

*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

### COMMENTARY ON SECTIONS

#### **Part 1: Single Jurisdiction for County Courts and Magistrates' Courts**

Part 1 of the Act creates a single jurisdiction in Northern Ireland for the county courts and magistrates' courts, replacing statutory county court divisions and petty sessions districts with administrative court divisions. This will allow greater flexibility in the distribution of court business by enabling cases to be listed in, or transferred to, an alternative court division where there is good reason for doing.

#### ***Section 1: Single jurisdiction: abolition of county court divisions and petty sessions districts***

This section creates a single territorial jurisdiction for the county courts and magistrates' courts by providing that:

- Northern Ireland is no longer to be divided into county court divisions and petty sessions districts; and
- the courts' jurisdiction and powers are exercisable throughout Northern Ireland.

#### ***Section 2: Administrative court divisions***

This section confers a power on the Department of Justice to divide Northern Ireland into administrative court divisions, after consultation with the Lord Chief Justice, and allows for Departmental directions to specify different administrative court divisions for different court purposes.

#### ***Section 3: Directions as to distribution of business***

This section confers a power on the Lord Chief Justice to give directions detailing the arrangements for the distribution of business among the county courts and magistrates' courts, and for the transfer of business from one court to another. The section also allows the Department to give directions as to the distribution among the chief clerks and clerks of petty sessions of the exercise of any functions conferred by any statutory provision on them.

#### ***Section 4: Lay magistrates***

This section re-enacts section 9 of the Justice (Northern Ireland) Act 2002, with amendments so that a lay magistrate will have jurisdiction throughout Northern Ireland, and will be appointed to an administrative court division.

The section also provides that a lay magistrate shall sit in accordance with directions issued by the Lord Chief Justice, and that in issuing such directions, the Lord Chief Justice shall have regard to the desirability of lay magistrates sitting in courts reasonably close to where they live or work.

Finally, the section confers a power on the Department, after consultation with the Lord Chief Justice to make further provision regarding eligibility for appointment as a lay magistrate which may include provision that may require a person to live or work in or within a specified distance of the administrative court division to which they are to be appointed.

#### ***Section 5: Justices of the peace***

This section re-enacts section 103 of the Judicature (Northern Ireland) Act 1978, with amendments so that justices of the peace shall have jurisdiction throughout Northern Ireland. The section also provides for the centralisation of record-keeping in relating to justices of the peace, so that the Department will be responsible for these.

#### ***Section 6: Consequential amendments***

This section provides for the consequential amendments contained in Schedule 1 to have effect. The section also contains an order making power so that the Department may make supplementary, incidental or consequential provisions as required by secondary legislation in consequence of or to give effect to this Part of the Act.

### **Part 2: Committal for trial**

Part 2 of the Act reforms the committal process to reform the use of preliminary investigations and the use of oral evidence at preliminary inquiries; provide for the direct committal to the Crown Court of certain indictable cases where the defendant intends to plead guilty at arraignment; and provide for the direct committal to the Crown Court of certain specified offences.

#### ***Chapter 1 – Preliminary investigations and mixed committals***

#### ***Section 7: Preliminary investigations***

This section amends the Magistrates' Courts (NI) Order 1981 ("the 1981 Order") by inserting a new Article 29A. This provides that committal proceedings in a magistrates' court shall be conducted by way of a preliminary investigation where the courts so directs, and in all other cases, shall be by way of a preliminary inquiry.

An accused may apply to the court for a direction that a preliminary investigation is to be held, and the court may grant such an application only if it is satisfied that a preliminary investigation is necessary in the interests of justice.

***Section 8: Mixed committals: evidence on oath at preliminary inquiry***

This section amends Article 34(2) of the 1981 Order (giving of evidence on oath at a preliminary inquiry) to provide that the prosecution or the accused may apply to the court for leave to require the giving of evidence on oath at a preliminary inquiry. Such leave will only be granted if, in the opinion of the court, this is necessary in the interests of justice.

***Chapter 2 – Direct committal for trial in certain cases***

***Section 9: Application of this Chapter***

This section provides that the direct transfer provisions apply where an accused person appears before a magistrates' court charged with an offence and certain conditions are satisfied.

***Section 10: Direct committal: indication of intention to plead guilty***

This section makes provision for the direct committal (without conducting committal proceedings) of an accused person to the Crown Court who wishes to plead guilty to an offence.

***Section 11: Direct committal: specified offences***

This section provides for the direct committal to the Crown Court for trial where an accused person is charged with a specified offence.

***Section 12: Direct committal for trial: offences relating to specified offences***

This section provides for the direct committal to the Crown Court for trial of a co-accused person who is charged with an offence related to a specified offence.

***Section 13: Direct committal: procedures***

This section prescribes the procedures to be followed in relation to direct committal, including the giving of notice to, and service of documents upon the accused and the Crown Court.

***Section 14: Specified offences: application to dismiss***

This section prescribes the procedures to enable an accused person who has been directly committed to the Crown Court to apply to the court to have the charge or charges dismissed.

### ***Section 15: Restrictions on reporting applications for dismissal***

This section makes provision for reporting restrictions in relation to applications for dismissal of a charge or charges.

### ***Section 16: Supplementary and consequential provisions***

This section gives effect to Schedule 3 to the Act, which contains amendments consequential to the provisions on direct committal, and makes further supplementary provision.

## **Part 3: Prosecutorial Fines**

Part 3 of the Act creates 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.

### **Prosecutorial Fine**

#### ***Section 17: Prosecutorial fine: notice of offer***

This section empowers a prosecutor to issue a notice offering an alleged offender over age 18 a prosecutorial fine for one or more summary offence(s) and specifies the information which the notice must contain.

The notice of offer will indicate that refusal of the offer may result in prosecution for the offence, and that acceptance of the offer discharges the alleged offender's liability for that offence. The alleged offender is given 21 days to accept or reject the offer, and no further proceedings may be undertaken during this 21 day period. If the prosecutorial fine notice of offer is accepted, then a prosecutorial fine notice will be issued.

#### ***Section 18: Prosecutorial fine notice***

This section is engaged if an offender accepts the offer of a prosecutorial fine.

On receipt of acceptance of a prosecutorial fine offer, a prosecutor must issue a prosecutorial fine notice to an alleged offender, containing details of the offence and how payment of the fine may be made. The section requires payment of the fine within 28 days of the date of issue of the notice, and requires the prosecutor to alert the fines clerk that a fine notice has been issued.

#### ***Section 19: Amount of prosecutorial fine***

This section defines the amount of the prosecutorial fine as the total of the amount determined by the prosecutor plus a £10 offender levy. The section also provides that in the case of an offence of criminal damage the prosecutor may also order an amount of compensation in respect of damage caused to be paid to a victim. The section sets the maximum value of a prosecutorial fine at £200 (level 1 on the standard fine scale) and the maximum compensation at £5000 (the maximum compensation awardable in a Magistrate's court).

***Section 20: Restrictions on prosecutions***

This section places restrictions on the issue of a prosecutorial fine. It prevents further action being taken against an alleged offender for the alleged offence within 21 days of the issue of a notice of offer. If the prosecutorial fine is paid before the end of the suspended enforcement period no proceedings may be brought for the offence.

**Payment of prosecutorial fine**

***Section 21: Payment of prosecutorial fine***

This section sets out the detailed arrangements for the payment of a prosecutorial fine.

Sums paid by way of a prosecutorial fine for an offence are treated as if they were fines imposed on summary conviction of that offence to allow the use of existing court fine recovery and compensation payment mechanisms.

**Non-payment of prosecutorial fine**

***Section 22: Failure to pay prosecutorial fine***

This section details the process to be undertaken if a prosecutorial fine is unpaid when the 28 day period allowed for payment has elapsed. In this case the fine is increased by 50% and the total amount is pursued as a court fine. Only the fine and offender levy elements are increased, the compensation element (if any) is not.

***Section 23: Registration certificates***

This section requires a prosecutor to raise a certificate of registration to allow a defaulted fine to be pursued by a fines clerk.

***Section 24: Registration of sum payable in default***

This section allows enforcement of the defaulted fine through existing court mechanisms.

***Section 25: Challenge to notice of registration***

This section allows an alleged offender to challenge the issue of a prosecutorial fine on the basis of mistaken identity.

***Section 26: Setting aside of sum enforceable under section 24***

This section allows a court to set aside the sum imposed by a prosecutorial fine and declare the disposal void.

## **Interpretation**

### ***Section 27: Interpretation of this Part***

This section defines the terms used in the legislation pertaining to prosecutorial fines.

## **Part 4: Victims and Witnesses**

Part 4 of the Act improves services and facilities for victims and witnesses by providing for the establishment of statutory Victim and Witness Charters, providing a statutory entitlement to be afforded the opportunity to make a victim personal statement and facilitating the sharing of information between criminal justice system service providers.

## **The Victim Charter and the Witness Charter**

### ***Section 28: Victim Charter***

This section places a duty on the Department to issue a Victim Charter setting out the services, standards of services and treatment of victims by specified criminal justice agencies. It highlights what services must be covered by the Charter and enables exceptions and restrictions to be applied to the Charter's general provisions that would allow a more targeted service to be provided.

Section 28 also makes provision enabling the services to a victim to be provided to others as well as the victim and requires criminal justice agencies to have regard to the Charter in carrying out their functions.

### ***Section 29: Meaning of victim***

This section defines a victim, sets out other people to be treated as a victim (for example where a person has died or is incapacitated) and circumstances where this would not apply. It enables the Charter to set out who are family members for this purpose.

### ***Section 30: Witness Charter***

This section places a duty on the Department to issue a Witness Charter setting out the services, standards of services and treatment of witnesses in criminal investigations and criminal proceedings by specified criminal justice agencies. It enables exceptions and restrictions to be applied to the Charter's general provisions that would allow a more targeted service to be provided. The section also makes provision enabling the services provided to a witness to be provided to others as well as, or instead of, the witness and requires criminal justice agencies to have regard to the Charter in carrying out their functions.

### ***Section 31: Procedure for issuing Charters***

This section sets out the procedure for issuing a Victim or Witness Charter (and also a revised Charter), including laying it before the Assembly and being brought into operation by order.

### ***Section 32: Effect of non-compliance***

This section sets out the effect of non-compliance with a Charter.

## **Victim statements**

### ***Section 33: Persons to be afforded opportunity to make victim statement***

This section provides that a victim is to be afforded an opportunity to make a written victim statement (to be known as a victim personal statement), setting out the effect of an offence or alleged offence. Regulations may provide for others to be afforded the opportunity, setting out when, how and by whom the opportunity should be afforded. A family member may make a statement, where a person cannot act on their own behalf or the victim has died.

### ***Section 34: Supplementary statement***

This section enables Regulations to make provision related to supplementary victim personal statements.

### ***Section 35: Use of victim statement***

This section enables Regulations to set out the use of the victim personal statement and make provision for the court to have regard to so much of any statement that it considers relevant to the offence in determining a sentence.

### ***Section 36: Disclosure for purposes of victim and witness support services and victim information schemes***

This section gives effect to the insertion of Schedule 3, which provides for the sharing of relevant information about victims and witnesses to service providers so that victims and witnesses can be advised about available services.

## **Part 5: Criminal Records**

This part modernises arrangements for the disclosure of criminal records by allowing for: electronic applications; portable disclosures; the issuing of single certificates; an independent appeals mechanism and guidance in relation to “relevant information” provided by a chief officer of police; a review mechanism in respect of information that has not been filtered by AccessNI; and a range of other improvements.

***Section 37: Restriction on information provided to certain persons***

This section repeals section 101 of the Justice Act (Northern Ireland) 2011 and sections 113A(4) and 113B(6) of the Police Act 1997 Act (the 1997 Act) which require that an employer or registered person should be sent a copy of a certificate. Such provision is no longer required as only applicants will routinely receive a copy of a certificate.

As a consequence, it also makes provision for registered persons to have access to information about certain certificates that stop short of indicating whether any criminal convictions or other information has been provided on that certificate. It also provides, in respect of the update service, that AccessNI must, in certain circumstances, send a copy of a standard or enhanced certificate to the registered person.

The section also repeals section 113B(5) of the 1997 Act under which information, which might be relevant, may be provided to a registered person without it being copied to the applicant. This is not regarded as human rights compliant and the PSNI have not used the powers for some time and have no plans to do so.

***Section 38: Minimum age for applicants for certificates or to be registered***

This section provides that children under 16 should not be subject to criminal record checks except in prescribed circumstances (such as those in home-based occupations) and that an individual under the age of 18 applying for registration must satisfy the Department that there is good reason for being registered.

***Section 39: Additional grounds for refusing an application to be registered***

This section provides a power to refuse to register an individual or organisation that has previously been removed from the register as a result of a breach of the Department's Code of Practice and / or Conditions of Registration as set out within the Police Act 1997 (Criminal Records) (Registration) (Regulations) (Northern Ireland) 2007.

***Section 40: Enhanced criminal record certificates: additional safeguards***

This section replaces the duty on the Department to send applications for enhanced disclosures to relevant police forces with a duty to send these to relevant chief officers. It also amends the 'relevancy' test in section 113B(4) (a) of the 1997 Act to be applied by a chief officer when determining whether information should be included in an Enhanced criminal record certificate from information which 'might be relevant' and ought to be included in the certificate, to a higher test of information which the chief officer 'reasonably believes to be relevant' and which ought to be included in the certificate.

The section also makes provision for statutory guidance to be published to which chief officers must have regard in discharging their functions under section 113B(4) of the 1997 Act. It also allows parties other than the applicant



to dispute the accuracy of the information contained in a certificate. Finally, the section allows a person to apply to the Independent Monitor (appointed under section 119B of the 1997 Act) to determine whether information provided under section 113(B)(4) of the 1997 Act is relevant or ought to be included on an enhanced criminal record certificate.

#### ***Section 41: Review of criminal record certificates***

This section inserts section 117B and Schedule 8A into the 1997 Act to make provision for a review mechanism as part of the filtering scheme operated by AccessNI. The review process will be undertaken by an independent person appointed by the Minister of Justice.

It will enable 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. The provision includes an automatic referral for cases where disclosures relate only to spent convictions or other disposals committed under the age of 18.

The section also provides for the publication of guidance to which the independent reviewer must have regard in exercising his or her functions under Schedule 8A to the 1997 Act.

#### ***Section 42: Up-dating certificates***

This section inserts section 116A into the 1997 Act. This makes provision for updating arrangements. Currently, an individual has to apply for a new certificate for each job or volunteering opportunity for which a certificate is required as the information on it is only valid when issued. Updating arrangements will make a certificate portable (allowing an individual to use their certificate for a variety of positions).

The provisions enable the Department to permit a relevant person in many circumstances this will be an employer to ask, subject to certain conditions, whether or not there is any new information. This will be done by means of an on-line facility and will enable the relevant person to establish if the information on the certificate remains valid and up to date and whether or not a new certificate should be requested. The section includes the provision that the Department must not grant an application for an enhanced criminal record certificate to be subject to up-date arrangements if the certificate contains (or would contain) information which relates to a third party.

#### ***Section 43: Applications for enhanced criminal record certificates***

This section makes provision in section 113B of the 1997 Act for those who are self-employed to apply for an enhanced certificate. Section 113B(2)(b) currently provides that an application must be accompanied by a statement by the registered person that the certificate is required for the purposes of an exempted question asked for a prescribed purpose. (The term Exempted question is defined in Section 113A(6) and demonstrates in broad terms that the certificate

is required for a purpose that has been excluded from the Rehabilitation of Offenders (Northern Ireland) Order 1978 by the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979).

If the position is one where the individual is self-employed the registered person is unable to provide such a statement. Section 41 will enable self-employed persons to provide, under Section 113B of the 1997 Act, a statement that the certificate is required for the purposes of an exempted question asked for a prescribed purpose.

Applications from a self-employed person must be submitted to AccessNI via a registered person in the same way that other applications are made. This means that the registered person will carry out functions such as checking identity.

#### ***Section 44: Electronic transmission of applications***

This section makes provision in sections 113A and 113B of the 1997 Act for applications for standard and enhanced certificates to be sent electronically by inserting a new subsection (2A).

#### ***Section 45: Disclosures by the Department of Justice to the Disclosure and Barring Service***

This section makes provision for the exchange of information between AccessNI and the Disclosure and Barring Service for barring purposes.

#### ***Section 46: Inclusion of cautions and other diversionary disposals in criminal records.***

This section provides statutory cover for the storage of cautions and other diversionary disposals on the criminal history database.

#### ***Section 47: Consequential amendments***

This section makes provision for the consequential amendments in Schedule 4 to have effect

### **Part 6: Child Protection Disclosures**

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

#### ***Section 48: Child protection disclosures***

This section amends Part 3, Articles 49 and 50 of the Criminal Justice (Northern Ireland) Order 2008. Article 49 is amended to include three further definitions: a child; a conviction; and a relevant previous conviction.

It defines a child as a person under the age of 18 years. It specifies that a conviction includes: a conviction by or before a court outside Northern Ireland; any finding (other than that linked to insanity) in criminal proceedings that a person has committed an offence or done the act or made the omission charged; or a caution given to a person in respect of an offence which the person admitted when cautioned. It defines relevant previous conviction as a conviction made for a sexual or violent offence which falls within a specified description of persons (specified in guidance under Article 50).

Article 50 is amended to provide new paragraph (2A). The effect is that guidance to agencies, used to assess and manage certain risks to the public, must contain provisions about arrangements for considering the disclosure of information on relevant previous convictions of a person, where it is necessary to protect a particular child, or children, from serious harm caused by that person. Provision may also be included in the guidance to prevent a person from disclosing the information to another person.

### **Part 7: Live Links in Criminal Proceedings**

This part expands provision for the use of live video link ('live link') facilities in courts to include committal proceedings, certain hearings at weekends and public holidays, and proceedings relating to failure to comply with certain order or licence conditions. Live links will also be available for witnesses before magistrates' courts from outside the United Kingdom and for patients detained in hospital under mental health legislation, and they will be the norm for evidence given by certain expert witnesses.

#### ***Section 49: Live Links: accused at committal proceedings***

This section allows for the accused ('A') to appear and give evidence by live link in committal proceedings in magistrates' courts, if A is likely to be held in custody or detained in hospital during the proceedings. The section includes several safeguards, such as requiring A's consent to a live link direction; the parties must have been given the opportunity to make representations; and the court must be satisfied that it is not contrary to the interests of justice for A to appear or give evidence by live link. Courts are required to adjourn proceedings under this section where A, attending by live link, cannot see or hear the court and be seen or heard by it, and this cannot be corrected immediately. The section also includes the procedure for giving or rescinding a direction, as well as the requirement that the court state and record its reasons for refusing or for rescinding a direction.

#### ***Section 50: Live links from another courtroom: first remands, etc.***

This section provides for certain persons to attend court hearings by live link at weekends and public holidays. This will allow, for example, for a small number of courts to hear certain cases, with defendants or offenders attending by live link from other courthouses. Subsection (1) sets out the sorts of hearing covered –

these all involve the person's first appearance at court following arrest or charge in specified circumstances.

The section contains safeguards including that the court must be satisfied that it is not contrary to the interests of justice for the person to appear by live link. Courts are required to adjourn proceedings under this section where the accused person, attending by live link, cannot see or hear the court and be seen or heard by it, and this cannot be corrected immediately. It also lays down the procedure for giving or rescinding a live link direction.

The section provides that the Department may, by order, amend the type of hearings that may be covered and the days of the week that live links can be used for these purposes. Such an order would be subject to the affirmative resolution procedure.

***Section 51: Live Links: proceedings for failure to comply with certain orders or licence conditions***

This section allows for live links to be used in proceedings where a person, already being held in custody, has to be brought before the court for failing to comply with a specified court order or with conditions under which a sexual offender is released on licence.

The section includes several safeguards, such as requiring the offender's consent before the court can direct that a live link be used, and the court must be satisfied that it is not contrary to the interests of justice for the offender to appear in this manner.

A further safeguard is the requirement on courts to adjourn proceedings for failure to comply with certain orders or licence conditions where the offender attending by live link cannot see or hear the court and be seen or heard by it, and this cannot be corrected immediately. The section also includes the procedure for giving or rescinding a live link direction. For example, in the case of a magistrates' court it must state and record its reasons for refusing or rescinding a direction.

The orders covered by these provisions are various community-related sanctions (eg probation) and sanctions for young persons (eg attendance centre orders, supervision orders). The section also enables the Department, by subordinate legislation, to add breaching other court orders made upon conviction and breaching conditions of other release licences. This would be by the affirmative resolution procedure.

***Section 52: Live Links: expert witnesses***

This section provides that, where certain expert witnesses are to give evidence, the court's starting assumption should be that the expert's evidence will be given by live link.

The sorts of expert witness to whom these provisions apply are to be set out in Regulations made by the Department (and subject to affirmative resolution). For instance, this might be the prosecution's forensics or telecommunications experts.

The relevant experts would be expected to appear at certain hearings by live link from their place of work, thus saving them from travelling to court and therefore saving the costs, time and work associated with that travel. The hearings affected are preliminary hearings, trials and appeals.

As a consequence, the current application process of having to actively apply for a live link direction will be reversed to one of application for personal appearance. A 'personal appearance' direction would only be given if it were in the interests of justice and the efficient administration of justice.

### ***Section 53: Live Links: witnesses outside the United Kingdom***

This section enables witnesses to give evidence from outside the United Kingdom to a magistrates' court in Northern Ireland in certain proceedings. Currently evidence may only be taken in a magistrates' court by live from witnesses outside Northern Ireland if they are situated elsewhere within the UK. This will help to reduce delays caused by scheduling the appearance of overseas witnesses in person during proceedings.

### ***Section 54: Live Links: patients detained in hospital under Mental Health Order***

This Section extends the use of live links in certain court proceedings to include patients detained in hospital under Part 2 of the Mental Health (NI) Order 1986 – patients compulsorily admitted to hospital for psychiatric assessment or treatment. Under existing legislation, only Part 3 psychiatric patients – those compulsorily admitted to hospital via the criminal justice system – are able to appear by live link. (The proceedings affected are for accused persons in preliminary hearings, sentencing hearings and related appeals.)

### **Part 8: Violent Offences Prevention Orders**

Part 8 of the Act creates a new tool – the Violent Offences Prevention Order (VOPO) - to assist relevant criminal justice agencies in the management of risk from violent offending.

The VOPO, as a preventative measure, will benefit offenders in terms of helping to prevent the committal of further offences and will also benefit those affected by crime, by reducing the risk of, and the fear of, crime, which could lead to a potential decrease in the number of victims of crime and potential victims of crime.

## **Violent offences prevention orders**

### ***Section 55: Violent offences prevention orders***

This section defines a VOPO. It establishes that the order may contain such prohibitions or requirements as the court making the order considers necessary, in order to protect the public from the risk of serious violent harm caused by the offender.

It provides that an order can be made for a minimum period of two years, up to a maximum term of five years, unless the order is renewed or discharged by the court.

It defines the term ‘serious violent harm’ as ‘serious physical or psychological harm caused by a person committing one or more specified offences’. A ‘specified offence’ is defined as an offence listed in Part 1 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 2008 (violent offences) .

It also provides a more restricted specification for the offence of assault occasioning actual bodily harm as a specified offence. The public is defined as being, either the general public, or any particular member of the public.

### ***Section 56: Violent offences prevention order made on conviction, etc***

This section allows the court to make a VOPO at the point it is dealing with the offender in respect of a specified offence; or where the person is found not guilty of a specified offence by reason of insanity; or is unfit to be tried and has done the act charged in respect of a specified offence.

The court may make a VOPO where it is satisfied that it is necessary for the purpose of protecting the public from the risk of serious violent harm. A VOPO can be made in respect of specified offences committed (or alleged to have been committed) before, or after, commencement of this provision.

### ***Section 57: Violent offences prevention order made on application of Chief Constable***

This section allows the Chief Constable to apply to the court for a VOPO in respect of a qualifying person who has, since the ‘appropriate date’, acted in such a way as to give him reasonable cause to believe that it is necessary for an order to be made.

It defines ‘appropriate date’ as the date the person was convicted of a specified offence, found not guilty of a specified offence by reason of insanity, or where he or she was found to be unfit to be tried and to have done the act charged in respect of a specified offence.

The application may be made in respect of those who reside in Northern Ireland, or who the Chief Constable believes is in, or is intending to come to, Northern Ireland.

In determining the necessity for a VOPO, the court must take into account whether the person is subject to any other statutory measures that would operate to protect the public from the risk of serious violent harm. The court must also be satisfied that the person qualifies for an order, and that the order is necessary for the purpose of protecting the public from the risk of serious violent harm from the person concerned.

***Section 58: Qualifying offenders***

This section sets out what is meant by the term ‘qualifying offender’ in relation to applications made by the Chief Constable for a VOPO. A person can qualify if he or she has been: convicted of a specified offence or; found not guilty of a specified offence by reason of insanity or; found unfit to be tried and to have done the act charged in respect of a specified offence. This includes those offences or acts committed before, or after, commencement of this provision.

It also provides for offences committed outside Northern Ireland, in those cases where an act constituted a criminal offence in the country where it was committed and would have constituted a specified offence if it had have been committed in Northern Ireland. It stipulates that an act punishable under the law of a country outside Northern Ireland constitutes an offence under that law; however it is described in that law. This includes those offences or acts committed before, or after, commencement of this provision.

It sets out that in those cases where an application for a VOPO is made by the Chief Constable, an act committed in a foreign jurisdiction which is an offence under that law, will be taken to be an act that would have constituted a specified offence if committed in Northern Ireland, unless the person (to whom the application relates) serves notice on the Chief Constable applying for the order denying that this is the case.

The person must give reasons for this and require the Chief Constable to prove the condition is met. It also allows the court to permit the person to require the Chief Constable to prove the condition is met, without having served such a notice.

***Section 59: Provisions that violent offences prevention orders may contain***

This section specifies the prohibitions or requirements (or both) that the court may impose as part of the VOPO.

It stipulates that the order may only include those prohibitions or requirements that are necessary for the purpose of protecting the public from the risk of serious violent harm from the person to whom the order relates.

### ***Section 60: Variation, renewal or discharge of violent offences prevention orders***

This section allows a person who is the subject of a VOPO, or the Chief Constable, to apply to the court for the VOPO to be varied, discharged, or renewed.

A VOPO may not be discharged before the end of the period of two years, beginning with the date on which it comes into force, unless consent to its discharge is given by the person to whom it relates, and the Chief Constable. A renewal order would be subject to a five year maximum limit. The variation of an order can impose additional prohibitions or requirements on the person.

A renewal or variation of an order can only be made if the court considers that it is necessary to do so for the purpose of protecting the public from the risk of serious violent harm caused by the person, and can only contain such prohibitions or requirements, as the court considers is necessary.

### ***Section 61: Interim violent offences prevention orders***

This section allows the court to make an interim VOPO, where an application for a main VOPO is, or has been, made. The interim order will enable prohibitions or requirements to be placed on the person's behaviour pending determination of the main order. It specifies that the interim order can be imposed for a fixed period, as defined in each order and that an interim order will cease to have effect at the end of this fixed period or (if before), when a decision is taken on the main application.

It ensures that an interim order can only be made when the court is satisfied that the individual qualifies for an order; that the court would be likely to make a main order; and that it is considered desirable to act before the determination of the main application to secure immediate public protection from the risk of serious violent harm caused by the person concerned.

An interim order cannot come into force whilst a person is subject to a custodial sentence or is detained in hospital. An interim order can be varied or discharged in the same way as a main order.

### ***Section 62: Notice of applications***

This section provides that a court may not begin to hear an application for a main or an interim VOPO, or an application to vary, discharge or renew a VOPO, unless it is satisfied that the person to whom it will be subject has been given reasonable notice of the application, and the time and place of the hearing.

### ***Section 63: Appeals***

This section provides for appeals to be made to the appropriate court against the making of a main or interim VOPO, or the making, or refusal to make a renewal, variation or discharge of a VOPO.



It provides that where an appeal is made against the making of a VOPO on conviction, the court will deal with the matter as if the order were a sentence passed on the person for a specified offence. Those appeals brought against the making of a VOPO as a consequence of an application by the Chief Constable, are to be made to the county court.

A person may also appeal the making of an order to vary, discharge or renew an order, or the refusal to make such an order. Where the original VOPO application was made to the Crown Court, the appeal must be brought to the Court of Appeal. In any other case, it would be brought to the county court.

It also provides that, the county court may make such orders as may be necessary to give effect to its determination of the appeal and that it may also make such incidental or consequential orders, as appear to it to be just.

### **Notification requirements**

#### ***Section 64: Offenders subject to notification requirements***

This section provides that those subject to a VOPO, or an interim VOPO, will also be subject to notification requirements.

#### ***Section 65: Notification requirements: initial notification***

This section sets out the information which a person must provide to police when he or she first makes a notification, and the timescales within which he or she is required to provide that information. The required information includes (but is not restricted to): the person's name; date of birth; home address; and national insurance number. Where the person is homeless, or has no fixed abode, they must notify an address, or location, where they can be regularly found.

Information must be provided to the police within three days of the main or interim VOPO coming into force. When determining the three day period, any time when a person is: remanded in, or is committed to, custody by an order of a court; serving a custodial sentence; detained in a hospital; or is outside the United Kingdom, is to be disregarded.

It also allows for the inclusion of additional information to be provided to the list of required information. This would be prescribed by regulations made by the Department (subject to the affirmative resolution procedure).

#### ***Section 66: Notification requirements: changes***

This section stipulates that the person must notify police of any changes made to the information initially provided.. This must be done within a three day period from the date when the change occurs. It also allows the person to notify the police before a change to the information occurs. This advance notification must include the date when the change is expected to occur.

Changes to information includes: the use of a name not previously notified; a new home address; any premises in the United Kingdom where they have stayed

for a qualifying period (and which has not already notified to the police); any change relating to the address of any other premises in the United Kingdom at which they regularly reside or stay; a change to any other details prescribed by regulations made by the Department; and when they have been released from custody, or discharged from hospital detention.

A qualifying period is defined as a period of seven days, or two or more periods, in any twelve months, which taken together amount to seven days.

***Section 67: Notification requirements: periodic notification***

This section requires the person to re-notify information provided to police at initial notification, within a defined period.

Where no changes have been made by the person since their initial notification, they would be required to re-notify the required information annually effective from the date of their initial notification. However, where changes have been made to the information subsequently, the annual re-notification date would, instead, be effective from the date they notified information changes to police.

Where the effective date ends whilst the offender is: remanded in or committed to custody by an order of a court; serving a custodial sentence; detained in a hospital; or is outside the United Kingdom, they would be required to re-notify three days from their release, discharge, or return.

It also provides that those who do not have a sole or main residence in the United Kingdom may be subject to a different frequency of notification requirements. This would be prescribed by regulations made by the Department (subject to the affirmative resolution procedure).

This provision does not apply to those subject to an interim order.

***Section 68: Notification requirements: absence from notified residence***

This section requires the person to notify the police in advance, if they intend to leave their registered home address for more than three days to travel elsewhere in the United Kingdom, but where they are not intending to reside at another address which has been, or must be, notified under these provisions.

***Section 64: Notification requirements: travel outside the United Kingdom***

This section provides the Department with the ability to make regulations (subject to the affirmative resolution procedure), setting out notification requirements for those who wish to travel outside the United Kingdom. The regulations would oblige such persons to notify certain details concerning their travel plans to the police.

***Section 70: Method of notification and related matters***

This section establishes how notification is to be made. It stipulates that the person must notify the police of the required information by attending a police

station prescribed in regulations made by the Department under section 87(1) (a) of the Sexual Offences Act 2003. The information should be given orally and must be acknowledged by police in writing. It also allows police to take the person's fingerprints and photograph for verification purposes, as may be required.

It also provides that where the relevant fingerprints taken provide a complete and up to date set of fingerprints and are of better quality than those held for the offender under the Police and Criminal Evidence (Northern Ireland) Order 1989, those taken for the purpose of notification can be retained by police for the individual. The fingerprints of poorer quality must be destroyed.

It stipulates that photographs taken for notification purposes are destroyed once the offender ceases to be subject to notification requirements, but allows the Chief Constable to apply to the court for an extension of photograph retention for a period of two years, following the end of the notification period. The Chief Constable and the offender can appeal against a court order given to extend the period of retention, or a refusal by the court to make an order.

## **Supplementary**

### ***Section 71: Offences***

This section sets out the penalties for failing to comply with the conditions of a VOPO or notification requirements. It stipulates that failure, without reasonable excuse, to comply with any prohibition or requirement of a full or interim VOPO, or any failure to comply with a notification requirement, without reasonable excuse, is an offence. It provides that those who knowingly provide false information on notification would also be committing an offence.

Where the person fails to comply with a notification requirement, the offence of failing to give a notification continues throughout the period during which the required notification is not given. An offender cannot be prosecuted more than once for the same failure.

The penalty for non-compliance is, on summary conviction, imprisonment for a period of up to six months, or a fine not exceeding the statutory maximum, or both. On conviction on indictment, the penalty is imprisonment for a period of up to five years, or a fine, or both.

### ***Section 72: Supply of information to relevant Northern Ireland departments or Secretary of State***

This section allows the Chief Constable to verify information provided by the individual in compliance with their notification requirements, to ensure that the information notified is correct and that no detail has been omitted. This will be done by comparing the details provided at notification against information provided by the person to certain bodies performing Government functions: a relevant Northern Ireland department, the Secretary of State, or a person

providing services to a relevant Northern Ireland Government department or the Secretary of State.

It allows the Chief Constable to share the information for the purposes of the prevention, detection, investigation or prosecution of offences under this Part. The information may only be shared for the purpose of checking that the information supplied to the police is accurate and for the purpose of compiling a report of the comparison. This must be carried out in compliance with the Data Protection Act 1998.

***Section 73: Supply of information by relevant Northern Ireland departments or Secretary of State***

This section stipulates that a compiled information report may be provided to the police and that the police may retain and use the information solely for the purpose of prevention, detection, investigation or prosecution of offences.

It provides that the information provided to police by other Government Departments must be destroyed once the offender ceases to be subject to notification requirements, but allows the Chief Constable to apply for an order to extend the period of retention for a further two years from when the notification period ends.

The application to extend must be made within three months preceding the end of the notification requirement period. The Chief Constable and the offender can appeal against a court order to extend the period of retention, or a refusal by the court to make an order.

***Section 74: Information about release or transfer***

This section allows the Department to make regulations (subject to the negative resolution procedure), requiring those who are responsible for the individual while he is serving a custodial sentence or detained in a hospital, to notify other specified persons of the fact that they have become responsible for that individual, and of the time they are released from custody, or transferred to another institution. The regulations would specify the person responsible and the person who must be notified.

***Section 75: Power of entry and search of offender's home address***

This section provides the police with a power of entry and search of a person's home address. The application must be made to the court by a police officer of the rank of superintendent or above. The court may issue a warrant authorising police to enter the premises for the purpose of risk assessment and to search the premises, if it is satisfied that the specified requirements are met.

The requirements are: that the address specified in the application is an address which was last notified to the police as their home address, or there are reasonable grounds to believe that the person lives there or may regularly be found there; that it is necessary for police to enter and search the premises for

the purpose of risk assessing the individual; and that the police have, on at least two occasions, sought to enter the premises and had been unable to do so.

It also provides that police may use reasonable force, to enter and search the premises, if necessary. The warrant may authorise the police to enter and search the premises on more than one occasion, if the court is satisfied that it is necessary to do so. It also provides that the court, when considering the need for a search warrant, must be satisfied that it is proportionate in all circumstances for police to enter and search the premises in the case where the premises is resided in by a third party.

### ***Section 76: Interpretation of this Part***

This section sets out definitions for the purposes of Part 8.

## **Part 9: Miscellaneous**

This part contains miscellaneous provisions.

### **Jury Service**

#### ***Section 77: Removal of maximum age for jury service***

This section abolishes the upper the age limit for jury service, making everyone over 18 qualified for jury service.

#### ***Section 78: Preparation of jury lists***

This section removes the duty on the Chief Electoral Officer not to select for inclusion in divisional jury lists those electors whose names have been furnished by the Juries Officer as being disqualified, ineligible or excused.

#### ***Section 79: Persons disqualified for jury service***

This section adds to the categories of persons disqualified for jury service persons who have received an indeterminate custodial sentence.

#### ***Section 80: Persons ineligible for jury service***

This section updates the list of persons ineligible for jury service: paragraph (2) adds members and staff of the National Crime Agency; and paragraph (3) removes persons “appointed for the purposes of Article 7(6) of the Treatment of Offenders (NI) Order 1976” and members of the Royal Irish Regiment.

#### ***Section 81: Persons excusable as of right from jury service***

This section updates the list of persons excusable from jury service as of right: paragraph (2) replaces “Representatives to the European Parliament” with “Members of the European Parliament”; paragraph (3) replaces “the Secretary and any Director of the Northern Ireland Audit Office” with “The Deputy Comptroller and Auditor General for Northern Ireland and any Assistant

Auditor General for Northern Ireland”; and paragraph (4) replaces “persons aged between 65 and 70 years” with “persons aged over 70 years”.

### **Unpaid community service after early release**

#### ***Section 82: Unpaid community service after early release***

This section provides the Department with a power to introduce a community service scheme, having first consulted with the Probation Board for Northern Ireland. Under such a scheme a person released early from prison under the terms of the Conditional Early Release Scheme (as provided for by Article 19 of the Criminal Justice (NI) Order 2008) may be required to engage in unpaid community service from the time of their early release up until the time they were originally due to be released.

### **Personal samples, DNA profiles and fingerprints**

#### ***Section 83: Power to take further fingerprints or non-intimate samples***

This section amends Article 61 and Article 63 of PACE to provide powers for police to take fingerprints or a non-intimate sample from persons without their consent, in cases where the investigation was discontinued but then resumed and the previous DNA sample, profile and fingerprints had been destroyed.

Consequential amendments to Schedule 2A of PACE, impose a time limit of six months from the resumption of the investigation for the sample and fingerprints to be retaken.

#### ***Section 84: Retention of material; persons convicted of an offence in England and Wales or Scotland***

This section will correct a gap identified in new Article 63G of PACE which makes provision for the retention of DNA and fingerprints taken from persons convicted of an offence outside Northern Ireland. As currently enacted, Article 63G would not permit the retention of the DNA profile and fingerprints taken from a person in Northern Ireland on the basis of a conviction recorded against the person for a recordable, non-qualifying offence in England, Scotland or Wales. New Article 63GA of PACE will ensure that DNA and fingerprints taken in Northern Ireland may be retained by virtue of the existence of a conviction in England, Scotland or Wales.

#### ***Section 85: Retention of DNA profiles or fingerprints: persons given a prosecutorial fine***

This section makes provision for a DNA profile and fingerprints taken by police from a person who accepts a prosecutorial fine for an offence to be retained for a period of two years.

***Section 86: Power to retain DNA profile or fingerprints in connection with different offence***

This section substitutes a new Article 63N into PACE to provide that fingerprints or a DNA profile taken in connection with the investigation of one offence are to be treated as if they were taken in connection with the investigation of any other offence that the person is subsequently arrested for, charged with, convicted of or given a penalty notice for. This means that provisions in PACE for the retention of fingerprints or DNA profiles where there is a criminal conviction will apply in such cases, without the need for a causal link between the arrest in respect of which the fingerprints and DNA profiles were taken and the subsequent offence.

***Section 87: Retention of personal samples that are or may be disclosable***

This section amends Article 63R of PACE to insert a reference to Article 63P of PACE (which governs the retention of DNA samples) thereby making the retention rules for samples subject to the Criminal Procedure and Investigations Act 1996 (CPIA) in the same way as DNA profiles and fingerprints retained under Articles 63B to 63O and 63Q. The amendments provide that any sample retained under the CPIA must not be used other than for the purposes of any proceedings for the offence in connection with which it was taken and, that once the CPIA no longer applies, the sample must be destroyed.

**Early Guilty Pleas**

***Section 88: Sentencing court to indicate sentence which would have been imposed if guilty plea entered at earliest reasonable opportunity***

This section requires a court, in certain circumstances when passing sentence, to indicate the sentence that it would have passed had the defendant entered a guilty plea at the earliest reasonable opportunity. This section is intended to increase awareness of the availability of sentencing credit for an early plea and add some clarity around the level of credit that may be available in particular circumstances.

**Sexual offences against children**

***Section 89: Meeting a child following sexual grooming etc.***

This section amends Article 22(1) (a) of 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 occasions to one or more occasions. The provision does not apply retrospectively and is effective only from the date of commencement of this section.

***Section 90: Sexual communication with a child***

This section introduces new section 22A into the Sexual Offences (Northern Ireland) Order 2008.

Section 22A provides that an adult person (18 years or over) commits an offence if they communicate sexually with a child under 16 years (or a child who the person committing the offence believes to be under 16 years) for the purpose of obtaining sexual gratification, or if they encourage the child to make a communication that is sexual, with them or someone else.

It defines a sexual communication as one which relates to sexual activity or where a reasonable person would consider it to be sexual. It defines sexual activity as an activity that a reasonable person would consider to be sexual.

Those found guilty of the offence would be liable to up to 6 months imprisonment, or a fine on summary conviction, or imprisonment of up to 2 years on indictment. Those guilty of the offence would also be subject to notification requirements under the terms of Part 2 of the Sexual Offences Act 2003.

### **Avoiding delay in criminal proceedings**

#### ***Section 91: General duty to progress criminal proceedings***

This section provides that in relation to criminal proceedings in the Crown Court or a magistrates' court, it is the duty of the court, the prosecution and the defence, to reach a just outcome as swiftly as possible.

#### ***Section 92: Case management regulations***

This section confers a power on the department to make regulations about the management and conduct of criminal cases that may impose duties on: the court; the prosecution; and the defence. The section also provides that the regulations may also confer functions on the court in relation to the "active management" of criminal cases and defines "active management" of cases in terms of the key responsibilities of a presiding judge.

### **Public Prosecutor's summons**

#### ***Section 93: Public prosecutor's summons***

This section enables a prosecutor from the Public Prosecution Service to issue a summons to an accused person without first having to get a lay magistrate to sign the summons, provided that a complaint has been made to a lay magistrate.

### **Defence access to premises**

#### ***Section 94: Defence access to premises***

This section introduces a power for a court, in criminal proceedings, to order access to specified premises for the defendant.

The section directs that an order will only be made where appropriate, and where it is required in connection with the preparation of the defendant's defence (or



appeal), authorising entry into and inspection of the premises and any other specified activity on the premises or in relation to anything on them.

### **Court security officers**

#### ***Section 95: Powers of court security officers***

This section amends Schedule 3 to the Justice (Northern Ireland) Act 2004 (court security officers) by providing that the powers exercisable by a security officer in a relevant building (as defined in the said Act) also extend within the boundary of the land on which the building stands.

### **Causing or allowing child or vulnerable adult to suffer serious physical harm**

#### ***Section 96: Causing or allowing child or vulnerable adult to suffer serious physical harm***

This section amends Section 5 of the Domestic Violence, Crime and Victims Act 2004 (offence of causing or allowing the death of a child or vulnerable adult). The section provides that in addition to causing or allowing death (under the current legislation) it will be an offence to cause or allow a child or vulnerable adult to suffer serious physical harm.

The section stipulates that a person found guilty of this offence is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine, or both.

### **Domestic violence protection notices and orders**

#### ***Section 97: Domestic violence protection notices and orders.***

This section gives effect to Schedule 7 of the Act, which provides 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.

### **Youth Justice**

#### ***Section 98: Aims of youth justice system***

This section inserts new wording in Section 53(3) of the Justice (NI) Act 2002, which compels all those working in the youth justice system to take account of the best interests of the children with whom they are working as a primary consideration.

***Section 99: Amendment to section 10 of the Criminal Justice Act (Northern Ireland) 2013***

This section deletes sub-section 10.5 of the Criminal Justice Act (NI) 2013 and amends sub-sections (6) and (7) to only such extent as to maintain the integrity of the Section.

**Salary of Lands Tribunal members**

***Section 100: Salary of Lands Tribunal members***

This section removes the need for an increase in the salary of the member of the Lands Tribunal to be made by an affirmative resolution order and to align the arrangements for determining that salary with the non-Assembly procedure used to determine other judicial salaries.

**Amendment to Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015**

***Section 101: Amendment to Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015***

This section amends sections 21(4)(a) and 21(11) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

Section 21(4) requires the Health and Social Care Board to make arrangements with a registered charity (within the meaning of the Charities Act (Northern Ireland) 2008) to provide for an Independent Guardian to be appointed for a child who is a victim, or a potential victim, of human trafficking, or who is determined to be a separated child.

Section 101 substitutes the term “registered charity” in section 21 (4)(a) with “charity” and inserts a new definition of “charity” in section 21(11). The amendment provides 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.

**Part 10: Supplementary Provisions**

This part contains the supplementary provisions including powers to make regulations.

***Section 102: Regulations, orders and directions***

This section provides that regulations and orders made by the Department may include such additional provisions as the Department considers necessary.

***Section 103: Interpretation***

This section contains interpretation provisions.

***Section 104: Transitional provisions and savings***

This section provides for transitional provisions and savings set out in [Schedule 5](#) to have effect.

***Section 105: Repeals***

This section provides repeals set out in [Schedule 6](#) to have effect.

***Section 106: Commencement***

The section concerns the commencement of the Act and enables the Department to make Commencement Orders.

***Section 107: Short title***

This section provides a short title for the Act.