

*These notes refer to the Justice Act (Northern Ireland)  
2015 (c.9) which received Royal Assent on 24 July 2015*

# Justice Act (Northern Ireland) 2015

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## **EXPLANATORY NOTES**

### **OVERVIEW**

7. The Act has 107 Sections, divided into 10 Parts, and 9 Schedules
8. This section provides an overview description for each Part of the Act in sequential order. A more detailed Section by Section commentary then follows.

### ***Single Jurisdiction for County Courts and Magistrates' Courts***

9. Court boundaries for the county courts and the magistrates' courts have historically been based upon local government districts. Under the current court boundaries model, there are limitations on the ability to manage the distribution of court business and so provide the best service to court users and ensure the most efficient use of judicial time and court resources.
10. Part 1 of the Act creates a single territorial jurisdiction in Northern Ireland for the county courts and magistrates' courts, similar to that which already exists for the High Court, Crown Court and Coroners Service, to allow greater flexibility in the distribution of court business by allowing cases to be listed in, or transferred to, an alternative court division where there is good reason for doing so.

### ***Committal for Trial***

11. Committal is a procedure used to determine whether there is sufficient evidence to justify putting a person on trial in the Crown Court. Proceedings can be in the form of oral evidence, where witnesses can be cross-examined, or as a paper exercise, carried out based on written statements and evidence. The practice of hearing oral evidence, particularly cross-examination, can have a significant impact on victims and witnesses, who may have to give (sometimes traumatic) evidence more than once.
12. Oral evidence hearings can also be very lengthy, with hearings typically lasting 1-2 days, and problems are often experienced in organising witnesses to attend, which can lead to adjournments and consequently increase delay in the magistrates' court before the case can be sent to the Crown Court. They can also be costly to the legal aid fund.

13. Part 2 of the Act creates new measures which will reform procedures around the taking of oral evidence and cross-examination of witnesses in committal proceedings, to provide that such evidence is only to be given where, in the opinion of the court, it is required in the interests of justice. Powers are also introduced to allow direct transfer to the Crown Court of those cases in which there is a guilty plea as well as direct transfer for certain indictable offences, beginning with murder and manslaughter cases.

### ***Prosecutorial Fines***

14. Part 3 of the Act introduces new arrangements in the form of a prosecutorial fine that will enable certain offences to be dealt with proportionately, and at an early stage, without recourse to court prosecution, thereby enabling prosecutorial resources to be better directed to prosecuting more serious offending, and dispensing with the requirement of an investigating officer appearing in court.
15. The prosecutorial fine will create new powers to enable public prosecutors to offer lower level offenders a financial penalty, up to a maximum of £200 (the equivalent of a level 1 court fine) as an alternative to prosecution of the case at court. It is proposed also that the prosecutor should have a power to attach a financial compensation order to the proposed penalty in cases of criminal damage only. Recipients of a prosecutorial fine will avoid a formal criminal record if the disposal is accepted and paid, although the criminal justice system will retain a record of such disposals to inform decisions on any future offending by the recipients of prosecutorial fines.

### ***Victims and Witnesses***

16. Part 4 of the Act contains provisions that will improve the experience of victims and witnesses in the criminal justice system, clearly setting out the services that are to be provided and the standard of service that victims and witnesses can expect to receive. Given the duties that will be imposed on criminal justice agencies it should also give rise to a greater focus on the needs of victims and witnesses across the criminal justice system. Combined with changes to reduce undue delay this should lead to a substantial improvement in the victims and witnesses experience of the criminal justice system.
17. The establishment of Victim and Witness Charters are key strands of the new five year strategy for victims and witnesses of crime. Too often victims and witnesses are unclear as to what services are available to them, when they should be provided with information on their case and what measures are available to provide them with support and help them give their best evidence where they attend court as a witness.
18. The Victim and Witness Charters will address this by clearly setting out what services are to be provided to victims, the standards of service they can expect to receive and a clear indication of how they should be treated by specified criminal justice agencies.

19. A key concern for victims is getting adequate support to meet their needs as they move through the criminal justice system and being provided with information on the progress of their case, even if that is simply to say that there has been no change. The Victim and Witness Charters will make the journey through the criminal justice system easier and simpler by clearly setting out the services that are available, who provides these services and the key stages in the process that victims and witnesses can expect to receive information on their case (including when and from whom). The Charter will also make clear who to contact should the service provided not be as expected or entitlements set out under the Charter are not provided
20. Providing a statutory entitlement to be afforded the opportunity to make a victim personal statement will ensure that victims can make their views known about the impact of the offence, ahead of sentencing, where a person is convicted of a crime. Given that there should also be increased awareness of the ability to make a statement, this will assist in improving victim's experience of the criminal justice system.
21. Finally, the Act makes provision to enable relevant details of victims and witnesses of crime to be shared by the police and Public Prosecution Service, to certain criminal justice system service providers, in order that they can be advised of relevant support services and information schemes. The purpose is to ensure that victims and witnesses are provided with relevant information, at the appropriate time, about available services and can make an informed decision about whether or not to avail of those services.

### ***Criminal Records***

22. Part 5 of the Act introduces a number of improvements to streamline the arrangements for, and additional protections relating to, the disclosure of criminal record checks. These include making criminal record checks portable and allowing for on-line updating in certain circumstances; accepting applications made by electronic transmission; changing from the current system of issuing two certificates for standard and enhanced checks (one to the Registered Body and the other to the applicant), to a system of issuing a single certificate to the applicant only; introducing arrangements to allow self-employed persons to obtain enhanced criminal record certificates; and allowing for the exchange of information between AccessNI and the Disclosure and Barring Service for barring purposes.
23. The Act also provides that criminal record checks should not be carried out for those under 16 years of age, except in certain prescribed circumstances; and that an individual under the age of 18 applying for registration must satisfy the Department that there is good reason for being registered.
24. A number of changes are made relating to the disclosure of "relevant information" as part of a criminal record check. These include making provision for statutory guidance – which must be published - to assist police in deciding what information should be released and for the establishment of

an independent representations process for those who wish to dispute “relevant information” provided by a chief officer of police.

25. Provision is also made for the introduction of a review mechanism for the filtering scheme operated by AccessNI, enabling a person to seek, in certain circumstances, a review of their case where a conviction or other disposal has not been filtered from their standard or enhanced criminal record certificate.

### ***Child Protection Disclosures***

26. Part 6 introduces Child Protection Disclosures to Northern Ireland to allow for the consideration of disclosure of conviction information in relation to any offender who falls within the public protection arrangements for Northern Ireland.

### ***Live Links***

27. Part 7 of the Act provides an expansion in court services by extending the range of matters that can be dealt with by way of “live link”. When evidence is given by live link a room is provided outside the courtroom where the witness can give evidence via a live television link to the courtroom. This means that the witness will be able to see the courtroom, and that those in the courtroom, including the defendant, will be able to see the witness through a television screen.
28. The additional “live link” provisions being created will introduce the use of live links for certain types of witness; hearing; court; and court-related proceedings in the interest of witnesses and the delivery of a more efficient justice system. The provisions do not change a patient’s or defendant’s entitlement to be present at a hearing nor do they alter the right to consult privately with their legal representative before, during or after a live link.
29. As a package they are designed to increase the use of live links in courts, prisons and hospital psychiatric units providing a cost effective and secure means for patients/defendants to participate in hearings.

### ***Violent Offences Prevention Orders***

30. Part 8 makes provision for the introduction of a new civil preventative measure – a Violent Offences Prevention Order (VOPO) – to help mitigate the risk of violent re-offending from certain offenders.
31. The VOPO will allow the court to place relevant conditions on the behaviour of a violent offender, and those subject to the order would also be made automatically subject to notification requirements. This involves the requirement to notify specified personal details to police (similar to those notified by sex offenders under the terms of the Sexual Offences Act 2003).
32. A VOPO can be made by the court in two ways: on conviction; or following application made by the police at a subsequent stage. It does not form part of a person’s sentence nor is it automatically applied to all violent offenders.

Rather, it can only be made following a determination by the court on the basis of the information and evidence presented to it. Specifically, an order can only be made where the court is satisfied that it is necessary for the purpose of protecting the public from the risk of serious violent harm caused by the offender.

33. The VOPO has been developed similar to the legislative framework of the Sexual Offences Prevention Order (SOPO) and is intended to complement existing public protection measures, such as public protection sentences.

### ***Miscellaneous***

34. Part 9 provides for improvements to a range of miscellaneous powers available to courts along with several other business improvement matters. For *Jury Service*, provisions provide for the abolition of the upper age limit for jury service (currently age 70), to be replaced with an automatic right of excusal for those over 70; an increase of the current age for automatic excusal from 65 to 70; and various tidy-up provisions.
35. For *Unpaid community service after release*, a power allows the Department to make regulations that may require a person released under the terms of the Conditional Early Release Scheme (under Article 19 of the Criminal Justice (NI) Order 2008) to engage in unpaid community service during the period of their early release.
36. For *Personal samples, DNA profiles and fingerprints*, a number of changes are made to the new DNA and fingerprints retention framework as set out in Schedule 2 of the Criminal Justice Act (Northern Ireland) 2013 to close a number of gaps in the provisions and ensure that the new regime operates as originally intended.
37. For *Early guilty pleas*, a statutory provision is introduced to encourage the use of earlier guilty pleas in Northern Ireland. The provisions will provide legislative support to a (non-legislative) scheme being developed to provide a structured early guilty plea scheme in the magistrates' courts and the Crown Court. The provisions will: (i) require a sentencing court to state the sentence that would have been imposed if a guilty plea had been entered at the earliest reasonable opportunity and; (ii) place a duty on a defence solicitor to advise a client about the benefits of an early guilty plea.
38. For *Sexual offences against children*, an amendment is made to the existing child grooming offence in the Sexual Offences (Northern Ireland) Order 2008 to reduce the number of times an adult has to have met, or communicated with, a child before meeting them, or travelling to meet them, from two to one. A new offence of 'sexual communication with a child' is also created, which will criminalise an adult who intentionally communicates with a child, where the content of the communication is sexual, or is intended to cause or incite a child to communicate sexually.

39. For *Avoiding delay in criminal proceedings*, the Act introduces a statutory framework for the management of cases. Through regulation, the Department of Justice will be able to impose duties on the prosecution, defence, and the court, which set out what must be completed prior to the commencement of court stages. There is also to be a general duty on the court, prosecution and the defence to reach a just outcome as swiftly as possible in relation to criminal proceedings.
40. Under *Public Prosecutor's summons*, provisions will allow a Public Prosecution Service prosecutor to issue a summons to a defendant without first having to get a Lay Magistrate to sign the summons, thereby streamlining procedures and helping to speed up the process in summons cases by reducing the time taken between the decision to prosecute and first appearance in court.
41. Under *Defence access to premises*, a power is introduced to fill a gap which currently exists, so that, in cases where access to premises is not agreed, the defendant will have recourse to the court in order to properly prepare his defence (or appeal).
42. For *Court security officers*, a lacuna is closed to enhance the security of court venues and court users by specifying that a Court Security Officer's powers to search, exclude, remove or restrain an individual is extended to include the grounds on which the court buildings sit.
43. For *Causing or allowing a child or vulnerable adult to suffer serious physical harm*, changes to Section 5 of the Domestic Violence, Crime and Victims Act 2004 are offered to extend the offence of causing or allowing the death of a child or vulnerable adult to include "suffering serious physical harm" to close a current gap in the legislation in cases where prosecutions for child cruelty or serious injury fail because there is insufficient evidence as to which member of the household was responsible.
44. Under *Domestic Violence Protection Notices and Orders*, provisions are included that provide for the police and the courts to have the power to issue protection notices and orders aimed at ensuring the immediate protection of victims or potential victims of domestic violence.
45. Changes to *Youth Justice* arrangements are provided in the form of amendments to the Aims of the Youth Justice System in Northern Ireland, articulated in Section 53 of the Justice (NI) Act 2002, to reflect the best interests principle as set out in Article 3 of the UN Convention on the Rights of the Child (UNCRC); and a technical adjustment to delete transitional arrangements relating to detention orders in sub-section 10.5 of the Criminal Justice Act (NI) 2013 that are no longer needed and which it was feared may not be ECHR-compliant.
46. A minor change is effected to the arrangements for determining the salary of the member of the *Lands Tribunal* and, finally, in this Part of the Act, an amendment is made to the *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015* so that in addition to charities already registered under the Charities Act (Northern Ireland) 2008,

charities waiting to be called forward to register under that Act and charities registered in either England and Wales or Scotland are eligible to be considered by the Health and Social Care Board to provide an independent guardian service in Northern Ireland.

***Supplementary Provisions***

47. Part 10 provides supplementary and transitional provisions. It provides for the making of regulations or orders under the Act; interpretation; transitional provisions and savings; and minor and consequential amendments and repeals. It provides powers of commencement. Seven sections come into effect on Royal Assent and the remainder will come into effect by order.