

# **JUSTICE (NORTHERN IRELAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### ***Section 7: Influencing a Prosecutor***

18. This section creates an offence of seeking to influence a prosecutor with the intention of perverting the course of justice as recommended by the Criminal Justice Review at recommendation 46. The offence is created by way of a new section 32A inserted into the 2002 Act. For this purpose, a prosecutor may be the Director, the Deputy Director of Public Prosecutions for Northern Ireland, a Public Prosecutor (as provided for in subsection (1) of the inserted section) or a barrister or solicitor to whom the Director has assigned the power to institute or conduct any criminal proceedings under section 36(2) of the 2002 Act (as provided for in subsection (2) of the inserted section). A person who, with the intention of perverting the course of justice, acts with the intention of influencing a prosecutor as defined above in any decision as to whether to institute or continue criminal proceedings commits this offence.
19. Case law concerning the common law offence of perverting the course of public justice is likely to be of use in the interpretation of this new offence. The intention in relation to the common law offence is one to pervert the course of public justice or the intention to do some act which, if achieved, would pervert the course of public justice. The act done must tend or intend to interfere with the course of public justice. Such acts include but are not limited to making false allegations, perjury, concealing the commission of an offence, obstructing the police, assisting others to evade arrest, failing to prosecute, procuring and indemnifying sureties, interfering with witnesses, evidence and jurors and publishing material calculated to prejudice a fair trial. Public justice has been interpreted to mean that either a course of justice has been commenced by way of an investigation or court proceedings, or an offence has been committed which requires prosecution.
20. A person charged with this offence may be tried either summarily or on indictment. Subsection (3) of the inserted section provides that the offence is punishable on summary conviction by a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or both. On conviction on indictment, the offence is punishable by imprisonment for a term not exceeding five years or to a fine or both. Subsection (4) of the inserted section requires the Director's consent for proceedings to be instituted to ensure that a prosecution for this offence is only instituted where there is sufficient evidence and where the prosecution will be in the public interest.