article into or out of a prison,
- (c) leaves a List A article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
- (d) knowing a person to be a prisoner, gives a List A article to him,

is guilty of an offence.

(2) In this section “authorisation” means authorisation given for the purposes of this section—

- (a) in relation to all prisons or prisons of a specified description, by prison rules or the Secretary of State; or
- (b) in relation to a particular prison, by the Secretary of State or by the governor of the prison.

(3) Authorisation may be given to specified persons or persons of a specified description—

- (a) in relation to specified articles or articles of a specified description;
- (b) in relation to specified acts or acts of a specified description; or
- (c) on such other terms as may be specified.

In this subsection “specified” means specified in the authorisation.

(4) Authorisation given by the Secretary of State otherwise than in writing shall be recorded in writing as soon as is reasonably practicable after being given.

(5) Authorisation given by the governor of a prison shall—

- (a) be given in writing; and
- (b) specify the purpose for which it is given.

(6) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine (or both)

34B Conveyance etc. of List B or C articles into or out of prison

(1) A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List B article into or out of a prison,
- (b) causes another person to bring, throw or otherwise convey a List B article into or out of a prison,
- (c) leaves a List B article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
- (d) knowing a person to be a prisoner, gives a List B article to him,

is guilty of an offence.

(2) A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List C article into a prison intending it to come into the possession of a prisoner,
- (b) causes another person to bring, throw or otherwise convey a List C article into a prison intending it to come into the possession of a prisoner,
- (c) brings, throws or otherwise conveys a List C article out of a prison on behalf of a prisoner,
- (d) causes another person to bring, throw or otherwise convey a List C article out of a prison on behalf of a prisoner,
- (e) leaves a List C article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
- (f) while inside a prison, gives a List C article to a prisoner,

is guilty of an offence.

(3) A person who attempts to commit an offence under subsection (2) is guilty of that offence.

(4) In proceedings for an offence under this section it is a defence for the accused to show that—

- (a) he reasonably believed that he had authorisation to do the act in respect of which the proceedings are brought, or
- (b) in all the circumstances there was an overriding public interest which justified the doing of that act.

(5) A person guilty of an offence under subsection (1) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both);
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both).

(6) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) In this section “authorisation” means authorisation given for the purposes of this section; and subsections (6) to (8) of section 34C apply in relation to authorisations so given as they apply to authorisations given for the purposes of that section.”

Other offences relating to prison security

78. After section 34B of the Prison Act (Northern Ireland) 1953 (c. 18) (as inserted by Article 77) insert—

“Other offences relating to prison security

34C.—(1) A person who, without authorisation—

- (a) takes a photograph, or makes a sound-recording, inside a prison, or
- (b) transmits, or causes to be transmitted, any image or any sound from inside a prison by electronic communications for simultaneous reception outside the prison,

is guilty of an offence.

(2) It is immaterial for the purposes of subsection (1)(a) where the recording medium is located.

(3) A person who, without authorisation—

- (a) brings or otherwise conveys a restricted document out of a prison or causes such a document to be brought or conveyed out of a prison, or
- (b) transmits, or causes to be transmitted, a restricted document (or any information derived from a restricted document) from inside a prison by means of electronic communications,

is guilty of an offence.

(4) In proceedings for an offence under this section it is a defence for the accused to show that—

- (a) he reasonably believed that he had authorisation to do the act in respect of which the proceedings are brought, or
- (b) in all the circumstances there was an overriding public interest which justified the doing of that act.

(5) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both); or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both).

(6) In this section “authorisation” means authorisation given for the purposes of this section—

- (a) in relation to all prisons or prisons of a description specified in the authorisation, by prison rules or by the Secretary of State;
- (b) in relation to a particular prison—
 - (i) by the Secretary of State
 - (ii) by the governor of the prison;
 - (iii) by a person working at the prison who is authorised by the governor to grant authorisation on his behalf.

(7) Authorisation may be given—

- (a) to persons generally or to specified persons or persons of a specified description; and
- (b) on such terms as may be specified.

In this subsection “specified” means specified in the authorisation.

(8) Authorisation given by or on behalf of the governor of a prison must be in writing.

(9) In this section “restricted document” means the whole (or any part of)—

- (a) a photograph taken inside the prison;
- (b) a sound-recording made inside the prison;
- (c) a personal record (or a document containing information derived from a personal record);
- (d) any other document which contains—
 - (i) information relating to an identified or identifiable relevant individual, if the disclosure of that information would or might prejudicially affect the interests of that individual; or
 - (ii) information relating to any matter connected with the prison or its operation, if the disclosure of that information would or might prejudicially affect the security or operation of the prison.

(10) In subsection (9)—

“personal record” means any record which is required by prison rules to be prepared and maintained in relation to any prisoner (and it is immaterial whether or not the individual concerned is still a prisoner at the time of any alleged offence);

“relevant individual” means an individual who is or has at any time been—

- (a) a prisoner or a person working at the prison; or
- (b) a member of such a person’s family or household.

(11) In this section—

“document” means anything in which information is recorded (by whatever means);

“electronic communications” has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001 (c. 9);

“photograph” means a recording on any medium on which an image is produced or from which an image (including a moving image) may by any means be produced; and

“sound-recording” means a recording of sounds on any medium from which the sounds may by any means be reproduced.”

Live links

Live links: introductory

79.—(1) Articles 80 and 81—

- (a) apply, respectively, to preliminary hearings and sentencing hearings in the course of proceedings for an offence; and
- (b) enable the court in the circumstances provided for in those Articles to direct the use of a live link for securing the accused’s attendance at any such hearing.

(2) The accused is to be treated as present in court when, by virtue of a live link direction under either of those Articles, he attends a hearing through a live link.

(3) In this Article and Articles 80 and 81—

- (a) references to a person being held in custody are references to his being held in custody in a prison, young offenders centre, juvenile justice centre or other institution;

- (b) “live link” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during the hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);
- (c) “the Order Book” means the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984 (No. 225);
- (d) “preliminary hearing” means a hearing in the proceedings held before the start of the trial, other than a hearing at which the court may commit the accused for trial;
- (e) “sentencing hearing” means any hearing following conviction which is held for the purpose of—
 - (i) proceedings relating to the giving or rescinding of a live link direction;
 - (ii) sentencing the offender or determining how the court should deal with him in respect of the offence;
- (f) “the start of the trial”—
 - (i) in the case of a trial on indictment, has the meaning given by section 39(3) of the Criminal Procedure and Investigations Act 1996 (c. 25); and
 - (ii) in the case of a summary trial, shall be taken to occur—
 - (A) when the court begins to hear evidence for the prosecution at the trial or 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 order without convicting the accused), or
 - (B) if the court accepts a plea of guilty without proceeding as mentioned in head (A), when that plea is accepted.
- (4) A court shall not give a live link direction under Article 80 or 81 unless—
 - (a) it has been notified by the Secretary of State that a live link is available between the court and the institution in which the accused is or is to be held in custody; and
 - (b) the notice has not been withdrawn.

Use of live link at preliminary hearings

80.—(1) This Article applies in relation to a preliminary hearing in a magistrates' court or the Crown Court.

(2) Where it appears to the court before which the preliminary hearing is to take place that the accused is likely to be held in custody during the hearing, the court may give a live link direction under this Article in relation to the attendance of the accused at the hearing.

(3) A live link direction under this Article is a direction requiring the accused, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.

(4) If a hearing takes place in relation to the giving or rescinding of such a direction, the court may require or permit a person attending the hearing to do so through a live link.

(5) The court shall not give or rescind a live link direction under this Article (whether at a hearing or otherwise) unless the parties to the proceedings have been given the opportunity to make representations.

(6) If in a case where it has power to do so a magistrates' court decides not to give a live link direction under this Article, it shall—

- (a) state in open court its reasons for not doing so; and
- (b) cause those reasons to be entered in the Order Book.

(7) Subject to paragraph (8), if where the accused is attending a preliminary hearing through a live link 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.

(8) 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.

(9) If the court proceeds with the hearing under paragraph (8) it shall not remand the accused in custody for a period exceeding 8 days commencing on the day following that on which it remands him.

Use of live link at sentencing hearings

81.—(1) This Article applies where an accused person is convicted in the course of proceedings for an offence in a magistrates' court or the Crown Court.

(2) If it appears to the court by or before which the accused is convicted that it is likely that he will be held in custody during any sentencing hearing for the offence, the court may give a live link direction under this Article in relation to that hearing

(3) A live link direction under this Article is a direction requiring the accused, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.

(4) A live link direction under this Article—

- (a) may be given by the court of its own motion or on an application by a party; and
- (b) may be given in relation to all subsequent sentencing hearings before the court or to such hearing or hearings as may be specified or described in the direction.

(5) The court may not give a live link direction under this Article unless—

- (a) the offender has given his consent to the direction; and
- (b) the court is satisfied that it is not contrary to the interests of justice to give the direction.

(6) The court may rescind a live link direction given under this Article at any time before or during a hearing to which it relates if it appears to the court to be in the interests of justice to do so (but this does not affect the court's power to give a further live link direction under this Article in relation to the offender).

The court may exercise this power of its own motion or on an application by a party.

(7) The offender may not give oral evidence while attending a hearing through a live link by virtue of this Article unless—

- (a) he consents to give evidence in that way; and
- (b) the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.

(8) The court must—

- (a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this Article; and
- (b) if it is a magistrates' court, cause those reasons to be entered in the Order Book.

Evidence of vulnerable accused

82.—(1) The [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) is amended as follows.

(2) After Article 21 (interpretation etc of Part 2) insert—

“PART 2A

USE OF LIVE LINK FOR EVIDENCE OF CERTAIN ACCUSED PERSONS

Live link directions

21A.—(1) This Article applies to any proceedings (whether in a magistrates' court or before the Crown Court) against a person for an offence.

(2) The court may, on the application of the accused, give a live link direction if it is satisfied—

- (a) that the conditions in paragraph (4) or, as the case may be, paragraph (5) are met in relation to the accused; and
- (b) that it is in the interests of justice for the accused to give evidence through a live link.

(3) A live link direction is a direction that any oral evidence to be given before the court by the accused is to be given through a live link.

(4) Where the accused is aged under 18 when the application is made, the conditions are that—

- (a) his ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his level of intellectual ability or social functioning; and
- (b) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).

(5) Where the accused has attained the age of 18 at that time, the conditions are that—

- (a) he suffers from a mental disorder (within the meaning of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#)) or otherwise has a significant impairment of intelligence and social function;
- (b) he is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court; and
- (c) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).

(6) While a live link direction has effect the accused may not give oral evidence before the court in the proceedings otherwise than through a live link.

(7) The court may discharge a live link direction at any time before or during any hearing to which it applies if it appears to the court to be in the interests of justice to do so (but this does not affect the power to give a further live link direction in relation to the accused).

The court may exercise this power of its own motion or on an application by a party.

(8) The court must state in open court its reasons for—

- (a) giving or discharging a live link direction, o
- (b) refusing an application for or for the discharge of a live link direction,

and, if it is a magistrates' court, it must cause those reasons to be entered in the Order Book.

Meaning and effect of live link.

21B.—(1) In Article 21A “live link” means an arrangement by which the accused, while absent from the place where the proceedings are being held, is able—

- (a) to see and hear a person there; and

(b) to be seen and heard by the persons mentioned in paragraph (2);
and for this purpose any impairment of eyesight or hearing is to be disregarded.

(2) The persons are—

- (a) the judge and the jury (if there is one);
- (b) where there are two or more accused in the proceedings, each of the other accused;
- (c) legal representatives acting in the proceedings; and
- (d) any interpreter or other person appointed by the court to assist the accused.

Saving

21C. Nothing in this Part affects—

- (a) any power of a court to make an order, give directions or give leave of any description in relation to any witness (including an accused), or
- (b) the operation of any rule of law relating to evidence in criminal proceedings.”.

(3) In Article 2(2) (interpretation) in the definition of “judge” at the end add “and (in the case of a youth court) any lay magistrate”.

Live links in appeals under Criminal Appeal Act

83.—(1) In section 24 of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (right of appellant to be present at proceedings in Court of Appeal), after subsection (2) insert—

“(2A) The Court of Appeal may at any time give a live link direction in relation to any proceedings at which the appellant is expected to be in custody but is entitled to be present.

(2B) For this purpose—

- (a) a “live link direction” is a direction that the appellant (if he is being held in custody at the time of the proceedings) is to attend the proceedings through a live link from the place at which he is held; and
- (b) “live link” means an arrangement by which the appellant is able to see and hear, and to be seen and heard by, the Court of Appeal (and for this purpose any impairment of eyesight or hearing is to be disregarded)

(2C) The Court of Appeal—

- (a) shall not give a live link direction unless—
 - (i) the appellant has consented to the direction; and
 - (ii) any other party to the appeal has had the opportunity to make representations about the giving of such a direction; and
- (b) may rescind a live link direction at any time before or during any proceedings to which it applies (whether of its own motion or on the application of a party).

(2D) The Court of Appeal must not give a live link direction unless—

- (a) it has been notified by the Secretary of State that a live link is available between the Court and the institution at which the appellant is expected to be in custody; and
- (b) the notice has not been withdrawn.”.

(2) In section 25 of that Act (giving of evidence), after subsection (3) insert—

“(4) A live link direction under section 24(2A) does not apply to the giving of oral evidence by the appellant at any hearing unless that direction, or any subsequent direction of the court, provides expressly for the giving of such evidence through a live link.”.

(3) In section 45(2) of that Act (powers exercisable by single judge), after paragraph (f) there is inserted—

“(fa) to give a live link direction under section 24(2A);”.

Legal aid

Civil legal services: anti-social behaviour orders

84.—(1) In Schedule 2 to the [Access to Justice \(Northern Ireland\) Order 2003 \(NI 10\)](#) (civil legal services: excluded services) in paragraph 2 after sub-paragraph (h) insert—

“(hh) proceedings under Article 3 or 4 of the Anti-social Behaviour (Northern Ireland) Order 2004;”.

(2) Article 8 of the [Criminal Justice \(Northern Ireland\) Order 2005 \(NI 15\)](#) (which is superseded by this Article) shall cease to have effect.

Civil legal services and legal aid: proceedings under Proceeds of Crime Act 2002

85.—(1) In Schedule 2 to the [Access to Justice \(Northern Ireland\) Order 2003 \(NI 10\)](#) (civil legal services: excluded services) in paragraph 3(2)(a) for “sub-paragraph 1(b)” substitute “head (a)”.

(2) In Part 1 of Schedule 1 to the [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(NI 8\)](#) (proceedings in which legal aid may be given under Part 2 of that Order) in paragraph 2A(2)(a) for “head (b)” substitute “head (a)”.

PACE

Entry for purposes of arrest

86. In Article 19 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) (entry for purposes of arrest) for paragraph (1)(c) substitute—

“(c) of arresting a person for an offence under—

- (i) section 42 of the Offences against the Person Act 1861 (c. 100);
- (ii) Article 18(3) or 21 of the [Public Order \(Northern Ireland\) Order 1987 \(NI 7\)](#);
- (iii) Article 4 of the [Protection from Harassment \(Northern Ireland\) Order 1997 \(NI 9\)](#);
- (iv) Article 25 of the [Family Homes and Domestic Violence \(Northern Ireland\) Order 1998 \(NI 6\)](#);”.

Pre-charge bail

87.—(1) Article 48 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) is amended as follows.

(2) In paragraph (3D) (bail conditions on release under Article 39(1)) for “Article 39(1)” substitute “Article 38(2) or (7)(b) or Article 39(1)”.

(3) After paragraph (3H) insert—

“(4) A magistrates' court may, on an application by or on behalf of a person released on bail under Article 38(2) or (7)(b), vary the conditions of bail.

(5) A person who has been released on bail under Article 38(2) or (7)(b) may be arrested without warrant by a constable if the constable—

- (a) has reasonable grounds for believing that the person is likely to break any of the conditions of his bail; or
- (b) has reasonable grounds suspecting that the person has broken any of those conditions.

(5A) A person arrested under paragraph (5) must be taken to a police station (which may be the station where the conditions of bail were set or varied or any other police station) as soon as practicable after the arrest.”

(4) In Article 132A of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) in paragraph (1)(a) after “Part V of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#)” insert “(other than under Article 38(2) or (7)(b))”.

Authorisation of X-rays and ultrasound scans

88. In Article 56A(1) of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) (authorisation of x-rays and ultrasound scans) for “superintendent” substitute “inspector”.

Police officers performing duties of higher rank

89. For Article 84 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) substitute—

“Police officers performing duties of higher rank

84.—(1) For the purpose of any provision of this Order or any other statutory provision under which a power in respect of the investigation of offences or the treatment of persons in police custody is exercisable only by or with the authority of a police officer of at least the rank of superintendent, an officer of the rank of chief inspector shall be treated as holding the rank of superintendent if—

- (a) he has been authorised by an officer holding a rank above the rank of superintendent to exercise the power or, as the case may be, to give his authority for its exercise; or
- (b) he is acting during the absence of an officer holding the rank of superintendent who has authorised him, for the duration of that absence, to exercise the power or, as the case may be, to give his authority for its exercise.

(2) For the purpose of any provision of this Order or any other statutory provision under which such a power is exercisable only by or with the authority of an officer of at least the rank of inspector, an officer of the rank of sergeant shall be treated as holding the rank of inspector if he has been authorised by an officer of at least the rank of superintendent to exercise the power or, as the case may be, to give his authority for its exercise.”

Penalties

Increase of maximum sentences for offences relating to knives, weapons etc.

90.—(1) In Article 22 of the [Public Order \(Northern Ireland\) Order 1987 \(NI 7\)](#) (carrying of offensive weapon) in paragraph (3)(a) for “6 months” substitute “12 months”.

(2) In Article 8 of the [Crossbows \(Northern Ireland\) Order 1988 \(NI 5\)](#) (offences relating to crossbows) for paragraphs (1) and (2) substitute—

“(1) A person guilty of an offence under this Order shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(3) In section 139 of the Criminal Justice Act [1988 \(c. 33\)](#) (having knife etc. in public place) for subsection (6) substitute—

“(6) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(4) In section 139A of the Criminal Justice Act [1988 \(c. 33\)](#) (having knife etc. on school premises) for subsection (6) substitute

“(6) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(5) In section 141(1) of the Criminal Justice Act [1988 \(c. 33\)](#) (offensive weapons) in subsection (1) for the words from “on summary conviction” to the end substitute “—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(6) In Article 53 of the [Criminal Justice \(Northern Ireland\) Order 1996 \(NI 24\)](#) (manufacture, sale. etc. of certain knives) for the words from “on summary conviction” to the end substitute “—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(7) In Article 54(1) of the [Criminal Justice \(Northern Ireland\) Order 1996 \(NI 24\)](#) (sale of knives, etc to young persons) for the words from “on summary conviction” to the end substitute “—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(8) In section 1 of the Knives Act [1997 \(c. 21\)](#) (unlawful marketing of knives) for subsection (5) substitute—

“(5) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(9) In section 2 of the Knives Act 1997 (c. 21) (publications connected with marketing of knives) for subsection (2) substitute—

“(2) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both

(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or to a fine, or to both.”.

(10) In Article 29(1) of the Magistrates Courts (Northern Ireland) Order 1981 (NI 26) after subparagraph (i) add—

“(j) Article 22 of the Public Order (Northern Ireland) Order 1987;

(k) the Crossbows (Northern Ireland) Order 1988;

(l) section 139(1), 139A(1) or 141(1) of the Criminal Justice Act 1988;

(m) Article 53 or 54(1) of the Criminal Justice (Northern Ireland) Order 1996;

(n) section 1 or 2 of the Knives Act 1997.”.

Driving disqualification for any offence

91.—(1) The court by or before which a person is convicted of an offence committed after the commencement of this Article may, instead of or in addition to dealing with him in any other way, order him to be disqualified, for such period as it thinks fit, for holding or obtaining a driving licence.

(2) Where the person is convicted of an offence the sentence for which is fixed by law or falls to be imposed—

(a) under Article 70(2) of the Firearms (Northern Ireland) Order 2004 (NI 3),

(b) under paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38),
or

(c) under Article 13 or 14 above,

paragraph (1) shall have effect as if the words “instead of or” were omitted.

(3) A court shall not make an order under paragraph (1) unless the court has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn.

(4) A court which makes an order under this Article disqualifying a person for holding or obtaining a driving licence shall require him to produce—

(a) any such licence held by him together with its counterpart (if any); or

(b) in the case where he holds a Community licence (within the meaning of Part 2 of the Road Traffic (Northern Ireland) Order 1981 (NI 1)), his Community licence and its counterpart (if any),

within 7 days or such longer time as the court may allow and if the licence is not produced within that time, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If a person who is disqualified under this Article applies under Article 47 of the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) for the disqualification to be removed and the court so orders, paragraph (6) of that Article shall not have effect so as to require particulars of the order to be endorsed on the licence, but the court shall send notice of the order to the Department of the Environment

(6) Paragraphs (3B), (4) and (4AA) of Article 180 of the Road Traffic (Northern Ireland) Order 1981 shall apply for the purposes of paragraph (4) in the same manner as they apply for the purposes of Article 29 of the Road Traffic Offenders (Northern Ireland) Order 1996.

(7) In this Article—

“driving licence” means a licence to drive a motor vehicle granted under Part 2 of the Road Traffic (Northern Ireland) Order 1981;

“counterpart”, in relation to a driving licence or a Community licence, has the same meaning as in that Part;

and Article 4(2) applies for the interpretation of paragraph (2) as it applies for the interpretation of Chapter 2 of Part 2.

Proving execution of arrest warrants

Jurisdiction of magistrates' court in relation to proving execution of arrest warrant

92.—(1) This Article applies where—

(a) a warrant mentioned in paragraph (2) is issued for the arrest of any person (“D”) by a resident magistrate, lay magistrate or magistrates' court for a county court division (“division A”); and

(b) D is arrested on foot of the warrant.

(2) The warrants are—

(a) a warrant under Article 20 or 25 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#);

(b) a warrant under Article 6 of the [Criminal Justice \(Northern Ireland\) Order 2003 \(NI 13\)](#); and

(c) a warrant under any other statutory provision prescribed for the purposes of this Article by order of the Secretary of State.

(3) The execution of the warrant may be proved before a magistrates' court for—

(a) division A;

(b) the county court division in which D is arrested (“division B”); or

(c) a county court division which adjoins division B (“division C”).

(4) Where the execution of the warrant is proved under paragraph (3) before a magistrates' court for division B or division C, that court—

(a) may remand D in custody or on bail to appear before a magistrates' court for division A; and

(b) may hear and determine any application by D for the grant of a right to representation under Article 26 of the [Access to Justice \(Northern Ireland\) Order 2003 \(NI 10\)](#);

but, subject to paragraph (5), that court may not exercise any other power in relation to D.

(5) Paragraph (4) does not prevent the court from exercising any jurisdiction which the court has apart from this Article

(6) Anything done before or by a magistrates' court for division B or division C under paragraph (3) or (4) shall have effect as if done before or by a magistrates' court for division A.

(7) In Article 20(3) of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) for the words from “issue a warrant to arrest” to the end substitute “issue a warrant for the arrest of that person”.

(8) Until the coming into operation of Article 26 of the [Access to Justice \(Northern Ireland\) Order 2003 \(NI 10\)](#) paragraph (4) has effect as if for sub-paragraph (b) there were substituted—

“(b) may hear and determine any application by D under Article 28(1) of the [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(NI 8\)](#) as if D had been charged before that court with the offence in respect of which the warrant was issued;”.

(9) An order under paragraph (2)(c) prescribing any statutory provision may make such consequential amendments to that provision as the Secretary of State thinks necessary or expedient.

Anti-social behaviour orders

Applications for interim order

93. In the [Anti-social Behaviour \(Northern Ireland\) Order 2004 \(NI 12\)](#) in Article 4 (interim orders) after paragraph (1) insert—

“(1A) An application by a relevant authority for an order under this Article may be made without notice being given to the defendant.”.

Special measures for witnesses in proceedings for anti-social behaviour orders

94. In Article 6C of the [Anti-social Behaviour \(Northern Ireland\) Order 2004 \(NI 12\)](#) in paragraph (4)(a) after “rules of court” insert “(within the meaning of that Part)”.

Youth justice

Rehabilitation of offenders

95.—(1) In Article 6(6) of the [Rehabilitation of Offenders \(Northern Ireland\) Order 1978 \(NI 27\)](#) (rehabilitation period for certain orders) after sub-paragraph (c) insert—

- “(d) a reparation order under Article 36A of that Order of 1998;
- (e) a community responsibility order under Article 36E of that Order of 1998;
- (f) a youth conference order under Article 36J of that Order of 1998;”.

(2) Paragraph (1) has effect for determining the rehabilitation period in respect of offences committed before, as well as after, the commencement of this Article.

(3) In Schedule 13 to the Justice (Northern Ireland) Act 2002 (c. 26) (repeals and revocations) omit the entry relating to Article 6(6)(c) of the Rehabilitation of Offenders (Northern Ireland) Order 1978

Custody of children over the age of 17

96.—(1) The [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(NI 9\)](#) is amended as follows.

(2) In Article 13(1)(b) for “paragraph (1B)” substitute “paragraphs (1B) and (1BB)”.

(3) In Article 13 after paragraph (1B) insert—

“(1BB) In the case of a child who has attained the age of 17, the court shall make an order committing the child to a juvenile justice centre (and not to a young offenders centre) if the court has been notified by the Secretary of State that no suitable accommodation for that child is available in a young offenders centre.”.

(4) In Article 39 for paragraph (3A) substitute—

“(3A) A court shall only make a juvenile justice centre order in the case of a child who has attained the age of 17 if either paragraph (3B) or (3C) applies in relation to the child.

(3B) This paragraph applies in relation to a child if—

- (a) the child will not become an adult during the period of the order;
- (b) the child has not had a custodial sentence imposed on him within the last two years; and
- (c) the court, after considering a report made by a probation officer, considers that it is in the child’s best interests to make such an order.

(3C) This paragraph applies in relation to a child if the court has been notified by the Secretary of State that no suitable accommodation for that child is available in a young offenders centre.”.

Remands by youth court

97. For Article 30A of the [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(NI 9\)](#) substitute—

“Power of youth court in relation to remands

30A. A youth court shall not be required to adjourn any proceedings for an offence at any stage by reason only of the fact—

- (a) that the court commits the accused for trial for another offence; or
- (b) that the accused is charged with another offence.”.

Youth conference orders

98.—(1) Article 36J of the [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(NI 9\)](#) (youth conference orders) is amended as follows.

(2) After paragraph (2) insert—

“(2A) Unless revoked, a youth conference order remains in force until the offender has complied with the requirements mentioned in paragraph (2)(a) or (as the case may be) (b).”

Welfare of children

99.—(1) The [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(NI 9\)](#) is amended as follows.

(2) In Article 33 (power of court to notify appropriate authority if child’s welfare requires it) for the words from “and a court—” to “if the court” substitute “the court before which he is charged may, if it”.

(3) Omit Article 43 (effect of juvenile justice centre order where care order is in force).