

# JUSTICE (NORTHERN IRELAND) ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY

#### ***Section 12: Bail to which Part II of the Criminal Justice (Northern Ireland) Order 2003 applies***

34. *Subsection (1)* of this section amends the provisions on bail in respect of non-scheduled cases contained in the [Criminal Justice \(Northern Ireland\) Order 2003 \(SI 2003/1247 \(N.I. 13\)\)](#) (“the 2003 Order”). *Subsection (2)* extends the definition of surrender to custody to include surrender to the custody of a prison governor in order to cover those released on compassionate bail.
35. *Subsection (3)* amends Article 5 of the 2003 Order (offence of absconding by person released on bail) so that the offences can be tried both summarily and on indictment (at the moment the offences are summary only). This will bring the treatment of these offences in line with the new offences being created in relation to scheduled offences by paragraph 1 of Schedule 2. The penalty for conviction on indictment will be up to 3 years imprisonment or a fine or both. The penalty on summary conviction will be up to 12 months imprisonment or a fine not exceeding the statutory maximum or both. *Subsection (4)(a)* amends article 6(3) of the 2003 Order so that the power of arrest without warrant in Article 6(3) will only apply in relation to those released on bail who are under a duty to surrender to the custody of a court.
36. *Subsection (4)(b)* creates a new power of entry, subject to a warrant being granted by a Justice of the Peace, to enable police officers to enter any premises in order to carry out an arrest under Article 6(3) of the 2003 Order. The Justice of Peace may only issue the warrant if he is satisfied that any of the conditions set out in new Article 6(3B) exist, and he is satisfied that the person to whom the application relates is, liable to be arrested under Article 6(3) and is to be found on the premises specified in the application. *Subsection (4)(c)* inserts a new sub-paragraph into Article 6 to make exceptions to the timing for bringing a person before a court following his arrest under Article 6(3) if he is in hospital and not well enough to attend court. Such an exception already exists in the similar provisions of Article 47(5) of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(SI 1989/1341 \(N.I.12\)\)](#).
37. Under Article 29(1) of the [Magistrates’ Courts \(Northern Ireland\) Order 1981 \(SI 1981/1675 \(N.I. 26\)\)](#) if a summary offence is punishable with more than six months imprisonment a person is normally entitled to elect for trial by jury. However, this right is subject to specific exceptions as set out in that Article. *Subsection (5)* adds Article 5(1) and (2) of the 2003 Order to the list of exceptions because the summary penalty for those offences has been increased to 12 months. *Subsection (6)* provides that the penalties available under *subsection (3)* will only apply to offences committed after the commencement of *subsection (3)*. This is to avoid any retrospective application of the legislation.