



2011 CHAPTER 24

PART 1

VICTIMS AND WITNESSES

CHAPTER 1

THE OFFENDER LEVY

Offender levy imposed by court

Offender levy imposed by court

1.—(1) This section applies where a court dealing with an offender for one or more offences imposes a sentence which is or includes—

- (a) a sentence of imprisonment;
- (b) a sentence of detention in a young offenders centre;
- (c) a sentence of detention under Article 13(4)(b) or 14(5) of the [Criminal Justice \(Northern Ireland\) Order 2008 \(NI 1\)](#);
- (d) a sentence of detention under Article 45(1) of the [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(NI 9\)](#);
- (e) a community order (within the meaning given by Article 2(2) of the [Criminal Justice \(Northern Ireland\) Order 1996 \(NI 24\)](#)); or
- (f) a fine.

(2) Subject to subsections (3) to (5), the court must, in addition, order the offender to pay an amount (“the offender levy”) determined under section 6.

(3) Subsection (2) does not apply where the offender is an individual under the age of 18.

(4) Subsection (2) does not apply by virtue of a sentence mentioned in subsection (1)(a) or (b) if—

- (a) that sentence is to be served concurrently with another such sentence imposed on the offender on a previous occasion; and
- (b) the offender levy has been imposed under this section in relation to that other sentence.

(5) Where the court considers—

- (a) that it would be appropriate to make a compensation order under Article 14 of the [Criminal Justice \(Northern Ireland\) Order 1994 \(NI 15\)](#), but
- (b) that the offender has insufficient means to pay both the offender levy and appropriate compensation,

the court must reduce the offender levy accordingly (if necessary to nil).

(6) A sentence mentioned in subsection (1)(a) and (b) includes a sentence which is suspended under section 18 of the Treatment of Offenders Act (Northern Ireland) [1968 \(c. 29\)](#).

(7) The Department may by order amend subsection (1).

(8) No order shall be made under subsection (7) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(9) In Article 29 of the Criminal Justice (Northern Ireland) Order 1996 (fixing of fines) after paragraph (3) insert—

“(3A) In applying paragraph (3), a court must not reduce the amount of a fine on account of any offender levy it orders the offender to pay under section 1 of the Justice Act (Northern Ireland) 2011, except to the extent that the offender has insufficient means to pay both.”.

Enforcement and treatment of offender levy imposed by court

2.—(1) An offender levy imposed by a court on an offender is enforceable in the same manner as any fine which has been, or might have been, imposed by the court in dealing with the offender.

(2) Accordingly any statutory provision referring (in whatever terms) to the enforcement of a fine imposed by a court shall have effect in relation to the enforcement of an offender levy imposed by that court as it has effect in relation to the enforcement of that fine.

(3) Subsections (1) and (2) are subject to—

- (a) any provision made by regulations under subsection (4); and
- (b) section 4.

(4) The Department may make such regulations with respect to the enforcement of an offender levy imposed by a court as it considers appropriate.

(5) Regulations under subsection (4) may in particular—

- (a) modify any statutory provision as it has effect by virtue of subsection (2) in relation to an offender levy imposed by a court; and
- (b) make such incidental, supplemental or consequential provision (including provision to modify a statutory provision) as appears to the Department to be expedient.

(6) In subsection (5) “modify” includes the making of additions, omissions, exceptions and amendments.

(7) Except as provided by or under this Part, amounts in respect of offender levies imposed by a court are to be paid, collected and treated in the same manner as amounts in respect of fines so imposed.

Deduction of offender levy imposed by court from prisoner's earnings

3.—(1) In this section—

- (a) “a relevant prisoner” means a person serving a sentence of imprisonment or detention who is liable to pay an offender levy imposed by a court;
- (b) “earnings”, in relation to a relevant prisoner, means money earned by that prisoner for work carried out under rule 51 of the Prison and Young Offender Centre Rules (Northern Ireland) 1995 ([SR 1995/8](#)).

(2) The governor of a prison or young offenders centre, or a person authorised by the governor, may make deductions from the earnings of a relevant prisoner for the purpose of discharging or reducing the liability of that prisoner to pay the offender levy.

(3) Deductions under this section are to be made at such rate and at such times and subject to such other conditions as the Department may direct.

Offender levy imposed by court: other supplementary provisions

4.—(1) A court shall not, at the time of sentencing an offender, exercise any power to issue a warrant committing the offender to prison in respect of the non-payment of an offender levy imposed by the court.

(2) Where an offender is liable to pay both a fine and an offender levy imposed by a court, any amount paid by an offender in respect of that liability shall be treated as first discharging the liability to pay the offender levy.

(3) A court may remit all or part of an offender levy imposed by it on an offender if—

- (a) the court in dealing with the offender imposed both a fine and an offender levy;
- (b) the offender has defaulted in paying the fine; and
- (c) in consequence of that default the court either—

- (i) commits that person to prison; or
 - (ii) makes a supervised activity order under Article 45 of the [Criminal Justice \(Northern Ireland\) Order 2008 \(NI 1\)](#).
- (4) If—
- (a) the court in dealing with the offender imposed both a determinate sentence of imprisonment or detention (other than a suspended sentence) and an offender levy; and
 - (b) the liability of the offender to pay the offender levy was reduced, but not discharged, by deductions made under section 3,
- the levy is, by virtue of this subsection, discharged on the expiry of the sentence.

Offender levy on certain penalties

Offender levy on certain penalties

- 5.—(1) This section applies to—
- (a) a fixed penalty payable in respect of—
 - (i) a notice under Article 60 of the [Road Traffic Offenders \(Northern Ireland\) Order 1996 \(NI 10\)](#) relating to an offence involving obligatory endorsement (within the meaning of Article 3 of that Order),
 - (ii) a conditional offer under Article 80 of that Order relating to such an offence;
 - (b) a penalty payable in respect of a penalty notice under section 60;
 - (c) a penalty specified by order made by the Department.
- (2) The Department may not specify a penalty under subsection (1)(c) unless the penalty—
- (a) is payable in respect of a notice issued to a person by, or on behalf of, a Northern Ireland department under a statutory provision; and
 - (b) payment of the penalty in pursuance of the notice discharges the person from liability to conviction for an offence to which the notice relates.
- (3) An order under subsection (1)(c)—
- (a) may amend the statutory provision under which any penalty specified by the order is payable;
 - (b) shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.
- (4) Where the person liable to pay a penalty to which this section applies is over the age of 18, the penalty is increased by an amount (“the offender levy”) determined under section 6.

(5) Accordingly in Article 59 of the Road Traffic Offenders (Northern Ireland) Order 1996 (amount of fixed penalty) at the end insert—

“(3) Where—

(a) the fixed penalty is in respect of—

(i) a notice under Article 60 relating to an offence involving obligatory endorsement; or

(ii) a conditional offer under Article 80 relating to such an offence; and

(b) the person liable to pay the fixed penalty is over the age of 18,

the fixed penalty is increased by the amount of the offender levy determined under section 6 of the Justice Act (Northern Ireland) 2011.”.

(6) Where the amount of a penalty is increased under section 62(5) or Article 69(2) of the [Road Traffic Offenders \(Northern Ireland\) Order 1996 \(NI 10\)](#) for the purposes of registering an amount for enforcement as a fine, so much of that penalty as consists of the offender levy shall be treated as having been increased by the same proportion.

Amount of the offender levy

Amount of the offender levy

6.—(1) The offender levy for the purposes of section 1 is—

(a) £50, where the sentence imposed on the offender is or includes—

(i) a determinate sentence of imprisonment or detention for more than 2 years (not being a suspended sentence); or

(ii) an indeterminate sentence of imprisonment or detention;

(b) £25, where that sentence—

(i) is or includes a determinate sentence of imprisonment or detention for 2 years or less (not being a suspended sentence); and

(ii) does not include a sentence falling within paragraph (a);

(c) £20, where that sentence—

(i) is or includes a community order or a suspended sentence of imprisonment or detention; and

(ii) does not include a sentence falling within paragraph (a) or (b);

(d) £15, where that sentence—

(i) is or includes a fine; and

(ii) does not include a sentence falling within paragraph (a), (b) or (c).

(2) The offender levy for the purposes of section 5 is £5.

(3) The Department may by order amend subsections (1) and (2).

(4) No order shall be made under subsection (3) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

CHAPTER 2

VULNERABLE AND INTIMIDATED WITNESSES

Special measures for vulnerable and intimidated witnesses

Eligibility for special measures: age of child witnesses

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

(2) In Article 4(1)(a) (witnesses eligible because under 17) for “17” substitute “18”.

(3) In Article 9 (special provisions relating to child witnesses)—

(a) in paragraph (8) for “17” substitute “18”, and

(b) in paragraph (9)(b) for “17” substitute “18”.

(4) In Article 10 (extension of Article 9 to certain witnesses)—

(a) in the title for “17” substitute “18”, and

(b) in paragraph (1)(a)(ii) for “17” substitute “18”.

Special measures directions for child witnesses

8.—(1) Article 9 of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) (special provisions relating to child witnesses) is amended in accordance with subsections (2) to (6).

(2) In paragraph (1) omit sub-paragraph (b).

(3) In paragraph (2)(a) for “(7)” substitute “(4C)”.

(4) In paragraph (4)—

(a) omit the “and” at the end of sub-paragraph (b), and

(b) after sub-paragraph (b) insert—

“(ba) if the witness informs the court of the witness’s wish that the rule should not apply or should apply only in part, the rule does not apply to the extent that the court is satisfied that not complying with the rule would not diminish the quality of the witness’s evidence; and”.

(5) After paragraph (4) insert—

“(4A) Where as a consequence of all or part of the primary rule being disapplied under paragraph (4)(ba) a witness’s evidence or any part of it

would fall to be given as testimony in court, the court must give a special measures direction making such provision as is described in Article 11 for the evidence or that part of it.

(4B) The requirement in paragraph (4A) is subject to the following limitations—

- (a) if the witness informs the court of the witness's wish that the requirement in paragraph (4A) should not apply, the requirement does not apply to the extent that the court is satisfied that not complying with it would not diminish the quality of the witness's evidence; and
- (b) the requirement does not apply to the extent that the court is satisfied that making such a provision would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(4C) In making a decision under paragraph (4)(ba) or (4B)(a), the court must take into account the following factors (and any others it considers relevant)—

- (a) the age and maturity of the witness;
- (b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in paragraph (3) or (as the case may be) in accordance with the requirement in paragraph (4A);
- (c) the relationship (if any) between the witness and the accused;
- (d) the witness's social and cultural background and ethnic origins;
- (e) the nature and alleged circumstances of the offence to which the proceedings relate.”.

(6) Omit paragraphs (5) to (7).

(7) In Article 10 of that Order (extension of provisions of Article 9)—

- (a) in paragraph (1) omit sub-paragraph (b), and
- (b) for paragraph (2) substitute—

“(2) Paragraphs (2) to (4) and (4C) of Article 9, so far as relating to the giving of a direction complying with the requirement contained in Article 9(3)(a), apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that Article).”.

Special provisions relating to sexual offences

9. After Article 10 of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) insert—

“Special provisions relating to sexual offences

10A.—(1) This Article applies where in criminal proceedings relating to a sexual offence (or to a sexual offence and other offences) the complainant in respect of that offence is a witness in the proceedings.

(2) This Article does not apply if the place of trial is a magistrates’ court.

(3) This Article does not apply if the complainant is an eligible witness by reason of Article 4(1)(a) (whether or not the complainant is an eligible witness by reason of any other provision of Article 4 or 5).

(4) If a party to the proceedings makes an application under Article 7(1)(a) for a special measures direction in relation to the complainant, the party may request that the direction provide for any relevant recording to be admitted under Article 15 (video recorded evidence in chief).

(5) Paragraph (6) applies if—

(a) a party to the proceedings makes a request under paragraph (4) with respect to the complainant; and

(b) the court determines for the purposes of Article 7(2) that the complainant is eligible for assistance by virtue of Article 4(1)(b) or 5.

(6) The court must—

(a) first have regard to paragraphs (7) to (9); and

(b) then have regard to Article 7(2);

and for the purposes of Article 7(2), as it then applies to the complainant, any special measure required to be applied in relation to the complainant by virtue of this Article is to be treated as if it were a measure determined by the court, pursuant to Article 7(2)(a) and (b)(i), to be one that (whether on its own or with any other special measures) would be likely to maximise, so far as practicable, the quality of the complainant’s evidence.

(7) The court must give a special measures direction in relation to the complainant that provides for any relevant recording to be admitted under Article 15.

(8) The requirement in paragraph (7) has effect subject to Article 15(2).

(9) The requirement in paragraph (7) does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the complainant’s evidence so far as practicable (whether because the application to that evidence of one or more other special measures

available in relation to the complainant would have that result or for any other reason).

(10) In this Article “relevant recording”, in relation to a complainant, is a video recording of an interview of the complainant made with a view to its admission as the evidence in chief of the complainant.”.

Evidence by live link: presence of supporter

10.—(1) In Article 12 of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) (evidence by live link) after paragraph (1) insert—

“(1A) Such a direction may also provide for a specified person to accompany the witness while the witness is giving evidence by live link.

(1B) In determining who may accompany the witness, the court must have regard to the wishes of the witness.”.

(2) In Article 15 of that Order (video recorded evidence in chief) after paragraph (9) insert—

“(9A) If the court directs under paragraph (9) that evidence is to be given by live link, it may also make such provision in that direction as it could make under Article 12(1A) in a special measures direction.”.

Video-recorded evidence in chief: supplementary testimony

11.—(1) Article 15 of the [Criminal Evidence \(Northern Ireland\) Order 1999](#) (video recorded evidence in chief) is amended as follows.

(2) In paragraph (5) for sub-paragraph (b) substitute—

“(b) the witness may not without the permission of the court give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, is dealt with in the witness’s recorded testimony.”.

(3) In paragraph (7)—

(a) for “paragraph (5)(b)(ii)” substitute “paragraph (5)(b)”, and

(b) in sub-paragraph (a) omit the words from “if there” to “relevant time,”.

(4) Omit paragraph (8) (definition of “the relevant time”).

(5) In paragraph (9) for “paragraph (5)(b)(ii)” substitute “paragraph (5)(b)”.

Evidence of certain accused persons

Examination of accused through intermediary

12.—(1) After Article 21B of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) insert—

“Examination of accused through intermediary

21BA.—(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 direction under paragraph (3) if it is satisfied—

- (a) that the condition in paragraph (5) is or, as the case may be, the conditions in paragraph (6) are met in relation to the accused; and
- (b) that giving the direction is necessary in order to ensure that the accused receives a fair trial.

(3) A direction under this paragraph is a direction that provides for any examination of the accused to be conducted through an interpreter or other person approved by the court for the purposes of this Article (“an intermediary”).

(4) The function of an intermediary is to communicate—

- (a) to the accused, questions put to the accused, and
- (b) to any person asking such questions, the answers given by the accused in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the accused or the person in question.

(5) Where the accused is aged under 18 when the application is made the condition is that the accused’s ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by the accused’s level of intellectual ability or social functioning.

(6) Where the accused has attained the age of 18 when the application is made the conditions are that—

- (a) the accused suffers from a mental disorder (within the meaning of the Mental Health (Northern Ireland) Order 1986) or otherwise has a significant impairment of intelligence and social functioning; and
- (b) the accused is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.

(7) Any examination of the accused in pursuance of a direction under paragraph (3) must take place in the presence of such persons as rules of court or the direction may provide and in circumstances in which—

- (a) the judge and legal representatives acting in the proceedings are able to see and hear the examination of the accused and to communicate with the intermediary;
- (b) the jury (if there is one) are able to see and hear the examination of the accused; and

- (c) where there are two or more accused in the proceedings, each of the other accused is able to see and hear the examination of the accused.

For the purposes of this paragraph any impairment of eyesight or hearing is to be disregarded.

(8) Where two or more legal representatives are acting for a party to the proceedings, paragraph (7)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(9) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by rules of court, that the person will faithfully perform the function of an intermediary.

(10) Article 3 of the Perjury (Northern Ireland) Order 1979 (perjury) applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding.

Further provision as to directions under Article 21BA(3)

21BB.—(1) The court may discharge a direction given under Article 21BA(3) at any time before or during the proceedings to which it applies if it appears to the court that the direction is no longer necessary in order to ensure that the accused receives a fair trial (but this does not affect the power to give a further direction under Article 21BA(3) in relation to the accused).

(2) The court may vary (or further vary) a direction given under Article 21BA(3) at any time before or during the proceedings to which it applies if it appears to the court that it is necessary for the direction to be varied in order to ensure that the accused receives a fair trial.

(3) The court may exercise the power in paragraph (1) or (2) of its own motion or on an application by a party.

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

- (a) giving, varying or discharging a direction under Article 21BA(3), or
- (b) refusing an application for, or for the variation or discharge of, a direction under Article 21BA(3),

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

(2) In the heading of Part 2A of that Order after “LIVE LINK” insert “AND INTERMEDIARY”.

Witnesses protected from cross-examination by accused in person

Age of child complainant

13. In Article 23 of the Criminal Evidence (Northern Ireland) Order 1999 (child complainants and other child witnesses) in paragraph (4)(a) for “17” substitute “18”.